SENATE—*Tuesday, March 18, 1997*

The Senate met at 10 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:

Lord, forgive us when we envy the gifts, talents, and success of others rather than praise You for all You have given to each of us. Sometimes we covet the opportunities and skills of others when they seem to exceed our own. We admit we miss becoming the distinctively different persons You have in mind. A limiting formula results: Our comparisons multiplied by combative competition, equals the stress of envy. You do not play favorites, or pit Your people against one another. You are for us and not against us.

You have promised that if we humble ourselves in Your sight, You will lift us up. We know You will multiply our potential beyond our wildest expectations. So we press on with a liberating formula: An honest recognition of the assets You have given each of us, multiplied by Your indwelling power, will equal greater excellence without stress today. Thank You dear Lord. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. NICKLES. Mr. President, thank you.

I thank the Chaplain, again, for an outstanding opening prayer.

SCHEDULE

Mr. NICKLES. Mr. President, today, following morning business, at 11:30, the Senate will resume consideration of Senate Joint Resolution 18, the Hollings resolution regarding the constitutional amendment on campaign funding. That debate will continue until 12:30 today, at which time the Senate will recess until the hour of 2:15 for the weekly policy conferences to meet.

When the Senate reconvenes at 2:15, there will be an additional 30 minutes for closing remarks, followed by a rollcall vote on passage of Senate Joint Resolution 18. Therefore, Senators can anticipate the rollcall vote at approximately 2:45 today.

Following that vote, the Senate will resume consideration of Senate Joint Resolution 22, the independent counsel resolution. We will be continuing discussions with the Democratic leader in the hope of reaching a consent agreement to allow us to complete action on this resolution. Also this week, it is possible that the Senate will consider a resolution regarding Mexico and their certification in the antidrug effort. In addition, the Senate may begin consideration of the nuclear waste legislation prior to our adjournment for the Easter recess.

Again, I remind my colleagues that since this is the last week of session prior to the adjournment, I hope all Senators will continue to cooperate and adjust schedules accordingly as we attempt to schedule legislation and votes. I thank my colleagues.

MEASURE PLACED ON THE CALENDAR—HOUSE JOINT RESOLUTION 58

Mr. NICKLES. Mr. President, I understand there is a resolution at the desk and it is due for its second reading.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator is correct.

The clerk will read the joint resolution for the second time.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 58) disapproving certification of the President under section 490(b) of the Foreign Assistance Act of 1961 regarding foreign assistance for Mexico during fiscal year 1997.

Mr. NICKLES. Mr. President, I object to further proceeding in this matter at this time.

The PRESIDING OFFICER. The joint resolution will be placed on the calendar.

Mr. NICKLES. Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business until 11:30, with Senators permitted to speak therein for up to 5 minutes each.

Under the previous order, the Senator from Colorado is recognized to speak for up to 15 minutes.

(The remarks of Mr. CAMPBELL pertaining to the introduction of S. 457 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Chair observes, in my capacity as a Senator from Kansas, the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SMITH of Oregon). Without objection, it is so ordered.

CAMPAIGN FINANCE REFORM

Mr. DASCHLE. Mr. President, I have not had the opportunity to come to the floor to talk about the pending matter. I want to devote a little time this morning to the constitutional amendment offered by the distinguished Senator from South Carolina, Senator HOLLINGS. I am a cosponsor of that legislation, and I proudly come to the floor in my advocacy of the passage of his amendment.

I give him great credit. He has come to the floor for years addressing, in myriad ways, the issue of campaign finance, the problems that we have associated with campaign finance, the difficulties, constitutionally and statutorily, in addressing all of the problems that he has so eloquently outlined now for a long period of time. Year after year, in Congress after Congress, fight after fight, Senator HOLLINGS has been extraordinary in his effort to address this issue in a consequential and comprehensive way.

I want to talk a little bit about the circumstances that I see facing all of us politically right now and my reasons for supporting the constitutional amendment. There are at least four primary reasons why I believe that the constitutional amendment needs to be addressed. I am of the view that statutorily we are incapable of adequately addressing every one of the nuances, every one of the problems that have arisen as a result of our efforts to address meaningful campaign finance reform in the past. I do not have with me the record that we have compiled, but we have spent hours and days and weeks in testimony and in hearings over the course of many Congresses grappling with this issue.

As I recall, there have been 49 hearings on campaign finance reform. There have been thousands and thousands of pages of reports. There have been over a score of filibusters on the floor keeping this issue from a vote. So the record in the Congress over the last 10 years has really been abysmal. The problems continue to mount and the circumstances continue to worsen and

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the situation involving Members is compounded.

In 1976, the total cost of all Federal elections was $310 million. That is total. That is what every House Member, every House candidate, every Senator, every Senate candidate, and every Presidential candidate spent—$310 million. In 1996, that amount had exploded—and I use that word intentionally—exploded to $2.7 billion. That is $2,100 a day for a Senate candidate. Every day, whether we generate the money all at once or whether we generate it day by day, we need to raise $2,100 a day.

Just yesterday I was over at my political office. I have a political office. I have a South Dakota office. I have a leadership office. I have three service offices. But now, without a doubt, one of the most important parts of any Senate infrastructure is the political office.

I was over in my political office yesterday dialing for dollars. I do not know how much I raised, but I made up yesterday for the fact that I had not raised $2,100 every day in the previous weeks.

Now the average cost of a Senate campaign is $4.5 million per Senator. I am in cycle now. I will be running in 1998. My budget, Mr. President, is $5 million. I have already indicated that. That is no secret. I will be raising and spending $5 million to be reelected.

I have heard colleagues on the Senate floor say, "Well, you know, the nation spends less than $2.7 billion on dog and cat food, so why should we be worried? We spend a lot more on dog and cat food than we spend in political races."

I do not think that is a proper comparison unless we have only 535 dogs and cats in this country. If you had 535 dogs and cats, that comparison would work. I tell you, if we were spending $2.7 billion on 535 designated dogs and cats, my sense is we would be outraged. There would be all kinds of complaints that dog and cat food is way too high. "I can't afford to keep a cat or a dog."

How is it we can afford a political process so denigrated today by practices that we all abhor that we are willing to spend $4.5 million per Senator? So, Mr. President, the cost is something that I think is very clearly an issue that we have to address, because it is only going to get worse.

We used the increases in campaign costs since 1976 to estimate what the cost of an election will be in the year 2025. Most of us, hopefully, will still be around. I will not be here, but I will be, hopefully, living. Our sons and daughters will be here seeking public office.

Our estimate is that a Senate race will cost $145 million in the year 2025. Now that is not any magical distortion of the amount. That is simply taking the inflation rate that we have experienced and costing it out to the year 2025—$145 million. We will be raising over $200,000 a day to meet that kind of cost in the year 2025.

So do we have a problem? I could rest my case on that alone. But there are other problems that I want to talk about this morning.

I have a friend I have known for 20 years, who ran for Congress. He is idealistic, has a wonderful family; and is extraordinarily helpful. My friend decided he wanted to run for Congress. He was at that point in life when he thought he could offer something. He cared deeply about the issues, and is very, very patriotic, an extraordinary young man in all respects.

But in order to meet his budget, my friend found himself holed up in a small cubicle with a desk and a phone calling for money about two-thirds to three-fourths of every day. Was he out there greeting the people sharing his ideas? No. Was he out there shaking hands, learning from the people? No. A campaign, anybody who has been through one will recognize, is really an educational experience.

Of course you impart your thoughts. But what I love about campaigns is how much you learn in return—the conversations with people in their homes, the opportunity to answer questions and hear concerns at Rotaries and chambers of commerce, the opportunity to shake hands at a plant gate and get comments about what families are thinking about. That education is lost when any candidate spends two-thirds to three-fourths of his time doing nothing but dialing for dollars.

WENDELL FORD, our distinguished colleague who sits right at this desk, said fundraising was a major factor in his determination not to run for reelection. We are going to lose an able public servant. When he was first elected to the Senate in 1974, his campaign cost $450,000. But he estimated he would have to raise $4.5 million for the race in 1998. He said, "I don't want to raise $4.5 million in Kentucky. I don't want to have to go through that. I don't think it is right. I don't want to have to sit in some cubicle called a 'political office' and dial for dollars day after day. I don't want to do that." So he is hanging it up.

How many more WENDELL FORDS, how many more talented public servants will hang it up or will not even start? So, Mr. President, this is a very serious problem from the point of view of candidates themselves—Republican or Democrat.

I recruit candidates, and one of the hardest things for me is to convince possible candidates to run knowing they have to raise $4.5 to $5.5 million. You go tell some businessman to give up his business, give up his family, give up his dignity, go tell them that "you ought to do that so you can take a seat here in the U.S. Senate." Tell them that. Convince them it is in the public interest. Here in the Senate, we have a wonderful opportunity to serve, but to get here you pay a heavy price, too heavy in the minds of more and more people. Too many good people are saying no to public life, no to public service because they do not want to do it. Frankly, I do not blame them.

In the third category are the implications of the money in the system. The implications of all of this money troubles me. Every day the front page has yet another story about White House difficulties. Obviously, it is now the subject of an investigation in the Governmental Affairs Committee and the Justice Department.

We are looking at all of that. We on the Democratic side have felt that many of the abuses the Republicans may be guilty of have not received adequate attention.

The media seem honed in on everything that happened in the White House. As a colleague has reminded me on several occasions, "Why hunt rabbits when you can hunt bear?" Well, there are some elephants that ought to be hunted, I think, given the circumstances.

There were reports in the Washington Post on January 23, 1997; the Wall Street Journal on January 9; Business Week on December 30, 1996; Roll Call on January 20, 1997; Inside Congress on December 20, 1996, that Republican leaders—including Republican National Committee Chairman Haley Barbour, NEWT GINGRICH, DICK ARMEY, TOM DELAY, and JOHN BOEHNER—summoned business leaders to a dinner to chastise them for donating money to Democrats and suggest that if they continue to do so, they would no longer have access to Republican leaders.

This is a quote—"'Companies that want to have it both ways,' said one top GOP strategist, 'no longer will be involved in Republican decisionmaking or invited to our cocktail parties.' They also demanded that the company fire all of its Democratic lobbyists and replace them with Republicans. A GOP leadership insider said, 'If companies send lobbyists to Republican offices, they will have GOP credentials or they won't be allowed in the room.' NRCC Chairman John Linder said, 'We're going to track where the money goes.'"

Mr. President, what does that mean? What are the implications of "money"? What do they mean when they say business leaders who contribute to Democrats will no longer be involved in Republican decisionmaking?

Here's another passage from Roll Call, October 30, 1995.

> Upon winning control of the 104th Congress, Congressman John Boehner, chair of the House Republican Conference, organized a leadership/lobbyist operation to help pass the Republicans' budget plan. Business lobbyists contributed at least $2,000 toward an advertising campaign to support the Republican budget. "In exchange, they got a seat in the inner circle that met every Monday in one of the Capitol's . . . meeting rooms."

So $2,000 for a seat in the inner circle meeting every Monday in the Capitol's meeting rooms.

Here's another example from Time magazine, March 27, 1995. Mr. Boehner also organized the Thursday group of "lobbyists representing some of the richest special interests in the country." The Republican leadership let these lobbyists use congressional office space and official resources to conduct their bill drafting and lobbying activities. The Thursday group served as command central for a million dollar campaign to enact items in the Contract With America. On tort reform, the group's efforts included "daily meetings of dozens of lobbyists on the seventh floor of the Longworth House Office Building, a budget of several million dollars raised under the guidance of a General Motors executive, and a vote-counting operation that was led by former top lobbyists for Ronald Reagan and George Bush."

Here is yet another example, this time from the Washington Post and Legal Times, dated October 29, 1996, and September 16, 1996, respectively: "Gingrich ally and foreign agent Grover Norquist's Americans for Tax Reform received a $4.6 million contribution from the RNC in October," 1 month before the election, "in October 1996 * * * the RNC contributed $4.6 million to the tax-exempt Americans for Tax Reform, which is headed by Gingrich ally Grover Norquist. Because it is not structured as a political committee, ATR is not required to disclose how it spends the money, as the RNC is. This $4.6 million in 'soft money' could be used by ATR directly on behalf of federal candidates—which would be scored as 'hard money' if spent by the RNC. Grover Norquist is a close ally of Gingrich and is also registered as a foreign agent for the Republic of Seychelles, and Jonas Savimbi, rebel leader of the National Union for the Total Independence of Angola."

Mr. President I could go on and on.

Perhaps I will end with this one just received yesterday: 1997 RNC Annual Gala, May 13, 1997. Cochairman—for a $250,000 fundraising requirement, you get "Breakfast and a Photo Opportunity with Senate Majority Leader Trent Lott and Speaker of the House Newt Gingrich on May 13, 1997." You get a luncheon with "Republican Senate and House leadership and the Republican Senate and House Committee Chairmen of your choice."

I am still reading from the document. You get a luncheon with the chairmen of your choice if you are willing to donate $250,000. If you only donate $100,000, you still get a luncheon with the chairmen of your choice, and you still get a breakfast and photo opportunity with "Senate Majority Leader Trent Lott and Speaker of the House Newt Gingrich." You do not get dais seating. For $45,000, amazingly, you are still entitled to lunch with the chairmen of your choice.

Mr. President, we do not need that. We do not need that in this institution or in our political system. This has to end. This will not go on without ultimately and directly affecting the quality and the historic standing of this institution.

Now let me address the last issue, and that is the constitutional issue. Mr. President, I have to say it is the hardest one. It is the hardest because there are a lot of people whose judgment I respect who are not willing to go as far as I am. But it is hard for me to understand what the Supreme Court said in Buckley versus Valeo. On the one hand, they said it is all right to limit how much you give; on the other hand, it is not all right to limit how much you spend. Why? If we are worried about free speech, why is it appropriate to limit giving but not limit spending? What is the constitutional premise that allows us to say we can limit how much you give, but we cannot limit how much you spend? It seems to me that once they decided to limit how much you give, they set themselves up, as well, for limiting how much you spend.

New York University law professor Ronald Dworkin and 40 other scholars wrote in a joint statement, "We believe that the Buckley decision is wrong and should be overturned. The decision did not declare a valuable principle that we should hesitate to challenge. On the contrary, it misunderstood not only what free speech really is but what it really means for free people to govern themselves."

The decision in Buckley and Colorado are a threat to the principle of one person, one vote. There are Senators who disagree, and there are many, many ways with which to express that disagreement. But I will say this: No one is guaranteed free money. Mr. President, free speech is not the same as free money. It is no more right for us to stand up in indignation with all of these problems and to say there is no problem, or that if there is a problem, we cannot address it because of the free speech argument on this issue.

Mr. President, we have limited speech in other ways. We have limited even the right of advertising in ways that have been demonstrated to be constitutional. When was the last time you saw a cigarette ad on television? When was the last time you saw ads for drugs on television? Obviously, there are restrictions on free speech. We all know that you cannot falsely yell "fire" in a crowded theater. Mr. President, I do not buy the argument that we cannot carefully restrict speech, because we restrict speech all the time.

I am out of time, and I know the distinguished Senator from West Virginia is about to speak as is required by the order. We will return to this issue again.

Let me close by saying we also know that this legislation, this amendment, is not going to pass. But we also know that there will be another day. There will be another day to offer bipartisan campaign reform legislation from a statutory perspective. I intend to be as aggressively supportive of that as I can be.

Let me say that this issue will not go away, not when our sons and daughters will be spending $145 million in the year 2025 just to walk in this door and vote.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 11 a.m. has arrived. The Senator from West Virginia is recognized to speak up to 30 minutes.

Mr. BYRD. Mr. President, I thank the Chair. I commend our leader who has just spoken. I agree with him, as I shall elaborate at this point.

THE HOLLINGS CAMPAIGN EXPENDITURE CONSTITUTIONAL AMENDMENT

Mr. BYRD. Ralph Waldo Emerson, in an oration delivered on August 31, 1867, said:

> This time, like all times, is a very good one, if we but know what to with it.

"This time, like all times, is a very good one, if we but know what to do with it."

As the Senate considers the proposed constitutional amendment offered by our distinguished colleague from South Carolina, Senator HOLLINGS, it is my fervent hope that each of us takes heed of Emerson's portentous words.

We have an opportunity to take an important step in the direction of restoring the people's faith in our ability to rise above partisanship and really do something about our present system of financing Federal campaigns. It is rotten. It is putrid. It stinks. The danger, as always, is that we will "circle the wagons," and avoid taking legal action aimed at meaningful reform.

Mr. President, as each day dawns, the public is confronted with new and increasingly garish allegations concerning the campaign financing practices that have become a way of life in our Nation.

Mr. President, we may be able to fool ourselves, but the time has come for all of us to stop trying to fool the American people. They are more than aware that both political parties—both political parties, not just one—abuse the current system and that both political parties fear to change because they don't want to lose their own perceived advantages. One party perceives certain advantages, and the other party perceives different advantages to its cause. But the insidious system of campaign fundraising and the increasing awareness by the people of our unwillingness to change it, will eventually

lead to the destruction of our very system of Government. For our own sakes and for the sake of our people we must find ways to stop this political minuet, and come to grips with the fact that we can't have it both ways. We can't continue to launch broadsides at each other and refuse to admit that we all bear the blame—all of us, in both parties. We have it in our power to change things and the excuses we creatively craft to duck that responsibility are utterly hollow and quite transparent.

The incessant money chase that currently permeates every crevice of our political system is like an unending circular marathon. And it is a race that sends a clear message to the people that it is money—money—money, not ideas, not principles, but money that reigns supreme in American politics. No longer are candidates judged fit for office first and foremost by their positions on the issues. No longer are they judged by their experience and their capabilities. Instead, potential candidates are judged by their ability to raise the millions, and tens of millions of dollars, and even hundreds of millions of dollars that it takes to run an effective campaign.

The average cost of a U.S. Senate race is $4.5 million. When I first ran for the U.S. Senate in 1958, I ran with Jennings Randolph, as the two candidates for the Senate. We were two candidates for two different Senate seats from West Virginia. Jennings Randolph ran for the 2-year term, the unexpired term of the late Matthew Mansfield Neely. I ran for the 6-year term. Each of us won the nomination, and then after the primary we joined together and we marshaled our monetary forces, which amounted to something like $50,000—$50,000 for two Senators. And that was more than had earlier been necessary in campaigns in West Virginia. We didn't have much television in those days. We didn't have political consultants. And so we ran on a war chest of $50,000. But the average cost of a U.S. Senate race today is $4.5 million. It can cost $10 million or $20 million or more to run for the Senate in some parts of the country today.

Now, how in the future can a poor boy from back in the sticks of West Virginia, or any other State, hope to become a United States Senator? How can a former welder in a shipyard, a former meatcutter in a coal mining community, a former produce salesman, a former groceryman—how can one hope to ascend the ladder to the high office of United States Senator? It will be beyond the means of such persons.

The American people believe that the way to gain access and influence on Capitol Hill is through money. And the American people are exactly right. The way to gain access on Capitol Hill, the way to get the attention of Members of this body is through money. The Bible says, "The love of money is the root of all evil." This campaign system that we now have bears that out.

Anyone who reads the daily newspaper would have no trouble coming to the conclusion that the best way to gain access to the White House is to be a so-called "fat cat contributor." Now, who can fault such logic? It is as plain as the nose on your face. We have to stop this madness. We must put an end to the seemingly limitless escalation of campaign costs and their pervasive influence of the special interests and the wealthy. We must act to put the United States Senate, the House of Representatives, and the Presidency of the United States back within the reach of anyone with the brains, the spirit, the guts, and the desire to want to serve. And the proposed constitutional amendment before us today is a necessary step on the way to accomplishing that goal.

Now, I am aware that opponents of this measure—and they have a right to their opinion—would say that it would be wrong to amend the Constitution in this fashion. They will say that, although I may be right about the need for change in our current fundraising system, I am just wrong about this proposed amendment. I am very reluctant to amend the Constitution, but I am not above amending it. The Constitution contains a provision, as we all know, that was included by the framers of that document that points the way and is the guide, the roadmap to amending the Constitution. It is well known that I believe that we tinker with the careful checks and balances of that document at our peril. But a Supreme Court decision in Buckley versus Valeo, a decision which I believe to be flawed, has all but doomed the prospects for comprehensive legislative reform of this campaign finance system otherwise. By equating campaign expenditures with free speech, Buckley versus Valeo has made it impossible for us to control the ever-spiraling money chase and to put anything but voluntary spending limits on Federal campaigns. This basic inflexibility makes any legislation intended to control the cancerous effects of too much money in politics complicated and convoluted. The contortions such legislation has to resort to, simply because we cannot mandate spending limits, create new opportunities for abuse as fast as we attempt to close down the old ones.

How do we pass any statute—any statute of consequence, that is—when the Supreme Court has told us that spending equals speech? Spending equals speech. Well, if that is the case, I don't have the equality of free speech that many Members in this body profess.

How do we place any kind of reasonable limit on fundraising and spending when the law of the land says that to do so violates the first amendment of the Constitution? How do we end $40 million Senate campaigns and $400 million Presidential campaigns when the Supreme Court tells us that those amounts are constitutionally protected? How do we really reform the system within the bounds of that judicial interpretation? The plain truth is that it cannot be done effectively unless we do amend the Constitution.

We can tinker around the edges, of course. But we cannot enact comprehensive legislation that will get at the heart of the problem. We cannot, consistent with the Court's ruling in Buckley versus Valeo, put an end to the hundreds of millions of dollars that are raised in "soft money" contributions, or the hundreds of millions of dollars that are spent through so-called "independent expenditures." I wish we could. But the fact is that we cannot get the kind of legislation we really need unless we first pass an amendment to the Constitution which nullifies Buckley versus Valeo.

We have heard the first amendment invoked in Buckley. We have heard the argument that we must not infringe upon freedom of speech. I believe that a continued failure to control campaign costs is actually what is injurious to free speech for all in political campaigns. Money has become the great "unequalizer"—the great "unequalizer"—in political campaigns. Money talks. Money talks, and a lot of money talks louder than a little money. Would anyone claim that the average citizen or the small contributor has the same access to, the same influence with, politicians as the major contributor or the big PAC representative? Well, take it from me, he doesn't. Whose opinions are heard? Whose free speech is heard? Whose "speech" gets through to the people who count in Washington?

In the case of elections, who is more likely to win but the candidate who can buy more TV time, the candidate who can afford more publicity, a bigger staff? So much for free speech. When it comes to our political system, speech is very, very, very expensive indeed.

In a very real sense, Buckley versus Valeo disenfranchised those of moderate and less than moderate means from having their views heard and weighted equally with those who can afford to contribute huge sums.

Who would stand here on the floor and tell me that the money that a poor coal miner is able to contribute will entitle that coal miner to the same freedom of speech and the same influence with his representatives in Washington as the wealthy can enjoy?

In a very real sense, Buckley versus Valeo, as I say, disenfranchised those of moderate means, the individual who works with his hands, who earns his bread by the sweat of his brow. He can't speak loudly enough to be heard in the corridors of his representatives in Washington.

The influence of money has completely contorted the intent of the first amendment when it comes to our political system. And Buckley versus Valeo has written that contortion into our organic law.

Additionally, Buckley versus Valeo further disenfranchised those who might endeavor to run for political office because it makes it practically impossible for most individuals to afford to run for office themselves unless they are either independently wealthy or a well-financed incumbent. What is that but an effective denial of the basic right of any capable, motivated citizen to stand for Federal office? And what is that but the setting up of classes of citizens, some of whom have more basic rights, some of whom have more freedom of speech because they have more money than others? It is nonsensical.

I believe that the Court in recent years, beginning with Buckley versus Valeo, has been far too dogmatic when it comes to the first amendment. First amendment rights are not absolute. Ever since Mr. Justice Holmes wrote that the right of freedom of speech does not include the right to falsely shout "fire"—it is all right to shout "fire" in a crowded theater if there is a fire. So there is a distinction. The right of freedom of speech does not include the right to falsely shout "fire" in a crowded theater. Ever since Mr. Justice Holmes wrote that, we have realized that there must and can be certain limitations on free speech. Certainly when there is a compelling Government interest in the prevention of corruption or the appearance of corruption, the Court has generally understood that limitations can be imposed. There could be few instances in which a compelling governmental interest in preventing corruption is more obvious than the example of the bedrock of our representative democracy—fair elections.

As the Court said in Gibney versus Empire Storage and Ice Co., ". . . It has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced or carried out by means of language, spoken, written or printed."

So, Mr. President, when it comes to modern political campaigns, it is only when there are no mandated expenditure limits that an inequality in free speech arises. The only real way to correct that inequity is to mandate limits on campaign expenditures. If the rules of the game are equal for all and fair to all, then no one is at a disadvantage simply because of purchasing power.

Mr. HOLLINGS' amendment would begin to correct the mechanistic, sterile jurisprudence that has reared its head in recent Court decisions regarding the first amendment and set us on a more correct course. The various ingenious forms of modern campaigning with their outlandish expenditures were never contemplated by James Madison and the other framers of the Constitution—never contemplated.

Only a blatant disregard for the obscene disadvantage which money can convey when not controlled in a political campaign could cause one to turn a blind eye to the need to respond to violence done to our Republic by a continued failure to put some limitations on campaign expenditures.

Mr. President, the time has come to stop. We have tried the legislative course. When I was majority leader during the 100th Congress, I tried eight times—eight times—to break a filibuster against campaign spending reform.

Robert Bruce, the great leader of the Scots, tried seven times, and it was after the seventh time—as he had lain in the loft of a barn and seen the spider attempt to spin his web from rafter to rafter, it was on the seventh time that the spider was successful in reaching the rafter—we are told that gave Robert Bruce the spirit and the inspiration and the faith he could try the seventh time and win. Well, I tried eight times. I was not successful in breaking the filibuster. I tried more times to invoke cloture than any leader has ever tried. It would not work. It is not going to work the next time.

The time has come to stop. It is time to set aside the partisan bickering, the constant sniping, the ceaseless one-upmanship, and the incessant covering, and do something that will give us the powers necessary to get at the root of the problem. Hiding behind the first amendment will not work. If we continue to try to hide behind the first amendment, we are going to destroy the trust of the people in our Government, in our system of Government. That is a system that is based on the people's trust.

It is not valid to hide behind the first amendment. This is about allowing more freedom of speech than less. It is about returning Government to the man in the street, to the woman who rocks the cradle and makes a home. Give them freedom of speech. It is about returning Government to that man and that woman and getting it out of the corporate boardrooms and the country clubs.

Fear is a very terrible thing. It is terrible because it paralyzes. Fear clouds judgment. Fear of losing advantage is what has driven both parties' reluctance to enact meaningful campaign finance reform in the past, and that same fear is what is driving the current reluctance. But the fixation with maintaining advantage is blinding us to a much greater and more serious peril: the total loss of credibility. Credibility is a precious commodity. We politicians have collectively squandered our credibility over the last several years because of the unchecked rise of the influence of money in politics. Already our people do not vote. They do not vote because they think politicians are all the same and that an individual vote does not matter anymore. Politicians are not trusted because all that concerns them, at least to the perception of the average citizen, is money and winning the next election.

I served as majority leader from the years 1977 through 1980 and again in the years 1987 and 1988, and I served as minority leader during the 6 years in between. It was a constant problem to be a leader and to program the Senate and to operate the Senate, and became increasingly a problem because of the money needs, the needs of the money chase. Senators had to go here; they had to go there; they had to raise money; they had to go for lunch; they had to go for dinner; they had to spend overnight. And it was virtually impossible to schedule votes at any time that would please any and everybody.

The thing that seemed to be most needful in this Senate during those years that I was the leader of my party was money, running around the country with a tin cup in one's hand raising money for a little, measly $134,000-a-year job. It is the most demeaning aspect of our lives as Senators, to have to run around and raise money. And it is getting worse.

The very fiber of what holds a Republic like ours together—trust—is ripping audibly with each new scandal, each new revelation in the press. And so I ask my colleagues to turn away from that course. We can start today. We can use what appears to be a low point in American politics to take an important step toward the good. We can remove this obstacle to real reform, crafted by a wrongheaded Supreme Court decision, and restore some precious equality to our political system.

Mr. President, I compliment the distinguished Senator from South Carolina, who is our leader in this effort. We probably won't win today. But it will be to the American people's loss. "This is a good time," as Ralph Waldo Emerson said, "if only we know what to do with it." Let us not squander an opportunity to begin to fix this thoroughly rotten campaign finance system once and for all. Let us not continue to disappoint the American people out there.

I urge my colleagues to take a stand and support this proposed amendment to the Constitution.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

CAMPAIGN FINANCE AMENDMENT TO THE CONSTITUTION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S.J. Res. 18, which the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (Senate Joint Resolution 18) proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

The Senate resumed consideration of the joint resolution.

The PRESIDING OFFICER. There will now be 1 hour equally divided between the Senator from Kentucky [Mr. MCCONNELL] and the Senator from South Carolina [Mr. HOLLINGS].

The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, let me first thank Senator BYRD our resident Senate historian. I do not say that lightly—because the distinguished Senator from West Virginia has been masterful in his analysis and been very, very cautious and careful. He has stood many a time for not amending the Constitution, that we don't do this, willy-nilly, for any and every problem. But, after 20 years, thousands of speeches and hours and effort made, he has given a very masterful analysis of the need for this amendment. The Senate and the Nation are indebted to him.

Mr. President, I ask unanimous consent that Senator DODD, of Connecticut, be added as a cosponsor.

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

Mr. HOLLINGS. Mr. President, although I commend the efforts of the minority leader and others seeking to statutorily reform our campaign finance laws, I am convinced the only way to solve the chronic problems surrounding campaign financing is reverse the Supreme Court's flawed decision in Buckley versus Valeo by adopting a constitutional amendment granting Congress the right to limit campaign spending.

We all know the score—we are hamstrung by that decision and the ever increasing cost of a competitive campaign. With the total cost for congressional elections, just general elections, skyrocketing from $403 million in 1990 to over $626 million in 1996, the need for limits on campaign expenditures is more urgent than ever. For nearly a quarter of a century, Congress has tried to tackle runaway campaign spending with bills aimed at getting around the disjointed Buckley decision. Again and again, Congress has failed.

Let us resolve not to repeat the mistakes of past campaign finance reform efforts, which have become bogged down in partisanship as Democrats and Republicans each tried to gore the other's sacred cows. During the 103d Congress there was a sign that we could move beyond this partisan bickering, when the Senate in a bipartisan fashion expressed its support for a constitutional amendment to limit campaign expenditures. In May 1993, a nonbinding sense-of-the-Senate resolution was agreed to which advocated the adoption of a constitutional amendment empowering Congress and States to limit campaign expenditures.

Now it is time to take the next step. We must strike the decisive blow against the anything-goes fundraising and spending tolerated by both political parties. Looking beyond the current headlines regarding the source of these funds, the massive amount of money spent is astonishing and serves only to cement the commonly held belief that our elections are nothing more than auctions and that our politicians are up for sale. It is time to put a limit on the amount of money sloshing around campaign war chests. It is time to adopt a constitutional amendment to limit campaign spending—a simple, straightforward, nonpartisan solution.

As Prof. Gerald G. Ashdown has written in the New England Law Review, amending the Constitution to allow Congress to regulate campaign expenditures is "the most theoretically attractive of the approaches-to-reform since, from a broad free speech perspective, the decision in Buckley is misguided and has worsened the campaign finance atmosphere." Adds Professor Ashdown: "If Congress could constitutionally limit the campaign expenditures of individuals, candidates, and committees, along with contributions, most of the troubles * * * would be eliminated."

Right to the point, back in 1974, Congress responded to the public's outrage over the Watergate scandals by passing, on a bipartisan basis, a comprehensive campaign finance law. The centerpiece of this reform was a limitation on campaign expenditures. Congress recognized that spending limits were the only rational alternative to a system that essentially awarded office to the highest bidder or wealthiest candidate.

Unfortunately, the Supreme Court overturned these spending limits in its infamous Buckley versus Valeo decision of 1976. The Court mistakenly equated a candidate's right to spend unlimited sums of money with his right to free speech. In the face of spirited dissents, the Court came to the conclusion that limits on campaign contributions but not spending furthered "* * * the governmental interest in preventing corruption and the appearance of corruption" and that this interest "outweighs considerations of free speech."

I have never been able to fathom why that same test—the governmental interest in preventing corruption and the appearance of corruption—does not overwhelmingly justify limits on campaign spending. The Court made a huge mistake. The fact is, spending limits in Federal campaigns would act to restore the free speech that has been eroded by the Buckley decision.

After all, as a practical reality, what Buckley says is: Yes, if you have a fundraising advantage or personal wealth, then you have access to television, radio and other media and you have freedom of speech. But if you do not have a fundraising advantage or personal wealth, then you are denied access. Instead of freedom of speech, you have only the freedom to say nothing.

So let us be done with this phony charge that spending limits are somehow an attack on freedom of speech. As Justice Byron White points out, clear as a bell, in his dissent, both contribution limits and spending limits are neutral as to the content of speech and are not motivated by fear of the consequences of the political speech in general.

Mr. President, every Senator realizes that television advertising is the name of the game in modern American politics. In warfare, if you control the air, you control the battlefield. In politics, if you control the airwaves, you control the tenor and focus of a campaign.

Probably 80 percent of campaign communications take place through the medium of television. And most of that TV airtime comes at a dear price. In South Carolina, you're talking between $1,000 and $2,000 for 30 seconds of primetime advertising. In New York City, it's anywhere from $30,000 to $40,000 for the same 30 seconds.

The hard fact of life for a candidate is that if you're not on TV, you're not truly in the race. Wealthy challengers as well as incumbents flushed with money go directly to the TV studio. Those without a fundraising advantage or personal wealth are sidetracked to the time-consuming pursuit of cash.

The Buckley decision created a double bind. It upheld restrictions on campaign contributions, but struck down restrictions on how much candidates with deep pockets can spend. The Court ignored the practical reality that if my opponent has only $50,000 to spend in a race and I have $1 million, then I can effectively deprive him of his speech. By failing to respond to my advertising, my cash-poor opponent will appear unwilling to speak up in his own defense.

Justice Thurgood Marshall zeroed in on this disparity in his dissent to Buckley. By striking down the limit on what a candidate can spend, Justice Marshall said, "It would appear to follow that the candidate with a substantial personal fortune at his disposal is off to a significant head start."

Indeed, Justice Marshall went further: He argued that by upholding the

limitations on contributions but striking down limits on overall spending, the Court put an additional premium on a candidate's personal wealth.

Justice Marshall was dead right and Ross Perot and Steve Forbes have proved it. Massive spending of their personal fortunes immediately made them contenders. Our urgent task is to right the injustice of Buckley versus Valeo by empowering Congress to place caps on Federal campaign spending. We are all painfully aware of the uncontrolled escalation of campaign spending. The average cost of a winning Senate race was $1.2 million in 1980, rising to $2.9 million in 1984, and skyrocketing to $3.1 million in 1986, $3.7 million in 1988, and up to $4.3 in 1996. To raise that kind of money, the average Senator must raise over $13,800 a week, every week of his or her 6-year term. Overall spending in congressional races increased from $446 million in 1990 to more than $724 million in 1994—almost a 70-percent increase in 4 short years. I predict that when the final FEC reports are compiled for 1996, that figure will go even higher.

This obsession with money distracts us from the people's business. It corrupts and degrades the entire political process. Fundraisers used to be arranged so they didn't conflict with the Senate schedule; nowadays, the Senate schedule is regularly shifted to accommodate fundraisers.

I have run for statewide office 16 times in South Carolina. You establish a certain campaign routine, say, shaking hands at a mill shift in Greer, visiting a big country store outside of Belton, and so on. Over the years, they look for you and expect you to come around. But in recent years, those mill visits and dropping by the country store have become a casualty of the system. There is very little time for them. We're out chasing dollars.

During my 1992 reelection campaign, I found myself raising money to get on TV to raise money to get on TV to raise money to get on TV. It's a vicious cycle.

I remember Senator Richard Russell saying: "They give you a 6-year term in this U.S. Senate: two years to be a statesman, the next 2 years to be a politician, and the last 2 years to be a demagogue." Regrettably, we are no longer afforded even 2 years as statesmen. We proceed straight to politics and demagoguery right after the election because of the imperatives of raising money.

My proposed constitutional amendment would change all this. It would empower Congress to impose reasonable spending limits on Federal campaigns. For instance, we could impose a limit of, say, $800,000 per Senate candidate in a small State like South Carolina—a far cry from the millions spent by my opponent and me in 1992. And bear in mind that direct expenditures account for only a portion of total spending. For instance, my 1992 opponent's direct expenditures were supplemented by hundreds of thousands of dollars in expenditures by independent organizations and by the State and local Republican Party. When you total up spending from all sources, my challenger and I spent roughly the same amount in 1992.

And incidentally, Mr. President, let's be done with the canard that spending limits would be a boon to incumbents, who supposedly already have name recognition and standing with the public and therefore begin with a built-in advantage over challengers. Nonsense. I hardly need to remind my Senate colleagues of the high rate of mortality in upper chamber elections. And as to the alleged invulnerability of incumbents in the House, I would simply note that well over 50 percent of the House membership has been replaced since the 1990 elections and just 3 weeks ago we swore in 15 new Senators.

I can tell you from experience that any advantages of incumbency are more than counterbalanced by the obvious disadvantages of incumbency, specifically the disadvantage of defending hundreds of controversial votes in Congress.

Moreover, Mr. President, I submit that once we have overall spending limits, it will matter little whether a candidate gets money from industry groups or from PAC's or from individuals. It is still a reasonable amount any way you cut it. Spending will be under control, and we will be able to account for every dollar going out.

On the issue of PAC's, Mr. President, let me say that I have never believed that PAC's per se are an evil in the current system. On the contrary, PAC's are a very healthy instrumentality of politics. PAC's have brought people into the political process: nurses, educators, small business people, senior citizens, unionists, you name it. They permit people of modest means and limited individual influence to band together with others of mutual interest so their message is heard and known.

For years we have encouraged these people to get involved, to participate. Yet now that they are participating, we turn around and say, "Oh, no, your influence is corrupting, your money is tainted." This is wrong. The evil to be corrected is not the abundance of participation but the superabundance of money. The culprit is runaway campaign spending.

To a distressing degree, elections are determined not in the political marketplace but in the financial marketplace. Our elections are supposed to be contests of ideas, but too often they degenerate into megadollar derbies, paper chases through the board rooms of corporations and special interests.

Mr. President, I repeat, campaign spending must be brought under control. The constitutional amendment Senator SPECTER and I have proposed would permit Congress to impose fair, responsible, workable limits on Federal campaign expenditures and allow States to do the same with regard to State and local elections.

Such a reform would have four important impacts. First, it would end the mindless pursuits of ever-fatter campaign war chests. Second, it would free candidates from their current obsession with fundraising and allow them to focus more on issues and ideas; once elected to office, we wouldn't have to spend 20 percent of our time raising money to keep our seats. Third, it would curb the influence of special interests. And fourth, it would create a more level playing field for our Federal campaigns—a competitive environment where personal wealth does not give candidates an insurmountable advantage.

Finally, Mr. President, a word about the advantages of the amend-the-Constitution approach that I propose. Recent history amply demonstrates the practicality and viability of this constitutional route. Certainly, it is not coincidence that five of the last seven amendments to the Constitution have dealt with Federal election issues. In elections, the process drives and shapes the end result. Election laws can skew election results, whether you're talking about a poll tax depriving minorities of their right to vote, or the absence of campaign spending limits giving an unfair advantage to wealthy candidates. These are profound issues which go to the heart of our democracy, and it is entirely appropriate that they be addressed through a constitutional amendment.

And let's not be distracted by the argument that the amend-the-Constitution approach will take too long. Take too long? We have been dithering on this campaign finance issue since the early 1970's, and we haven't advanced the ball a single yard. All-the-while the Supreme Court continues to strike down campaign limit after campaign limit. It has been a quarter of a century, and no legislative solution has done the job.

Except for the 27th amendment, the last five constitutional amendments took an average of 17 months to be adopted. There is no reason why we cannot pass this joint resolution, submit it to the States for a vote, and ratify the amendment in time for it to govern the 1998 election. Once passed by the Congress, the joint resolution goes directly to the States for ratification. Once ratified, it becomes the law of the land, and it is a Supreme Court challenge.

And, by the way, I reject the argument that if we were to pass and ratify this amendment, Democrats and Republicans would be unable to hammer out a mutually acceptable formula of

campaign expenditure limits. A Democratic Congress and Republican President did exactly that in 1974, and we can certainly do it again.

Mr. President, this amendment will address the campaign finance mess directly, decisively, and with finality. The Supreme Court has chosen to ignore the overwhelming importance of media advertising in today's campaigns. In the Buckley decision, it prescribed a bogus if-you-have-the-money-you-can-talk version of free speech. In its place, I urge the Congress to move beyond these acrobatic attempts at legislating around the Buckley decision. As we have all seen, no matter how sincere, these plans are doomed to fail. The solution rests in fixing the Buckley decision. It is my hope that as the campaign financing debate unfolds, the majority leader will provide us with an opportunity to vote on this resolution—it is the only solution.

I now yield 5 minutes to the distinguished colleague from California, Senator BOXER.

The PRESIDING OFFICER. The Senator from California is recognized to speak for 5 minutes.

Mrs. BOXER. Mr. President, I am proud to stand with Senator HOLLINGS and Senator BYRD and many other Senators today in support of Senate Joint Resolution 18. This measure proposes a constitutional amendment to allow the Congress to limit the amount of money that is spent on campaigns. I treasure the Constitution of the United States of America and never have I stood on the floor of the Congress supporting such a measure, except for the equal rights amendment and this measure. It is very rare that I stand to amend this Constitution. But we are about to lose our democracy. It is that serious. I think what Senator HOLLINGS has come up with here is a way to save this democracy. So, I am so proud to be a cosponsor of his measure.

Total campaign spending for general election congressional races has increased more than sixfold in the past 20 years. The total amount of money raised by Republicans and Democrats in 1996 was almost $900 million. In my own reelection campaign, I believe that it could cost at least $20 million. I come from California. We have 33 million people. And $20 million would actually be less than what was spent several years ago to win a U.S. Senate seat. It is an unbelievable amount.

So it is undeniable that there is an extraordinary amount of money in political campaigns. The amounts are growing and unfortunately, in my view, some partisan observers of our political system do not even see it as a problem. I have heard responses such as, "So what?" Or, "Money is the American way." Or "The problem isn't too much money, it is too little money." And the most ludicrous I thought, "We spend more advertising dollars on yogurt than we do on campaigns." I strongly disagree with the notion that money in politics is not a problem. It is a serious problem, undermining our democracy, depressing voter turnout, and, frankly, depressing the American people who should be depressed that their elected officials have to spend so much time away from their official duties.

Let me talk about the California race. Today, a Senate candidate in California can expect to have to raise up to $10,000 a day, including Saturday and Sunday, 365 days a year, for 6 full years. Imagine, $10,000 a day, 7 days a week, 365 days a year, for a full 6 years. That is too much time away from work, too much time away from doing the kinds of things that we want to do here, making life better for people. I resent it. And I am so proud to be able to support this constitutional amendment. Anyone who supports reform, therefore, has to support this. Because of the Supreme Court decision, we cannot control spending unless we pass this Hollings amendment. The Supreme Court decision discriminates against potential candidates who do not have a lot of personal wealth. The talent pool for the House and Senate is declining because of the amount of money that is needed to be raised.

I want to talk a minute about the Supreme Court decision—which I know my colleagues, who are attorneys, who understand it, perhaps, in a deeper fashion, have already done—but I want to talk about it from a commonsense point of view, and as someone who loves this Constitution. I think the Supreme Court was just completely wrong on this Buckley versus Valeo decision that said that Congress could not put a cap on campaign spending. Freedom of speech is the most precious and most important of all the rights guaranteed in our Constitution. But, it seems to me, if you equate money with speech you are demeaning speech. You are demeaning speech. Not everything can be equated with the dollar. Free speech goes far beyond that. And what about the speech of the candidates who do not have personal wealth? What about their speech? When someone comes in who is worth $200 million, $300 million, and throws $30, $40 million into a race—we have had that in California. What happens to the people who cannot afford to put their own money in a race? What happens to their speech?

So, it seems to me what the Court has done in Buckley is to support the speech of the wealthy candidates, not the speech of those of us who cannot afford to put those millions of dollars into place.

The PRESIDING OFFICER. The time of the Senator from California has expired.

Mrs. BOXER. Mr. President, I ask for 2 additional minutes.

Mr. HOLLINGS. I so yield.

The PRESIDING OFFICER. The Senator from California is recognized for 2 additional minutes.

Mrs. BOXER. If money is speech, as the Supreme Court says, then more money must be more persuasive speech, and those ideas with the most money behind them will tend to prevail.

This is un-American. I am a product of public schools. I go toe to toe here with people who went to Harvard and Yale and all those expensive schools. My schooling was free, from kindergarten all the way through college. It is the American way, to give us all that level playing field. We do not have a level playing field if we have to live with Buckley versus Valeo. It is an un-American decision. It is wrong. It is elitist. Ideas should prevail because of their inherent worth, not because they were able to be hyped in 30-second commercials.

By the way, sometimes these commercials are not even ideas, they are terrible attacks on other candidates. So they are not even ideas, but somehow they are worth so much because an individual may have the money.

"Money is speech" subverts the notion that ideas, not commercials, are the heart of the expression that the first amendment protects.

My colleague, Senator HOLLINGS, who has been so eloquent and so persuasive in this debate was right when he said—and I quote—"Our democracy must be saved from this excess."

Mr. President, it is time to go back to the original meaning of the first amendment, overturn Buckley versus Valeo and allow Congress to set spending limits that are fair for all congressional races. I can think of no more important issue than this one to be dealing with at this time as the furor swirls around all these large campaign contributions. Well, folks, those are the rules. Those are the rules. We allow it in the current system. We need to change the current system. To do that we need to pass the Hollings resolution.

I thank you very much and I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Let me thank the distinguished colleague from California. She has spoken to the reality of what we really are confronting.

I do not know how you run a race in the State of California. Mr. Huffington, of your State, spent $30 million of his own money to run for Senate and lost. Last week the Senator from Nevada suggested that all Mr. Huffington needs to do would be come to Nevada. In Nevada he could run a fine campaign for $10 million. He could move, saving $20 million of his money, down to the State of Nevada and win, so to speak,

with the $10 million. We know we know as in warfare, he who rules the air controls the battlefield. And he who rules the airwaves in politics controls the election.

And it is just that cold, hard reality that the Senator from California has spoken to. I am most grateful for her leadership on this particular score.

Going right back, Mr. President, to 1974 and the passage of the Federal Election Campaign Act, in the aftermath of Watergate. We acted together—Republicans and Democrats and said with a strong vote that we shall not have the Government up for sale and that we had to limit spending in campaigns.

So in the 1974 act we limited the individual amount of a contribution. In short, we limited the free speech. Congress did that after a studied debate. We limited the spending of the independent groups at that particular time. We limited the spending of the political action committees. We limited the spending of the individual candidates' own personal wealth, and we limited the overall spending. So the manifest intent in 1974 was to limit what my opponents now characterize as free speech.

In the 1976, Buckley decision, the Court went along with Congress' effort to limit an individual's free speech. When it comes to an individual's contribution, they said fine, it is constitutional to limit the spending or free speech of independent groups or of political action committees.

On the other hand, the Court then said, expenditures, they are not limited. Any limit on expenditures would be a violation of the first amendment. Now, that left us with a dilemma, the rich candidate or the candidate with a fundraising advantage, he has got unlimited speech because he does not have limits. This and the unlimited spending by candidates has become a cancer on the body politic. Combined spending of both political parties has gone up, as the Senator from California said, to almost a billion dollars.

So, Mr. President, what we have here is a terrible dilemma. We wrestled with it for 10 years after that 1976 decision until the mid-1980's when I first introduced a joint resolution to amend the Constitution and provide Congress the authority to limit campaign spending. We did not have a Pavlovian kind of reaction of "Ipso facto, just run. Let's go ahead and amend the Constitution." We did it after numerous attempts to correct the problem. First it was Common Cause, they said we ought to publicly finance. Time and time again, Congress rejected public financing. Opponents characterized it as food stamps or welfare for politicians. So that is not going to fly.

We tried individual voluntary restrictions. If we voluntarily limited, then you can get free time, free television time, free mailings and other benefits.

We were never able to come to grips with reform largely because of the Buckley decision. As Chief Justice Burger said in his dissenting opinion, expenditures and contributions were two sides of the same coin, and to try to limit the one and not the other would not wash. That was Chief Justice Burger's characterization of the decision.

So we are not coming here as just politicians, but with the support of the best of jurists who have come over the years and criticized the Buckley decision. J. Skelly Wright in the Yale Law Journal said that there was nothing in the first amendment that commits us to the dogma that money is speech.

So after trying for 10 years I introduced a constitutional amendment. At that time, we believed perhaps the Court itself saw the practical and the scandalous effect the decision had had and that they would reverse their own decision.

But please, my gracious, Mr. President, they shot that idea with last years Colorado Republican Party versus FEC decision and now "Katie, bar the door. The sky is the limit."

Now what do we have? We have the practical effect of absolutely no limits. Business leaders now say, "Senator, you know, we thought that we sort of had done our part when we gave our $1,000. Now after that Colorado decision the telephone rings off the hook. Now I want $100,000." "What in the world has happened to you all here in Washington?"

They think this is the result of a congressional decision.

Back in 1974 the Congress agreed, in a bipartisan fashion—not partisan—that we could only ask for that $1,000. That is no longer the case.

I refer to an article in the Monday Washington Post, 'Parties' Congressional Campaign Committees Took in Millions in 'Soft Money' in 1995–96." This is the practical effect of the Colorado decision.

This soft money represents independent contributions that, under the Colorado decision, can be spent on congressional campaigns so long as you cannot prove categorically it was coordinated—even though it went for the benefit an individual candidate. In that case, they just started savaging a potential candidate way ahead of time on the radio.

Even though the Court is limiting the individual contributions, the PAC contributions, and right on down the line, now they say, "Well, after all, just go ahead with the so-called soft money," so that practically congressional committees have no limits. As the chart shows the committees received "donations of as much as $735,000 from a single corporation, $310,000 from a union, and $250,000 from an individual from January 1, 1995, through December 31, 1996."

The National Republican Senatorial Campaign Committee raised near $27 million in these unregulated donations in the election year, about three times the total 4 years earlier. The Democratic Senatorial Campaign Committee actively solicited soft money for the first time in the 1995–96 campaign, collecting about $14 million compared with the $566,111 in 1991–1992.

So, you see, both parties just went running amok.

In response to my distinguished friend from Texas, who last week said on this floor that the Republican Party was the poor party and the Democrats were rich, I suggest a look at this chart.

Mr. President, I ask unanimous consent that the article and the chart be printed in the RECORD.

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

[From the Washington Post, Mar. 17, 1997]

PARTIES' CONGRESSIONAL CAMPAIGN COMMITTEES TOOK IN MILLIONS IN "SOFT MONEY" IN 1995–96

(By Charles R. Babcock)

While congressional and public attention has been focused on the large donations the Democratic National Committee solicited for the 1996 elections, the congressional arms of both parties—whose stated purpose is helping to elect federal officials—were busy raking in unlimited "soft money" as well.

Corporations and labor unions may not give directly to federal candidates, and individuals are limited to giving $1,000 to a candidate per election and $20,000 a year to a party committee. But most national party committees have been raising money outside the federal limits, often in $50,000 and $100,000 chunks. This soft money is supposed to be used toward administrative costs and party-building activities such as get-out-the-vote drives.

Federal Election Commission records, analyzed by Common Cause, which is pushing to ban soft money as part of reforming the way federal campaigns are financed, show the congressional committees had donations of as much as $735,000 from a single corporation, $310,000 from a union and $250,000 from an individual from Jan. 1, 1995, through Dec. 31, 1996.

The National Republican Senatorial Committee raised nearly $27 million in these unregulated donations in the election cycle, about three times the total four years earlier. The Democratic Senatorial Campaigns Committee actively solicited soft money for the first time in the 1995–96 campaign, collecting about $14 million, compared with $566,111 in 1991–92.

On the House side, the National Republican Congressional Committee raised nearly $19 million in soft money, three times as much as it raised four years earlier. The Democratic Congressional Campaign Committee raised nearly $12 million, compared with $4.4 million in 1991–92.

FEC rules require that a percentage of the soft money the committees raised be transferred to state and local candidates. The practice has caused some controversy, with Sen. Dianne Feinstein (D–Calif.) complaining that the DSCC shouldn't be in that business after she learned it had spent more than $1 million on state candidates in California.

The NRSC transferred $2.7 million to New York state candidates and committees, with

state Democrats complaining that committee Chairman Alfonse M. D'Amato (R–N.Y.) did so to shore up the party structure for his reelection run in 1998.

	To DSCC	To DCCC
Gave $75,000 or more to one of the Democratic committees:		
American Federation of State County & Municipal Employees	$310,000	$272,500
Federal Express Corp	250,125	7,500
Philip Morris Cos	237,500	192,768
Peter B. Lewis (Progressive Corp.)	225,000	0
Connell Rice & Sugar Co	200,000	207,000
Association of Trial Lawyers of America*	193,500	32,800
Loral Corp.*	155,500	75,000
Bernard L. Schwartz	155,500	70,000
Archer Daniels Midland Co	155,000	80,000
RJR Nabisco Inc.*	143,353	97,550
RJ Reynolds Tobacco	75,853	51,300
Mashantucket Pequot Tribe*	139,000	105,000
American Airlines	121,333	97,033
MCI Telecommunications Corp	110,193	94,950
Sullivan & Liapakis PC*	100,000	125,000
Pamela Liapakis	75,000	0
AT&T Corp	99,980	20,500
Walt Disney Co.*	92,500	60,050
Summit Technology Inc	88,599	0
Orin Kramer (Kramer Spellman LP)	82,500	0
Joseph E. Seagram & Sons Inc.*	80,000	95,000
Edgar M. Bronfman Sr	80,000	80,000
MacAndrews & Forbes Holding Inc.*	76,000	10,000
NHCG Management Corp	50,000	0
Time Warner Inc.*	69,918	75,000
Eli Lilly & Co	61,500	113,100
AFL–CIO	52,000	122,500
Michael Bloomberg (Bloomberg Financial Markets)	50,000	100,000
SBC Communications	43,792	122,798
Flo-Sun Sugar Co.*	40,000	92,000
United Food & Commercial Workers	35,000	171,500
Laborers' International Union of North America	35,000	75,000
American Federation of Teachers	30,000	85,500
Atlantic Richfield Co	19,000	126,800
Wade E. Byrd (Berry & Byrd)	10,000	75,000
E. & J. Gallo Winery	7,500	80,700
Don Henley (musician)	0	150,000
Charles N. Davenport (SeaWest Inc.)	0	110,000
Service Employees International Union	0	100,000

*Includes contributions from executives and/or affiliates.
Source: Common Cause from Federal Election Commission records.

	To NRSC	To NRCC
Gave $75,000 or more to one of the Republican committees:		
Phillip Morris Cos	$735,338	$353,432
News Corp.*	518,200	201,500
Anna M. Murdoch	250,000	0
DLO Corp.	125,000	0
News America Publishing Inc.	65,000	150,000
RJR Nabisco Inc.*	287,500	175,950
R.J. Reynolds Tobacco Co.	107,500	19,500
Foster Friess (Friess Associates Inc.)	259,900	30,000
Atlantic Richfield Co.*	217,000	180,400
Union Pacific Corp.*	191,500	49,500
Anschutz Corp.	50,000	0
Tobacco Institute	187,100	84,000
Brown & Williamson Tobacco Corp.	170,000	282,500
Federal Home Loan Mortgage Corp.	165,000	85,000
Flo-Sun Sugar Co.*	164,500	59,500
American Financial Group]*	160,000	270,000
Carl Lindner	0	150,000
Bear Stearns & Co.	160,000	10,000
Archer Daniels Midland Co.	155,000	50,000
MacAndrews & Forbes Holding Inc.*	150,000	10,000
Revlon Group Inc.	100,000	10,000
924 Bel Aire Corp.	50,000	0
Chevron Corp.	145,200	133,850
Glaxo Wellcome Inc.*	141,100	0
CSX Corp.	139,712	42,500
Association of Trial Lawyers of America	138,600	37,500
MBNA Corp.*	135,000	0
AT&T Corp.*	133,295	78,545
Joseph E. Seagram & Sons Inc.*	130,000	140,000
Walt Disney Co.*	130,000	25,250
BankAmerica Corp.	128,700	105,500
U.S. Tobacco Co.	121,000	82,900
Time Warner Inc.	120,000	100,000
NYNEX Corp.*	119,600	191,750
Circus Circus Enterprises Inc.	115,000	25,000
United Technologies Corp.	115,000	95,500
Schering-Plough Corp.	112,585	135,000
Stephens Inc.*	112,500	47,500
PaineWebber Group Inc.*	110,000	50,000
Beneficial Corp.	109,500	15,000
TECO Energy	105,100	0
WMX Technologies Inc.	103,900	59,000
John J. Cafaro (Cafaro International)	103,200	0
Federal Express Corp.	103,000	46,900
Gateway 2000]*	100,000	0
Ronald S. Lauder (Estee Lauder Cosmetics)	100,000	100,000
Loews Corp.]*	100,000	120,000
CNA Financial Corp.	52,500	62,500
Lorillard Tobacco	47,500	57,500
Mirage Resorts Inc.	100,000	150,000
Blue Cross & Blue Shield Association]*	96,500	115,658
Exxon Corp.	95,000	45,000
British Petroleum (BP Oil)]*	94,000	55,829
BP Exploration & Oil Inc.	56,000	29,000
Public Securities Association	94,000	118,200
Goldman Sachs]*	91,390	2,250
Merrill Lynch & Co.	90,000	61,000
Sprint Corp.]*	89,673	41,400
Viacom International Inc.*	82,700	10,000
Great Western Financial Corp.	82,000	40,000
MCI Telecommunications Corp.	82,000	44,718
Prudential Insurance Co. of America]*	78,100	103,950
Prudential Securities Inc.	55,000	48,000
Occidental Petroleum Corp.]*	77,000	67,750
Federal National Mortgage Association	75,000	10,000
Forstmann Little & Co.*	73,000	162,000
Theodore J. Forstmann	50,000	150,000
Smokeless Tobacco Council Inc.	72,100	112,500
National Association of Realtors	67,200	93,000
Enron Corp.*	55,000	115,000
US West Inc.	53,000	98,400
Textron Inc.	51,500	134,700
Pfizer Inc.	50,000	71,000
Ashland Oil Inc.	48,000	88,810
Boeing Co.	47,000	115,700
Amgen Inc.	40,000	95,000
Pacific Telesis Group	37,200	75,200
American Insurance Association	36,100	75,250
SBC Communications]*	35,000	153,100
Anheuser-Busch Co.	27,500	107,750
Interface Group Inc.	20,000	100,000
Chemical Manufacturers Association	17,000	84,500

Note: This list includes contributions to the Republican Senate-House Dinner Committee and the Democratic Congressional Dinner Committee, which split their proceeds between their parties' House and Senate campaign committees.

Mr. HOLLINGS. Mr. President, according to the Federal Election Commission, the total amount of money raised overall, hard and soft money, in 1996, by the Republicans was $548.7 million and by the Democrats was $332.3 million.

So, the Democrats scramble everywhere. To the embarrassment of all of us both Democrat and Republican, but my opponents do not want to recognize that.

I got a call from my distinguished colleague, the Senior Senator from Alabama. I understand he took the floor yesterday. Five times he has been a cosponsor of this particular joint resolution for a constitutional amendment. Now he is worried about the freedom of speech. You see now, the Senator from Alabama seems to have lost his freedom of speech. It is a sad, sad, commentary, Mr. President, but that is exactly what is happening. The other side says, look, here we have the advantage of money overwhelmingly, and that is our advantage in politics, and we are not going to give it up, so let us hide behind the First Amendment. It is a very shameful performance, a dog-and-pony show, coming up here and saying we should not amend the Constitution, we should not think of it. The very people saying that and quoting Patrick Henry have voted to amend the Constitution relative to the burning of the flag—the very speakers that have taken the floor. I have seen hypocrisy before, but not like this.

Then they come saying "Well, you know, we are not spending enough money in campaigns. What could happen," under this amendment is, "the Congress could legislate us into incumbency, whereby you would never be opposed."

They use Patrick Henry to defend their actions. He once cried, "Peace, peace, there is no peace." Here today we cry "Free speech, free speech, there is no free speech." In politics it is paid speech we are talking about. As for me, give me this constitutional amendment to save democracy.

Justice Jackson said that the Constitution is not a suicide pact, Mr. President. In that context, I will review several of the most recent constitutional amendments and show their relative significance to the pending amendment. Amendment No. 27 has to do with the compensation of Senators and Representatives. Certainly, this is more important than the 27th amendment. The 26th amendment has to do with the voting age. If they can change the voting age, they can certainly change the money limit. This is more important than the 26th amendment. The 25th amendment had to do with the succession in office. This is far more important a problem. We deal with this each and every day—day in and day out, exacerbating, getting worse and worse, turning elections into auctions. And going right to the 24th amendment, the poll tax. Well, we said in the 24th amendment that you cannot separate voters financially. That is exactly what Buckley has done. Those who have the money can shout to the rooftops. Those without money can get lockjaw—just hush, you cannot compete. The last five or six amendments, Mr. President, we have shown have been adopted in about a 20-month period. You can bet your boots that this could easily be adopted in 1998.

What we have here is an amendment that is neutral. We do not say limit spending or not limit. We merely authorize the States and the Federal Government to limit spending. Here we are asking for a right.

Here this devolution crowd that keeps coming up here and saying, "return government to the states, return government to the people, let the people act," that is what I am trying to do. Pass my amendment, send it to the States and let the American people make the decision. We do not say "limit." We do not say "not limit." We just say give the people's representative body—namely, the Congress of the United States—the authority to limit. My opponents do not want to give the people a chance to vote on it.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Chair advises the Senator from South Carolina he has 5 minutes 45 seconds remaining. Senator MCCONNELL has 30 minutes.

The Senator from Utah.

Mr. HATCH. Mr. President, there is a right way and a wrong way of reforming our system of campaign finance. The Hollings proposal to amend our Constitution is simply the wrong way. It would, in effect, amend the first amendment to our Constitution to allow any reasonable restrictions to be

placed on independent campaign expenditures and contributions. Why does he propose that we amend the first amendment? Because the Supreme Court of the United States has held that restrictions on independent expenditures violate the first amendment's free speech protection and that such restrictions could only be justified upon a showing of a compelling—as opposed to any reasonable—reason.

The Hollings amendment would gut the free speech protections of the first amendment. It would allow the curtailing of independent campaign expenditures that could overcome the natural advantage that incumbents have. It would, thus, limit free speech and virtually guarantee that incumbents be reelected. Thus, the Hollings amendment could change the very nature of our constitutional democratic form of Government by establishing what the Founders of the Republic feared most: A permanent elite or ruling oligarchy that dominates us all. Let me explain.

The very purpose of the first amendment's free speech clause is to ensure that the people's elected officials effectively and genuinely represent the public. For elections to be a real check on Government, free speech must be guaranteed—both to educate the public about the issues, and to allow differing view points to compete in what Oliver Wendell Holmes called the market place of ideas.

Simply put, without free speech, Government cannot be predicated upon, what Thomas Jefferson termed, "the consent of the governed." Without free speech, there can be no government based on consent because consent can never be informed.

The Supreme Court of the United States recognized this fundamental principle of democracy in the 1976 case of Buckley versus Valeo, 424 U.S. 1 (1976). The Court in Buckley recognized that free speech is meaningless unless it is effective. In the words of Justice White, "money talks." Unless you can get your ideas into the public domain, all the homilies and hosannas to freedom of speech are just talk. Thus, the Supreme Court held that campaign contributions and expenditures are speech—or intrinsically related to speech—and that regulating of such funds must be restrained by the prohibitions of the first amendment.

The Buckley Court made a distinction between campaign contributions and campaign expenditures. The Court found that free speech interests in campaign contributions are marginal at best because they convey only a generalized expression of support. But independent expenditures are another matter. These are given higher first amendment protection because they are direct expressions of speech.

Consequently, because contributions are tangential to free speech, Congress has a sizeable latitude to regulate them in order to prevent fraud and corruption. But not so with independent expenditures. In the words of the Court:

> A restriction on the amount of money a person or group can spend necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating in today's mass society requires the expenditure of money.

The Hollings amendment's allowance of restrictions on expenditures by Congress and State legislatures would impose direct and substantial restraints on the quantity of political speech. It would permit placing drastic limitations on both individuals and groups from spending money to disseminate their own ideas as to which candidate should be supported and what cause is just. The Supreme Court noted that such restrictions on expenditures, even if neutral as to the ideas expressed, limit political expression at the core of our electoral process and of the first amendment freedoms.

Indeed, even candidates under the Hollings proposal could be restricted in engaging in protected first amendment expression.

Justice Brandeis observed, in Whitney versus California, that in our Republic, "public discussion is a political duty," and that duty will be circumscribed where a candidate is prevented from spending his or her own money to spread the electoral message. That a candidate has a first amendment right to engage in public issues and advocate particular positions was considered by the Buckley Court to be of "particular importance . . . candidates [must] have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day."

Campaign finance reform should not be at the expense of free speech. This amendment, in trying to reduce the costs of political campaigns—a noble goal, I can say—could cost us so much more; it could cost us our heritage of political liberty. Without free speech, our Republic could become a tyranny. Even the liberal American Civil Liberties Union opposes Senator Hollings-type approaches to campaign reform and calls such approaches a "recipe for repression."

Mr. President, the simple truth is that there are just too many on the other side of the aisle that believe that the first amendment is inconsistent with campaign finance reform. That is why they are pushing the Hollings proposal. To quote House minority leader RICHARD GEPHARDT, "[w]hat we have is two important values in direct conflict: freedom of speech and our desire for a healthy campaign in a healthy democracy. You can't have both."

Well, I strongly disagree. You can have both. We have to have both. Without both, the very idea of representative democracy is imperiled. That is why I oppose the Hollings amendment. I think the distinguished Member of the House, Mr. GEPHARDT, is just absolutely wrong. I think if we change the Constitution to denigrate the first amendment, we would be absolutely wrong and it would fly in the face of what really ought to be done in campaign finance reform, which all of us would like to have. But until it can be done in a balanced, reasonable way that doesn't prefer one side over the other, it will never be done. That is one of the problems. We cannot get it done in a balanced, decent way that really evens the odds for everybody in our society, rather than stacking them in favor of one side or the other.

Having said all this, I want to pay tribute to my colleague, our floor leader on this matter. He has taken a lot of flack from the media that always seems to stand up for first amendment rights and freedoms, until it comes to this issue. Frankly, I have a lot of respect for our colleague from Kentucky and the guts he has had to stand up for free speech and for first amendment rights more than any other single Member of Congress. He did it in his campaign when they made this a major focal effort of the campaign, and he still won by a considerable margin over the opponent who was making this a focal point.

I think we can have campaign finance reform, but we won't have it until it is fair, balanced, until it effects all parties and candidates. And we won't have it, as far as I am concerned, unless we protect free speech rights the way they ought to be protected.

Again, I compliment my colleague and express my support for his position on the floor at this time. I express regret to my friend from South Carolina that I can't support him on this constitutional amendment.

I yield the floor.

(Mr. ALLARD assumed the chair.)

Mr. MCCONNELL. Mr. President, I thank my good friend from Utah for his wonderful contribution to this debate we have had. It has been a good debate about the first amendment. I also thank him very much for his kind remarks about my work on this issue.

The Senator from Utah is right. It hasn't been easy from time to time because, as he pointed out, our friends in the press sometimes think the first amendment only applies to them. The first amendment was not crafted just for the press. It was crafted for all Americans. The free speech provisions of the first amendment apply to individuals, candidates, parties, groups; it applies to all of these people.

What we have before us today, Mr. President, is an effort to cut a chunk out of the first amendment and say

that political discourse in this country is entitled to less freedom than all other kinds of speech, all other kinds of speech. Why, Mr. President, even pornography and flag burning would have more protection—more protection—than political discourse after this amendment. Because this amendment would grant to Congress the power to shut everybody up, Congress being composed of incumbents, it is reasonable to assume that Congress would want to shut up all those people who are criticizing Congress.

This amendment gives Congress the power to set reasonable limits—whatever that is—on expenditures made, presumably, by the candidates, in support of—by people outside the campaigns—in support of the candidate, or in opposition to the candidate, and the American Civil Liberties Union said it could apply to the press as well.

In short, this is a complete reversal of the kind of speech the Founding Fathers were the most concerned about. Mr. President, I am confident they were most concerned about political discourse, political discussion, political speech. They were beginning to have experiences with free press at that time. But I am confident that what they were mostly thinking about, when crafting the first amendment, was political discourse in the course of political campaigns.

So the question is, as the Senator from Utah and others have pointed out, it is not whether you are for reform, but whether you are for the first amendment. That is what is before us here today. This ought to be a no-brainer. Even Common Cause is against this proposal. Even the Washington Post is against this proposal. Even Senator MCCAIN and Senator FEINGOLD, I believe, are going to oppose this.

In short, this proposal doesn't have any constituency. Even the reform groups are not for it. Of course, it has many opponents. There is a coalition—in fact, I had a press conference with a coalition just Friday in opposition not only to this amendment, but also to McCain-Feingold. The coalition spans the American political spectrum. At this press conference Friday, we had the ACLU and the National Education Association on the left, and the Christian Coalition, Right to Life, and the NRA on the right, and all other groups in between. What did they all have in common? These people had never met each other before. They didn't want the Government shutting them up. They didn't want the Government taking them off the playing field in political discussion in this country. That is what they all had in common. They want to be free to criticize us. They think they have a constitutional right to do that. They believe this amendment begins to eliminate that right, and proposals like McCain-Feingold do the same.

So, Mr. President, this is a very, very important issue. This vote will be about whether you support the first amendment or not, whether you support political free speech in this country, not just by candidates, but by groups, individuals, and parties as well. This is at the core of our democracy, and we are having a legitimate discussion here about whether to carve that out and change that after 210 years.

Mr. President, this is a very, very significant step in the wrong direction. I hope that it will be defeated later this afternoon overwhelmingly. It deserves to be defeated overwhelmingly. The goal here is to reverse the Buckley decision, a well-thought-out, well-reasoned decision.

In the Buckley case, the Supreme Court said, "The first amendment denies Government"—that is us in here—"the Government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise."

The Court went on, "In a free society ordained by our Constitution, it is not the Government but the people, individually as citizens, candidates, and collectively as associations and political committees, who must retain control over the quantity"—how much we speak—"and the range of debate on public issues in a political campaign."

That pretty well says it all, Mr. President. At least Senator HOLLINGS, my good friend from South Carolina, understands that in order to change that ruling you really do have to change the first amendment. That is what is before us—to change the first amendment for the first time in 200 years to give the Government the power to shut up individuals, candidates, associations, and political committees; tell them how much they may speak, and maybe even what they may say. Who is to say how far the Government would go in seeking to quiet the voices of those who may oppose what we are trying to do?

The Court went on. It said, "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reach. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money."

The Court was recognizing the obvious, recognizing reality. The Court went on. It said, "Even distribution of the humblest handbill costs money." Further, the Court stated, "The electorate's increasing dependence on television and radio for news and information makes these 'expenditures' of modes of communication indispensable instruments of effective political speech."

The Court further said, "There is nothing invidious, improper, or unhealthy in a campaign spending money to communicate." Further, the Court said, "The mere growth in the cost of Federal election campaigns in and of itself provides no basis"—they didn't equivocate here, Mr. President—"provides no basis for government restrictions on the quantity of campaign spending." The Court further addressed the old level-playing-field argument that we hear so frequently. The Court said about the level playing field, "The concept that the government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the first amendment."

The Buckley case was good in 1976, and it is good in 1997. In fact, the Supreme Court in virtually every case in this field since 1976, since the Buckley case, has moved further in the direction of more and more openness in political discourse in this country. In other words, they have reaffirmed Buckley time and time again over the last 20 years. This is a position the Court isn't going to change. And the Senator from South Carolina, to his credit, understands that. He understands the Court is not going to shut up these individuals, groups, candidates, and parties. He understands the Court realizes that this kind of debate is at the heart of what makes America a great democracy.

The Senator from South Carolina looks at that and finds it unappetizing. He finds all of this political discourse offensive and says we ought to carve a chunk out of the first amendment for the first time in 210 years and give to us here in the Government the power to control all of this discourse. It makes us uncomfortable. We don't like being criticized. We certainly do not like these campaigns against us by our opponents. But we don't like these outside groups either. It makes us uncomfortable. They sometimes say bad things about us. This is a terrible condition, that anybody other than the press could actually muster the resources to criticize. We had better do something about it. We had better shut those folks up. So we will just amend the first amendment, and we will decide that political speech is somehow less worthy than other kinds of speech, and we will take those people off the playing field, or we will make them report to the Government in advance and salute before they get permission to speak.

That is what this is about, Mr. President. That is what this is about. This constitutional amendment ought to be defeated resoundingly. It is certainly my hope that it will be. As I said earlier, it has essentially no constituency even among those clamoring the loudest for some form of campaign finance reform.

So later this afternoon when we vote on amending the first amendment for the first time in 200 years, I hope the Senate will defeat it overwhelmingly.

Mr. ROTH. Mr. President, there's an old joke that might help us put the current activity surrounding campaign finance reform into some perspective. The joke concerns two men who hire a small plane to go hunting bear. The pilot, as he drops the hunters off, insists that the plane can only carry two passengers and one bear on its return trip. With that warning ringing in their ears, the hunters go off and eventually return with two bears.

The pilot protests that the huge second animal will overload the plane. The hunters remind him that that was just what he told them last year. They reminded him that they had given him an extra $100 the year before, and that he had let them load both bears. "So here's another $100," they say and then they pack both carcasses into the rear of the plane. The plane struggles down the runway and lifts uncertainly into the sky. It gets halfway home but then crashes in the forest. The hunters crawl from the wreckage and ask the bruised pilot, "Where are we?" The pilot looks around and replies, "Same place we crashed last year."

Today, the debris of scandal associated with campaign financing is strewn all about us. The White House is under siege as one news report after another brings new information about suspected improprieties. The Governmental Affairs Committee has now been asked to probe into the illegal and improper financial practices that may have taken place in this last election.

What I want to remind my colleagues is that this is not the first time we have addressed this issue. In fact, this is, as Yogi Berra would say, déja vu all over again.

More than two decades ago, Congress passed legislation on campaign finance reform. That legislation included limits on all contributions and on candidate expenditures. It placed limits on independent expenditures, required disclosure, and set limits on the amount of personal wealth a candidate could spend on his campaign.

This was done, Mr. President, in 1974. Following that legislation, however, the Supreme Court stepped in and decimated the reforms with its decision in Buckley versus Valeo.

While the courts upheld limits on campaign contributions, it struck down the limits on independent expenditures and on the use of personal wealth. This, in effect, increased the disparity between the wealthy and the not-so-wealthy in campaigns. It also increased the power and impact of independent expenditures, much of which focuses on negative advertising.

Each of these serious consequences of the Supreme Court's decision created conditions that were exactly opposite of what Congress had intended. For example concerning independent expenditures, this means that person or group has unlimited ability to spend money for or against any candidate, as long as they do not coordinate their efforts with the candidates.

Because of the Supreme Court's decision, and the rising costs of political campaigns—costs that can be prohibitive and exclusionary—I remained active in trying to find a remedy, a remedy that would result in the kind of real reform that Congress had intended. Because of Buckley versus Valeo, it was clear that such reform could not be achieved by statute, but that it required a constitutional amendment. In four consecutive Congresses, Senator HOLLINGS and I introduced constitutional amendments that would achieve Congress' goal of complete reform.

In this Congress, Senator HOLLINGS has reintroduced his constitutional amendment, and once again I intend to support it. I intend to support it because anything short of an amendment will fail to achieve the conditions necessary for real reform. Statutory reforms without a constitutional amendment will create even greater problems as political money will flow elsewhere to get around the statutory limitations.

In other words, as restrictions are placed on certain channels, money will find its way into other channels—it will flow through independent expenditures and unlimited personal contributions, which are protected by the Supreme Court's decisions.

Needless to say, this would further damage the ability of a sharp, qualified candidate to win office if he or she did not have the kind of money that a wealthy candidate—a candidate who may even come from out of State—can bring into a race. Small States like Delaware would be extremely vulnerable to the inequities created by these restrictions.

For over two decades now, reformers in Congress have been seeking to overturn Supreme Court decisions by simple statute even though the decisions were based on the first amendment. That effort is a waste of time for anyone seeking comprehensive reform. Of course, if one's goal is to incapacitate all candidates who are not wealthy and to allow the wealthy and the special interests to determine the outcomes of elections, then perhaps such statutory reforms will do. But if one's goal is to level the playing field, then the solution must effectively address all the players and not only the candidates.

So unlike some of my colleagues who support the pending constitutional amendment, I cannot support statutory proposals whose effect would be to weaken the role of candidates and to strengthen the role of those whose spending is constitutionally protected. No statute can limit what the Constitution, as interpreted by the Supreme Court, protects.

The Constitution gives us, in these circumstances, a simple choice: we can overturn the Supreme Court so that we can reenact the 1974 campaign finance law or we can live under the Supreme Court decision, powerless to enact comprehensive reform.

I am glad to see that this basic constitutional fact of life has now been embraced by the minority leaders in both Houses. But we need more support than theirs to achieve the supermajority in both Houses required to propose ratification. And that will happen when those organizations espousing reform stop blocking the only path to real reform.

Last week on the floor, opponents of the pending constitutional amendment argued that adoption of the proposal would allow Congress to do all sorts of unreasonable things, such as outlawing all campaign expenditures so that incumbents would be reelected. It may be helpful to recall that 10 years ago the Hollings proposal did not include the important word "reasonable" modifying the limits Congress could impose on campaign expenditures. At that time, I argued that adding the word "reasonable" would make clear that judicial review of congressional limits was intended.

Opponents seem to suggest that the pending proposal would give Congress unlimited discretion. That's not true. Courts now under the fourth amendment review what is "unreasonable" search and seizure. Under the pending proposal, courts would review what is or is not a "reasonable" limit on campaign expenditures.

Opponents also raised the question whether the proposal would authorize Congress to limit editorials. I must say that I never viewed editorials as campaign expenditures, and I believe that most people have the same view. If that point needed further clarification, I would think legislative history could make clear that editorial coverage is not intended to be included within the pending proposal.

Mr. President, campaign finance reform must be fair. A constitutional amendment will allow us to make it fair. Campaign finance reform must also look at making races less expensive and more accessible to fine candidates who are deterred from running because of money.

Campaigns can be made less expensive by shortening the campaign season, and by requiring television stations to grant free advertising time as a condition of their Federal licenses.

It's no secret that the major expense in the electoral process is buying media time. I have long been an advocate of free TV for campaigns—going back to the 1970's—and I have introduced legislation toward this end.

In 1993, I wrote to President Clinton seeking his support, and I'm now delighted to see that he has suggested requiring broadcasters to provide free time for candidates in exchange for new licenses to provide high-definition television.

This will be no easy feat. When I first broached this idea, I could only find three Senators who would support me. One was Majority Leader Mike Mansfield. That was many years ago, and I must admit we have seen some progress. The last time I brought this legislation to the floor, a few years ago, I received six votes. But perhaps, in light of the scandal plaguing the White House, as well as the outcry from our constituents, this is an idea whose time has come.

I have talked to my constituents, Mr. President. I know their feelings on campaign finance reform. They want reasonable limitations on campaign expenditures. They want reasonable limits placed on independent expenditures. And they want shorter campaigns.

It is my sincere hope that as we move forward in this important debate, we will achieve these three very basic objectives, and, unlike our bear hunters, we will not, in the years to come, find ourselves in the same situation we are in now.

Mr. CONRAD. Mr. President, I rise today in support of Senate Joint Resolution 18, the campaign finance reform constitutional amendment sponsored by Senators HOLLINGS and SPECTER. This constitutional amendment gives Congress and the States the power to limit campaign spending. Although I've supported similar constitutional amendments in the past, this is the first time I've cosponsored such an amendment.

Amending the Constitution is not something I take lightly. The Constitution is the basic law of our land, and the guarantor of our country's most precious rights and liberties. The Constitution has only been changed 27 times—only 17 times since the first 10 amendments, the Bill of Rights, were adopted in 1789. Voting to amend the Constitution is perhaps the most important vote I can cast as a U.S. Senator. However, it seems to me we have reached a crisis point with our current campaign finance system. To put it simply, campaign spending is out of control. It is my belief that this constitutional amendment will help us address in a fair and reasonable manner the chronic problems plaguing our current campaign finance system.

In 1974, 23 years ago, Congress passed the Federal Election Campaign Practices Act in response to the controversy surrounding the Watergate scandal. The Federal Election Campaign Practices Act required greater disclosure by candidates and parties, restricted cash contributions, and limited campaign expenditures. In 1976, the Supreme Court reviewed the constitutionality of the act in Buckley versus Valeo. In reviewing the case, the Court struck down the limits on campaign expenditures as an unconstitutional restriction on freedom of speech. The effect of this decision is that it equated the unlimited expenditure of campaign money with the exercise of free speech. In my view, this decision was a mistake.

Since that time, Congress has made numerous attempts at addressing this decision, particularly during the last 10 years, by putting forth various comprehensive campaign finance reform initiatives. Most of these bills attempted to address the campaign expenditure problem either by providing a system of public financing or providing inducements for voluntary spending limits. During my 10 years in the Senate, I have supported most of these proposals. Unfortunately, all of these initiatives were defeated.

The campaign spending problem was further exacerbated by the Supreme Court's decision last June in the Colorado Republican Party versus FEC. In that decision, the Court struck down the spending limits of political parties in congressional campaigns. This decision virtually wiped out the remaining Federal campaign spending limits.

Last year, we saw record amounts of money spent on campaigns. Republican and Democratic committees alone spent $881 million and it has been estimated that more than $4 billion was spent on campaigns at all levels during the last election cycle. There is every indication to believe that the costs of campaigns will continue to skyrocket. Some argue that the amount of money spent on campaigns is insignificant when compared with the amount we spend on other facets of our economy. I think this is a specious comparison.

The current campaign finance system is out of control and it threatens to push average Americans out of the process. Voter cynicism and apathy are on the increase. In the last election, voter turnout fell below 50 percent. Most people understand the corrosive effect the current campaign finance system has on our democracy.

The time has come for us to fix this system by placing reasonable limits on the amount of money that can be spent on campaigns. We must restore confidence in our political system. Voting for this constitutional amendment will allow us to do just that. I urge my colleagues to vote in favor of Senate Joint Resolution 18.

Mr. FAIRCLOTH. Mr. President, I rise in strong opposition to the constitutional amendment we are debating today.

Frankly, I think this amendment is very dangerous.

It is dangerous anytime you tinker with the first amendment, our right to freedom of speech.

I suppose what is most appalling to me is that we have the tenacity to even consider this amendment. Two weeks ago, the Senate could not muster the fortitude to pass a constitutional amendment to control Federal spending.

Now, here we are debating an amendment to limit an individual's spending.

Mr. President, this demonstrates just how backward our priorities are.

We can't control how much the Federal Government will spend—but we will presume to tell an individual how much he or she can spend on political campaigns.

That is simply unacceptable.

Also, Mr. President, I am not a lawyer. But the term "reasonable" limits used in this amendment appears to be pretty loose.

How can we reasonably restrict what someone can spend?

How can we reasonably restrict political speech?

And the very thought that the Federal Government—the Congress—would be setting a reasonable standard is troubling.

Further, Mr. President, we should call this for what it really is—the incumbent protection constitutional amendment.

Everyone knows that if you limit your opponent's spending—the better known incumbent has an advantage. And under this amendment, we can limit opposition spending.

This is absurd—the Congress setting how much our opponents can spend against us.

Who can possibly hope to challenge an incumbent if he or she is not allowed to use their own money—however little or much—in the campaign.

Of course, this amendment probably puts us on the path to Federal funding of political campaigns.

Mr. President, I cannot abide the fact that not only do we pay a politician's salary. Now some politicians expect the citizens to spend their tax dollars paying for the campaign as well.

We can't ask the working men and women of this country to do that.

Further, I would remind my colleagues that we have full Federal funding for Presidential races—and has this stopped the President from shamelessly raising money? The answer is no.

President Clinton didn't need to sell the Lincoln bedroom to pay for his campaign. The taxpayers of this country paid for every penny of his campaign. We did this so that the President wouldn't have to be bothered or be influenced by the fundraising process.

But that apparently did not matter. His goal was to raise as much money as possible—beyond that legally permissible for himself—to buy misleading ads on Medicare.

Federal funding has failed at the Presidential level—and it won't work at the congressional level.

Mr. President, I also have to question why the minority and the President is in such a hurry to enact campaign finance reform.

During 1996, they used the White House and the executive branch to squeeze money out of everyone from banks to Indian tribes.

Now the American public is finding out about it.

Suddenly, the No. 1 priority of the Democratic Party is campaign finance reform.

When the horse is out of the barn, a horsethief running down the street telling everyone about it isn't going to do any good.

If the front pages weren't covered in negative stories about the sordid tales of DNC and White House fundraising, I don't think we would be out here rushing to clutter the Constitution with supposed campaign reform.

Finally, Mr. President, we never seem to question why there is so much money in politics. One reason we have overlooked is because the Government is in everyone's business.

If we weren't threatening to legislate and regulate businesses on a daily basis, perhaps they wouldn't feel compelled to give large donations.

The best campaign finance reform we can make here is to get out of Americans' daily lives. They shouldn't have to buy access for the purpose of making their views heard on legislation that would be ruinous to the free enterprise system.

If we would stop the bad legislation and regulation—we could stop the bad campaign finance practices we don't like.

Mr. President, I have great respect for Senator HOLLINGS and Senator BRYAN, they are both fine Senators from the other party, but I believe that on this issue, they have taken a very dangerous approach by suggesting that we amend the Constitution.

Thank you, Mr. President.

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

The PRESIDING OFFICER. The Senator has 8 minutes.

Mr. MCCONNELL. I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I yield our remaining time to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. I thank my distinguished colleague from South Carolina.

Mr. President, I am here to express my support for Senate Joint Resolution 18, introduced by the Senator from South Carolina and the Senator from Pennsylvania.

If I may, let me just briefly respond to the statement made by my friend from Kentucky that there are not any interest groups supporting this amendment on the left or on the right. I am not surprised by that. Do you know who is supporting this amendment? The unorganized mass of the American people who do not belong to special interest groups of the left or the right and who know that something fundamentally wrong is happening in our democracy that is depriving them of their equal and individual right to affect their government. What is happening is the unlimited, and I am afraid corrupting, use of money in America politics.

Mr. President, I do not come to supporting a constitutional amendment of any kind, certainly one affecting the first amendment, lightly. I do not believe that I have ever supported any other amendment to the Constitution that would alter the first amendment. But I think that the threat to our democracy from the excess of money in politics is so serious that it merits—in fact, it calls out for—support of this constitutional amendment.

Let's remember what we are doing here when we talk about the Buckley decision. To pass this constitutional amendment is not to contradict what the Framers of the Constitution did in their great work more than 200 years ago. It is to contradict five of the Members of the U.S. Supreme Court, who gave a rendering of the first amendment that I cannot imagine the Framers of our Constitution had in mind, which is that money is speech. It is hard to believe. The consequences are serious.

So it is only by supporting this amendment and giving us the right to limit the amount of money in politics that I think we can restore a sense of integrity and sanity to our campaign finance system and, if I do say so, to our democracy.

Mr. President, much of the debate over this proposed constitutional amendment has centered on this question of the threat to the principle of free speech. Of course, we all hold that principle dear. But free speech is not what is at issue here. Free speech is about the inalienable God-given right of all of us to express our points of view without governmental interference. That simply is not at issue here in this proposed amendment, or in our campaign finance system.

Mr. President, nothing in this amendment or in any campaign finance reform package that I have seen that could be passed here would diminish or threaten individual Americans' rights to express their views about candidates running for office, or about any problem or issue in American life. What would be threatened by this constitutional amendment is what should be threatened by it, and that is something entirely different—the ever-increasing and disproportionate power that those with money have over our political system. As everyone in this Chamber knows, the spiraling costs of running for office require all of us to spend more and more time raising money and more and more time with those who give it.

Barely a day goes by in which we do not learn of an event or a meeting with elected officials attended only by those who could afford to give $5,000 or $10,000 or $100,000 or more—sums of money that are obviously beyond the capacity of the overwhelming majority of the American people. And that is threatening a principle all of us also hold dear, as dearly as the principle of free speech, which is the fundamental underlying principle of our democracy. It is a sacred principle. I say it is sacred because of that line in the beginning of the Declaration of Independence: All men are created equal and we, men and women of America, are endowed not by Congress, not by some committee but by our Creator with the inalienable right to life, liberty and the pursuit of happiness.

That principle guarantees that every person has one vote and each and every one of us, rich or poor or in between, has an equal right and an equal ability to influence the workings of our Government. As it stands now, it is that sacred principle, the underlying principle of all of the rights expressed in the Bill of Rights in the Constitution, that is under attack from our campaign finance status quo system, and that sacred principle that promises to remain under attack until we do something to save it and protect it, and that something, I submit, is quite simply to limit the influence of money in politics. I do not see a way to do that without limiting the amount of money spent in political campaigns, and I do not see a way to do that constitutionally without passing this constitutional amendment.

Mr. President, nothing less than the future of our great democracy is at stake here. Unless we act to reform our campaign finance system, people with money will continue to have disproportionate influence in our system. People who are not even citizens of the United States will try to influence our Government's decision by their use of money. And the genius of America—that our citizenship based on our common creation by God, not our pocketbook, gives us each equal power to play a role in our governance—that genius will continue to be under seige.

Mr. President, I support the constitutional amendment. I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Kentucky has the remaining time, 8 minutes.

Mr. MCCONNELL. Mr. President, my good friend from Connecticut acknowledged that there were no groups agitating for a constitutional amendment but the unorganized mass of people were.

Well, America is a seething cauldron of special interests. We all belong to one group or another, many of which have legitimate issues before the Government. And, of course, we do not think the group we belong to is a special interest. That is the other guy's group that is trying to do something I do not like. But the fact is, the Founders of this country envisioned that we would be a seething cauldron of interest groups all banding together to petition the Government, which is another part of the first amendment. These people do not want to be pushed off the playing field. They do not want to be pushed off the playing field. They think that their involvement in issues is important. They think it helps create a better America. They do not view themselves as pursuing some evil goal. After all, who is it that is going to have the wisdom to sort of sanitize America of all these special interests and who are we to be so arrogant as to preach to these groups that their interests are somehow evil. Who is not suspect? Whose interests are above reproach?

This amendment says we get to determine that right in here; we, the Government, get to decide what is reasonable speech. And you know what we will do, Mr. President. We will shut up all the people who are criticizing us. We will pull them off the playing field altogether. We will set a spending limit so low that all of us are guaranteed to be reelected. We will control the game all right.

This is a preposterous suggestion, with all due respect to those who will vote for it. It guts the first amendment. It takes citizens off the playing field and out of the process. This is exactly the wrong thing to do.

George Will, in a column in the Washington Post February 13, referred to this as a "Government Gag"—a "Government Gag." I ask unanimous consent that George Will's column be printed in the RECORD.

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

[From the Washington Post, Feb. 13, 1997]

GOVERNMENT GAG

(By George F. Will)

To promote the fair and effective functioning of the democratic process, Congress, with respect to elections for federal office, and States, for all other elections, including initiatives and referenda, may adopt reasonable regulations of funds expended, including contributions, to influence the outcome of elections, provided that such regulations do not impair the right of the public to a full and free discussion of all issues and do not prevent any candidate for elected office from amassing the resources necessary for effective advocacy.

Such governments may reasonably define which expenditures are deemed to be for the purpose of influencing elections, so long as such definition does not interfere with the right of the people fully to debate issues.

No regulation adopted under this authority may regulate the content of any expression of opinion or communication.—Proposed amendment to the Constitution

Like the imperturbable Sir Francis Drake, who did not allow the Spanish Armada's arrival off England to interrupt a game of bowling, supposed friends of the First Amendment are showing notable sang-froid in the face of ominous developments. Freedom of speech is today under more serious attack than at any time in at least the last 199 years—since enactment of the Alien and Sedition Acts. Actually, today's threat, launched in the name of political hygiene, is graver than that posed by those acts, for three reasons.

First, the 1798 acts, by which Federalists attempted to suppress criticism of the government they then controlled, were bound to perish with fluctuations in the balance of partisan forces. Today's attack on free speech advances under a bland bipartisan banner of cleanliness.

Second, the 1798 acts restricted certain categories of political speech and activities, defined, albeit quite broadly, by content and objectives. Today's enemies of the First Amendment aim to abridge the right of free political speech generally. It is not any particular content but the quantity of political speech they find objectionable.

Third, the 1798 acts had expiration dates and were allowed to expire. However, if today's speech-restrictors put in place their structure of restriction (see above), its anti-constitutional premise and program probably will be permanent.

Its premise is that Americans engage in too much communication of political advocacy, and that government—that is, incumbents in elective offices—should be trusted to decide and enforce the correct amount. This attempt to put the exercise of the most elemental civil right under government regulation is the most frontal assault ever mounted on the most fundamental principle of the nation's Founders.

The principle is that limited government must be limited especially severely concerning regulation of the rights most essential to an open society. Thus the First Amendment says "Congress shall make no law . . . abridging the freedom of speech," not "Congress may abridge the freedom of speech with such laws as Congress considers reasonable."

The text of the proposed amendment comes from Rep. Richard Gephardt, House minority leader, who has the courage of his alarming convictions when he says: "What we have is two important values in conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both."

However, he also says: "I know this is a serious step to amend the First Amendment. . . . But . . . this is not an effort to diminish free speech." Nonsense. Otherwise Gephardt would not acknowledge that the First Amendment is an impediment.

The reformers' problem is the Supreme Court, which has affirmed the obvious: Restrictions on the means of making speech heard, including spending for the discrimination of political advocacy, are restrictions on speech. It would be absurd to say, for example: "Congress shall make no law abridging the right to place one's views before the public in advertisements or on billboards but Congress can abridge—reasonably, of course—the right to spend for such things."

Insincerity oozes from the text of the proposed amendment. When Congress, emancipated from the First Amendment's restrictions, weaves its web of restraints on political communication, it will do so to promote its understanding of what is the "fair" and "effective" functioning of democracy, and "effective" advocacy. Yet all this regulation will be consistent with "the right of the people fully to debate issues," and with "full and free discussion of all issues"—as the political class chooses to define "full" and "free" and the "issues."

In 1588 England was saved not just by Drake but by luck—the "Protestant wind" that dispersed the Armada. Perhaps today the strangely silent friends of freedom—why are not editorial pages erupting against the proposed vandalism against the Bill of Rights?—are counting on some similar intervention to forestall today's "reformers" who aim not just to water the wine of freedom but to regulate the consumption of free speech.

Mr. MCCONNELL. In addition to that, Mr. President, the American Civil Liberties Union in a letter to me dated March 6, 1997, also expressed their opposition to this constitutional amendment to amend the first amendment for the first time in 200 years. I ask unanimous consent that it be printed in the RECORD.

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

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, March 6, 1997.

DEAR SENATOR: The American Civil Liberties Union strongly opposes S.J. Res. 18, the proposed constitutional amendment that permits Congress and the states to enact laws regulating federal campaign expenditures and contributions.

Whatever one's position may be on campaign finance reform and how best to achieve it, a constitutional amendment of the kind here proposed is not the solution. Amending the First Amendment for the first time in our history in the way that S.J. Res. 18 proposes would challenge all pre-existing First Amendment jurisprudence and would give to Congress and the states unprecedented, sweeping and undefined authority to restrict speech protected by the First Amendment since 1791.

Because it is vague and over-broad, S.J. Res. 18 would give Congress a virtual "blank check" to enact any legislation that may abridge a vast array of free speech and free association rights that we now enjoy. In addition, this measure should be opposed because it provides no guarantee that congress or the states will have the political will, after the amendment's adoption, to enact legislation that will correct the problems in our current electoral system. This amendment misleads the American people because it tells them that only if they sacrifice their First Amendment rights, will Congress correct the problems in our system. Not only is this too high a price to demand in the name of reform, it is unwise to promise the American people such an unlikely outcome.

Rather than assuring that the electoral processes will be improved, a constitutional amendment merely places new state and federal campaign finance law beyond the reach of First Amendment jurisprudence. All Congress and the states would have to demonstrate is that its laws were "reasonable." "Reasonable" laws do not necessarily solve the problems of those who are harmed by or locked out of the electoral process on the

basis of their third party status, lack of wealth or non-incumbency. The First Amendment properly prevents the government from being arbitrary when making these distinctions, but S.J. Res. 18 would enable the Congress to set limitations on expenditures and contributions notwithstanding current constitutional understandings.

Once S.J. Res. 18 is adopted, Congress and local governments could easily further distort the political process in numerous ways. Congress and state governments could pass new laws that operate to the detriment of dark-horse and third party candidates. For example, with the intention of creating a "level playing field" Congress could establish equal contribution and expenditure limits that would ultimately operate to the benefit of incumbents who generally have a higher name recognition than their opponents, and who are often able to do more with less funding. Thus, rather than assure fair and free elections, the proposal would enable those in power to perpetuate their own power and incumbency advantage to the disadvantage of those who would challenge the status quo.

S.J. Res. 18 would also give Congress and every state legislature the power, heretofore denied by the First Amendment, to regulate the most protected function of the press—editorializing. Print outlets such as newspapers and magazines, broadcasters, Internet publishers and cable operators would be vulnerable to severe regulation of editorial content by the government. A candidate-centered editorial, as well as op-ed articles or commentary printed at the publisher's expense are most certainly expenditures in support of or in opposition to particular political candidates. The amendment, as its words make apparent, would authorize Congress to set reasonable limits on the expenditures by the media during campaigns, when not strictly reporting the news. Such a result would be intolerable in a society that cherishes the free press.

Even if Congress exempted the press from the amendment, what rational basis would it use to distinguish between certain kinds of speech? For example, why would it be justified for Congress to allow a newspaper publisher to run unlimited editorials on behalf of a candidate, but to make it unlawful for a wealthy individual to purchase an unlimited number of billboards for the same candidate? Likewise, why would it be permissible for a major weekly news magazine to run an unlimited number of editorials opposing a candidate, but impermissible for the candidate or his supporters to raise or spend enough money to purchase advertisements in the same publication? At what point is a journal or magazine that is published by an advocacy group different from a major daily newspaper, when it comes to the endorsement of candidates for federal office? Should one type of media outlet be given broader free expression privileges than the other? Should national media outlets have to abide by fifty different state and local standards for expenditures? These are questions that Congress has not adequately addressed or answered.

Moreover, the proposed amendment appears to reach not only expenditures by candidates or their agents but also the truly independent expenditures by individual citizens and groups—the very kind of speech that the First Amendment was designed to protect.

If Congress or the states want to change our campaign finance system, then it need not throw out the First Amendment in order to do so. Congress can adopt meaningful federal campaign finance reform measures without abrogating the First Amendment and without contravening the Supreme Court's decision in Buckley v. Valeo.

* * * * *

Rather than argue for these proposals, many members of Congress continue to propose unconstitutional measures, such as the McCain/Feingold bill that are limit-driven methods of campaign finance reform that place campaign regulation on a collision course with the First Amendment. . . .

The ACLU urges Senators to oppose S.J. Res. 18.

Sincerely,

LAURA W. MURPHY.

Mr. MCCONNELL. Mr. President, just today the Washington Times editorialized, saying "Save the First Amendment," very strongly in opposition to the Hollings amendment. I ask unanimous consent that this editorial be printed in the RECORD.

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

[From the Washington Times, Mar. 18, 1997]

SAVE THE FIRST AMENDMENT

"The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive or unwise." So said the U.S. Supreme Court in what some now refer to as its "infamous" 1976 ruling in the landmark case Buckly vs. Valeo. The high court's decision struck down as unconstitutional post-Watergate reforms restricting campaign expenditures, and critics have been trying to get around the decision ever since.

Today, the U.S. Senate is scheduled to take up a proposed constitutional amendment to override the ruling and, in effect, reform the reforms. South Carolina Sen. Ernest Hollings, the amendment's chief backer along with Pennsylvania Sen. Arlen Specter, calls it the only "rational alternative" to a system that awarded public office to the highest bidder." Among other things it states Congress can set "reasonable" limits on contributions to and expenditures by candidates for federal office. It gives states similar powers to control state campaign spending.

The proposed amendment is but the first shot in a battle over campaign finance reform that gets hotter with each new story about the golden handshakes Mr. Clinton got from contributors during the last presidential campaign. Still to come is the McCain-Feingold bill to put "voluntary" limits on campaign contributions and an effort to provide for taxpayer financing of campaigns or, as critics refer to the idea, food stamps for politicians.

Arrayed against the Hollings amendment is a formidable coalition of interest groups ranging from the American Civil Liberties to the National Rifle Association, who have little in common other than the principle that limiting contributions and expenditures will restrict the right of their members to free speech. These days, some speech costs a lot, whether in the form of commercials, mailings or bumper stickers. Cutting off funds in this case inevitably means cutting off your ability to disseminate your message—free speech, in other words.

At the head of the coalition is Kentucky Sen. Mitch McConnell, whom Ellen Miller of Public Campaign calls the Darth Vader of campaign-finance reform, so successful has he been in blocking the proposed changes. Mr. McConnell is an unapologetic defender of the political debate that comes of campaign spending. Indeed, he considers such spending to be evidence of the robust debate indispensible to the well-being of the country.

If such a position makes him the Darth Vader of campaign reform, then here's hoping the force, so to speak, is with him. Campaign spending is one measure of the power government has to manipulate political and economic ends to the benefit of one group or another. If you want to limit spending, limit the power and watch how quickly the fundraisers dissipate.

Short of that, there is a danger that tightened regulations may tilt campaign laws to benefit one group or other. If you limit soft-money contributions to political parties, for example, you may end up giving an edge to organized labor, which favors candidates with in-kind and off-the-books contributions in the form of get-out-the-vote drives and phone banks.

There are also free-speech concerns with government campaign financing. Why should taxpayers have to see their hard-earned dollars go to support candidates with whom they disagree?

Does the current system really favor those candidates with deep pockets? Ask Oliver North, Michael Huffington and Steve Forbes, all of whom raised and spent huge sums of money, in some cases their own, without winning office.

The best kind of reform, long advocated here, would drop spending limits and increase disclosure. As University of Virginia professor Larry Sabato has put it, "Let a well-informed marketplace, rather than a committee of federal bureaucrats, be the judge of whether someone has accepted too much money from a particular interest group or spent too much to win an election. Reformers who object to money in politics would lose little under such a scheme, since the current system—itself a product of reform—has already utterly failed to inhibit special-interest influence."

Congress shouldn't aggravate the problem by gutting the First Amendment.

Mr. MCCONNELL. I referred earlier to a press conference that I happened to have had Friday with various groups opposed to this amendment and also opposed to McCain-Feingold. The press conference was really about both. Among the groups organized in opposition: the National Taxpayers Union, the National Right to Life Committee, the National Rifle Association, the American Civil Liberties Union, the Christian Coalition, the Direct Marketing Association, the National Association of Broadcasters, the National Assocation of Business PAC's, the National Education Association, the National Association of Realtors.

All of these groups, which represent over 15 million American citizens, are saying in effect to the Congress, do not amend the first amendment for the first time in 200 years. Do not pass a measure like McCain-Feingold. Do not shut us up. We are not part of the problem. We are busily at work expressing our point of view, arguing for the causes that we think are important.

This is totally American. This is the essence of America.

And so those groups came together last Friday in an effort to express themselves about this proposal to amend the first amendment and also McCain-Feingold. I think one of the most interesting speakers was from an organization with which I am seldom aligned, the National Education Association. Don Morabito, who is from the NEA, was at the press conference, and he said, "The fact is," referring to the groups in the room, "We don't represent the same people, don't contribute to the same candidates and don't believe in the same things," with one exception. We agree on the first amendment. We agree on the first amendment.

The ACLU, in referring to the proposal before us, said the constitutional amendment is "truly an abhorrent proposal," with "breathtaking implications, and McCain-Feingold is draconian regulation." "And if you want to talk 'unseemly,' added ACLU Washington director Laura Murphy, what about the current reform proposal's efforts to 'demonize' special interests and political action committees that follow the law?"

So I think it is important to remember what the current feeding frenzy is all about. We all thought it was about illegal, illegal activity, and there seems to have been a good deal of that particularly at the White House and in the Democratic campaign for President last year, but now the effort is to switch, change the subject and to pass either a constitutional amendment or some legislation to take American citizens out of the game.

Mr. GORTON. Mr. President, will the Senator from Kentucky yield for a question.

Mr. McCONNELL. Yes, I yield to the Senator from Washington.

Mr. GORTON. Mr. President, would it be appropriate to say, I ask my friend from Kentucky, that at the present time under the first amendment the American people are free to participate in their political system and in public affairs pretty much in any way they wish, that their freedom of speech is entirely unlimited?

And would it be fair also to say that the thrust of this constitutional amendment is that its sponsors are asking the American people to give the Congress of the United States the right to devise, to knit together a gag which is then to be applied to the American people themselves, not just candidates but to any American who wishes to express his views about a candidate, any organization that wishes to express its views about a candidate, for that matter, any newspaper or television station that wishes to express its view about a candidate; that this constitutional amendment says that what has been entirely free, an entirely free process, we now ask that you allow us to impose whatever we consider to be a reasonable gag upon your exercise of that right?

Mr. McCONNELL. I would say to my friend from Washington, he is absolutely correct. He describes the constitutional amendment with precision. And that is exactly what the sponsors of this proposal have in mind.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. McCONNELL. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:30 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. COATS].

CAMPAIGN FINANCE AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask for up to 10 minutes to speak on the joint resolution under the control of the distinguished Senator from South Carolina.

Mr. HOLLINGS. I yield to my cosponsor.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SPECTER. I understand the majority leader is on his way to the floor. Apparently there is a unanimous-consent request. As soon as he gets here, I will be glad to yield to him at that time.

Mr. President, I support this constitutional amendment for campaign finance reform and for overturning Buckley versus Valeo because I am convinced that only if we have such a constitutional amendment will we be able to have meaningful campaign finance reform. And that is urgently needed.

Those who oppose the amendment do so on a claim that there would be an invasion of inviolate first amendment protections. I suggest those arguments are not well founded as a matter of constitutional law or constitutional history.

The first amendment of the U.S. Constitution has been limited where there are important reasons for doing so. Perhaps the most famous decision is by Oliver Wendell Holmes on what is called the "clear and present danger" which would warrant limiting freedom of speech. The famous example was given of crying "fire" in a crowded theater.

And, Mr. President, I suggest that there is a clear and present danger today to America's political system if we do not have effective campaign finance reform.

The "fighting words" exception to freedom of speech is well recognized in a distinguished opinion by Justice Murphy. If someone says to another a racial slur or religious slur, that person may punch the speaker in the nose and not be charged with assault and battery, so that freedom of speech is limited by fighting words.

You have the examples of obscenity and moral standards, especially with children. There are limits as to what may be spoken or what may be put into printed context on obscenity.

It is my view, and really a prevailing view in America today, that there is an urgent necessity for campaign finance reform. It simply cannot be done if you have the Supreme Court decisions standing in the way, because they say that an individual may spend as much of his or her money as he or she may choose as a matter of freedom of speech but others cannot do so. Others are limited to $1,000.

I have cited a rather forceful example from my point of view of my own personal experience running in the primary in 1976 for the U.S. Senate when the 1974 law was in effect limiting expenditures for a candidate in the primary with the population size of Pennsylvania to $35,000. And my opponent in that race—who later was one of my very best friends and closest colleagues in the U.S. Senate, Senator John Heinz—we were opposing each other in that Senate primary.

The Supreme Court of the United States held that an individual could spend millions, and Senator Heinz did that, spent more than $3 million in that primary and general election. But at the same time, the Supreme Court upheld the limitation of $1,000 on what my brother could spend. Where was Morton Specter's freedom of speech if he was limited by the campaign finance law to $1,000?

What sense does it make to say that a candidate has more freedom of speech than some other contributor? But that is what the Buckley versus Valeo decision did.

Then you have this rule or exception on campaign expenditures which are independent. That has become a practical impossibility to define what is an independent expenditure.

You have the 1996 Presidential election. You have an enormous amount of soft money raised on both sides by Republicans as well as Democrats, but the Democrats did it with more finesse, more direction, and more success, when President Clinton used millions of dollars in soft money for advertising in 1995, which so set the stage to make it

impossible or at least virtually impossible to regain that ground. In this situation you had President Clinton personally editing the commercials which went over. Yet, they were supposed to be somehow immune from the Federal election laws, notwithstanding the fact that when a candidate runs for President there is a pledge that there will be no funds used on expenditures in addition to what the Federal Government is providing.

We have myriad rules on soft money. We have rules that are really impossible to apply on what is issue advocacy, where you can spend money, as opposed to advocacy for a candidate. Those commercials not only go right to the line, they really cross the line, with no enforcement possible, with a commercial saying everything but "vote for candidate John Doe."

The realism is that in the absence of an opportunity for Congress to legislate in this field, without this constitutional inhibition, campaign finance reform may not be achieved.

Then you had the recent decision of the Supreme Court of the United States in 1996 on the Colorado legal party where there are four opinions written and not one of the opinions commands the consent or concurrence of five Justices. So when you finish reading that opinion, it is absolutely impossible to say what the law is on the important campaign issues taken up in that case. The Supreme Court Justices are frequent in their criticism of what we pass in the Congress where they cannot find a clear-cut statement on our legislation and then they look to legislative intent. Some of the Justices say they cannot find legislative intent or they do not recognize legislative intent.

Our statutes are a model of clarity, and the worst of the statutes ever passed by the Congress of the United States is a model of clarity compared to what you had in the Supreme Court decision in the Colorado case, where you cannot possibly figure out what the law is, because among four opinions no five Justices have agreed on any set rationale to give guidance as to what the law should be.

In conclusion, Mr. President, since the majority leader has arrived, it is my view, after studying the Constitution for more than 40 years, that the decision of Buckley versus Valeo simply is not good constitutional law to equate speech with campaign spending. It impedes, obstructs, and prevents Congress from legislating in this important field. That is why I urge this amendment be adopted.

I have no doubt, Mr. President, about the outcome of today's vote. I say as a matter for the future we ought to build a record, one day, so that we will overturn Buckley v. Valeo, and then have some sensible legislation in this very critical area.

I thank the Chair and yield the floor.

UNANIMOUS CONSENT AGREEMENTS—SENATE JOINT RESOLUTION 22 AND SENATE JOINT RESOLUTION 18

Mr. LOTT. Mr. President, I ask unanimous consent that during the pendency of Senate Joint Resolution 22, no amendments or motions be in order other than a motion to table, and at the conclusion of the vote on passage of Senate Joint Resolution 18 at 2:45, approximately, today, there then be 90 minutes for remaining debate, to be equally divided between the two leaders or their designee, with an additional 10 minutes allocated to Senator SPECTER.

I further ask unanimous consent that following the use or yielding back of debate time for Senate Joint Resolution 22 on Tuesday, the joint resolution be temporarily laid aside, and Senator LEAHY or his designee be recognized to offer a joint resolution relative to the independent counsel, and no amendments or motions will be in order, other than a motion to table, and that there then be 90 minutes of debate to be equally divided between the two leaders or their designees, and an additional 30 minutes under the control of Senator FEINGOLD, 20 minutes under the control of Senator BYRD, 30 minutes under the control of Senator LEVIN, 20 minutes under the control of Senator NICKLES, and 40 minutes under the control of Senator COATS.

Finally, I ask unanimous consent that following the conclusion or yielding back of time today, the second joint resolution be laid aside.

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

Mr. LOTT. For the information of all Senators, this agreement would call for two rollcall votes on the independent counsel issue. However, the votes have not been ordered by consent yet. I hope to discuss further with the Democratic leader today exactly when that will occur so that we can schedule those two votes.

I should note that we have one Senator who had a death in the family. We want to make sure that he is able to be back here for that vote.

In light of this agreement, there will be no further votes after the 2:45 vote today. Members should be prepared to vote tomorrow around 10 o'clock on the independent counsel issue.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MCCONNELL. Mr. President, I listened with considerable interest to the observations of my friend from Pennsylvania, Senator SPECTER, about the, as he put it, ill-advised Buckley decision.

Let me say, Mr. President, I think the Buckley decision was an outstanding decision. Obviously, the Supreme Court feels it was because they have had a number of opportunities in the last 20 years to revisit it, refine it, cut it back, restrict it, and in each instance they have expanded it further in the direction of more and more freedom to speak in the political process in this country.

The essence of the Buckley decision was in several passages that bear repeating as we move here toward the vote on this constitutional amendment to, in effect, overturn the Buckley case. The Court said with regard to spending limits, "The first amendment denies Government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In a free society ordained by our Constitution, it is not the Government," said the Court, "not the Government, but the people individually as citizens and candidates, and collectively as associations and political committees who must retain control over the quantity and range of debate on public issues in a political campaign."

Now, Mr. President, that really sums it up here. Who will control the political discourse? The Court had that issue directly before it in the Buckley case, and the Court said the Government is not going to control political speech in this country consistent with the first amendment.

Now, Senator HOLLINGS understands that, and he is offering this constitutional amendment to allow the Government to control political discourse for the first time in the history of our country. It leads you to ask the question: Who will feel more comfortable if we, the Congress, are in charge of regulating and controlling political speech in this country? Well, I do not think our citizens will feel more comfortable with that. That is clearly the end result of this debate, because this amendment says, in effect, the Buckley case will be overridden so that the amount of expenditures that may be made by, that is, by the campaigns, in support of the campaigns or in opposition to the campaigns shall be regulated by the Government.

All of us in here will have the last word on just how much speech is allowed, not only the quantity of it but the range of it.

Now, the Buckley case went on to say that a restriction on the amount of money a person or group can spend on political communication during a campaign necessarily, Mr. President, reduces the quantity of expression. So what we have after this amendment is the Government with the power to control how much we get to speak.

The Court said: "* * * reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." That pretty well says it all. Under the Hollings amendment, the Government will be able to decide how much we get to speak, how big an audience we get to reach. In short, the Government would control political discourse in this country. The Court went on to say that "this is because"—referring to their opposition to spending restrictions—"virtually every means of communicating ideas in today's mass society requires expenditure of money." It is a fact, whether we like it or not, to the extent that the Government defines what your financial outlays can be, if you are a candidate or if you are a group in support of or in opposition to a candidate, the Government is saying, in effect, you only get so much speech, a rationing of speech. And we here in the Congress get to determine how much everybody talks.

I don't think it is much of a reach to suggest that we are going to want to shut down those who criticize us. We don't like these independent expenditures in particular. We certainly don't like what our opponents are saying about us. So what we would do in the aftermath of the Hollings amendment is shut those people up. We would probably—in terms of independent groups—shut them entirely up. In terms of our opponents, we would set the spending limit so low they would not have a chance and never will be able to get the message across, because virtually every incumbent starts off ahead, and if the other fellow can't get resources, he is going to stay ahead.

The Court went on to say, in Buckley, "Even distribution of the humblest handbill costs money." Further, the Court stated, "The electorate's increasing dependence on television and radio for news and information makes these expensive modes of communication indispensable elements of effective political speech." Indispensable elements of effective political speech.

Now, the Buckley case was right on the mark. They understood what it takes to speak in today's modern American society. It is not a question of whether we like it or not. This is a fact. It is as certain as the Sun is going to come up tomorrow. It is as certain as the Sun is going to come up tomorrow. Without the resources to market the message in this society, your speech is quieted—under the Hollings amendment quieted by the Government, which will control your discourse.

The Court in the Buckley case further said, "There is nothing invidious, improper, or unhealthy in a campaign spending money to communicate." There is nothing unhealthy about that. Nothing is inherently unhealthy about that. With regard to the growth in campaign spending, which was anticipated in 1976 and certainly has occurred, the Court said, "The mere growth in the cost of Federal election campaigns in and of itself provides no basis for Government restrictions on the quantity of campaign spending."

In other words, the Court was saying a lot of speaking is not bad, and an effort to try to restrict the amount of speaking to some Government-prescribed formula is a clear violation of the first amendment, which is why we are now voting on the amendment of the Senator from South Carolina to give the Government the power to control political discourse in this country.

The Court also addressed the issue of the level playing field. We often hear that. Proponents of bills, for example, like McCain-Feingold, say they want to "level the playing field." This is what Buckley had to say about leveling the playing field. The Court said, "The concept that Government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the first amendment." In other words, the notion that the Government is wise enough to level the playing field is abhorrent to the first amendment.

After all, if you think about it, it would be impossible to level the playing field. How is the playing field leveled if you only leveled the amount of money? I would say that in my State of Kentucky, in order to have a remotely level playing field, you would have to get 600,000 people to change their registration and two major newspapers to leave the State. Then you might have, in some ways, a level playing field. Then, of course, what happens when your opponent is famous, maybe a well-known athlete or a war hero, or somebody who has a special place in the hearts of the American people? How is the playing field leveled then? The Government has prescribed how much you can speak in the campaign. Your opponent starts off 5 yards from scoring a touchdown, and you're way back on your own 20, and the Government says this is how much you get to communicate with the constituents. In what way is that a level playing field? In fact, the Court rejected out of hand the level playing field argument.

So the Buckley decision was a sound decision. The Supreme Court believes it is a sound decision. They have reinforced it time and time again over the last 20 years. This amendment basically has no constituency. Common Cause, the principal group supporting various kinds of campaign finance reform, opposes the Hollings amendment. The American Civil Liberties Union opposes the constitutional amendment. Even our dear colleague, Senator MCCAIN, who differs with me on this issue, opposes this amendment. This is an amendment without a constituency. The Washington Post, who is certainly interested in its version of campaign finance reform, opposes this amendment.

In short, Mr. President, regardless of how you may feel about which kind of campaign finance reform might be appropriate, amending the first amendment for the first time in 200 years to give the Government the power to control the political discourse in this country by individuals, groups, candidates, and parties is a substantial overreaching and a dangerous step in the wrong direction. I think it could probably be argued persuasively that this is the kind of speech that the Framers of our Constitution had most in mind when they were writing the first amendment. They were just beginning the process of having elections and dealing with the issue of campaigning. Certainly at the heart of what they had in mind when they talked about free speech was free political speech.

After this amendment, pornography and flag burning would have more protection under the first amendment than political discourse. Political discourse would be singled out among all the other kinds of expression that we are free to engage in in this country under the first amendment; political discourse would be singled out and handed over to Government control. Mr. President, this is clearly a step we should not take. I hope the amendment will be substantially defeated.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, it is rather amusing to hear my distinguished colleague say that this particular initiative is "without a constituency." The constituency started 10 years ago with the Commission on the Constitutional System. I have quoted a group of several hundred present and former legislators, executive branch officials, political party officials, professors, and civic leaders who are interested in analyzing and correcting the weaknesses that have developed under our political system since the Buckley case.

We have the support of 44 law professors, which I have inserted into the RECORD, as well as 24 State attorneys general. When I introduced this joint resolution some 10 years ago, it was only relevant and pertaining to the Federal Government. The States came and begged and said, "Amend the Buckley ruling and include protection for us also." The cities came and said, "Amend it, please, and include the protection for the cities also."

Yet, my distinguished colleague says that he has the endorsement of the Washington Post and the ACLU. He had better not let many on his side of the aisle hear that or they will start changing their votes. I know that crowd over there. I can tell you, Mr.

President, we need to examine the very authority that the distinguished Senator from Kentucky uses—the Buckley case—which he said was good. He said it was good in 1976 it is good in 1997. He says it's good and that "we don't want, need the Hollings resolution." Incidentally, it is the Hollings-Specter. I don't know whether they are ashamed to have a Republican cosponsor it. They don't mind saying "McCain-Feingold," but they don't want to say "Hollings-Specter." But I do appreciate the distinguished Senator from Pennsylvania joining in. I understand also that my colleague from Delaware, Senator ROTH, has asked for time. I was waiting to make sure he had a moment. But in any event, I admire their courage for joining me because apparently they have made this into a party position. When I lose my good friend, the Senator from Alabama, Senator SHELBY, who cosponsored this three times and now comes and says he is worried about the freedom of speech, I know the pressure is on. But, after saying Buckley is good, they then say vote against the Hollings initiative. They argue that my amendment would be the first time in 200 years we have limited the freedom of speech, whereby there is no question that this is exactly what the Buckley decision does. The Buckley decision limits the freedom of speech of those who wish to contribute in political campaigns. The Buckley decision limits to this very moment the freedom of speech of political action committees. He talks about this being the first time in 200 years, yet he has to acknowledge that their authority shows the spurious nature of their defense.

Mr. President, what we have is what the Senator from Utah, Senator HATCH, said would gut the freedom-of-speech provision for the first time. Yet, we have already had it gutted in the Buckley decision. Thereupon, as the Chief Justice said in his dissenting opinion, it is half a haircut. You can't deal with the contributions without dealing with the expenditures of those contributions—both sides of the same coin, as he expressed it.

So we have been at this now for 20 years. We have had over 240 votes in Congress on campaign finance reform. What we have finally come to is not the question of how but the question of whether or not we are going to really limit. Heretofore, for 20 years we have had Common Cause say that this measure is public financing. We have had McCain-Feingold say, if you will voluntarily limit yourself, you can get free time, free TV time, free mailing time, and everything. All of those initiatives were dealing with how to limit. But now, my good friend from Kentucky says really we should not limit it at all.

That is the vote. If you want to limit, this is the way to give the authority to the national Congress to limit it. If you do not want to limit it, then vote against it. If you want reform, if you want to really get on top of this problem, we don't tell you how to do it. But you have to have the authority within the people's national Congress to actually limit it. That is the resolution. A constitutional amendment which is just as significant—in fact, more important than—five of the last six amendments to the national Constitution dealing with elections. Adopt it, if you please, and in 18.5 months—the average of those five—I would dare say that with the constituency we have of the cities, the States, the interest, and the people, this would be ratified in the 1998 November election.

They have worked it pretty good in a partisan fashion to try to bring in the freedom of speech, by saying money is speech. But it can't be. But what we are talking about is paid speech, not free speech. You go down to the Washington Post, which he says endorses this, and ask them for a quarter page or half page, and see how much free speech you get out of that newspaper.

What we are talking about is the right to control the election. The war in the field of battle, as the distinguished Senator INOUYE knows, is won by those who control air over the battlefield. Those who control the airwaves win political elections. There isn't any question about it. Money talks here. If we can't get on top of this monster, as Elizabeth Drew has said, we will never be able to save the process. We will never be able to save the democracy itself. Chief Justice Jackson said that the Constitution is not a suicide compact. We can move after 20 years to address this important problem facing our nation. We should move.

I thank the Chair.

The PRESIDING OFFICER. All time has expired.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Montana [Mr. BURNS] is necessarily absent.

The yeas and nays resulted—yeas 38, nays 61, as follows:

[Rollcall Vote No. 31 Leg.]

YEAS—38

Akaka	Dorgan	Levin
Baucus	Feinstein	Lieberman
Biden	Ford	Mikulski
Bingaman	Glenn	Murray
Boxer	Graham	Reed
Breaux	Harkin	Reid
Bryan	Hollings	Robb
Byrd	Inouye	Roth
Cleland	Jeffords	Sarbanes
Cochran	Johnson	Specter
Conrad	Kerry	Wellstone
Daschle	Landrieu	Wyden
Dodd	Lautenberg	

NAYS—61

Abraham	Gorton	McConnell
Allard	Gramm	Moseley-Braun
Ashcroft	Grams	Moynihan
Bennett	Grassley	Murkowski
Bond	Gregg	Nickles
Brownback	Hagel	Roberts
Bumpers	Hatch	Rockefeller
Campbell	Helms	Santorum
Chafee	Hutchinson	Sessions
Coats	Hutchison	Shelby
Collins	Inhofe	Smith (NH)
Coverdell	Kempthorne	Smith (OR)
Craig	Kennedy	Snowe
D'Amato	Kerrey	Stevens
DeWine	Kohl	Thomas
Domenici	Kyl	Thompson
Durbin	Leahy	Thurmond
Enzi	Lott	Torricelli
Faircloth	Lugar	Warner
Feingold	Mack	
Frist	McCain	

NOT VOTING—1

Burns

The PRESIDING OFFICER. On this vote, the yeas are 38, the nays are 61. Two-thirds of the Senators voting, a quorum being present, not having voted in the affirmative, the joint resolution is rejected.

Mr. MCCONNELL. Mr. President, I move to reconsider the vote, and I move to lay that on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, just a couple of observations about the vote just completed.

The constitutional amendment to strip political speech out of the first amendment and give the Government the power to control said speech was just defeated 61 to 38. We have had previous votes on the Hollings amendment in other years.

I would just like to mention for the benefit of my colleagues this is the biggest vote against the Hollings amendment yet achieved in the Senate. The opponents of this amendment included all but 4 Republicans and 11 Democrats. So I think it was a very encouraging indication of growing support for protecting the first amendment.

I want to thank my colleagues for this overwhelming vote against the amendment. Also I thank Tamara Somerville and Lani Gerst for their continuing good work on this issue. They are both members of my staff.

I yield the floor.

APPOINTMENT OF AN INDEPENDENT COUNSEL TO INVESTIGATE ALLEGATIONS OF ILLEGAL FUNDRAISING

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of Senate Joint Resolution 22, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 22) to express the sense of the Congress concerning the application by the Attorney General for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.

The Senate resumed consideration of the joint resolution.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, it is my understanding, under the previous unanimous consent agreement, that discussion and debate will be taking place on either the resolution that Senators just voted on or the pending independent counsel resolution. Is that a correct assumption?

The PRESIDING OFFICER. The Senator is correct. The Senator from Indiana has 40 minutes under the agreement.

Mr. COATS. Mr. President, I do not believe I will consume the full 40 minutes. In fact, I am sure I will not. And if I finish before that, I would be happy to yield that time back to expedite the process.

Mr. President, I generally believe that the Senate floor should be a place to talk about issues, not about scandals. So my first inclination is to voice my support for an independent counsel and hope the process will take its course. The need for this investigation should be beyond question, proven on the front page of the newspaper every morning.

Under normal circumstances, there would be little more to say. But this circumstance is not normal because it now concerns some of the most disturbing questions that can be asked in a democracy.

Was the executive power of the White House abused to improperly influence the outcome of an American Presidential election?

Were foreign governments invited by the Democratic Party and the Clinton administration to corrupt American elections?

Was the privilege of American citizenship distorted and undermined to serve the President's reelection?

And now we are forced to ask, were American intelligence services manipulated by this administration as part of its fundraising machine?

The revelations that began last October, and have continued until this morning, do not primarily concern the low standards of our current campaign finance system. Those standards, it has been argued, should be changed. We will be debating that in this body.

What the almost daily revelations we have seen do concern are the legal and ethical breaches of the current standards by the Clinton administration. And that charge is different in kind in the seriousness from the policy debate on campaign finance reform.

It is not the technical violation of campaign finance law that primarily concern me. Those are for lawyers and prosecutors to debate and decide. The issue is far greater than the sum of those ethical and legal problems. All of the strands of this scandal—high-pressure soft-money fundraising, illegal foreign contributions, the abuse of the Immigration and Naturalization Service and of the CIA—reveal an administration obsessed with reelection, indifferent to ethical rules and organized to skirt the law.

All of these efforts were directed toward one event, and one date: The Presidential election on November 5, 1996.

There are countless complex elements to this scandal, but only one central issue. Was the executive branch of Government corrupted and compromised by a rogue political election operation centered in the Democratic National Committee, the Office of the President, the Office of the Vice President, and the Office of the First Lady?

By definition—no matter what the justification—this would not just be a violation of legal and ethical standards regarding campaign financing, but arguably a crime against democracy itself.

The most recent revelation is one of the most damaging. We now know that the Central Intelligence Agency was used by the Democratic National Committee to encourage access to the President by Roger Tamraz, an international fugitive and major donor to the Democrat Party.

We know that Donald Fowler, chairman of the DNC, made a call to the CIA asking that that agency provide classified information to the White House about Mr. Tamraz and his business interests in a pipeline project funded partially by Chinese businessmen.

When the National Security Council refused to recommend a meeting between Mr. Tamraz and President Clinton, the White House eventually scheduled at least four that we know of. One meeting in April 1996 took place while Mr. Tamraz was being sought for questioning by Interpol, the international police agency, for bank fraud in Lebanon. Mr. Tamraz made $177,000 in donations to Democrat causes and maintained business ties with both Saddam Hussein's Iraq and Muammar Qadhafi's Libya.

The White House has responded by saying in effect, as they have said to every issue that has been raised regarding their ethics and regarding their fundraising operation, "Well, everyone is doing it."

Mr. President, unless there are things going on here in the Senate that I do not know about, the White House defense that "everyone is doing it" does not apply here.

It has been said that the confirmation process is at fault in the withdrawal of the Anthony Lake nomination, the individual who headed the National Security Council during these events.

The fault, in fact, Mr. President, lies elsewhere. The Lake nomination was eventually undermined because he was forced to operate in the heart of a political fundraising machine whose abuses are being revealed to us in expanded detail each day.

The White House blames partisan Republicans, but the final straw in the failure of this nomination came because our intelligence services were politicized for partisan political advantage.

We are not entirely sure what Mr. Lake's role was in this. That is the reason why we requested interviews with NSC staff, interviews that were denied, and why we were going to seek today subpoenas to order those interviews to take place.

But we do know what the White House role was. And it was clearly inappropriate. If Anthony Lake is the victim of a political process gone haywire, that political process is to be found in the White House itself.

The most recent revelation is part of a pattern, a pattern of abusing executive power for political ends.

Concerning political solicitation at the White House, we now know that the Office of the President, the Office of the Vice President, and the Office of the First Lady were all involved in these efforts.

We know that the President's request for immediate action on fundraising in early 1995—the written message that read "ready to start overnights right away"—we know that this began a program of White House coffees and Lincoln Bedroom overnights that eventually raised nearly $40 million.

We know that an unsigned memo was written to Martha Phipps, deputy chief of staff to the chairman of the Democratic Party, which suggested 10 White House rewards for major donors: two seats on Air Force One, two seats on Air Force Two; six seats at all private dinners; six to eight spots at all White House ceremonies and events; official delegation trips abroad; better coordination on appointments to boards and commissions; White House mess privileges; White House resident visits and overnight stays; guaranteed Kennedy Center tickets; six radio address spots; photo opportunities with White House principals.

We know, Mr. President, that at least 7 of these 10 perks were actually used in fundraising efforts. We know that the administration, in its fundraising

efforts, applied few, if any, ethical standards to those who were given access to the White House.

Included in the White House coffees with President Clinton were a major drug dealer, a twice-convicted felon for theft and tax offenses, a Chinese arms dealer, and an international fugitive on conspiracy and embezzlement charges.

We know that the Vice President, Mr. GORE, solicited campaign contributions by telephone from his White House office on more than 50 occasions. One business figure who received a call recounts—and I quote—"There were elements of a shakedown in the call. It was very awkward. For a Vice President, particularly this Vice President who has real power and is the heir apparent, to ask for money gave me no choice."

We know that the First Lady's chief of staff, Margaret Williams, accepted a $50,000 political contribution at the White House.

We know that Harold Ickes, assistant to the President, wrote a memo to a major Democrat contributor advising him on ways to make a $5 million contribution to the Democratic National Committee tax deductible. The three-page document detailed how such a contribution could be filtered through 501(c)3 organizations that were helpful to Democrat reelection efforts. In the memo, Mr. Ickes wrote, "If possible, it would be greatly appreciated if the following amounts could be wired to designated banks."

We know there was a clear direction from the President and First Lady to use a White House computer database for political purposes. That database, by the way, was purchased with $1.7 million of taxpayer dollars. One memo marked "Confidential" from White House political aide Marsha Scott argues that the database be made available "to the [Democrat National Committee] and other entities we choose to work with for political purposes." On this memo are the handwritten words, "This sounds promising. Please advise." Signed HRC.

Another memo from Ms. Scott, to Erskine Bowles, the President's current chief of staff, outlines a plan to use the database to reward supporters with "trinkets" and access. The memo concludes, "This is the President's idea and it is a good one."

Another memo from Ms. Scott to Thomas McLarty, the President's former chief of staff, states of this plan, "Both the President and the First Lady have asked me to make this my top priority."

We know, Mr. President, that former White House counsel Bernard Nussbaum, early in the Clinton administration, had contributed a memo titled "Criminal Statutes." In that memo he wrote, "A number of criminal statutes prohibit the use of Federal programs, [Federal] property or employment for political purposes. Violation of these criminal statutes is punishable by imprisonment and/or payment of a substantial fine." The memo went on to outline the type of activities clearly prohibited by the law: "Soliciting or receiving campaign contributions on Federal property or in Federal buildings. This means that fundraising events may not be held [—may not be held—] at the White House; that no fundraising phone calls or mail may emanate from the White House or any other Federal buildings; and that no campaign contributions may be accepted at the White House or any other Federal buildings."

So, Mr. President, based on the Nussbaum memo, the former White House counsel memo, then White House counsel, we know this administration was fully informed of these ethical and legal standards, the standards of the current system, but we also know those standards were broadly and repeatedly violated at every level of the Clinton White House.

And then there is the issue of White House political involvement in foreign political contributions.

We know that many of the principal figures in the current scandal—including John Huang, Charlie Trie and Johnny Chung—have been longtime Clinton supporters, some brought to Washington from Arkansas. They have had open access to this administration —Huang visiting the White House 78 times in 15 months and Chung visiting at least 49 times.

We know that Johnny Chung took six Chinese businessmen to the White House to hear President Clinton's radio address on March 11, 1996, in exchange for a $50,000 contribution to the Democratic National Committee—the contribution that was given to Margaret Williams on March 17.

We know that Charlie Trie attempted to make a $460,000 contribution to the President's legal defense fund, claiming the money was collected from a variety of sources. Yet the serial numbers on the money orders were sequential and much of the handwriting was identical. Initially, only $70,000 of the money was returned. It took several months for the law firm overseeing the fund to return the remainder of the contribution.

We know, Mr. President, that John Huang was an official at the Clinton Commerce Department with a top-secret security clearance. While an official at Commerce, he recommended policies unfavorable to Taiwan and supported by China. We know that John Huang visited the Chinese Embassy at least two times during his tenure. In one instance, Mr. Huang requested top-secret documents on May 10, 1995, the day he was scheduled to meet the Chinese Ambassador.

We know that in an Oval Office meeting on September 13, 1995—including President Clinton, Bruce Lindsey, John Huang, and James Riady, the Indonesian head of the Lippo Group—a decision was made to transfer Mr. Huang to the Democratic National Committee where he became vice chairman of finance.

We know that John Huang approached officials of the Asian American Business Roundtable with a plan to channel more than $250,000 through roundtable members to the Democratic National Committee in return for a $45,000 kickback.

We know Huang helped arrange a California fundraiser at a Buddhist temple, attended by Vice President GORE, in which illegal contributions were transmitted to the DNC through third parties. One participant was paid $5,000 in cash in small bills and told to write a check. Vice President GORE claimed for 2 months he was unaware this event was a fundraiser. But a memo later surfaced that revealed that Vice President GORE's staff had briefed him on the fundraising purpose of the event.

We know that John Huang raised more than $3 million for Democrats in illegal contributions from Asian sources.

We know that the FBI, based on surveillance of the Chinese Embassy, expressed serious concerns that the Chinese Government was attempting to influence American elections through illegal contributions. That information was communicated to two officials at the Clinton White House in June of 1996. For reasons that for the moment are unclear, Mr. President, that information was not acted upon.

Another area of White House political involvement concerns the Immigration and Naturalization Service.

We know in September 1995 a Democrat activist from Illinois wrote to the First Lady to alert her of an "opportunity" presented by a new Immigration and Naturalization Service policy to increase the pace of naturalization. Daniel Solis wrote, "The people stuck in Chicago's naturalization bottleneck represent thousands of potential voters." He added that "similar backlogs exist in politically important States" like California and Texas.

We know the Vice President's office initiated a program called Reinventing Citizenship USA. We know the Vice President's office became involved in this project. A senior advisor to Vice President GORE sent an e-mail to a gentleman by the name of Dough Farbrother, another Gore aide, in March of 1996. Mr. Farbrother, being another Vice Presidential aide, received the memo in 1996, and that memo stated, "The President is sick of this and wants action."

We know that in a later message to the Vice President, Mr. Farbrother said that the Immigration and Naturalization Service is not doing enough to

"produce a million new citizens before election day."

He concluded that, "Unless we blast INS headquarters loose from their grip on the front line managers, we are going to have way too many people still waiting for citizenship in November."

We know that Mr. Farbrother later drafted a memo to President Clinton on behalf of Vice President GORE, which stated that "if we are too aggressive in removing the roadblocks to success, we might be publicly criticized for running a pro-Democrat voter mill and even having Congress stop us."

We know that as a result of these efforts 180,000 people were processed without criminal background checks. Clearly, the standards of citizenship were bent and broken for political purposes.

Mr. President, in the middle of all this political activity at the White House, designed to influence the Presidential election, Vice President GORE made the following statement: "The ethical standards established in this White House have been the highest in the history of the White House. You have a tougher code of ethics, tougher requirements, strictly abided by." When that statement was made last year, it was barely credible. Today, that statement is offensive and outrageous. Evidence piles upon evidence of legal and ethical wrongdoing in the Clinton administration.

Mr. President, each day, it seems, either the New York Times, or the Washington Post, or the Wall Street Journal, or other major, credible investigative organizations, detail new improper or illegal activity, or both, coming out of this administration, related to the campaign financing operation run in the White House during the last election. As a consequence of this, I believe we are forced to three conclusions by this unfolding scandal. First, the White House, in preparation for the election, was turned into a political machine—more like Tammany Hall than the most ethical White House in history. The staff of the President, the staff of the Vice President, the First Lady, the Immigration and Naturalization Service, and even the CIA were all involved. We are not sure exactly what the direct involvement was of the President. We know the Vice President, who was referred to as "solicitor in chief," was a key player in all of this, in one way or another, Mr. President, with fundraising or increasing the number of Democrat voters. There was even use of the CIA in the operation to fund this election, which was conducted in an unprecedented and extraordinary and very disturbing way. Clearly, all the advantages of the executive branch were employed in the President's reelection effort.

Mr. President, there is something deeply disturbing and inherently troubling about all of this. In a democracy, we prevent public officials from using their public office to improperly influence the outcome of elections because such practices are, perhaps, the most serious form of corruption in a democracy.

The second conclusion from all of this is that the return of illegal money by the Democrat National Committee comes after the benefits that it bought, after the election is past and after the damage is done. In reality, the money raised by Johnny Huang and others cannot be returned because it has already been used. The DNC will simply raise new money, which is then refunded. We must not fool ourselves that returning illegal money is sufficient punishment, or any kind of punishment at all. It turns illegal funds into a campaign loan to be repaid after the votes are counted. And now it is unclear just when that loan will ever be repaid, because despite public announcements that the DNC is returning illegal contributions, not a penny—at least a reported penny—has yet been returned.

Finally, this unfolding story of the White House improperly influencing the result of the national election is not politics as usual, as is so often alleged by the White House in response to each new allegation. This is something unique and something uniquely disturbing. This administration wants us to believe that its actions, if questionable, were normal practice, but we must never, Mr. President, become immune to illegality. This record of broken trust and broken rules does not primarily indicate the need for campaign finance reform; it indicates the need for further FBI investigation. It indicates the need for immediate firings in the White House. It may indicate the need for criminal prosecutions. It certainly indicates the need for independent counsel.

Every time the New York Times, Wall Street Journal, Washington Post, or other publication reports a new aspect of this scandal, the same response comes back from the White House: "Republicans are being partisan. This is just politics. We all do it, so let's clean up the mess together."

No one at the White House, in any context, seems willing to take responsibility for ethical and legal violations. If the White House will not assume that responsibility, then it must be imposed. Senator THOMPSON's committee will doubtlessly do good work, but its results will almost certainly be attacked and discounted by the Clinton administration as simply "partisan politics." I supported the effort to allow that committee to move forward in its investigation. But it is clear that the pattern of response from the White House now that whatever is said either by this Senator on this floor, or any Republican on this floor, or any Republican in a public statement, or conducted by any committee controlled by a Republican chairman—it's clear now that every question asked, every allegation made, and every statement offered is simply labeled as "partisan politics."

For that reason, it seems that in the end, we have no choice but to proceed with independent counsel. While far from perfect—and I have had my reservations about independent prosecutors—such a process, however, was designed to move questions of criminality outside the political process. And those questions of criminality in this case are serious questions—as serious as it gets—and may reach to the very highest levels of our Government.

This administration has maintained its power, but has squandered its integrity. It has actively undermined the integrity of an American Presidential election. This is a breathtaking act of political arrogance. Yet, the President insists it was justified because, in his words, "The direction of the country was at stake."

I wonder what the public response would have been, Mr. President, if during the Watergate investigation of then President Nixon the response from the President, the response from the Vice President, and the response from the administration had been that all the means that we took, all the things that we engaged in were justified because our political agenda and the direction of our country was at stake.

To overlook virtually every questionable, improper, illegal practice, and to overlook this 14 pages of what we know—who knows what we don't know?—and simply say that it was justified on the basis that the agenda of this administration was so important that any law could be violated, that any ethics rule could be overlooked, that any practice could be undertaken, simply to advance their political agenda for the future of America, puts this country in a dangerous, dangerous situation.

The ends do not justify the means. While the President and his party feel strongly about what the agenda should be for this country, it is clear that there are opposing agendas that are debated every day on the Senate floor and in the Congress, and debated among the American people. It is political arrogance to suggest that one party's political agenda for the future of this country justifies the kinds of campaign practices that took place in the reelection effort of this President.

The White House for years has chosen its own direction. That direction appears to be the corruption of the very democratic process itself.

Mr. President, I believe this situation has become so serious and so potentially threatening, and damaging to the political process and to the office of the Presidency that an independent

counsel is needed, and needed immediately. I, therefore, will join with many here in this body in a sense-of-the-Senate resolution calling upon the Attorney General to immediately name an independent counsel, someone who is above reproach, whose credibility is acceptable to the American people, whose integrity is unquestioned, to investigate the extraordinary serious allegations printed in major newspapers with great credibility. Just reading the quotes alone from memos obtained regarding some of these practices raises enough question I believe for the appointment of an independent counsel.

I hope my colleagues will join me in this effort. Clearly the administration and the White House has decided to follow the course of labeling every charge as simply a partisan attack, equating campaign financing in the last congressional election with what took place at the White House—and they are leagues apart in terms of degree—attempting to confuse the issue with phrases like "Mistakes were made"; "We promise we won't do it again, even though we are proud of what we have done." The phrases and comments that seem to indicate that we are all in the same pot together on this one; "You guys did it. We did it. Let's put behind us what was done and move forward to clean up the system."

I think it is time people began to take responsibility for their own actions. Since the White House refuses to do this, I think it is appropriate that we move forward with independent counsel. I will be supporting the resolution to be voted on tomorrow.

Mr. President, if I have any time left, I yield that time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. NICKLES. Mr. President, I rise today to support the resolution of Senator LOTT calling for the Attorney General to appoint an independent counsel to investigate many of the allegations of illegal activity concerning the 1996 election cycle.

This statement—I will read most of it—is very serious. It bothers me as a Senator to do this. I am not a big proponent of the independent counsel statute, but I think clearly it was written to avoid a conflict of interest between the Attorney General and covered persons, those persons being the President, the Vice President, and heads of national committees. I think we have seen evidence in the last 2 or 3 months that there probably is a conflict of interest between the Attorney General and the President and the Vice President and other high officials within the Clinton administration.

In the New York Times there is an editorial that says:

> Disclosures about a Chinese plan to influence the election have taken the fund raising scandal to a new level of seriousness and clarity. Now it is clear that any citizen with a reasonable interest in the efficiency of the Federal investigative agencies and the integrity of the electoral process will want a full account of what went on.

I agree with that.

Recent news reports revealed conflicting accounts by President Clinton, the White House, and the FBI, concerning whether the President was made aware of intelligence information that the Chinese Government might be trying to influence the upcoming elections. The FBI believe they may attempt to funnel illegal donations into Presidential and congressional campaigns. The question whether the President was aware of this information and if not, why it was kept from the President, is just one of the numerous conflicts of interest pending before the Attorney General.

It is an important issue to determine whether President Clinton was aware of the Chinese Government's intended illegal actions before he approved White House coffees, lunches, and dinners with individuals known to have close ties to the Chinese Government. Charlie Trie, Pauline Kanchanalak, and Johnny Chung were allowed frequent access into the White House to attend various functions and one-on-one meetings with the President.

Mr. Chung came into the White House reportedly 49 times—and I have heard 51 times—and he donated over $366,000 that had to be returned. One of Mr. Chung's visits came only 1 day after he delivered a $50,000 check to Mrs. Clinton's Chief of Staff Maggie Williams in the White House. Mr. Chung brought six Chinese businessmen into the Oval Office to watch the President's radio address, one of which is the vice president of a Chinese company that trades weapons. They had their photos taken afterward. The White House was warned about handing over these pictures by the President's own NSC staff. They labeled Mr. Chung a "hustler" and warned that he might use the pictures to "enhance his business." In spite of this, Mr. Chung also brought Chinese beer executives into the White House who evidently obtained their pictures with the President since it was reported that one of these pictures was featured on a billboard advertisement for the beer company.

Pauline Kanchanalak visited the White House at least 26 times and donated approximately $250,000 to the DNC. On the day Ms. Kanchanalak brought some of her business clients to a White House coffee with the President, she donated $85,000 to the DNC and it was recorded that the donation was for "coffee with the President of the United States." Ms. Kanchanalak has not been available to answer questions about any of this. She apparently left the country after congressional subpoenas were issued and there were news reports that documents were destroyed.

Charlie Trie visited the White House up to 37 times and delivered $640,000 in checks and money orders to the President's legal defense fund. The money had to be returned since it was from unverifiable sources. About 1 month after Mr. Trie delivered the bulk of these checks, President Clinton expanded the number of members of the U.S.-Pacific Trade and Investment Policy Commission and Mr. Trie was appointed to that Commission. The White House denied any connection between the donations and the delivery of the money, but questions remain unanswered. Mr. Trie also arranged for Chinese arms merchant Wang Jun to attend a White House coffee with President Clinton. Wang Jun is a former officer of the Chinese People's Liberation Army and was chairman of a Chinese company suspected of trying to import illegal automatic weapons into the United States.

Did the President know about the Chinese Government's plan before his reelection campaign and his legal defense fund accepted hundreds of thousand of dollars in illegal donations?

Was the President aware of this information when he allowed a Chinese arms dealer and manufacturer into the White House?

Was Mr. Trie's appointment to the Trade Commission related to his generous donations to help pay the President's legal expenses and to aid his reelection efforts?

All of these examples show just how many conflicts of interest exist for the Attorney General and the Department of Justice to investigate these allegations. And that is just what they are at this point—allegations. However, the independent counsel statute clearly provides under section 591(c)(1) and (d) of title 28, United States Code, that the Attorney General may invoke the independent counsel process when the Attorney General has received specific information from a credible source sufficient to constitute grounds to investigate whether a violation of any Federal criminal law, other than a Class B or C misdemeanor or infraction, may have been committed by any other person if such investigation or prosecution by the Department of Justice may result in a personal, financial, or political conflict of interest.

The independent counsel statute is intended to allow the Attorney General to request the appointment of an independent counsel when this type of conflict of interest occurs involving those at the highest levels of our Government and top officers of the President's

political party. I believe that Attorney General Reno has ample information and should therefore, invoke this provision of the statute to immediately request appointment of an independent counsel.

Attorney General Reno testified before the Government Affairs Committee in favor of the reauthorization of the act. She testified that:

The reason that I support the concept of an independent counsel with statutory independence is that there is an inherent conflict whenever senior Executive Branch officials are to be investigated by the Department and its appointed head, the Attorney General. The Attorney General serves at the pleasure of the President. . . .

Section 591 (a) and (d) of the independent counsel law also contains a mandatory provision which requires the Attorney General to invoke the independent counsel process whenever the Attorney General has received specific information from a credible source sufficient to constitute grounds to investigate whether any Federal criminal law, other than a Class B or C misdemeanor or infraction, may have been violated by a covered person.

There has been specific credible information publicly reported that officers and agents of the Democratic National Committee were acting under the direction of and pursuant to instructions given by the President, Vice President, and other top level officials in the White House and the Clinton-Gore reelection campaign. The President, Vice President, the Clinton-Gore Reelection Campaign chairman and treasurer are named in the statute as covered persons.

If it is correct that certain officers and agents of the Democratic National Committee were acting under the direction of the reelection campaign and were in effect exercising authority for the campaign at the national level, then it is open to interpretation whether the chairman and top officers of the DNC would also be covered persons under the law.

The law also provides a list of other covered persons which includes the Attorney General, certain top Justice Department officials, Cabinet Secretaries, and other top level administration officials. Any person working in the Executive Office of the President with a salary of $133,500 or above is also a covered person under the law.

What this means is that if the Attorney General receives specific information from a credible source that any Federal criminal law, other than a Class B or C misdemeanor or infraction, may have been violated, Attorney General Reno must conduct a preliminary investigation and seek the appointment of an independent counsel if further investigation is warranted.

There are numerous Federal laws that may apply to the allegations we have heard about and seen reported in the news:

Title 18 of the United States Code, section 599 makes it unlawful for a candidate for Federal office to promise an appointment to any public or private position or employment in return for support of his candidacy.

Section 600 makes it unlawful to promise employment, a contract, or other benefit in exchange for any political activity or support for a candidate or political party.

Section 607 makes it unlawful for any person to solicit or receive any contribution intended to influence an election for Federal office in any [government] room or building.

This is the tone that has been related to the President's fundraising coffers and also to the Vice President's phone calls.

Section 641 makes it unlawful to convert Government property which includes telephones, copy machines, or Government computer records for one's own use.

Section 201 makes it unlawful to give or offer a bribe to a public official in order to influence an official act.

Section 205 makes it unlawful for a Government employee to act as an agent for anyone before a Federal agency on matters that the United States is a party or has a direct interest.

Section 793 makes it unlawful to communicate national defense information to anyone not entitled to receive it.

Section 794 makes it unlawful to communicate national defense information to a foreign government or representative of a foreign government.

Section 219 prohibits a Federal Government official or employee from acting as foreign agent by delivering money actually derived from foreign countries.

Sections 611–621 of the Foreign Agents Registration Act prohibit any person from acting in any capacity on behalf of a foreign government or foreign political party without registering with the Attorney General.

Section 1905 makes it unlawful for a Federal employee to make an unauthorized disclosure of proprietary business information.

Section 1956 is the money laundering statute.

Section 1505 makes it unlawful to obstruct an agency or committee proceeding.

All of these laws are subject to:

Title 18, section 371, conspiracy statute which makes it unlawful to conspire to commit any offense against the United States; and sections 1341 and 1342, mail and wire fraud statutes which make it unlawful to use the mails, radio, or telephones in connection with any scheme to defraud or obtain money by false pretenses.

Section 1001 false statements statute which makes it unlawful to make a false statement or use a document containing materially false statements in a matter before the executive branch and with some limitations, the judicial and legislative branches.

The Federal election laws make it unlawful to: Solicit or accept political contributions from foreign nationals in section 441e; it makes it unlawful to knowingly accept a contribution made in the name of another person; section 441f; or makes it unlawful to solicit any contribution from persons with contracts with any government agency; section 441c.

These are only a portion of the Federal laws that apply to the allegations currently under review.

Recent news accounts of solicitations of campaign contributions by the Vice President, and possibly the President or senior White House staff, occurring in White House offices not used for residential purposes, or onboard Air Force One, may have violated Federal criminal laws prohibiting soliciting or receiving political contributions in any Government room or office or conversion of Government property to one's own use.

There has been specific credible information publicly reported that the Cheyenne-Arapaho Indians of Oklahoma contributed $107,000 to the Clinton-Gore reelection campaign in order to meet with President Clinton to discuss the return of Federal lands. It also was reported that Clinton-Gore reelection campaign chief fundraiser Terrance McAuliffe may have offered a Government benefit of access in exchange for additional political support which may violate Federal law prohibiting the promise of a Government benefit in exchange for political activity or support.

There has been specific credible information publicly reported that President Clinton, Vice President GORE, Deputy Chief of Staff Harold Ickes, and other covered White House and Clinton-Gore campaign officers coordinated the solicitation and expenditure of independent Democratic Party funds which may be in violation of the Federal election laws. It was further reported that Democratic party advertising and expenditures were directed toward the reelection effort which may have had the effect to render these funds subject to campaign finance limitations to which they otherwise were not subject.

There has been specific credible information publicly reported that President Clinton met with Long Beach officials to advance a proposed contract between the city of Long Beach and the Chinese state-owned merchant fleet, the China Ocean Shipping Co., COSCO, to lease an abandoned United States Navy Station at Long Beach. It was also reported that individuals—Charlie Trie, Wang Jun, and Johnny Chung—with business interests linked to the Chinese shipping company made campaign donations to the Democratic National Committee and visited the

President at a White House coffee during the negotiations for this lease which may have violated Federal laws if any promise of a Government benefit was given in exchange for political activity or support or if a promise of money from a foreign government was given.

Yesterday, the Wall Street Journal reported that oil financier Roger Tamraz, who had an outstanding international arrest warrant for allegedly embezzling $200 million from a Lebanese bank, attended a White House coffee, a White House dinner and reception, and viewed a movie with President Clinton. All of these visits were allowed in spite of warnings from the President's own National Security Counsel Asian specialist's recommendation that Mr. Tamraz should have no future meetings or future access to the White House. Mr. Tamraz met with the NSC specialist in an attempt to obtain support from the administration for a multibillion dollar oil pipeline from the Caspian Sea to Turkey that he was negotiating to build. He then tried to set meetings with Vice President GORE and President Clinton.

The specialist's advice appears to have been followed until Mr. Tamraz made donations of $50,000 and then $100,000 to the Democratic National Committee. When the National Security Counsel determined that it was not in the best interest of the United States to support Mr. Tamraz's business proposal or for his return to the White House, he went to the Democratic National Committee.

Mr. Tamraz is quoted as saying that he thought that "through the DNC [he] could make a policy heard." DNC Chairman Don Fowler is reported to have personally called the White House's NSC specialist and asked her to drop her opposition to Mr. Tamraz meeting with President Clinton. Mr. Fowler apparently also managed to have the CIA send over a paper on Mr. Tamraz which Mr. Fowler said would show that Mr. Tamraz had helped the United States in the past. The requested meetings with the President did occur. It was reported that Mr. Tamraz had four meetings with President Clinton in spite of these warnings. What did Mr. Tamraz do to warrant such special access? We know that he donated at least $177,000 to the DNC and it was reported that he raised more money from other large donors.

Why was a man with an international arrest warrant, accused of embezzling $200 million from a foreign bank, allowed into the White House to meet with the President?

Why was this same man allowed to meet with President Clinton over the objections of his own National Security Council Asia specialist's warnings?

Why was the chairman of the Democratic National Party involving himself in foreign policy issues?

Why did he call the National Security Council to attempt to change a decision?

How did the chairman of the Democratic National Committee obtain a copy of a paper on a donor from the CIA and have it sent to the National Security Council?

On whose authority was this done?

Was the President aware of his party chairman's actions and did he approve?

If not, why did he continue to meet with this man?

What was requested in these meetings and was any benefit provided to Mr. Tamraz as a result?

There has been specific credible information publicly reported that a cocaine dealer convicted of transporting nearly 6,000 pounds of cocaine into this country, Jorge Cabrera, met with President Clinton in the White House. Eric Wynn, convicted of 13 counts of stock fraud which allegedly was to benefit the Bonano crime family, met with President Clinton. And a man alleged to have been associated with Russian organized crime, Gregori Loutchansky, also met with President Clinton. Mr. Yogesh Gandhi contributed $325,000 to the DNC and met with President Clinton to give him a World Peace Award although reports allege that he owed $10,000 in back taxes and filed divorce papers in court that he was a pauper and could not afford to pay the court's fees. Numerous other specific allegations surrounding John Huang and Webster Hubbell have been widely reported and raised questions about their activities in relation to Chinese interests.

All of these questions need to be answered. They clearly present a conflict of interest for the Attorney General and the Department of Justice. And they do involve credible information concerning covered persons that may have violated Federal law.

Mr. President, I urge the Attorney General to appoint a special counsel to investigate these charges. I think the law calls for it. I think it is very clear. I do not think it is close. So I urge the Attorney General to appoint an independent counsel immediately.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GORTON). The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I ask unanimous consent I be allowed to speak for 20 minutes as in morning business.

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

Mr. DORGAN. Mr. President, I ask unanimous consent following my presentation that Senator LEVIN from Michigan be recognized on the bill.

The PRESIDING OFFICER. Senator LEVIN has time reserved.

Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I come to the floor to discuss a piece of legislation that I and a couple of my colleagues intend to introduce, but I did want to comment first on the remarks that have been offered previously on the floor of the Senate, including the just-completed remarks by the majority whip.

It is certainly the case that a number of allegations about fundraising abuses are serious and ought to be investigated. The current campaign financing system in this country is in desperate need of revision and reform. The range of abuses that need investigation goes all the way around the spectrum. These include abuses by the major campaign committees, both the Republican National Committee and the Democratic National Committee, congressional campaigns, and the White House. There are a wide range of allegations surfacing almost daily now for several months about abuses in campaign financing. All of them deserve to be fully investigated. The American people deserve no less than that.

Last week, there was an attempt to do a congressional investigation resolution on the floor of the Senate. That resolution was attempting to put blinders on the investigation sufficient so that it would only investigate a little corner of the problem, and it was the majority party saying only investigate the opposition. It turned out that sufficient members of the Senate would not agree with that. So, finally it had to be broadened to say investigation of campaign finance abuses ought to be across the board, no matter which party is involved with those abuses. As a result the charter given last week to the Senate Committee that will investigate these abuses, is a broader charter rather than a narrower charter.

The same should hold true with the discussion about the resolution now before the Senate. This resolution, once again, attempts to narrow it. The resolution that will be offered by the Senator from Michigan, a substitute offered by Senator LEVIN, is what I will choose to support, largely because that resolution contemplates that abuses shall be investigated with respect to either party or any party in which there is an allegation of fundraising abuse.

The Senate Judiciary Committee already has petitioned the Attorney General on the question of an independent counsel. The law provides for that. The law does not provide for the Senate to intervene on a political basis to petition for an independent counsel. What is happening here is unprecedented. It has not happened previously.

Part of this debate is whether this is politics or substance. We already have

a congressional investigation that will now be organized and will be very well funded. We already have a letter from the Senate Judiciary Committee to the Attorney General. The question of whether this legislation now brought to the floor is a political missive, I suppose, is up to those who are looking at it and would make judgments about its narrow scope. I prefer that we consider the resolution and vote for the resolution offered by the Senator from Michigan.

I make one additional point. What is not on the floor of the Senate is campaign finance reform. It ought to be. Campaign finance reform ought to be brought to the Senate. We ought to debate it. We ought to reform the campaign finance system.

What is not on the floor of the Senate, and it must be, is the Chemical Weapons Treaty. That is very important business that is before the body. We must bring it to the floor and have a vote on it and have a debate on the Chemical Weapons Treaty. The attempt to end the spread of poison gases for warfare in this world is a noble attempt initiated first by President Reagan and then by President Bush, sent to us by President Clinton. Many countries have already signed the initiative. It is being held up in this body. Very soon we will have to take aggressive action to try to wedge that to the floor of the Senate and insist on a vote on the important Chemical Weapons Treaty.

(The remarks of Mr. DORGAN pertaining to the introduction of S. 465 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. Under the previous unanimous-consent ordered, the Senator from Michigan is to be recognized. The Senator from Michigan is recognized for not to exceed 30 minutes.

Mr. LEVIN. Mr. President, there is only one reason the Senate is being asked by the majority leader's resolution to intervene in the independent counsel process which is being considered by the Attorney General. The reason is partisan politics, pure and simple. It is regrettable for many reasons, particularly following last week's determination by the full Senate to support a broad and fair and evenhanded investigation by the Senate Governmental Affairs Committee into campaign finance practices in the 1996 election—Presidential and congressional, House and Senate, Republican and Democratic. In doing that last week, we recognized as a body that abuses in campaign fundraising are not in the exclusive domain of either political party, or either end of Pennsylvania Avenue. We confirm the view, as stated in the Governmental Affairs Committee report, in support of funding a broad scope investigation that:

> The committee intends to investigate allegations of improper activities by all, Republicans, Democrats, or other political partisans. It will investigate specific activities, not the political party against which the allegations are made.

But now, in a partisan attempt to reestablish the focus of the press and the public on just the Democratic National Committee and just the Clinton-Gore campaign, the majority leadership brings this resolution to the floor. The very wording of the resolution reveals its partisan objective. Nothing in the resolution mentions activities in connection with the Republican National Committee, or the fundraising activities of Members of Congress. The resolution mentions possible Democratic problems exclusively and calls upon the Attorney General to seek the appointment of an independent counsel to investigate only allegations against Democrats. It is an unbalanced, partisan piece of work, and I expect it will receive the unbalanced partisan vote that it deserves.

But in addition to the reversal that it reflects of the Senate's unified position on a broad, bipartisan investigation into campaign finance reform, it does damage to the very law that it is seeking to invoke. For the past 18 years I have served as either chairman or ranking Democrat on the Subcommittee of the Governmental Affairs Committee with jurisdiction over the independent counsel law. I have been actively involved in three authorizations of this important statute. And having experienced and studied the history of this law, it is apparent to me that this resolution runs directly counter to the fundamental purpose of the independent counsel law.

The independent counsel law was enacted in the aftermath of Watergate. The Watergate Committee recommended, and Congress agreed, that we needed an established process by which criminal investigations of our top Government officials could be conducted in an independent manner free from any taint of favoritism or politics. This was necessary, we decided, in order to maintain the public's confidence in one of the basic principles of our democracy—that this is a country that follows the rule of law. We established a process whereby the Attorney General would follow certain established procedures in reviewing allegations of criminal wrongdoing by top Government officials and decide at certain stages whether to ask a special court to appoint a person from the private sector to take over the investigation and conduct it independently from the chain of command at the Department of Justice. We wanted the public to have confidence that investigations into alleged criminal conduct by top Government officials were no less aggressive—and I might add no more aggressive—than any such investigation of the average citizen. We particularly wanted to take any suggestion of partisanship out of the investigative and prosecutorial decisionmaking process.

So here is what we did. We established the requirement that if the Attorney General receives specific information from a credible source that a crime, other than a class B or C misdemeanor, has been committed by certain enumerated top Government officials, the Attorney General has to conduct a threshold inquiry lasting no more than 30 days, to determine if the allegation is frivolous or legitimate. The top officials who trigger this so-called mandatory provision of the act are the President and Vice President, the Cabinet Secretaries and Deputy Secretaries of the executive branch departments, plus very top White House officials who are paid a salary at least as high as Cabinet Secretaries or Deputy Secretaries, and in addition the chairman and treasurer or other top officials of the President's campaign committee.

If, after that threshold inquiry, the Attorney General determines that there is specific information from a credible source that a crime may have been committed, the Attorney General must then conduct a preliminary investigation lasting no more than 90 days in which she gathers evidence to determine whether further investigation is warranted. If, after the conclusion of the 90-day period, the Attorney General determines that further investigation is warranted with respect to a covered official, then she must seek the appointment of an independent counsel. The Attorney General is required by law to seek such appointment from a special court made up of three article III judges appointed for 2-year terms by the Chief Justice of the Supreme Court.

The independent counsel law also has a provision that gives the Attorney General the discretion—and I repeat the discretion—to seek an independent counsel where there is a criminal allegation against a noncovered official and the Attorney General determines that the Department of Justice has a political, personal, or financial conflict of interest with respect to the investigation. There must still be specific information from a credible source that a crime may have been committed and a preliminary investigation to determine whether further investigation is warranted. Use of this provision is contemplated where the Attorney General or top Justice Department employees may have been personally involved in the matters under investigation or where the Attorney General has an unusually close personal relationship with the subject of the investigation.

A third provision of the independent counsel law provides that the Attorney General may seek the appointment of an independent counsel relative to allegations against Members of Congress.

The independent counsel law provides that if the Attorney General receives specific information from a credible source that a crime may have been committed by a Member of Congress, she can determine whether the continued investigation of that allegation should be conducted by the Department of Justice or whether it is in the public interest that the investigation be conducted by an independent counsel. Like the conflict of interest provision, this is a discretionary authority, but it is one the Attorney General has available to her in matters involving Members of Congress.

In crafting the independent counsel law, Congress contemplated a role for Congress with respect to the appointment of an independent counsel in a specific case. We included a provision that is tailored to the purposes of the law. The independent counsel law explicitly provides that the appropriate avenue for congressional comment on the appointment of an independent counsel is through action of the Judiciary Committee. The law provides that either a majority of the majority party or a majority of the minority party may request the Attorney General to appoint an independent counsel acting in the Judiciary Committee. Upon receipt of such a letter, the law provides that the Attorney General must respond in writing to the authors of the letter explaining "whether the Attorney General has begun or will begin a preliminary investigation" under the independent counsel law setting forth "the reasons for the Attorney General's decision regarding such preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin."

The Attorney General is not obligated to trigger the statute when she receives such a letter. She is not required to initiate a threshold inquiry or conduct a preliminary investigation. She is only required to respond within 30 days, as I have indicated before. That is the process that we provided in the independent counsel law for Congress to express an opinion in triggering the statute.

Now, why did we adopt that procedure specifically in the statute? We wanted to provide an opportunity for congressional expression in a moderate way. We did not say the Senate or the House could trigger the required report by resolution, thereby raising the stakes and increasing the level of possible partisan bickering. We provided for members of the Judiciary Committee to make the request to the Attorney General, and we required of her only that she respond in writing to the letter in a 30-day period in the manner indicated. So we channeled congressional concerns about the appointment of an independent counsel into a low-key, limited process to keep partisan politics at bay.

We also established this limited process because central to this law is the constitutional requirement that the Attorney General control the triggering of the statute. Congress as a whole is constitutionally prohibited from forcing the Attorney General to seek an independent counsel. In fact, when the constitutional challenge to the independent counsel law was considered by the Supreme Court in the case of Morrison versus Olson, the Supreme Court based its finding of constitutionality for the law upon the fundamental principle followed in the statute that the Attorney General has full authority to exercise her discretion free of congressional control.

The Supreme Court said the following in Morrison versus Olson:

> We observe first that this case does not involve an attempt by Congress to increase its powers at the expense of the executive branch . . . Indeed, with the exception of the power of impeachment—which applies to all officers of the United States—Congress retained for itself no powers of control or supervision over an independent counsel. The act does empower certain members of Congress to request the Attorney General to apply for the appointment of an independent counsel, but the Attorney General has no duty to comply with the request, although he must respond within a certain time limit . . . Other than that, Congress' role under the Act is limited to receiving reports or other information and oversight of the independent counsel's activities, functions that we have recognized generally as being incidental to the legislative function of Congress.

The resolution before us would tend to undermine that basic principle of this law. It also does undermine the nonpartisan spirit which has been so important to this law's operation. This law has been reauthorized in this Chamber at the instigation, I believe, at least on the last three occasions, of then Senator Bill Cohen, Republican from Maine, and myself. We always did it on a bipartisan basis. We always told each other it was critical to this law's functioning that it be implemented carefully as written and not be undermined by bipartisan efforts to use it to its advantage in this most political body.

That is why as an alternative to the majority leader's resolution I have introduced, with Senator LEAHY, a resolution which simply urges the Attorney General to follow the law as it is written, to do her job with respect to all three of her powers to invoke the statute: The mandatory coverage of covered officials in the executive branch, the conflict of interest provision, and the Members of Congress provision. And it asks her to consider all allegations involving Federal elections, Democratic and Republican, Congress and the President, and to do so free of any political considerations.

The majority leader's resolution is problematic both for what it leaves out and what it includes. It leaves out any reference to allegations against Members of Congress and the Republican Party, and it includes conclusory language with respect to the allegations against the White House and the Democratic Party. The resolution leaps to judgment and purports to make the very judgments about possible criminality which the statute and the Constitution reserve for the Attorney General.

The majority leader's resolution very clearly leaves out the same group which some in this body tried to leave out of the Governmental Affairs Committee's investigation, allegations against Members of Congress.

Let us just look at some of the activity that the majority leader's resolution would rather the Attorney General ignore that is not referenced in this resolution at all.

A few months ago, when the 105th Congress first got underway, the media was filled with articles about Speaker NEWT GINGRICH and his misuse of alleged tax-exempt organizations to further partisan political ends.

On January 17, 1997, a specially-appointed investigative subcommittee of the House Ethics Committee released a unanimous bipartisan report which presented the following conclusions:

> The subcommittee found that in regard to two projects, Mr. Gingrich engaged in activity involving 501(c)(3) organizations that was substantially motivated by partisan political goals. The subcommittee also found that Mr. Gingrich provided the committee with material information about one of those projects that was inaccurate, incomplete and unreliable.

The two projects referred to, a television course called "American Opportunities Workshop," and a college course called "Renewing American Civilization," were largely paid for with tax-exempt donations to two tax-exempt groups, the American Lincoln Opportunity Foundation and the Progress and Freedom Foundation.

The House bipartisan report notes that tax-exempt groups are not allowed to engage in partisan political activities. It states that even Mr. GINGRICH's tax counsel, "said that he would not have recommended the use of 501(c)(3) organizations to sponsor the course because the combination of politics and 501(c)(3) organizations is an 'explosive mix,' almost certain to draw the attention of the IRS."

The unanimous bipartisan report of the House ethics investigative subcommittee went on to make the following notable findings:

> Based on the evidence, it was clear that Mr. Gingrich intended that the [American Opportunities Workshop] and renewing American civilization projects have substantial partisan political purposes.

This is a bipartisan finding, that Mr. GINGRICH "intended" that those two

projects have "substantial partisan political purposes." And the subcommittee went on:

In addition, he was aware that political activities in the context of 501(c)(3) organizations were problematic. Prior to embarking on these projects, [the committee wrote] Mr. Gingrich had been involved with another organization that had direct experience with the private benefit prohibition in a political context, the American Campaign Academy. In a 1989 tax court opinion [the subcommittee continued] issued less than a year before Mr. Gingrich set the [American Opportunities Workshop] projects into motion, the academy was denied its exemption under 501(c)(3) because, although educational, it conferred an impermissible private benefit on Republican candidates and entities. Close associates of Mr. Gingrich were principals in the American Campaign Academy. Mr. Gingrich taught at the academy, and Mr. Gingrich had been briefed at the time on the tax controversy surrounding the academy.

And the investigative subcommittee over in the House continued:

Taking into account Mr. Gingrich's background, experience, and sophistication with respect to tax-exempt organizations, and his status as a Member of Congress obligated to maintain high ethical standards, the Subcommittee concluded that Mr. Gingrich should have known to seek appropriate legal advice. . . . Had he sought and followed such advice . . . 501(c)(3) organizations would not have been used to sponsor Mr. Gingrich's [American Opportunities Workshop] and Renewing American Civilization projects.

Now, that unanimous, bipartisan report was issued 2 months ago. It raises, directly, explicitly, serious questions about the deliberate and illegal misuse of tax-exempt organizations by a prominent Member of Congress, and false statements to Congress. The House Ethics Committee report found that Speaker Gingrich intentionally used two tax-exempt organizations for partisan political purposes, even after having been specifically denied tax-exempt status for another organization in 1989 because of the partisan nature of that organization's work. How revealing it is that the resolution before us, of the majority leader, does not mention one word of that entire matter—not a word.

And even leaving aside the issue of Mr. GINGRICH, given the campaign season just behind us, it is also revealing that the resolution before us makes no mention in any way of the tax-exempt organizations that played so prominent a role in the 1996 election. Congress made a decision many years ago that we wanted to give a break to charities and civic organizations devoted to working for public purposes, but we didn't want to use taxpayer dollars to subsidize partisan political activities by these organizations. Blatant violations of the legal limits on partisan political activity appear to have taken place during the 1996 election cycle by a number of tax-exempt organizations. Let us just look at two examples.

In the last months of the 1996 election cycle, the Republican National Committee transferred $4.6 million to Americans for Tax Reform, an organization that is exempt from paying taxes. Grover Norquist, the president of tax-exempt Americans for Tax Reform, was quoted in one Washington Post article as stating that in the last weeks before the 1996 election, his organization sent out 20 million pieces of mail and paid for millions of phone calls in 150 congressional districts. Much of this last-minute activity was made possible by the Republican National Committee's $4.6 million contribution. That is according to the article.

An Associated Press article that came out in October of 1996 quoted Mr. Norquist as saying that his group was sending out a last-minute, $3 million mailing to reinforce Republican antitax messages and that "two-thirds of the money came from the GOP."

Mr. Norquist indicated in the Washington Post article that his group didn't pay for televised political ads, but there is evidence to the contrary. An ad broadcast in the New Jersey Senate campaign states that it was paid for by the tax-exempt Americans for Tax Reform. The ad directly attacks the Democratic candidate for missing votes. Here is a sample:

Taxpayers pay liberal Bob Torricelli $133,000 a year, but he doesn't show up for work. That's wrong.

That ad was broadcast in the final weeks of the campaign. It presumably cost a great deal of money to air and may have been paid for with those RNC funds.

Americans for Tax Reform also sponsored what was designated facetiously as a special award for Members of Congress, in the last weeks of the 1996 campaign. The award was called the "Enemy of the Taxpayer" award, and it was given to 34 Members of Congress, none of whom were Republicans. The press release issued by Americans for Tax Reform contained a quotes from Mr. Norquist, directly attacking the Democratic Party.

That is not all. A group called Women for Tax Reform, operating out of the same office as Americans for Tax Reform, was created in late August 1996, to launch a national television advertising campaign. It announced its first two ads, both of which consisted of a woman directly attacking President Clinton. One included the following statement:

When Clinton was running, he promised a middle-class tax cut. Then he raised my taxes. He was just lying to get elected. This year, he'll lie some more.

The activity that I have just described, TV ads, direct mail, phone calls, and Enemy of the Taxpayer awards, are as partisan as anything I have seen in my years in politics. These activities were directed at Federal candidates, they were timed to happen in the last weeks before the Federal elections, and they were apparently paid for by millions of dollars in contributions given to the tax-exempt Americans for Tax Reform, including millions from the RNC.

The president of Americans for Tax Reform, Grover Norquist, is routinely described by the Washington Times as a GOP strategist. In 1995, he published a book called "Rock the House" celebrating the Republican takeover of the House of Representatives, for which Speaker NEWT GINGRICH provided the introduction. The quotes inside the cover of his own book reveal much about the man running this tax-exempt organization.

Rush Limbaugh states, "Grover Norquist is perhaps the most influential and important person you've never heard of in the GOP today."

Haley Barbour, RNC chairman, writes, "¿¿'Rock the House' is a true insider's account of the Republican revolution of 1994."

Paul Gigot, a Wall Street Journal columnist and television commentator portrays Mr. Norquist as "one of the main power brokers in the new Republican majority."

Mr. Norquist is described by these persons—each of whom he chose to feature in quotations designed to promote his book—as a Republican insider and power broker. That isn't exactly the profile one would expect for what is supposed to be a nonpartisan, tax exempt group.

So, what are the possible violations? What are the possible violations of criminal law? The list might include: Knowing and willful violation of the Federal Election Campaign Act and false statements to the IRS in violation of 26 United States Code 7206 or 18 United States Code 1001.

Let me describe another tax-exempt group. This one has not been around for very long. It is called Citizens for Reform. It incorporated in Virginia in May 1996, was granted tax-exempt status in June 1996. Its articles of incorporation state that the group's purpose is:

. . . to serve the public interest and to promote the social welfare by fostering and developing greater public participation, on a nonpartisan basis, in the national debate concerning the size, scope, growth and responsibility of government and of the impact of government on the community, the private sector, and citizens in all walks of life.

This group stated that it expected to conduct conferences, seminars, public events, research, and studies. In its application for tax-exempt status, which is, by law, a publicly available document, the group states that it does not have any membership dues, contributions or gifts in 1996, and projects raising only $1,000 in revenue in 1997 and another $1,000 in 1998.

This group, Citizens for Reform, stated that it had no plans to spend "any money attempting to influence" any elections. Within months of its creation, this tax-exempt group, however,

spent hundreds of thousands of dollars on television and radio ads targeting Federal candidates, and brimming with the intensely partisan type of campaign rhetoric. Ads paid for by this group appear in California, Montana, New York, Kansas, Texas, Arkansas, and Pennsylvania. The group now, apparently, admits spending $2 million in the 5 months before election day.

One TV ad specifically targeted a Democratic candidate for Congress in Montana, Bill Yellowtail. Here is an excerpt from this ad:

He preaches family values, but he takes a swing at his wife. Yellowtail's explanation: he only slapped her once but her nose was not broken.

That is supposed to be nonpartisan activity?

Another TV ad directly targeting a Democratic Congressman, CAL DOOLEY in California. Here is a sample:

Cal Dooley said no to increased money for drug enforcement. Instead, Dooley gave your money to radical lawyers who represented drug dealers.

How is that for another nonpartisan ad?

One of their radio ads was broadcast just before the 1996 election in New York. The ad attacked Democratic Congressman MAURICE HINCHEY and lauded his Republican challenger. It was described in a Wall Street Journal column as follows:

Rep. Maurice Hinchey, the ad said, voted against "sensible welfare reform," [and] voted for "the largest tax increase in history" and took money from a union with ties to the mob. By contrast, it said, Rep. Hinchey's Republican challenger . . . supports "real welfare reform," would cut taxes and promises to "stop special-interest influence on Capitol Hill."

The Wall Street Journal article went on to say, "It is impossible to find out who put up the money for the ad; Citizens for Reform doesn't have to say." The president of Citizens for Reform, Peter Flaherty, said that his group has spent money in 15 different congressional districts in 10 States.

What happened to the statement of that group that it had no plans to attempt to influence any elections? That is a statement made to the IRS to get an exemption: "No plans to influence any elections"—that is the representation.

How did it happen that just months after receiving its tax exemption, this group had $2 million and the resources to sponsor patently political ads across the country? What happened to the conferences and the seminars that this group was going to hold? What happened to the statements it made to the IRS that it planned to raise no money in 1996?

Those questions give rise to others. Was there a knowing and willful violation of Federal campaign laws or false statements to the IRS?

But the majority resolution before us does not mention any investigation of Citizens for Reform or Americans for Tax Reform or any other tax-exempt group that was active in the 1996 elections in violation, allegedly, of the laws prohibiting those groups from engaging in partisan activities and whose tax-exempt millions paid for TV ads, voter education materials, get-out-the-vote activities that are just completely at odds, apparently, with what a tax-exempt organization is allowed by law to do.

For my part, I trust the Attorney General to conduct a thorough criminal investigation of all the allegations against Democrats and Republicans, members of the executive branch and the legislative branch. I think she will follow the evidence wherever it leads, as she should. I also trust her to follow the independent counsel law, to use it if she determines that there is specific information from a credible source that a crime may have been committed by a covered official, or to use it for anyone other than a covered official against whom there is such specific information the Department has a personal, financial, or political conflict of interest, or Members of Congress if she determines it is in the public interest to do so.

The majority leader's resolution omits what it should include, which is the Attorney General's review of activities of Members of Congress.

Mr. President, I ask unanimous consent that I be allowed 3 additional minutes.

Mr. LEAHY. I will give the Senator 3 minutes from the time reserved for this side.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator is recognized for 3 additional minutes.

Mr. LEVIN. I thank the Chair and my good friend from Vermont.

The majority leader's resolution omits what it should include, which is the Attorney General's review of activities of Members of Congress, and it includes what it should omit, by prejudging the very investigation by the Attorney General that it seeks. It thereby does a disservice to the Nation, which is awaiting an objective and fair review, and it undermines the independent counsel law which is dependent upon a nonpolitical application free from partisan pressure.

An alternative resolution that I and Senator LEAHY will be offering will urge the Attorney General to make a thorough and fair review of the allegations, free from political pressure, to reach whatever conclusion is appropriate as to the persons covered by the statute, as to persons not covered by the statute where there might be a conflict of interest, and as to Members of Congress where the public interest indicates that an independent counsel might be the proper course for her to pursue.

This alternative resolution we will be offering embodies the spirit of the independent counsel law. It permits the process invoked by the Judiciary Committee a few days ago to proceed without interference by this body. That letter was sent by Republican members of the Judiciary Committee to the Attorney General asking her to appoint an independent counsel. The law requires her to answer that request within 30 days. We should not prejudge that process that the law provides for, and we should not prejudge the Attorney General's answer. We should stand by the process which was established in the independent counsel law and not give in to this partisan effort.

I thank the Chair and yield the floor.

Mr. LEAHY. Mr. President, I see the distinguished Senator from Wisconsin on the floor. I wonder if it might be in order for me to speak for about 4 minutes and then it be in order for him to immediately reclaim his time. I would take this time from the time reserved to the Senator from Vermont as manager on this side.

Mr. FEINGOLD. I thank the Senator.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I spoke for hours on this issue on Friday and again yesterday. I will not repeat what I said other than to compliment the distinguished Senator from Michigan and others for what they have said. I put into the RECORD the editorial from the Washington Post that reaches the same basic conclusion as the resolution of the distinguished Senator from Michigan.

I spoke of the fact that the resolution before us, the resolution introduced by the distinguished majority leader and others, is aimed just at the President, the Vice President and very, very carefully—very, very carefully—excludes the Republicans in Congress as it does the Democrats in Congress.

If we want to show real interest in justice, we should say, well, let us look at any activity of Members of Congress, too. Let us not act as though we are so above the law that we can only point our finger at the President. But that is not the point I am here to bring up, Mr. President.

I have had the privilege of serving with five Presidents: President Ford, President Carter, President Reagan, President Bush, and President Clinton. I have served here with a number of very distinguished majority leaders on my side of the aisle: Senator Mansfield, Senator BYRD, and Senator Mitchell, all as majority leader; and on the other side of the aisle, Senator Baker and Senator Dole. Of course, now I serve with the Senator from Mississippi [Mr. LOTT].

I mention these majority leaders, Senators Mansfield, BYRD, Mitchell, Baker and Dole, because there is one thing that I recall from each one of them in setting the agenda of the U.S. Senate. It was that if the President of

the United States was going to be abroad in a summit meeting, negotiating with other heads of state, the U.S. Senate would refrain from bringing forward matters directly aimed—especially partisan matters—directly aimed at the President of the United States.

This resolution is directly aimed at the President of the United States. And what is going to happen? We will arrange to make sure we vote on it almost within hours of the time he will sit down with the President of Russia, the leader of the only other nuclear superpower.

Mr. President, has this body and this town become so partisan that we are going to ignore the tradition of all Republican leaders and all Democratic leaders in this body, and that is, to show some unity behind the President while he is abroad representing not Democrats, not Republicans, but all Americans?

Never in my 22 years in the Senate have I seen such an egregious breach of tradition. That does not mean that a President, Republican or Democrat, is given a free ride. What that means is that the President of the United States will at least be able to demonstrate, when he is abroad representing this country, that he is shown some support back home during the time he is abroad. When he is back here, we will go back and forth and fight as we always have. Fine. That is the process. But the tradition has always been to be supportive of the President when he is at a summit with other leaders. Of all summits he might be attending, what could be more important than the one with the President of Russia?

It was tasteless enough to introduce this resolution and start the debate on it while the President was undergoing surgery at Bethesda. Now, that, at the very least, shows a tastelessness that also, I believe, is unprecedented in this body. That could be chalked up to tasteless partisanship that is not appropriate. It is as bad as making jokes at the President's expense when he is lying there in pain recovering. But we just assume that sometimes we have tastelessness in politics.

However, when we have votes designed to hit directly at the President while he is abroad in a summit, that, Mr. President, goes beyond tastelessness. That shows no regard for history. That shows no regard for the traditions of this body. That shows no regard for the importance of a President being abroad.

Now, I had differences with President Reagan on the way the Contra war was run. I recall we held off from any questions of that when he was going abroad for summits. I may have had differences with President Bush and some of his issues, but we held off on any discussion of that when he was going abroad for a summit.

Mr. President, with all due respect to my good friends on the other side of the aisle—and I have many—I ask them to at least take a few minutes if they are going to set the schedule, and I ask them to take a look at the history of the United States, the history of the Senate, the history of the Presidency, and know there are certain things we do in this country to demonstrate we are worthy of being only 1 of 100 men and women representing a quarter of a billion Americans.

I am deeply saddened by this. I hope this is only a momentary lapse in the kind of traditions that have kept the Senate, occasionally at least, the conscience of the Nation. I hope this is only a temporary lack of those things that show the Senate to be the best.

I thank my friend from Wisconsin.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Thank you, Mr. President. I rise today to speak on the two resolutions which the Senate is debating, the so-called Republican version and the Democratic version. I take this opportunity to explain why I intend to vote against both versions as they are now being offered.

At the outset, we should be clear that there is no reason for the Senate to actually consider either version. The statute authorizing the appointment of an independent counsel gives the authority to make the appointment to the Attorney General of the United States, and it also provides a mechanism for the House and Senate Judiciary Committees to invoke a procedure for the Attorney General to respond to a request for appointment of an independent counsel. Mr. President, that, in fact, is what has been used in recent days. Both the House and Senate Judiciary Committees last week voted to invoke that process. The Attorney General has 30 days to respond.

In effect, what we are doing today, since all of that has already happened, what we are doing today is really just shear theatrical maneuvering. On the one side, we have the Republican resolution, which carefully restricts the request and any implication of wrongdoing just to the Clinton White House. That resolution puts Congress off limits for an independent counsel investigation for its alleged wrongdoing. It puts the Republican National Committee off limits for an independent counsel investigation. The Republican resolution turns a blind eye to any allegations of impropriety beyond the White House itself.

On the other side, we have a Democratic resolution that stops short of even taking notice of the fact that there have been so many allegations of wrongdoing on the part of the Democratic Party that the public is crying out for an independent, impartial investigation.

Mr. President, both sides appear to be ignoring the degree to which the fundraising practices of the 1996 elections have gone beyond any limits and created the appearance of a system totally out of control. The improprieties are not limited to the fundraising activities in the White House. Both parties engaged in an almost mindless race to the bottom. The staggering amounts of money raised in the 1996 elections, more than $2.7 billion, compelled the kind of fundraising excesses which continue to shock the country each day. Day after day the front-page story is yet another tale of improprieties and new scandals. The stories encompass both parties, the congressional races as well as the Presidential races.

Mr. President, according to a poll released last week by the Wall Street Journal and NBC News, 91 percent of the American people believe that, if an independent counsel was appointed, the investigation should include all Federal elections, not just the Presidential race, but congressional races, as well.

Last fall, Common Cause filed a request with the Attorney General for appointment of an independent counsel to investigate the violations of law by both parties in the 1996 campaign.

At the time, I said that such action might be appropriate. More recently, I reached the conclusion that it was necessary because it had become clear that the seemingly endless scope of allegations arising from campaign fundraising activities touching all levels of our Government had grown so vast that the only manner in which the public's confidence can be ensured is, Mr. President, by the appointment of an independent counsel. In my view, given the breadth of the allegations, any investigation conducted by the Department of Justice is inevitably and unavoidably subject to the taint of political conflict in this context. To this end, I called upon the Attorney General to appoint an independent counsel.

However, an important distinction between the position I have taken and that offered by the majority in the form of this resolution is that I believe that any call for an independent counsel must necessarily include an investigation of all potential wrongdoers, be it on the part of the executive branch, the political parties, or the Congress. The Republican resolution takes the position that neither Congress nor the Republican National Committee should be subject to such an investigation. I believe the American people will see through this approach. How can anyone suggest to the citizens of this Nation that potential illegalities should be subject to an independent counsel, provided the target is the President but not the Congress? When the target is one party, but not the other, they will surely see such a ploy for exactly what it is, yet another partisan maneuver

designed to delude the public into believing that the problem is limited to a small group of people and not a systemic problem that demands a comprehensive overhaul of our system of campaign finance laws.

Mr. President, as a threshold, it is essential to understand the basis for the independent counsel as well as who is covered by the law. The underlying premise behind the independent counsel law, a premise which we should sustain and that is threatened by partisan gamesmanship, is that we have an inherent obligation to ensure the confidence of the American people and the public in investigations of the Government. This law, born of the Watergate scandal, was derived to restore and protect the public's confidence in these types of investigations, and in the process preserve and promote the public's confidence in the integrity of the U.S. Government.

Mr. President, the independent counsel law provides that the Attorney General must seek an independent counsel upon finding specific information, derived from a credible source, that a violation of Federal law has potentially occurred in regard to certain covered persons, such as the President, the Vice President, Cabinet members, certain high-level officials in the White House, among others. In addition to these mandatory provisions, the independent counsel law provides the Attorney General with certain discretionary power for other persons—those not covered by the mandatory provisions—and, Mr. President, to emphasize, Members of Congress. Members of Congress are included within these discretionary powers of the Attorney General with regard to the independent counsel. In regard to other persons, an independent counsel may be sought if, in the face of specific evidence of illegality, derived from a credible source, a personal, political, or financial conflict of interest exists or may arise as a result of a Department of Justice investigation. In regard to Members of Congress, the discretionary standard is a public interest standard. In other words, if the Attorney General has evidence of a violation of Federal law involving a Member of Congress, she may seek an independent counsel if she finds it to be in the public interest.

Mr. President, over the past few weeks, I have been approached by colleagues and others who argue that Members of Congress are simply not subject to the statute. Mr. President, that is simply incorrect. In fact, if one reviews the legislative history of this law, one finds that Congress had previously been covered, albeit not explicitly, under the other persons provision. In the 1994 reauthorization, Congress clarified this and added a separate section solely for Members of Congress.

The conference report accompanying the 1994 amendments to the independent counsel law states as follows:

> The 1987 law provided the Attorney General with the discretionary authority to use the independent counsel process for any person whose investigation or prosecution by the Department of Justice "may result in a personal, financial, or political conflict of interest." This discretionary authority permitted the Attorney General, if a conflict of interest were present, to use the independent counsel process to investigate Members of Congress. However, Members of Congress were not specifically identified as falling within that general category of coverage.

Mr. President, realizing the hypocrisy of a law that allows an independent counsel in regard to the executive, but not explicitly with regard to Congress, the Congress chose to act. The conference report continues:

> The Senate bill gives the Attorney General specific discretionary authority to use the independent counsel to investigate Members of Congress. It broadens the standard for invoking the process with respect to Members from requiring a conflict of interest to requiring the Attorney General to find it would be in the public interest. This broader standard would permit the Attorney General to use the independent counsel process for Members of Congress in cases of perceived as well as actual conflicts of interest.

Not only did the Congress then act to explicitly include Members of Congress, it took the additional step of making the standard for invoking the statute easier to apply than it had been previously. As the conference report stated, the statute may be invoked in the case of a perceived or actual conflict of interest. Now, this is a significant statement of congressional intent as to whether or not Congress falls within the ambit of the independent counsel statute.

Yet, Mr. President, the resolution brought to the floor of the Senate by a Republican leader chooses a different course and turns a blind eye to any potential illegal conduct on behalf of Members of Congress, be it real or perceived. It simply says to the Attorney General, appoint an independent counsel in regard to the Clinton administration, but not in regard to any illegality involving Congress or the Republican National Committee. Mr. President, I believe this approach is seriously flawed and should be rejected.

As I indicated previously, 9 out of 10 Americans want all illegality in regard to the 1996 elections investigated. Yet, this resolution chooses to ignore that which the American people seem to readily understand—that being that all illegality should be investigated.

Mr. President, when one looks at the myriad of allegations that have arisen in the wake of the 1996 Federal elections, it is not difficult to see why the American people feel that both political parties, and Congress, should be included in an independent counsel investigation.

There has been a lot of attention focused upon alleged wrongdoing by the Clinton White House. But equal attention needs to be focused upon similar allegations about the behavior of both national parties and the Members of the Congress during the fundraising explosion in the 1996 election.

At the outset, it should be understood that what is being sought here is an independent counsel to investigate allegations of wrongdoing in the 1996 election. The distinguished chairman of the U.S. Senate Judiciary Committee, Senator HATCH, stated during the debate on this issue on Friday as follows:

> The answer to whether criminal wrongdoing has occurred will of necessity turn on the resolution of disputed factual, legal, and state of mind determinations.

Repeating that, he said:

> The answer to whether criminal wrongdoing has occurred will of necessity turn on the resolution of disputed factual, legal, and state of mind determinations.

We have to stress what the Senator from Utah stated: At this stage, whether there was criminal wrongdoing turns on the resolution of factual, legal, and state-of-mind determinations. Obviously, those factual determinations can only be ascertained by an impartial investigation, and that statement applies equally to allegations regarding Republican conduct in fundraising activities as it does to Democratic conduct.

Without engaging in an extensive description of the allegations of improper conduct in the 1996 election, which goes well beyond the activities of the White House, let me highlight a few areas.

First, with respect to the soft money machines that were operated by both parties in the 1996 elections, the initial request filed by Common Cause last fall for appointment of an independent counsel alleged that both the Clinton and Dole Presidential campaigns, along with their respective political parties, knowingly and willfully violated Federal campaign finance laws. Common Cause specifically charged that both campaigns were engaged in illegal schemes to violate the Presidential primary spending limits and the ban on soft money being used directly to support a Federal candidate.

Mr. President, the Senator from Utah also alluded to this question in his remarks on Friday when he stated:

> There remains significant factual questions of the extent to which the allegedly improper fundraising activity was, in fact, directed toward benefiting Federal campaigns.

If, indeed, it is determined that there were knowing and willful schemes to use soft money in both Presidential campaigns, both parties, as Common Cause asserts, would have violated existing law prohibiting such activity. Of course, Mr. President, the answer cannot be ascertained until an independent investigation is conducted.

Mr. President, let me describe another piece of soft money activity that has been tied directly to the Republican National Committee; that is, the

transfer of some $4.6 million from the RNC to a tax-exempt organization headed by Grover Norquist, a close ally of the Republican Speaker of the House. This organization, according to a Washington Post story on December 10, 1996, then used the RNC money to flood voters in 150 congressional districts with millions of pieces of mail and phone calls.

Now, this story adds a rather peculiar twist to the concept of independent expenditures. There have been plenty of complaints about various groups, including labor organizations, running independent campaigns against particular candidates. But this story describes what appears to be what or what may have been a money laundering scheme, which allowed the RNC to raise soft money and then transfer it to this tax-exempt group, which then used the money for an independent expenditure campaign.

Was there coordination of these expenditures with the candidates themselves, or through the Republican National Committee? Was this transfer of money designed to allow the RNC to do indirectly what the law prohibits them to do directly—that is, spend soft money in a congressional campaign? Should we not be seeking the answer to that question? Was this a violation of tax laws as well as campaign finance laws? As the Senator from Utah stated in calling for an investigation of Democratic fundraising activities, there are significant factual questions involved here as to the extent to which this fundraising activity was directed toward benefiting Federal congressional campaigns. Mr. President, those questions cannot be resolved without an investigation.

With respect to the issue of foreign contributions being illegally funneled into Federal elections, I think we are all aware of the allegations that have been made that the People's Republic of China may have targeted Members of Congress, as well as the White House. How successful they were remains unknown. Certainly, we ought to have this question addressed in any independent counsel investigation with regard to Members of Congress, as well as the White House.

Finally, let's be candid about the fact that the allegations that campaign contributions were exchanged for special access to policymakers are not directed solely against the current administration. The newspapers have been filled with story after story of Members of Congress, and the political campaign committees of both parties, establishing various schemes to woo and impress large contributors.

For example, in 1995, the Republican National Committee is reported to have promised $15,000 donors four meetings a year with House and Senate Republican leaders, as well as participation in international trade missions. Of course, in fairness, similar charges have been made against the Democratic National Committee. Did these schemes cross the line in some cases? Was there illegal exchanges of access for campaign contributions? The answers can only be ascertained after factual investigations.

It is little wonder, Mr. President, that in light of these types of allegations, the American public would ask for a broad investigation. It is not difficult to understand why 91 percent of the American people think that all illegality, including that of Congress should be considered by an independent counsel.

Mr. President, I mentioned earlier that the statute provides a specific mechanism for congressional involvement in the appointment of an independent counsel. That mechanism is triggered by a request from the House and Senate Judiciary Committees. I also noted that both committees had already acted pursuant to that statutory authority to submit a request to the Attorney General.

Unfortunately, that process also broke down along partisan lines. As a Democratic Senator who had previously called for appointment of an independent counsel, I had hoped to be able to work on a bipartisan basis within the Judiciary Committee to formulate a request that would transcend party lines. Unfortunately, that effort failed.

In the Senate Judiciary Committee, the Republican members sent one letter; the Democratic members sent another. The respective letters resembled the resolutions before us today. As far as I am concerned, neither letter went far enough.

I choose not to sign either letter because the Democratic letter stopped short of calling for an independent counsel, while the Republican letter, much like this resolution, chose to focus solely on the administration and ignored the potential illegal conduct on behalf of the Congress. Instead, I sent my own letter asking for the appointment of an independent counsel in regard to all illegal activity in the 1996 Federal election, including Congress.

Mr. President, in calling as I have for an independent counsel, I have been taken to task by all sides—from those who do not want a special counsel and from those who, somehow, believe that by calling for an independent counsel to investigate all parties, I am somehow seeking to protect the administration. Notwithstanding these inconsistent conclusions, I remain firm in my belief that the scope of the allegations is such that the only way we can hope to salvage the confidence of the American people in any investigation of campaign fundraising illegalities is to appoint an independent counsel. In so doing, I do not mean to disparage or question the ability of our Attorney General, Janet Reno, to conduct a fair and evenhanded investigation. I simply feel that the scope of this problem is such that irrespective of her evenhandedness, her ultimate conclusion will be suspect and challenged on political grounds. In a sense, the political nature this debate has taken in the Senate makes my point.

In regard to many of my colleagues on this side of the aisle, I simply disagree with those who argue that an independent counsel should not be appointed. While I appreciate the sincerity of their perspectives, I have reached a different conclusion. The decision to call for an independent counsel is not one that any of us should take lightly. The statue exists for very specific reasons directed at promoting public confidence in the investigation of the Government. The statute does not exist to provide elected officials opportunities to score political points against officials of the other party as I fear has been attempted with this resolution.

In my view, we risk something far greater than short-term partisan advantage by engaging in a process as partisan as this. We risk the further erosion of the public's confidence in the Government and in particular the U.S. Senate to set aside partisanship and work for the good of the American people. At the same time, my friends on the Republican side of the aisle ought to be willing to expose their own parties to the same intense scrutiny that they urge for the opposite party. An evenhanded investigation into all aspects of fundraising improprieties in the 1996 election is the fair response.

This raises the final point I wish to make. That being the pressing need to set about doing the work of the people of this Nation in a bipartisan, constructive manner. As I travel to each county in Wisconsin, as I do each year, I talk with the men and women of my State and at each and every stop, be it in Milwaukee or Bayfield County, the people I listen to all want us to work together and help solve the problems that confront them each and every day.

Sadly, the short history of the 105th Congress, much like the 104th Congress, seems to ignore that call to action. Rather than setting about the hard work of actually balancing the Federal budget we debated for a number of weeks a constitutional amendment which would have forestalled the hard choices until well into the next century. In the meantime, the budget process itself, the process by which we can actually balance the budget, continues to languish. In fact, the 105th Congress has debated more constitutional amendments than it has confirmed Federal judges—three constitutional amendments, no judges. We have also debated a resolution dealing with the scope of the Governmental Affairs inquiry into campaign irregularities

and finally, after much public pressure, the scope of that inquiry was adjusted to cover not just illegality but improper conduct, but only after the Senate was needlessly tied up for a number of days. Although this resolution before us for the third day now should only be concerned with illegality, we are nonetheless at an impasse because the proponents of this nonbinding and unnecessary resolution refuse to include themselves in the scope of the inquiry. No wonder people are turned off by government.

Mr. President, in conclusion, I will not support this one-sided resolution calling for an independent counsel to investigate only one aspect of the 1996 elections. I have made clear my belief that one should be appointed and I did so long before the political exercises which have consumed the Judiciary Committee and this body were set in motion a few weeks ago. Further, I will not support the Democratic alternative because it fails to call for an independent counsel. While the Democratic alternative is correct that any investigation must necessarily cover Congress it falls short of calling for an independent counsel. But more importantly Mr. President, than how any one of us votes on these resolutions, it is my sincere hope that we can set aside the divisive partisan issues which have characterized the outset of the 105th Congress and move toward bipartisan solutions. We should balance the budget, we should address juvenile crime, we should strengthen educational programs, and we should reform the campaign laws which have created the unrelenting money chase that gives rise to so many of the problems which frame this debate.

The campaign finance system in this Nation is broken and in desperate need of repair and the American people understand that, even if some members of the Senate seem to believe the current, scandal-ridden system works fine, they certainly don't feel that way. Furthermore, the American people also understand that the responsibility for the current scandals regarding the campaign fundraising activities of the 1996 Federal elections lie at the feet of both parties, the administration and the Congress.

Yet what is ultimately more important than assessing blame and passing nonbinding resolutions is whether or not this body moves forward and adopts comprehensive, bipartisan campaign finance reform.

Mr. DORGAN. Mr. President, the majority is bringing to a vote a resolution that urges the Attorney General to begin the process of appointing an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign. I will oppose this resolution, if it remains unchanged, because it urges an overly narrow, one-sided investigation. Instead, I will support the alternative to be proposed by Senator LEAHY.

Let us remember that the independent counsel law places the authority to seek an independent counsel in the hands of the Attorney General, and her hands are tied unless certain thresholds are met. I have great faith in the independence and integrity of Janet Reno. She has already invoked the independent counsel process several times during this administration. If and when she believes that the law should be triggered, she will, I am confident, take appropriate action. Yet the majority seeks with this unfortunate resolution to tell her what to do.

I hope that the majority will instead accept the alternative resolution being proposed by Senator LEAHY. The Leahy amendment would change the majority's resolution in several ways, all for the better.

The Leahy amendment suggests that the Attorney General use her best professional judgment to determine whether to invoke the independent counsel process. It asks that she make her decision without regard to political pressures. It urges her to do so in accordance with the standards of the law and the established procedures of the Department of Justice. And it makes no distinction between presidential and congressional campaigns; it urges that potential illegalities by covered persons be investigated, regardless of which branch of government is involved.

In short, the Leahy alternative attempts to observe both the letter and the spirit of the law in this matter. It avoids prejudging the issue. Most importantly, it attempts to prevent the further politicization of the independent counsel process, a process that Congress established in order to take politics out of the investigation or prosecution of high government officials.

Fundamentally, that is why I urge my colleagues to oppose the majority's resolution and support the Leahy alternative. Let us not attempt to politically influence our Justice Department and Federal judiciary in this matter. Let us not make a bad situation worse. Let us repeat the bipartisanship that we showed last week. Let us respect the independent counsel law and the independence of the judiciary. And let us also proceed with a diligent and thorough congressional investigation.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

Mr. TORRICELLI. Mr. President, I yield myself 10 minutes of the time allotted to the minority.

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

Mr. TORRICELLI. Mr. President, I do not know whether in the coming weeks the Attorney General will determine whether or not the threshold has been reached to name independent counsel. But I do know, in her tenure of service, Attorney General Reno has had an uncompromising sense of personal integrity. She was called upon in a number of instances to reach a determination about investigating high officials in this administration, including President Clinton. She has never hesitated to act in the interests of justice. So, while I do not personally believe at the moment that the circumstances exist for independent counsel as defined by the law, it is important, again, to reassure ourselves about the quality of justice in this country under the leadership of the Attorney General and, just as important, in the great traditions of the Federal Bureau of Investigation under the able leadership of the Bureau's Director, Louis Freeh.

Though I recognize that today some disagree and in their own judgment believe that it would be better in the national interest to proceed to an independent counsel, whether you accept their evaluation on this day or perhaps mine in believing it should be left to another day, there is the question about whether or not the act is able to be properly implemented at this moment as intended in the independent counsel statute. It is my judgment that, while we may differ in this institution on whether or not the act should be applied, we should be able to agree on the underlying problem, and that is there is a problem in the court with the ability to appoint a special counsel.

The statute requires that the Chief Justice appoint judges to serve in the special division for a term of 2 years. Three judges are to serve on the council that will, in turn, name a special counsel in this or any other instance. It was the intention of the Congress to facilitate a rotation of these judges to ensure their independence so that no one dominates the appointing process, for purposes of the confidence of this Congress and the interests of justice. For whatever reasons, what were to be temporary assignments on the court in this special division appear to be becoming lifetime appointments. Judge Sentelle, who chairs the court, is in his third consecutive term. Judge Butzner is in his fourth. Judge Fay has now begun his second term.

Mr. President, this is not what was intended in the independent counsel statute, and as we debate today the relative merits of whether to appoint an independent counsel, every Member of the Senate needs to consider, if the Attorney General is requested to make

this appointment, who will be making the appointment and what confidence do we have the congressional intent of independence and the integrity of the judgments will meet the necessary standards of justice?

Most particularly is the question of Judge Sentelle. Judge Sentelle's position in leading this three-judge panel raises serious questions and, indeed, I believe inhibits the ability of the Attorney General to proceed with confidence when and if she reaches a determination the statutory requirements to name an independent counsel are reached.

During the 1993 debate over reauthorization of the independent counsel statute, Senator Cohen perhaps said it best. He said:

> The appearance of justice is just as important as justice itself, in terms of maintaining public confidence in our judicial system.

Mr. President, no one could possibly believe that the appearance of justice is served by having Judge Sentelle in these circumstances name an independent counsel. Judge Sentelle is a known political associate of two Republican Senators who have views on this issue. He has served as a member of Senator HELMS' National Congressional Republican Club and was chairman of the North Carolina State Republican Party convention. He stands accused of engineering the removal of Whitewater counsel, Robert Fiske, and replacing him with an independent counsel who clearly has exercised his position with questionable judgment and clear partisanship. I speak, of course, of Kenneth Starr.

The decision to appoint Mr. Starr came only days after Judge Sentelle had a private luncheon with two Members of this institution who had strong views on the subject, in what was an extrajudicial and clearly inappropriate meeting.

Mr. President, despite poor judgment, inappropriate actions, Judge Sentelle was recently reappointed to his third term on the court. As senior judge in this position, with the other two judges serving in this similar capacity, both on senior status, he clearly has an extraordinary influence over the operation of the appointing process.

Five former presidents of the American Bar Association considered these facts, these extrajudicial communications, and determined they give rise to appearance of impropriety.

As long as Judge Sentelle sits on the special division, there will always be questions regarding the objectivity of the independent counsel appointments. I believe, therefore, whether you share my judgment that the trust should be placed in the Attorney General to determine whether or not the requisite requirements have been reached in the statute before appointing or requesting the appointment of an independent counsel or you agree with other Members of the Senate that those criteria have already been reached, we certainly, in the interest of fairness, can reach a judgment today that Judge Sentelle should recuse himself from his current responsibilities. Failing that recusal, it is certainly incumbent upon Chief Justice Rehnquist, given his general responsibility for the administration of the courts, to remove Judge Sentelle or request that he temporarily remove himself from the appointment process.

I recognize the strong divisions in the Senate. I understand the passions that this issue brings to different Members of the Congress. But certainly despite our partisan differences or our interpretations of the facts, our common interest in justice should lead us to one determination. There is a need in our country and in this Senate to come away from this debate with a feeling that an impartial and a fair administrator of justice is required to implement the independent counsel statute, whether that determination in naming an independent counsel is to be reached now or whether the facts dictate that they are to be named later.

Mr. President, it is a simple question of fairness and justice. I hope other Members of the Senate will join with me in calling upon Judge Sentelle, in the best traditions of the American judiciary, to recuse himself now, but I also hope, before any other Members of this Senate need to rise and express themselves on these facts, the Chief Justice of the United States will exercise his responsibilities to ensure that the courts are true to their traditions of justice.

Mr. President, I yield the floor.

RELATIVE TO THE DECISION OF THE ATTORNEY GENERAL ON THE INDEPENDENT COUNSEL PROCESS

Mr. TORRICELLI. Mr. President, pursuant to the unanimous consent agreement, on behalf of Senators LEAHY and LEVIN, I call up Joint Resolution 23.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> A joint resolution (S.J. Res. 23) expressing the sense of the Congress that the Attorney General should exercise her best professional judgment, without regard to political pressures, on whether to invoke the independent counsel process to investigate alleged criminal misconduct relating to any election campaign.

The Senate proceeded to consider the joint resolution.

Mr. TORRICELLI. Mr. President, I ask unanimous consent that all time for debate on the joint resolution be yielded back.

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

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent to speak as in morning business.

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

Ms. MOSELEY-BRAUN. I thank the Chair.

(The remarks of Ms. MOSELEY-BRAUN pertaining to the introduction of S. 456 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

IN SUPPORT OF THE CONFIRMATION OF ALEXIS HERMAN

Ms. MOSELEY-BRAUN. Mr. President, today the Labor Committee is considering the nomination of Alexis Herman to be Secretary of Labor. Alexis Herman has been a friend and a colleague for many years. I believe she would make an outstanding Secretary of Labor. She has always shown the leadership, good judgment, and high principles that the job requires. Her commitment to improving the condition of America's working people is second to none.

Alexis Herman has long dedicated her efforts to putting all Americans to work. She began her career by bringing together workers needing employment and employers needing workers. She did this by providing relevant, necessary training for potential employees so that they possessed the skills needed by employers.

Through her work, companies across America had access to employees who had the specific skills necessary for each company's particular jobs, and the people she trained were able to obtain work because they were trained for positions that actually existed.

As you know, she went on to head the Women's Bureau of the Department of Labor under President Carter. Her work there included helping displaced homemakers enter the work force, increasing opportunities for women to apprentice in skilled trades, and promoting women-owned businesses, something that has received strong bipartisan support in the Congress.

I would like especially to highlight her efforts at the Women's Bureau to provide job training opportunities for welfare recipients. Now, more than ever, we need to promote practical policies for putting people to work. Last year's welfare bill will mean that a flood of untrained, unskilled people will be searching desperately for work, or their families will go hungry. Without skills and training, however, their prospects for finding a job are bleak. We need Alexis Herman's practical experience working with employers and employees in the coming years if we are to put over a million people to work.

Alexis Herman's commitment to diversity will also enhance our work force. We, in this Nation, have the best work force in this world. Any time we retreat from providing equal opportunities to all of our citizens, however, we risk weakening our greatest asset, our workers. If we fail to utilize the talents of all of our people, we sell ourselves short as a nation. With her vast experience in increasing diversity in the workplace, Alexis Herman will ensure that no talent goes untapped.

In addition, as public liaison for President Clinton, Ms. Herman worked with Americans across the country—Americans with diverse backgrounds and concerns. She has served as a liaison with these many diverse groups and the President so successfully, because she is interested in, sympathetic to, and able to work with, the full spectrum of the American people.

I would also like to note Ms. Herman's commitment to continue the work of Secretary Reich in enhancing pension security. I have spent the last several years focusing on retirement security for all Americans, and for women in particular. Secretary Reich was a strong ally and we are beginning to make progress. Retirement security is one of the most important issues for our time, with baby boomers turning 50 every 9 seconds. If we allow a generation to retire into poverty, the Nation will lose a generation of consumers and gain a generation of dependents; an outcome that no one wants. I am confident that Alexis Herman's talent and experience will propel the efforts to improve retirement security forward and I would welcome the opportunity to work with her on this issue.

I would like to emphasize that I believe that one of Ms. Herman's greatest strengths is that she has formed partnerships with both business and labor in her many years working on employment issues. She understands the kind of investment business must make in human capital to improve productivity, increase profits, and create new jobs. She understands how difficult it is for small businesses to start up, and also how important these small businesses are to the economy as a whole. She understands that people want to work, and that they need the opportunity to be trained so that they can become productive members of the work force. She understands that we are all in this together.

Alexis Herman has spent many years serving the people and the country. I believe that there could be no better candidate for Secretary of Labor than Alexis Herman. She is an outstanding public servant. Her confirmation will make history; as Secretary of Labor she will make a difference in the lives of millions of Americans and workers throughout the world. I urge my colleagues to support the nomination of Alexis Herman to be Secretary of Labor and I look forward to her rapid confirmation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak therein for up to 5 minutes each.

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

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, March 17, 1997, the Federal debt stood at $5,363,306,532,631.89.

Five years ago, March 17, 1992, the Federal debt stood at $3,858,355,000,000.

Ten years ago, March 17, 1987, the Federal debt stood at $2,247,176,000,000.

Fifteen years ago, March 17, 1982, the Federal debt stood at $1,049,729,000,000.

Twenty-five years ago, March 17, 1972, the Federal debt stood at $429,286,000,000 which reflects a debt increase of nearly $5 trillion ($4,934,020,532,631.89) during the past 25 years.

CONGRATULATIONS TO DR. PAUL CURRIE ON HIS RETIREMENT

Mr. ASHCROFT. Mr. President, Senator Christopher S. "Kit" BOND and I would like to share with our colleagues in the U.S. Senate the example of a man who has been a model of citizenship, character, and service to humanity throughout his lifetime. The gentleman about whom I speak is Dr. Paul Currie, who will soon retire as pastor of the Presbyterian Church of Caruthersville.

On September 22, 1983, Dr. Paul Currie was present in this Chamber serving as Chaplain and offering the opening prayer. While this is historically an honor for any individual, we believe it was more of an honor for the U.S. Senate to have Dr. Currie serving in this chamber. Indeed, we believe the nearly four decades of service rendered to the community of Caruthersville, MO, serves as the real testimony to his compassion for his fellow man.

Since arriving in Caruthersville in 1958, Dr. Currie has always sought to reach beyond the lines of faith and unite all denominations in service to those in need. We can take faith that there are others who have been inspired by Dr. Currie and now live outside our great state, serving others.

Although Dr. Currie will be retiring, we will never forget his leadership. This veteran of the Korean war, this humble servant of God, community, and family, deserves to be recognized for his decades of service to his fellow man.

Senator BOND and I recognize today not only a lifetime of accomplishments by Dr. Currie, but also his inspiration of others. His example will inspire others to seek to enhance freedom, opportunity, and family life for generations to come.

In closing, I would like to quote a few words from Matthew 25:21, which I feel summarizes Dr. Paul Currie's many great deeds: "Well done, my good and faithful servant!"

We congratulate Dr. Currie on his retirement and extend him our best wishes for health and happiness for many years to come.

MESSAGES FROM THE HOUSE

At 4:29 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to the provisions of section 274(b)(2) of Public Law 104–264, the Speaker appoints to the National Civil Aviation Review Commission the following members from private life on the part of the House: Mr. John J. O'Connor of Pennsylvania and Mr. D. Scott Yohe of Washington, DC.

The message also announced that pursuant to the provisions of section 274(b)(2) of Public Law 104–264, the minority leader appoints to the National Civil Aviation Review Commission the following members from private life on the part of the House: Col. Leonard Griggs (retired) of Missouri and Mr. John O'Brien of Virginia.

At 6:50 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 bill, in which it requests the concurrence of the Senate:

H.R. 924. An act to amend title 18, United States code, to give further assurance to the rights of victims of crime to attend and observe the trials of those accused of the crime.

MEASURE PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

H.J. Res. 58. Joint resolution disapproving the certification of the President under section 490(b) of the Foreign Assistance Act of 1961 regarding foreign assistance for Mexico during fiscal year 1997.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1436. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, the report on the Veterans Equitable Resource Allocation (VERA) plan; to the Committee on Veterans' Affairs.

EC–1437. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a request for supplemental relative to the National Transportation Safety Board; to the Committee on Appropriations.

EC–1438. A communication from the Secretary of Defense, transmitting, pursuant to law, the notice concerning a retirement; to the Committee on Armed Services.

EC–1439. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, a notice of approval for a personnel management demonstration project for the Department of the Navy; to the Committee on Armed Services.

EC–1440. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on the Joint Demilitarization Technology Program; to the Committee on Armed Services.

EC–1441. A communication from the Legislative and Regulatory Activities Division, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, a rule entitled "Government Securities Sales Practices," (RIN3064–AB66) received on March 14, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC–1442. A communication from the Managing Director of the Federal Housing Finance Board, transmitting, pursuant to law, the report of a rule entitled "Advances to Nonmembers"; to the Committee on Banking, Housing, and Urban Affairs.

EC–1443. A communication from the Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule relative to the Costal Service Costal Management, (RIN0648–ZA27) received on March 17, 1997; to the Committee on Commerce, Science, and Transportation.

EC–1444. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule relative to air bags, (RIN2127–AG59) received on March 17, 1997; to the Committee on Commerce, Science, and Transportation.

EC–1445. A communication from the Secretary of the Health and Human Services, transmitting, pursuant to law, the report on Child Support Enforcement Incentive Funding; to the Committee on Finance.

EC–1446. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, a draft of proposed legislation to the authorize appropriations for the Department of State to carry out its authorities and responsibilities in the conduct of foreign affairs during fiscal years 1998 and 1999; to the Committee on Foreign Relations.

EC–1447. A communication from the Executive Director of the Japan-U.S. Friendship Commission, transmitting, pursuant to law, a draft of proposed legislation to privatize the Commission; to the Committee on Foreign Relations.

EC–1448. A communication from the Acting Secretary Secretary, Department of State, transmitting, pursuant to law, the 1996 annual report on voting practices at the United Nations.

EC–1449. A communication from the Assistant Secretary of Interior for Indian Affairs, transmitting, a draft of proposed legislation to provide for the division, use and distribution of judgment funds; to the Committee on Indian Affairs.

EC–1450. A communication from the Assistant Secretary of Interior for Indian Affairs, transmitting, a draft of proposed legislation to provide for the division, use and distribution of judgment funds; to the Committee on Indian Affairs.

EC–1451. A communication from the Secretary of Education, transmitting, a draft of proposed legislation entitled "The Partnership to Rebuild America's Schools Act of 1997"; to the Committee on Labor and Human Resources.

EC–1452. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, the report of the Committee of Equal Opportunities in Science and Engineering; to the Committee on Labor and Human Resources.

EC–1453. A communication from the Director and Chairperson of the Office of Special Education and Rehabilitative Services, National Institute On Disability and Rehabilitation Research, Department of Education, transmitting, pursuant to law, the report entitled "Disability Research: Accomplishments and Recommendations For Federal Coordination"; to the Committee on Labor and Human Resources.

EC–1454. A communication from the Director of the U.S. Office of Government Ethics, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1455. A communication from the Chairman of the Farm Credit System Insurance Corporation, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1456. A communication from the Executive Director of the Interstate Commission on the Potomac River Basin, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996 and the report of the Office of Inspector General for the period October 1, 1995 through September 30, 1996; to the Committee on Governmental Affairs.

EC–1457. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1996; to the Committee on Governmental Affairs.

EC–1458. A communication from the Acting Chair of the National Indian Gaming Commission, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1459. A communication from the Chairman of the U.S. Nuclear Regulatory Commission, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1460. A communication from the Acting Executive Director of the Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1461. A communication from the Commissioner of the Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, three rules including a rule entitled "Inspection and Expedited Removal of Aliens" (RIN1115–AE24, AE02, AD74) received on March 14, 1997; to the Committee on the Judiciary.

EC–1462. A communication from the Maritime Administrator, Department of Transportation, transmitting, pursuant to law, the report on the Voluntary Intermodal Sealift Agreement; to the Committee on Commerce, Science, and Transportation.

EC–1463. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, the report of a rule relative to leased commercial access, received on March 18, 1997; to the Committee on Commerce, Science, and Transportation.

EC–1464. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, a rule entitled "Availability of Funds and Collection of Checks," received on March 18, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC–1465. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, nine rules including a rule entitled "Approval and Promulgation of Implementation Plans," (FRL5700–9, 5691–8, 5707–7, 5708–8, 5701–8, 5700–3, 5708–7, 5708–3, 5707–9) received on March 18, 1997; to the Committee on Environment and Public Works.

EC–1466. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Ruling 97–14, received on March 17, 1997; to the Committee on Finance.

EC–1467. A communication from the Assistant Secretary for Legislative Affairs, Departmentof State, transmitting, pursuant to law, the report of Presidential Determination 97–19; to the Committee on Foreign Relations.

EC–1468. A communication from Chair of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1996; to the Committee on Governmental Affairs.

EC–1469. A communication from the Director of the Office of Government Ethics, transmitting, pursuant to law, a rule entitled "Standars of Ethical Conduct for Employess of the Executive Branch," (RIN3209–AA04) received on March 12, 1997; to the Committee on Governmental Affairs.

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:

POW–45. A resolution adopted by the city of Pulaski, TN relative to Poland; to the Committee on Foreign Relations.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Labor and Human Resources:

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Donna Holt Cunnginghame, of Maryland, to be chief financial officer, Corporation for National and Community Service (new position), to which position she was appointed during the last recess of the Senate.

NATIONAL COUNCIL ON DISABILITY

Dave Nolan Brown, of Washington, to be a member of the National Council on Disability for a term expiring September 17, 1998.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arthur I. Blaustein, of California, to be a member of the National Council on the Humanities for a term expiring January 26, 2002.

Lorraine Weiss Frank, of Arizona, to be a member of the National Council on the Humanities for a term expiring January 26, 2002.

Susan Ford Wiltshire, of Tennessee, to be a member of the National Council on the Humanities for a term expiring January 26, 2002.

Nathan Leventhal, of New York, to be a member of the National Council on the Arts for a term expiring September 3, 2002.

U.S. INSTITUTE OF PEACE

Joseph Lane Kirkland, of the District of Columbia, to be member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 2001.

NATIONAL INSTITUTE FOR LITERACY

Jon Deveaux, of New York, to be a member of the National Institute for Literacy Advisory Board for a term expiring October 12, 1998.

NATIONAL MEDIATION BOARD

Magdalena G. Jacobsen, of Oregon, to be a member of the National Mediation Board for a term expiring July 1, 1999.

NATIONAL SCIENCE FOUNDATION

M.R.C. Greenwood, of California, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2002.

John A. Armstrong, of Massachusetts, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2002.

Stanley Vincent Jaskolski, of Ohio, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2002.

Jane Lubchenco, of Oregon, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2000.

Richard A. Tapia, of Texas, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2002.

Mary K. Gaillard, of California, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2002, Bob H. Suzuki, of California, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2002, Eamon M. Kelly, of Louisiana, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2002, Vera C. Rubin, of the District of Columbia, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2002.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mary Lucille Jordan, of Maryland, to be a member of the Federal Mine Safety and Health Review Commission for a term of 6 years expiring August 30, 2002. (Reappointment)

Theodore Francis Verheggen, of the District of Columbia, to be a member of the Federal Mine Safety and Health Review Commission for a term expiring August 30, 2002.

Mr. JEFFORDS. Mr. President, for the Committee on Labor and Human Resources, I report favorably two nomination lists in the Public Health Service which were printed in full in the CONGRESSIONAL RECORD of January 30, 1997, and ask unanimous consent, to save the cost of reprinting on the Executive Calendar, that this nominations lie at the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of January 30, 1997, at the end of the Senate proceedings.)

The following candidates for personnel action in the regular corps of the Public Health Service subject to qualifications therefor as provided by law and regulations:

To be medical director

Larry J. Anderson
John S. Andrews, Jr.
Kenneth W. Bernard
Richard D. Cannon
Robert H. Carlson
Jose F. Cordero
Jaime M. Diaz-Hernandez
Stephen W. Heath
David G. Hooper
Van S. Hubbard
T. Stephen Jones
Douglas N. Klaucke
Jeffrey A. Lybarger
Mark W. Oberle
Stephen B. Permison
Jeffrey J. Sacks
James H. Shelhamer
Dorothy D. Sogn
Edward Tabor
Michael H. Trujillo

To be senior surgeon

Robert F. Anda
Richard T. Caldwell
Jeffrey A. Cutler
Ruth A. Etzel
John T. Friedrich
George E. Graning
Joel R. Greenspan
Evan C. Hadley
Scott D. Holmberg
Michael J. Horan
Mark A. Kane
Jonathan E. Kaplan
Norris S. Lewis
Dorothy K. Macfarlane
Neil J. Makela
Richard A. Martin
Thomas R. Navin
Edward L. Petsonk
Frank D. Richards, Jr.
Cynthia D. Schraer
Mary K. Serdula
Phillip L. Smith
Hugh K. Tyson
Ronald J. Waldman
Allen J. Wilcox
Ray Yip

To be surgeon

Lynn A. Bosco
Ralph T. Bryan
William A. Calder IV
Richard J. Calvert
William E. Carter, Jr.
Philip E. Coyne, Jr.
Andrew M. Friede
Terence H. Hamel
George H. Hays, Jr.
Bradley S. Hersh
John R. Livengood
Adelina D. Marinberg
Diane A. Mitchell
John S. Moran
Neil J. Murphy
Mark G. Peterson
Michael Pratt
Sam S. Shekar

To be dental director

Harold A. Black
Thomas J. Decaro
Robert S. Enders
James W. Farrington
Douglas B. Fritz
Lawrence J. Furman
Robert H. Harry, Jr.
James A. Lipton
Donald W. Marianos
Robert A. Palmer
Steven H. Posner
Alan L. Sandler

To be senior dental surgeon

Victor R. Alos
Charles H. Detjen
Alan R. Deubner
M. Ann Drum
Robert F. Felker, Jr.
James D. Friday
Michael H. Hess
Richard T. Higham
Miguel Rico
Barry H. Waterman
Richard H. White
Russell C. Williams, Jr.
Benjamin F. Howard
James J. Jan
Mark Koday
Michael L. Mark
Gene J. McElhinney
Steven R. Newman
Forrest H. Peebles
Garry E. Pitts
Rodney Wong
David K. Wright
Stephen W. Wyatt

To be dental surgeon

Jerome B. Alford
Steven J. Baune
Robin S. Berrin
Samuel L. Bundrant
Billy D. Card, Jr.
James E. Code
Markus P. Eldred
Michael A. Foster
Kevin S. Hardwick
Mark S. Jacobson
Thomas E. Jordan
Jan T. Josephson
Margaret L. Lamy
Tad R. Mabry
Marilyn R. McKean
Howard W. Payne, Jr.
Peter M. Preston
Sandra L. Shire
Adele M. Taylor
John B. Veasley
Clifford D. White
Paul Young

To be nurse director

Janet M. Dumont
May B. Given
Lorraine A. Maciag
Lynn E. McCourt

To be senior nurse officer

Melissa M. Adams
Bruce C. Baggett
Martina P. Callaghan
Martha J. Coury
Roberta A. Holder-Mosley
Charles R. Mauch
Nancy E. Miller-Korth
Constance J. Overby
Marilyn K. Pierce-Bulger
Cristin O. Rodriguez
Carol A. Romano
Myra J. Tucker
Gale G. White
Beverly R. Wright
Sarah C. Zahniser

To be nurse officer

Robin E. Anderson
Ana M. Balingit-Clark
Doris L. Clarke
James E. Clevenger
Regena N. Dale
Joanne Derdak
Fern S. Detsoi
Thomas J. Edwards
Danny J. English
Maureen Q. Farley
Pamela R. Gallagher-Navarro
Clarice Gee
Alan D. Goldstein
Martha L. Haynes
Mark W. Hunt
Merrit C. Jensen
Donna M. Kenison
David L. Kerschner
Kathleen M. Kinsey
Mark P. Lecapitaine
Lynn M. Lowry
Judith E. Maeda
Kenda J. Mathews
Timothy E. Mathews
Sheryl L. Meyers
Michael G. Mikulan
Roger A. Monson
Susan J. Morris
Ernestine Murray
Robinson J. Myers
Barbara J. Myrick
Rebecca K. Olin
Maria C. Padilla
Gladys V. Perkins
James M. Pobrislo
Christine L. Rubadue
Beverly J. Sanders
Leslie A. Spousta, Jr.
Timothy R. Stockdale
Lauren C. Tancona
Diane R. Walsh
Mark S. Wessel
Janet L. Wildeboor

To be engineer director

Bruce P. Almich
Donald B. Bad
Moccasin

Samuel C. Bradshaw
Alvin Chun
Herbert W. Dorsey
Marius J. Gedgaudas
Alan J. Hoffman
Thomas T. Kariya, Jr.
Stephen B. Leighton
William H. Midgette
Dennis M. Obrien
Richard J. Waxweiler
Wayne E. Wruble

To be senior engineer officer

Gerald V. Babigian
Curtis C. Bossert
Alwin L. Dieffenbach
John R. Giedt
Robert M. Hayes
William A. Heitbrink
Gary A. McFarland
Joseph C. Cocalis
John T. Collins
Richard D. Melton
Elliot A. Shefrin
Michael Verschelden
Randy N. Willard
Bryan K. H. Yim

To be engineer officer

Randall L. Bachman
Jose F. Cuzme
Kennith O. Green
Valerie J. Haney
Daniel L. Heintzman
Kenneth F. Martinez
Ronald L. Mickelsen
Douglas C. Ott
George D. Pringle, Jr.
Roger G. Slape
Kelly R. Titensor
Robert L. Wilson

To be scientist director

Wilbur H. Cyr
Robert B. Dick
George C. Jan
Robert P. Klein
Kenneth Krell
Joseph M. Madden
Eve K. Moscicki
Annette W. Zimmern

To be senior scientist

Raymond F. Beach, Jr.
Gregory M. Christenson
Raquel A. Crider
William T. Dill
William A. Kachadorian
Alan C. Schroeder
Chung-Yui B. Tai
Richard W. Truman

To be scientist

John E. Abraham
Leslie P. Boss
John A. Elliott
G. Shay Fout
Sara Dee McArthur
Rogert R. Rosa
Mildred M. Williams-Johnson

To be sanitarian director

Richard M. Bryan
Douglas R. Jackson
Ralph J. Touch, Jr.

To be senior sanitarian

Larry E. Glaze
Randy E. Grinnell
John J. Hanley
Richard W. Hartle
Gregory M. Heck
Gary P. Noonan
John A. Steward

To be sanitarian

Byron P. Bailey
William D. Compton
Ralph F. Fulgham
Barry S. Hartfield
Robert F. Hennes
Joseph L. Hughart
Mark H. Mattson
John P. Sarisky
Jeffrey J. Smith
Kevin Tonat
L.J. David Wallace III
Paul T. Young

To be veterinary director

Michael J. Blackwell

To be senior veterinary officer

Marguerite Pappaioanou

to be veterinary officer

Peter B. Bloland

To be pharmacist director

David Barash
John A. Boren
Gary A. Erickson
Steven C. Garrett
J. Craig Hostetler
James E. Knoben
Jay D. McGath
Steven R. Moore
Richard E. Davis
Jimmy P. Dowdy
James C. Myers
Robert W. Parrish
Steven L. Pettitt
William B. Welch
Patricia T.L. Yee-Spencer

To be senior pharmacist

Russell E. Alger
Thomas L. Blumenberg
Robert W. Boyce
Anthony J. Brooks
Susan Carl
Anthony W. Decicco
Paul N. Deramo
Rogert D. Eastep
Roger A. Goetsch
Arden H. Hanson
Paul L. Hepp
William A. Hess
Francis J. Hussion
Michael F. Johnston
Ralph B. Lillie
James A. May
Jon A. McArthur
Thomas J. McGinnis
Robert C. Nelson
Nicholas P. Provost
Grover H. Rivenbark
Linda J. Shull
R. David Simpton
Ronnie D. Thomas
William P. Tyler, Jr.
Peter L. Vaccari
Robert L. West
Stephen W. Wickizer

To be pharmacist

Diane Centeno-Deshields
Paul A. David
Josephine E. Divel
Steven C. Doane
Mary B. Forbes
Eric D. Gregory
Martin Jagers
Danny C. Jones
James C. Jordan
Michael R. Lilla
Robert A. McGough
James W. Mitchell
Michael J. Montello
Cecilia-Marina Prela
Robert W. Rist
Renee J. Roncone
William D. Sage
Thomas J. Troshynski

To be dietitian director

Beverly G. Crawford

To be senior dietitian

Shirley R. Blakely
Sandra R. Robinson

To be dietitian

Diana M. Prince
Paulette D. Wicks

To be therapist director

Michael R. Huylebroeck

To be senior therapist

Charles L. McGarvey
Marie A. Schroeder

To be therapist

Terry T. Cavanaugh
Franklin D. Keel
Sherry L. Phillips
Bonnie C. Thornton

To be health services director

Evan R. Arrindell
Martin J. Bree
Robert N. Burns
William M. Chapin, Jr.
James E. Clair
Larry D. Edmonds
Jerry G. Gentry
Robert P. Kuhlthau
Michael A. Lopatin
John L. McCrohan, Jr.
Emmett E. Noll,
Margaret T. Roper
Harry A. Rosenzweig
Edwin L. Sensintaffar
Robert Soliz
Stuart M. Swayze
Dawn G. Tharr

To be senior health services officer

Mary P. Anderson
Kenneth R. Bahm
Stephen J. Balcerzak
Roger W. Broseus
Stephanie D. Bryn
Thomas F. Carrato
Vivian T. Chen
Robert L. Davidson
Carol A. Delany
Norman E. Dodds
Jean D. Doong
John D. Dupre
Alan S. Friedlob
John D. Gallicchio
Donald W. Gann
John M. Garber
Jesse L. Glidewell
Terence M. Grady
Richard P. Haskins
Gloria J. Holder
Ellen M. Hutchins
Debra Y. Lewis
Hector Lopez
George G. Martin
James D. McGlothlin
Carol Rest-Mincberg
S. Jay Smith
Francis P. Wagner, Jr.

To be health services officer

Eugenia Adams
Duane R. Beckwith
Francis J. Behan
Annie L. Brayboy-Fair
Robert G. Hammernik
Teresa C. Horan
Nina R. Lalich
W. Henry Macpherson
Robert J. Slayton
Rachel E. Solomon
Maria E. Stetter
Nancy A. Tollison
John N. Zey

The following candidates for personnel action in the regular corps of the Public Health Service subject to qualifications therefor as provided by law and regulations:

To be medical director

Dan L. Longo

To be senior surgeon

Michael A. Friedman
Jeffrey R. Harris
Douglas B. Kamerow
Henry C. Lane

To be surgeon

Enrique S. Fernandez
Dennis M. Klinman
Daniel G. Schultz
David L. Swerdlow

To be senior assistant surgeon

Alice Y. Boudreau
Joanna Buffington
Erlinda R. Casuga-Marquez
A. Russell Gerber
Douglas W. Kingma
Denise T. Koo
Eric D. Mintz
Mark J. Papania
David H. Sniadack
Judith Thierry
John C. Watson
Jane R. Zucker

To be dental surgeon

Rosemary E. Duffy

To be senior assistant dental surgeon

David L. Brizzee
Jeffrey M. Carolla
Michael E. Korale
Jana Cheryl McIntosh
Rebecca V. Neslund
William J. Perez
Linda C. Torres
John T. Zimmer

To be senior assistant nurse officer

Joyce A. Anderson
Victoria L. Anderson
Judith E. Arndt
Lori E. Bealle
Erica M. Boardman
Jeffrey N. Burnham
Laura M. Chisholm
Maria L. Dinger
Cindy E. Hamlin
Dennis R. Hammond
Roldie C. Jones
Christine M. Parmentier
Daniel Reyna
Cliffornia J. Rolle
Mary F. Rossi-Coajou
Leslie L. Royall
Rosemary J. Sullivan
James S. Whiting
Christine L. Williams
Tony M. Zorzynski

To be assistant nurse officer

Daniel J. Aronson
Robert C. Frickey

To be senior assistant engineer officer

Raymond M. Behel II
David M. Birney
Eric L. Crump
Gary S. Earnest
Michael G. Gressel
William R. Griffin
Michael J. Koehmstedt
Dennis J. Wagner
Louis A. Lightner, Jr.
Robert B. McVicker
Jacqueline M. Parker
Steven E. Raynor
Paul G. Robinson
George W. Styer
Daniel C. Tompkins
Maurice C. West

To be assistant engineer officer

Anthony G. Kathol

To be scientist

Donald H. Burr

To be senior assistant scientist

Dina Birman
Frank P. Gonzales
Bruce H. Grant
Neal R. McMann

To be sanitarian

Brenda J. Holman

To be senior assistant sanitarian

Gary J. Gefroh
Kevin W. Hanley
Michael P. Keiffer
Geoffrey G. Langer
John P. Leffel
Reva J. Melton
Edward Perez, Jr.
Frederick A. Ramsey
Doris Ravenell-Brown
Michael M. Welch

To be veterinary officer

Linda R. Tollefson

To be senior assistant veterinary officer

Tracey C. Bourke
Stephanie I. Harris

To be senior assistant pharmacist

Michael R. Allen
Maria T. Burt
Robert B. Carlile IV
John M. Coleman
L. Jane Duncan
Traci C. Gale
Jill G. Geoghegan
Karen G. Hirshfield
Ilene R. Ketter
David V. Larson
Keith E. Rost
Linda M. Schrand
Kassandra C. Sherrod
Thomas A. Sticht
Julie E. Warren

To be assistant pharmacist

Dana L. Hall
Eddie J. Winn

To be senior assistant dietitian

Young S. Song
Connie Y. Torrence-Thomas
Juli M. Whitson

To be senior assistant therapist

Bart E. Drinkard

To be senior assistant health services officer

Bradley L. Austin
Toni A. Bledsoe
Frank H. Cross, Jr.
Willard E. Dause
Jan Davis
Maureen E. Gormley
Steve Gurski III
R. Andrew Hunt
Winston L. Moorehead
Judith A. Nelson
Gay E. Nord
Kenneth B. Stewart

To be assistant health services officer

Lou A. Rector
Christopher R. Walsh

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs:

Susan R. Baron, of Maryland, to be a member of the National Corporation for Housing Partnerships for the term expiring October 27, 1997.

Jeffrey A. Frankel, of California, to be a member of the Council of Economic Advisers.

Charles A. Gueli, of Maryland, to be a member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1999.

Yolanda Townsend Wheat, of Missouri, to be a member of the National Credit Union Administration Board for the term of 6 years expiring August 2, 2001.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Ms. MOSELEY-BRAUN (for herself, Mr. KENNEDY, Mr. GRAHAM, Mr. KERRY, Mr. LEVIN, Mr. TORRICELLI, Mrs. MURRAY, Ms. MIKULSKI, Mr. DODD, and Mr. WELLSTONE):

S. 456. A bill to establish a partnership to rebuild and modernize America's school facilities; to the Committee on Labor and Human Resources.

By Mr. CAMPBELL:

S. 457. A bill to amend section 490 of the Foreign Assistance Act of 1961 to provide alternative certification procedures for assistance for major drug producing countries and major drug transit countries; to the Committee on Foreign Relations.

By Mr. FAIRCLOTH (for himself, Mr. KYL, Mr. WARNER, Mr. LUGAR, Mr. SHELBY, Mr. INHOFE, Mr. BENNETT, Mr. CRAIG, Mr. ENZI, and Mr. HAGEL):

S. 458. A bill to provide for State housing occupancy standards, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CAMPBELL (for himself, Mr. MCCAIN, Mr. DOMENICI, Mr. MURKOWSKI, and Mr. INOUYE):

S. 459. A bill to amend the Native American Programs Act of 1974 to extend certain authorizations, and for other purposes; to the Committee on Indian Affairs.

By Mr. BOND (for himself, Ms. SNOWE, Mr. NICKLES, Mr. BURNS, Mr. WARNER, Mr. FAIRCLOTH, Mr. MURKOWSKI, Mr. INHOFE, Mr. ENZI, Mr. HUTCHINSON, Mr. MACK, Ms. MIKULSKI, and Mr. GRAMS):

S. 460. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes; to the Committee on Finance.

By Mrs. HUTCHISON (for herself, Mr. INHOFE, and Mr. HELMS):

S. 461. A bill to amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MACK (for himself, Mr. D'AMATO, Mr. BOND, Mr. FAIRCLOTH, and Mr. GRAMS):

S. 462. A bill to reform and consolidate the public and assisted housing programs of the United States, and to redirect primary responsibility for these programs from the Federal Government to States and localities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COATS:

S. 463. A bill to amend the Solid Waste Disposal Act to permit a Governor to limit the disposal of out-of-State solid waste in the Governor's State, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. MURRAY:

S. 464. A bill to amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error; to the Committee on Veterans Affairs.

By Mr. DORGAN (for himself, Mr. BYRD, and Mr. SARBANES):

S. 465. A bill to establish an Emergency Commission To End the Trade Deficit; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. KENNEDY, Mr. KERRY, Mrs. FEINSTEIN, and Mr. TORRICELLI):

S. 466. A bill to reduce gun trafficking by prohibiting bulk purchases of handguns; to the Committee on the Judiciary.

By Mr. WELLSTONE (for himself, Mrs. MURRAY, Mr. WYDEN, and Mr. DORGAN):

S. 467. A bill to prevent discrimination against victims of abuse in all lines of insurance; to the Committee on Labor and Human Resources.

By Mr. CHAFEE (for himself and Mr. MOYNIHAN):

S. 468. A bill to continue the successful Federal role in developing a national intermodal surface transportation system, through programs that ensure the safe and efficient movement of people and goods, improve economic productivity, preserve the environment, and strengthen partnerships among all levels of the government and the private sector, and for other purposes; to the Committee on Finance.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 469. A bill to designate a portion of the Sudbury, Assabet and Concord Rivers as a component of the National Wild and Scenic River System; to the Committee on Energy and Natural Resources.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 470. A bill to amend the Internal Revenue Code of 1986 to make a technical correction relating to the depreciation on property used within an Indian reservation; to the Committee on Finance.

By Mr. LEVIN (for himself and Mr. LEAHY):

S.J. Res. 23. A joint resolution expressing the sense of the Congress that the Attorney General should exercise her best professional judgement, without regard to political pressures, on whether to invoke the independent counsel process to investigate alleged criminal misconduct relating to any election campaign; read twice.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ROBB:

S. Res. 64. A resolution to designate the week of May 4, 1997, as "National Correctional Officers and Employees Week"; to the Committee on the Judiciary.

By Mr. DURBIN (for himself and Mr. DORGAN):

S. Res. 65. A bill to express the sense of the Senate on consideration of comprehensive campaign finance reform; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. MOSELEY-BRAUN (for herself, Mr. KENNEDY, Mr. GRAHAM, Mr. KERRY, Mr. LEVIN, Mr. TORRICELLI, Mrs. MURRAY, Ms. MIKULSKI, Mr. DODD, and Mr. WELLSTONE):

S. 456. A bill to establish a partnership to rebuild and modernize America's school facilities; to the Committee on Labor and Human Resources.

THE PARTNERSHIP TO REBUILD AMERICA'S SCHOOLS ACT OF 1997

Ms. MOSELEY-BRAUN. Mr. President, I send to the desk, and I am pleased to introduce, along with a number of my colleagues, the Partnership To Rebuild America's School Act of 1997. This legislation is designed to address one of the most fundamental problems that we currently face as a nation with regard to public elementary and secondary education: many of

our schools are literally falling down around our children. This legislation will help us address this problem, the crisis of crumbling schools in America.

On Friday, the President officially transmitted this legislation to the Congress. The bill is the result of months of work by the Department of Education, the Department of the Treasury, the White House, my office, and a number of other congressional offices.

At the outset, I commend and thank everyone who has participated in the development of this legislation for their efforts.

Mr. President, the Partnership To Rebuild America's Schools Act of 1997 will help States and local school districts finance the repair, renovation, modernization and construction of their schools. States and school districts will be able to use the Federal funds to assist them in financing their highest priority projects.

This bill will allow school districts to do more of what they need to be doing, educating our children for the 21st century.

In America, the rungs on the ladder of opportunity are still crafted in the classroom. High school graduates earn, on average, 46 percent more every year than those who do not graduate. College graduates earn 155 percent more every year than those who do not graduate from high school. Over the course of a lifetime, the most educated Americans will earn five times as much as the least educated.

Education, however, is not just a matter of individual benefit. It is a public good as well. It affects and correlates to the status and the quality of life for our entire community. It correlates to just about every indicia of economic and social well-being. Educational attainment can be directly tied to income, health, the likelihood of being on welfare, the likelihood of being incarcerated, and the likelihood of voting and participating in our democracy. Education, therefore, has both national as well as individual implications.

In a recent Wall Street Journal survey of leading U.S. economists, 43 percent of those surveyed said the single most important thing that we could do to increase our long-term economic growth rate would be to invest more in education and research and development. Nothing else even came close to education in the survey. One economist said, "One of the few things that economists will agree upon is the fact that economic growth is very strongly dependent on our own abilities."

In his State of the Union Address, President Clinton noted that education is a critical national security issue for our future. I believe this notion should be at the heart of our debate over education.

In order to compete with cheap, Third World labor in a global economy, in an information age, and to maintain the standard of living to which we have grown accustomed as Americans, we will have to have a work force that works smarter, that works better, that can hold its own in this global economy at the high end of the productivity scale.

So education then becomes a matter of national concern and, indeed, as the President pointed out, a matter of our national security, because it is directly linked to our ability to be able to maintain the standard of living that we have come to appreciate as Americans and our ability to compete in this global marketplace.

We all have a role to play. That is why this legislation starts off calling itself a partnership, because there must be a partnership between State, local and National Government to meet the challenge that this global economy, and changes in the world, have given us all to face.

The Partnership To Rebuild America's Schools Act of 1997 will help us to meet the challenge by investing in education in ways that preserve the fundamental tenet of local control of education.

By investing in bricks and mortar the Federal Government can contribute to a more balanced partnership among all levels of Government and in the private sector to rebuild and modernize our schools so they can serve all of our children in the 21st century. This legislation strikes that balance. This legislation does preserve local control, but, much to the point, it says that we at the national level have an obligation to participate in addressing those needs that can be most appropriately addressed at the national level; and that is rebuilding our crumbling schools.

The bill uses 5 billion Federal dollars to leverage an additional $15 billion worth of State, local and private resources. Half of the money will be apportioned to States using the existing Title I basic grants formula. The remainder will flow directly to the 100 school districts in the country with the largest numbers of children living below the poverty level.

Of the amount available for direct assistance to these impoverished communities, the Department of Education will apportion 70 percent by formula and will make the remaining 30 percent available on a competitive basis.

In addition, the bill will allocate 2 percent of the funds to the Secretary of the Interior for administration to Indian schools and to the Secretary of Education for the outlying territories.

Under both the State and local programs, States and school districts would have an enormous amount of flexibility in the use of these Federal funds to help finance school improvement projects. They could use the funds to subsidize State or local bond issues, certificates of participation, purchase or lease agreements, or other financial transactions used to finance school improvements.

In addition, the States would be allowed to capitalize on entities similar to the State infrastructure banks which are currently used by a number of States to help finance highway improvement projects. These infrastructure banks could be used to leverage additional resources.

This program is designed to stimulate new construction and renovation, and there are specific provisions in the bill to ensure that Federal funds are not used simply to finance school improvements that would have occurred anyway. The bill is designed to fill a real need that exists at both the State and local levels for school financing assistance, not to supplement districts that would have otherwise been able to finance their projects.

It is carefully crafted to minimize administrative costs at the Federal level and to maximize local control over decisions that must be made with regard to school improvements.

States and districts will be required to submit applications to the Secretary of Education describing their needs and the process that will be used to award the Federal funds. Once these applications are approved, grantees will immediately receive the full share of the $5 billion.

In addition, other than following certain criteria, States and local districts will be free to finance their top-priority projects. The Federal Government will not be in the business of dictating priorities and needs to State and local school districts who know their schools best.

This bill helps address a need that has completely overwhelmed States and local school districts. The magnitude of the school facilities problem is so great today that many districts cannot maintain the kind of educational environment necessary to teach all of our children the kind of skills they will need to compete in the 21st century, global economy.

The U.S. General Accounting Office, which at my request conducted an intensive 2-year study of the condition of America's schools, recently concluded that 14 million children attend schools in need of major renovations or outright replacement, and 7 million children attend schools with life-threatening safety code violations. They found that it will cost $112 billion to essentially bring schools up to code, not to equip them with new computers and cosmetic improvements, but just to address the toll that decades of deferred maintenance have taken on our Nation's school facilities.

That $112 billion price tag, as enormous as it may sound, does not include the cost of wiring schools for modern technology. One of the greatest barriers to the incorporation of modern

computers into the classroom is the physical condition of many school buildings. You cannot very well use a computer if you do not have the electrical system to plug it into the wall. Too many schools across the country do not have the physical capacity to provide our youngsters with the instruments they will need in order to be educated for this information age.

According to the General Accounting Office, almost half of all schools lack enough electrical power for the full-scale use of computers, 60 percent of them lack enough conduits in the walls to connect classroom computers to a network, and more than 60 percent lack enough phone lines for instructional use.

For this generation, computers really are the functional equivalent of books. My son sometimes is amazed that computers were not around when I was in school. The fact of the matter is, though, that many of our schools were built before the advent of these technologies, and they have not been upgraded so that modern teaching tools can be used in the classroom. Our youngsters need modern technology if they are to be prepared for this information age and for this global economy.

That $112 billion price tag also does not include the cost of expanding capacity to accommodate soaring enrollments. According to the U.S. Department of Education, just to keep up with growing enrollment, we will need to build 6,000 new schools over the next 10 years.

Teachers and parents know full well that these conditions directly affect the ability of children to learn. Recent research, however, has lent scientific proof to that intuitive knowledge. Two separate studies found a 10 to 11 percent achievement gap between students in good school buildings and those in poor school buildings after controlling for all other factors.

Other studies have found that when buildings are in poor condition, students are more likely to misbehave. That should come as no surprise to parents. Three leading researchers in this area recently concluded, "Based on our research, there is no doubt that building condition affects academic performance."

Mr. President, this legislation is in the interest, I believe, of not just the children of America who have to go to these school buildings, many of which are dilapidated and rundown and neglected, but it is also in the interest of communities that will need the help to finance school repairs, and it is in the interest of our Nation that will need to have an educated work force.

Mr. President, the current system of school finance, which relies primarily on local property taxes, is not flexible enough to meet the enormous needs of our Nation's schools. This country, I believe, needs a new approach to solve the problem of crumbling schools, a partnership among all levels of government and the private sector that preserves local control of education, but creates some balance, and infuses, frankly, a little more reason into our school finance system that does not now adequately serve the schools, the children, the country, or the local property taxpayers.

The Department of Education has looked closely at a number of communities around the country and assessed the effect that this legislation would have on their ability to finance their construction needs. The Department looked at, for example, Los Angeles. Most of the school buildings there are more than 40 years old and are not wired for technology. Mr. President, 245 schools need roof replacements, and 50 of them need new boilers. According to the Department, this legislation could accelerate many long overdue projects and facilitate the passage of bond referenda at the local level.

The Department also looked at the State of Maine, which has many 100-year-old buildings and one-room schoolhouses. According to the Department, most districts in that State cannot cover the total cost of bonds issued to finance repair and modernization projects. Again, this legislation would allow needed projects to go forward.

The Department also looked at a school district in southern Florida suffering from severe overcrowding. Mr. President, 34,000 students in that district do not have permanent desks. There are 10,000 new students added to the system each year. The district would have to build a new school every month to keep up with this demand. According to the Department this legislation will help this district move away from the use of portable classrooms, which do not provide as conducive a learning environment as real schools.

My own State of Illinois would benefit greatly from this legislation. As the GAO reported last week, my State has unfortunately one of the most inequitable school finance systems in the Nation. With a low State contribution to school resources, and with a poor State effort to target funds to the neediest districts, local property taxpayers in Illinois are saddled with almost 60 percent of the costs of educating their children. It is no wonder, then, that the State board of education estimates that Illinois' construction needs are $13 billion. Too many of Illinois' school districts have a difficult time even providing textbooks and pencils, let alone major capital improvements. This legislation would free up local resources in Illinois for education by providing Federal support for the construction, rehabilitation and renovation of the school buildings.

I urge all my colleagues to take a close look at the needs of the schools in their States and consider joining us in cosponsoring this legislation. This initiative is not about partisan politics. In fact, I think most Americans would agree wholeheartedly with the President when he said that partisan politics should stop at the schoolhouse door. This is something that transcends partisan differences and goes to the heart of our ability to provide for our children's well-being and their needs going into the 21st century.

Congress has a unique opportunity to take a fundamentally new approach to improving the quality of elementary and secondary education. This bill represents a chance to improve our system of school finance and help prepare our children for the 21st century. I believe this will be welcomed by taxpayers at the local level, particularly those who, at this point, are unfairly burdened with the costs of trying to keep up a school system that deserves the support of all levels of government in our country.

Mr. President, I have several documents from the Department of Education that I would like to have printed in the RECORD. I have the letter of transmittal from the Secretary of Education to the President of the Senate, a fact sheet regarding the correlation between building conditions and student achievement, and seven case studies assessing the impact this legislation would have on communities across America. I ask unanimous consent that these materials, as well as the text of the bill itself, be printed at this point in the RECORD.

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

S. 456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Partnership to Rebuild America's Schools Act of 1997."

TITLE I—SCHOOL CONSTRUCTION ASSISTANCE PROGRAM

TABLE OF CONTENTS

SEC. 101. The table of contents for this Act is as follows:

TITLE I—SCHOOL CONSTRUCTION ASSISTANCE PROGRAM

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PART 1—PROGRAM AUTHORIZED

FINDINGS AND PURPOSE

SEC. 102. (a) FINDINGS.—The Congress finds as follows:

(1) According to the General Accounting Office, one-third of all elementary and secondary schools in the United States, serving 14,000,000 students, need extensive repair or renovation.

(2) School infrastructure problems exist across the country, but are most severe in central cities and in schools with high proportions of poor and minority children.

(3) Many States and school districts will need to build new schools in order to accommodate increasing student enrollments; the Department of Education has predicted that the Nation will need 6,000 more schools by the year 2006.

(4) Many schools do not have the physical infrastructure to take advantage of computers and other technology needed to meet the challenges of the next century.

(5) While school construction and maintenance are primarily a State and local concern, States and communities have not, on their own, met the increasing burden of providing acceptable school facilities for all students, and the poorest communities have had the greatest difficulty meeting this need.

(6) The Federal Government, by providing interest subsidies and similar types of support, can lower the costs of State and local school infrastructure investment, creating an incentive for States and localities to increase their own infrastructure improvement efforts and helping ensure that all students are able to attend schools that are equipped for the 21st century.

(b) PURPOSE.—The purpose of this Act is to provide Federal interest subsidies, or similar assistance, to States and localities to help them bring all public school facilities up to an acceptable standard and build the additional public schools needed to educate the additional numbers of students who will enroll in the next decade.

DEFINITIONS

SEC. 103. Except as otherwise provided, as used in this Act, the following terms have the following meanings:

(1) CHARTER SCHOOL.—The term "charter school" has the meaning given that term in section 10306(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8066(1)).

(2) COMMUNITY SCHOOL.—The term "community school" means a school, or part of a school, that serves as a center for after-school and summer programs and the delivery of education, tutoring, cultural, and recreational services, and as a safe haven for all members of the community by—

(A) collaborating with other public and private nonprofit agencies (including libraries and other educational, human-service, cultural, and recreational entities) and private businesses in the provision of services;

(B) providing services such as literacy and reading programs; senior citizen programs; children's day-care services; nutrition services; services for individuals with disabilities; employment counseling, training, and placement; and other educational, health, cultural, and recreational services; and

(C) providing those services outside the normal school day and school year, such as through safe and drug-free safe havens for learning.

(3)(A) CONSTRUCTION.—The term "construction' means——

(i) the preparation of drawings and specifications for school facilities;

(ii) erecting, building, acquiring, remodeling, renovating, improving, repairing, or extending school facilities;

(iii) demolition, in preparation for rebuilding school facilities; and

(iv) the inspection and supervision of the construction of school facilities.

(B) The term "construction" does not include the acquisition of any interest in real property.

(4) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" has the meaning given that term in section 14101(18) (A) and (B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(18) (A) and (B)).

(5) SCHOOL FACILITY.—(A) The term "school facility" means—

(i) a public structure suitable for use as a classroom, laboratory, library, media center, or related facility, whose primary purpose is the instruction of public elementary or secondary students; and

(ii) initial equipment, machinery, and utilities necessary or appropriate for school purposes.

(B) The term "school facility" does not include an athletic stadium, or any other structure or facility intended primarily for athletic exhibitions, contests, games, or events for which admission is charged to the general public.

(6) SECRETARY.—The term "Secretary" means the Secretary of Education.

(7) STATE.—The term "State" means each of the 50 States and the Commonwealth of Puerto Rico.

(8) STATE EDUCATIONAL AGENCY.—The term "State educational agency" has the meaning given that term in section 14101(28) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(28)).

FUNDS APPROPRIATED

SEC. 104. There are appropriated $5,000,000,000 for the purpose of carrying out this Act, which shall be available for obligation by the Secretary of Education from October 1, 1997 until September 30, 2001.

ALLOCATION OF FUNDS

SEC. 105. (a) RESERVATION FOR THE SECRETARY OF THE INTERIOR AND THE OUTLYING AREAS.—(1) The Secretary shall reserve up to two percent of the funds appropriated by section 104 to—

(A) provide assistance to the Secretary of the Interior, which the Secretary of the Interior shall use for the school construction priorities described in section 1125(c) of the Education Amendment of 1978 (25 U.S.C. 2005(c)); and

(B) make grants to America Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, in accordance with their respective needs, as determined by the Secretary.

(2) Grants provided under paragraph (1)(B) shall be used for activities that the Secretary determines best meet the school infrastructure needs of the areas identified in that paragraph, subject to the terms and conditions, consistent with the purpose of this Act, that the Secretary may establish.

(b) ALLOCATION OF REMAINING FUNDS.—Of the remaining funds appropriated by section 104—

(1) 50 percent shall be used for formula grants to States under section 111;

(2) 35 percent shall be used for direct formula grants to local educational agencies under section 126; and

(3) 15 percent shall be used for competitive grants to local educational agencies under section 127.

PART 2—GRANTS TO STATES

ALLOCATION OF FUNDS

SEC. 111. (A) FORMULA GRANTS TO STATES.—Subject to subsection (b), the Secretary shall allocate the funds available under section 105(b)(1) among the States in proportion to the relative amounts each State would have received for Basic Grants under subpart 2 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331 et seq.) for the most recent fiscal year if the Secretary had disregarded the numbers of children counted under that subpart who were enrolled in schools of local educational agencies that are eligible to receive direct grants under section 126 of this Act.

(b) ADJUSTMENTS TO ALLOCATIONS.—The Secretary shall adjust the allocations under subsection (a), as necessary, to ensure that, of the total amount allocated to State under subsection (a) and to local educational agencies under section 126, the percentage allocated to a State under this section and to localities in the State under section 126 is at least the minimum percentage for the State described in section 1124(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6334(d)) for the previous fiscal year.

(c) REALLOCATIONS.—If a State does not apply for its allocation, applies for less than its full allocation, or fails to submit an approvable application, the Secretary may reallocate all or a portion of the State's allocation, as the case may be, to the remaining States in the same proportions as the original allocations were made to those States under subsections (a) and (b).

ELIGIBLE STATE AGENCY

SEC. 112. The Secretary shall award each State's grant to the State agency, such as a State educational agency, a State school construction agency, or a State bond bank, that the Governor, with the agreement of the chief State school officer, designates as best able to administer the grant.

ALLOWABLE USES OF FUNDS

SEC. 113. Each State shall use its grant under this part only for one or more of the following activities to subsidize the cost of eligible school construction projects described in section 114:

(1) Providing a portion of the interest cost (or of another financing cost approved by the Secretary) on bonds, certificates of participation, purchase or lease arrangements, or other forms of indebtedness issued or entered into by a State or its instrumentality for the purpose of financing eligible projects.

(2) State-level expenditures approved by the Secretary for credit enhancement for the debt or financing instruments described in paragraph (1).

(3) Making subgrants, or making loans through a State revolving fund, to local educational agencies or (with the agreement of

the affected local educational agency) to other qualified public agencies to subsidize—

(A) the interest cost (or another financing cost approved by the Secretary) of bonds, certificates of participation, purchase or lease arrangements, or other forms of indebtedness issued or entered into by a local educational agency or other agency or unit of local government for the purpose of financing eligible projects; or

(B) local expenditures approved by the Secretary for credit enhancement for the debt or financing instruments described in subparagraph (A).

(4) Other State and local expenditures approved by the Secretary that leverage funds for additional school construction.

ELIGIBLE CONSTRUCTION PROJECTS; PERIOD FOR INITIATION

SEC. 114 (a) ELIGIBLE PROJECTS.—States and their subgrantees may use funds under this part, in accordance with section 113, to subsidize the cost of—

(1) construction of elementary and secondary school facilities in order to ensure the health and safety of all students, which may include the removal of environmental hazards; improvements in air quality, plumbing, lighting, heating and air conditioning, electrical systems, or basic school infrastructure; and building improvements that increase school safety;

(2) construction activities needed to meet the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(3) construction activities that increase the energy efficiency of school facilities;

(4) construction that facilitates the use of modern educational technologies;

(5) construction of new school facilities that are needed to accommodate growth in school enrollments; or

(6) construction projects needed to facilitate the establishment of charter schools and community schools.

(b) PERIOD FOR INITIATION OF PROJECT.—(1) Each State shall use its grant under this part only to subsidize construction projects described in subsection (a) that the State or its localities have chosen to initiate, through the vote of a school board, passage of a bond issue, or similar public decision, made between July 11, 1996 and September 30, 2001.

(2) If a State determines, after September 30, 2001, that an eligible project for which it has obligated funds under this part will not be carried out, the State may use those funds (or any available portion of those funds) for other eligible projects selected in accordance with this part.

(c) REALLOCATION.—If the Secretary determines, by a date before September 30, 2001 selected by the Secretary, that a State is not making satisfactory progress in carrying out its plan for the use of the funds allocated to it under this part, the Secretary may reallocate all or part of those funds, including any interest earned by the State on those funds, to one or more other States that are making satisfactory progress.

SELECTION OF LOCALITIES AND PROJECTS

SEC. 115. (a) PRIORITIES.—In determining which localities and activities to support with grant funds, each State shall give the highest priority to—

(1) localities with the greatest needs, as demonstrated by inadequate educational facilities, coupled with a low level of resources available to meet school construction needs; and

(2) localities that will achieve the greatest leveraging effect on school construction from assistance under this part.

(b) ADDITIONAL CRITERIA.—In addition to the priorities required by subsection (a), each State shall consider each of the following in determining the use of its grant funds under this part:

(1) The condition of the school facilities in different communities in the State.

(2) The energy efficiency and the effect on the environment of projects proposed by communities, and the extent to which these projects use cost-efficient architectural design.

(3) The commitment of communities to finance school construction and renovation projects with assistance from the State's grant, as demonstrated by their incurring indebtedness or by similar public or private commitments for the purposes described in section 114(a).

(4) The ability of communities to repay bonds or other forms of indebtedness supported with grant funds.

(5) The particular needs, if any, of rural communities in the State for assistance under this Act.

(6) The receipt by local educational agencies in the State of grants under part 3, except that a local educational agency is not ineligible for a subgrant under this part solely because it receives such a grant.

STATE APPLICATIONS

SEC. 116. (a) APPLICATION REQUIRED.—A State that wishes to receive a grant under this part shall submit an application to the Secretary, in the manner the Secretary may require, not later than two years after the date of enactment of this Act.

(b) DEVELOPMENT OF APPLICATION.—(1) The State agency designated under section 112 shall develop the State's application under this part only after broadly consulting with the State board of education, and representatives of local school boards, school administrators, the business community, parents, and teachers in the State about the best means of carrying out this part.

(2) If the State educational agency is not the State agency designated under section 112, the designated agency shall consult with the State educational agency and obtain its approval before submitting the State's application.

(c) STATE SURVEY.—(1) Before submitting the State's application, the State agency designated under section 112, with the involvement of local school officials and experts in building construction and management, shall survey the need throughout the State (including in localities receiving grants under part 3) for construction and renovation of school facilities, including, at a minimum—

(A) the overall condition of school facilities in the State, including health and safety problems;

(B) the capacity of the schools in the State to house projected enrollments; and

(C) the extent to which the schools in the State offer the physical infrastructure needed to provide a high-quality education to all students.

(2) A State need not conduct a new survey under paragraph (1) if it has previously completed a survey that meets the requirements of that paragraph and that the Secretary finds is sufficiently recent for the purpose of carrying out this part.

(d) APPLICATION CONTENTS.—Each State application under this part shall include—

(1) an identification of the State agency designated by the Governor under section 112 to receive the State's grant under this party;

(2) a summary of the results of the State's survey of its school facility needs, as described in subsection (c);

(3) a description of how the State will implement its program under this part;

(4) a description of how the State will allocate its grant funds, including a description of how the State will implement the priorities and criteria described in section 115;

(5)(A) a description of the mechanisms that will be used to finance construction projects supported by grant funds; and

(B) a statement of how the State will determine the amount of the Federal subsidy to be applied, in accordance with section 117(a), to each local project that the State will support;

(6) a description of how the State will ensure that the requirements of this part are met by subgrantees under this part;

(7) a description of the steps the State will take to ensure that local educational agencies will adequately maintain the facilities that are constructed or improved with funds under this part;

(8) an assurance that the State will use its grant only to supplement the funds that the State, and the localities receiving subgrants, would spend on school construction and renovation in the absence of a grant under this part, and not to supplant those funds;

(9) an assurance that, during the four-year period beginning with the year the State receives its grant, the combined expenditures for school construction by the State and the localities that benefit from the State's program under this part (which at the State's option, may include private contributions) will be at least 125 percent of those combined expenditures for that purpose for the four preceding years; and

(10) other information and assurances that the Secretary may require.

(e) WAIVER OF REQUIREMENT TO INCREASE EXPENDITURES.—The Secretary may waive or modify the requirement of subsection (d)(9) for a particular State if the State demonstrates to the Secretary's satisfaction that that requirement is unduly burdensome because the State or its localities have incurred a particularly high level of school construction expenditures during the previous four years.

AMOUNT OF FEDERAL SUBSIDY

SEC. 117. (a) PROJECTS FUNDED WITH SUBGRANTS.—For each construction project assisted by a State through a subgrant to a locality, the State shall determine the amount of the Federal subsidy under this part, taking into account the number or percentage of children from low-income families residing in the locality, subject to the following limits:

(1) If the locality will use the subgrant to help meet the cost of repaying bonds issued for a school construction project, the Federal subsidy shall be not more than one-half of the total interest cost of those bonds, determined in accordance with paragraph (4).

(2) If the bonds to be subsidized are general obligation bonds issued to finance more than one type of activity (including school construction), the Federal subsidy shall be not more than one-half of the interest cost for that portion of the bonds that will be used for school construction purposes, determined in accordance with paragraph (4).

(3) If the locality elects to use its subgrant for an allowable activity not described in paragraph (1) or (2), such as for certificates of participation, purchase or lease arrangements, reduction of the amount of principal to be borrowed, or credit enhancements for individual construction projects, the Federal

subsidy shall be not more than one-half of the interest cost, as determined by the State in accordance with paragraph (4), that would have been incurred if bonds had been used to finance the project.

(4) the interest cost referred to in paragraphs (1), (2), and (3) shall be—

(A) calculated on the basis of net present value; and

(B) determined in accordance with an amortization schedule and any other criteria and conditions the Secretary considers necessary, including provisions to ensure comparable treatment of different financing mechanisms.

(b) STATE-FUNDED PROJECTS.—For a construction project under this part funded directly by the State through the use of State-issued bonds or other financial instruments, the Secretary shall determine the Federal subsidy in accordance with subsection (a).

(c) NON-FEDERAL SHARE.—A State, and localities in the State receiving subgrants under this part, may use any non-Federal funds, including State, local, and private-sector funds, for the financing costs that are not covered by the Federal subsidy under subsection (a).

SEPARATE FUNDS OR ACCOUNTS; PRUDENT INVESTMENT

SEC. 118. (a) SEPARATE FUNDS OR ACCOUNTS REQUIRED.—Each State that receives a grant, and each recipient of a subgrant under this part, shall deposit the grant or subgrant proceeds in a separate fund or account, from which it shall make bond repayments and pay other expenses allowable under this part.

(b) PRUDENT INVESTMENT REQUIRED.—Each State that receives a grant, and each recipient of a subgrant under this part, shall—

(1) invest the grant or subgrant in a fiscally prudent manner, in order to generate amounts needed to make repayments on bonds and other forms of indebtedness described in section 113; and

(2) Notwithstanding section 6503 of title 31, United States Code or any other law, use the proceeds of that investment to carry out this part.

STATE REPORTS

SEC. 119. (a) REPORTS REQUIRED.—(1) Each State receiving a grant under this part shall report to the Secretary on its activities under this part, in the form and manner the Secretary may prescribe.

(2) If the State educational agency is not the State agency designated under section 112, the State's report shall include the approval of the State educational agency or its comments on the report.

(b) CONTENTS.—Each report shall—

(1) describe the State's implementation of this part, including how the State has met the requirements of this part;

(2) identify the specific school facilities constructed, renovated, or modernized with support from the grant, and the mechanisms used to finance those activities;

(3) identify the level of Federal subsidy provided to each construction project carried out with support from the State's grant; and

(4) include any other information the Secretary may require.

(c) FREQUENCY.—(1) Each State shall submit its first report under this section not later than 24 months after it receives its grant under this part.

(2) Each State shall submit an annual report for each of the three years after submitting its first report, and subsequently shall submit periodic reports as long as the State or localities in the State are using grant funds.

PART 3—DIRECT GRANTS TO LOCAL EDUCATIONAL AGENCIES

ELIGIBLE LOCAL EDUCATIONAL AGENCIES

SEC. 121. (a) ELIGIBLE AGENCIES.—Except as provided in subsection (b), the local educational agencies that are eligible to receive formula grants under section 126 and competitive grants under section 127 from the Secretary are the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, as determined by the Secretary using the most recent data available from the Department of Commerce that are satisfactory to the Secretary.

(b) CERTAIN JURISDICTIONS INELIGIBLE.—For the purpose of this part, the local educational agencies for Hawaii and the Commonwealth of Puerto Rico are not eligible local educational agencies.

GRANTEES

SEC. 122. For each local educational agency described in section 121(a) for which an approvable application is submitted, the Secretary shall make any grant under this part to the local educational agency or to another public agency, on behalf of the local educational agency, if the Secretary determines, on the basis of the local educational agency's recommendation, that the other agency is better able to carry out activities under this part.

ALLOWABLE USES OF FUNDS

SEC. 123. Each grantee under this part shall use its grant only for one or more of the following activities to reduce the cost of financing eligible school construction projects described in section 124:

(1) Providing a portion of the interest cost (or of any other financing cost approved by the Secretary) on bonds, certificates of participation, purchase or lease arrangements, or other forms of indebtedness issued or entered into by a local educational agency or other unit or agency of local government for the purpose of financing eligible school construction projects.

(2) Local expenditures approved by the Secretary for credit enhancement for the debt or financing instruments described in paragraph (1).

(3) Other local expenditures approved by the Secretary that leverage funds for additional school construction.

ELIGIBLE CONSTRUCTION PROJECTS; REDISTRIBUTION

SEC. 124. (a) ELIGIBLE PROJECTS.—A grantee under this part may use its grant, in accordance with section 123, to subsidize the cost of the activities described in section 114(a) for projects that the local educational agency has chosen to initiate, through the vote of the school board, passage of a bond issue, or similar public decision, made between July 11, 1996 and September 30, 2001.

(b) REDISTRIBUTION.—If the Secretary determines, by a date before September 30, 2001 selected by the Secretary, that a local educational agency is not making satisfactory progress in carrying out its plan for the use of funds awarded to it under this part, the Secretary may redistribute all or part of those funds, and any interest earned by that agency on those funds, to one or more other local educational agencies that are making satisfactory progress.

LOCAL APPLICATIONS

SEC. 125. (a) APPLICATION REQUIRED.—A local educational agency, or an alternative agency described in section 122 (both referred to in this part as the "local agency"), that wishes to receive a grant under this part shall submit an application to the Secretary, in the manner the Secretary may require, not later than two years after the date of enactment of this Act.

(b) DEVELOPMENT OF APPLICATION.—(1) The local agency shall develop the local application under this part only after broadly consulting with parents, administrators, teachers, the business community, and other members of the local community about the best means of carrying out this part.

(2) If the local educational agency is not the applicant, the applicant shall consult with the local educational agency, and shall obtain its approval before submitting its application to the Secretary.

(c) LOCAL SURVEY.—(1) Before submitting its application, the local agency, with the involvement of local school officials and experts in building construction and management, shall survey the local need for construction and renovation of school facilities, including, at a minimum—

(A) the overall condition of school facilities in the local educational agency, including health and safety problems;

(B) the capacity of the local educational agency's schools to house projected enrollments; and

(C) the extent to which the local educational agency's schools offer the physical infrastructure needed to provide a high-quality education to all students.

(2) A local educational agency need not conduct a new survey under paragraph (1) if it has previously completed a survey that meets the requirements of that paragraph and that the Secretary finds is sufficiently recent for the purpose of carrying out this part.

(d) APPLICATION CONTENTS.—Each local application under this part shall include—

(1) an identification of the local agency to receive the grant under this part;

(2) a summary of the results of the survey of school facility needs, as described in subsection (c);

(3) a description of how the local agency will implement its program under this part;

(4) a description of the criteria the local agency has used to determine which construction projects to support with grant funds;

(5) a description of the construction projects that will be supported with grant funds;

(6) a description of the mechanisms that will be used to finance construction projects supported by grant funds;

(7) a requested level of Federal subsidy, with a justification for that level, for each construction project to be supported by the grant, in accordance with section 128(a), including the financial and demographic information the Secretary may require;

(8) a description of the steps the agency will take to ensure that facilities constructed or improved with funds under this part will be adequately maintained;

(9) an assurance that the agency will use its grant only to supplement the funds that the locality would spend on school construction and renovation in the absence of a grant under this part, and not to supplant those funds;

(10) an assurance that, during the four-year period beginning with the year the local educational agency receives its grant, its expenditures for school construction (which, at that agency's option, may include private contributions) will be at least 125 percent of its expenditures for that purpose for the four preceding years; and

(11) other information and assurances that the Secretary may require.

(e) WAIVER OF REQUIREMENT TO INCREASE EXPENDITURES.—The Secretary may waive or modify the requirement of subsection (d)(10) for a local educational agency that demonstrates to the Secretary's satisfaction that that requirement is unduly burdensome because that agency has incurred a particularly high level of school construction expenditures during the previous four years.

FORMULA GRANTS

SEC. 126. (a) ALLOCATIONS.—The Secretary shall allocate the funds available under section 105(b)(2) to the local educational agencies identified under section 121(a) on the basis of their relative allocations under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) in the most recent year for which that information is available to the Secretary.

(b) REALLOCATIONS.—If a local educational agency does not apply for its allocation, applies for less than its full allocation, or fails to submit an approvable application, the Secretary may reallocate all or a portion of its allocation, as the case may be, to the remaining local educational agencies in the same proportions as the original allocations were made to those agencies under subsection (a).

COMPETITIVE GRANTS

SEC. 127. (a) GRANTS AUTHORIZED.—The Secretary shall use funds available under section 105(b)(3) to make additional grants, on a competitive basis, to recipients of formula grants under section 126.

(b) ADDITIONAL APPLICATION MATERIALS.—Any eligible applicant under section 126 that wishes to receive additional funds under this section shall include in its application under section 125 the following additional information:

(1) The amount of funds requested under this section, in accordance with ranges or limits that the Secretary may establish based on factors such as relative size of the eligible applicants.

(2) A description of the additional construction activities that the applicant would carry out with those funds.

(3) Information on the current financial effort the applicant is making for elementary and secondary education, including support from private sources, relative to its resources.

(4) Information on the extent to which the applicant will increase its own (or other public or private) spending for school construction in the year in which it receives a grant under this section, above the average annual amount for construction activity during the preceding four years.

(5) A description of the energy efficiency and the effect on the environment of the projects that the applicant will undertake, both with its grant under this section and its grant under section 126, and of the extent to which those projects will use cost-efficient architectural design.

(6) Other information that the Secretary may require.

(c) SELECTION OF GRANTEES.—The Secretary shall select grantees under this section on the basis of criteria, consistent with the purpose of this Act, that the Secretary may establish, which shall include—

(1) the relative need of applicants, as demonstrated by inadequate educational facilities and a low level of resources to meet their school construction needs;

(2) the commitment of applicants to meet their school construction needs and the leveraging effect that assistance under this part would have, as demonstrated by the additional resources that they will provide, from non-Federal sources, to meet those needs, in accordance with subsection (b)(4).

AMOUNT OF FEDERAL SUBSIDY

SEC. 128. (a) AMOUNT OF FEDERAL SUBSIDY.—For each construction project assisted under this part, the Secretary shall determine the amount of the Federal subsidy in accordance with section 117(a).

(b) NON-FEDERAL SHARE.—A grantee under this part may use any non-Federal funds, including State, local, and private-sector funds, for the financing costs that are not covered by the Federal subsidy under subsection (a).

SEPARATE FUNDS OR ACCOUNTS; PRUDENT INVESTMENT

SEC. 129. (a) SEPARATE FUNDS OR ACCOUNTS REQUIRED.—Each grantee under this part shall deposit the grant proceeds in a separate fund or account, from which it shall make bond repayments and pay other expenses allowable under this part.

(b) PRUDENT INVESTMENT REQUIRED.—Each granteee under this part shall—

(1) invest the grant funds in a fiscally prudent manner, in order to generate amounts needed to make repayments on bonds and other forms of indebtedness; and

(2) notwithstanding section 6503 of title 31, United States Code or any other law, use the proceeds of that investment to carry out this part.

LOCAL REPORTS

SEC. 130. (a) REPORTS REQUIRED.—(1) Each grantee under this part shall report to the Secretary on its activities under this part, in the form and manner the Secretary may prescribe.

(2) If the local educational agency is not the grantee under this part, the grantee's report shall include the approval of the local educational agency or its comments on the report.

(b) CONTENTS.—Each report shall—

(1) describe the grantee's implementation of this part, including how it has met the requirements of this part;

(2) identify the specific school facilities constructed, renovated, or modernized with support from the grant, and the mechanisms used to finance those activities; and

(3) other information the Secretary may require.

(c) FREQUENCY.—(1) Each grantee shall submit its first report under this section not later than 24 months after it receives its grant under this part.

(2) Each grantee shall submit an annual report for each of the three years after submitting its first report, and subsequently shall submit periodic reports as long as it is using grant funds.

TITLE II—GENERAL PROVISIONS

TECHNICAL EMPLOYEES

SEC. 201. For the purpose of carrying out this Act, the Secretary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, may appoint not more than 10 technical employees who may be paid without regard to the provisions of chapter 51 and subchapter IV of chapter 5 of that title relating to classification and General Schedule pay rates.

WAGE RATES

SEC. 202. (a) PREVAILING WAGE.—The Secretary shall ensure that all laborers and mechanics employed by contractors and subcontractors on any project assisted under this Act are paid wages at rates not less than those prevailing as determined by the Secretary of Labor in accordance with the Act of March 3, 1931, as amended (40 U.S.C. 276a et seq.). The Secretary of Labor has, with respect to this section, the authority and functions established in Reorganization Plan Numbered 14 of 1950 (effective May 24, 1950, 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(b) WAIVER FOR VOLUNTEERS.—Section 7305 of the Federal Acquisition Streamlining Act of 1994 (40 U.S.C. 276d-3) is amended—

(1) in paragraph (5), by striking out the "and" at the end thereof'

(2) in paragraph (6), by striking out the period at the end thereof and inserting a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(7) The Partnership Rehabilitate America's Schools Act of 1997.".

NO LIABILITY OF FEDERAL GOVERNMENT

SEC. 203. (a) NO FEDERAL LIABILITY.—Any financial instruments, including but not limited to contracts, bonds, bills, notes, certificates of participation, or purchase or lease arrangements, issued by States, localities or instrumentalities thereof in connection with any assistance provided by the Secretary under this Act are obligations of such States, localities or instrumentalities and not obligations of the United States and are not guaranteed by the full faith and credit of the United States.

(b) NOTICE REQUIREMENT.—Documents relating to any financial instruments, including but not limited to contracts, bonds, bills, notes, offering statements, certificates of participation, or purchase or lease arrangements, issued by States, localities or instrumentalities thereof in connection with any assistance provided under this Act, shall include a prominent statement providing notice that the financial instruments are not obligations of the United States and are not guaranteed by the full faith and credit of the United States.

CONSULTATION WITH SECRETARY OF THE TREASURY

SEC. 204. The Secretary shall consult with the Secretary of the Treasury in carrying out this Act.

U.S. DEPARTMENT OF EDUCATION,
THE SECRETARY
March 13, 1997.

Hon. ALBERT GORE, Jr.,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed for consideration of the Congress is the Partnership to Rebuild America's Schools Act of 1997, a bill that would provide a one-time Federal stimulus to help States and localities bring all public school facilities up to acceptable standards and build the additional schools needed to serve increasing enrollments. Also enclosed is a section-by-section analysis summarizing the contents of the bill. I am sending an identical letter to the Speaker of the House.

Mr. President, a number of factors have led the Administration to conclude that the Federal Government must assist the States and localities in providing the school facilities that our children will need if they are to achieve to challenging educational standards. First of all, recent General Accounting Office reports have documented the deplorable condition of too many of the Nation's schools. According to the GAO, one-third of all schools, serving more than 14 million students, need extensive repair or renovation of one or more buildings. Students are attending schools that have antiquated heating,

plumbing, and electrical systems and even fail to meet local health and safety codes. Some schools do not provide full access to individuals with disabilities, and many do not have the infrastructure needed to adopt new educational technologies. All of these problems are most prevalent in urban districts.

In addition to making repairs and renovations to their existing schools, many districts will have to build new schools in order to accommodate increasing enrollments. In fact, the Department has projected that States and localities will need to build 6,000 more schools in order to serve an additional 2.9 million students who will enroll in the next decade. This need will put further pressure on already strained school budgets.

Clearly, school construction is, and will remain, primarily a State and local responsibility, and the vast majority of facilities needs will have to be met with non-Federal resources. Unfortunately, however, for a variety of reasons State and local governments have not been making substantial progress even in clearing the existing backlog of construction needs. The Federal Government can play a crucial role in addressing this problem by providing limited resources, on a one-time basis, in a manner that spurs States, communities, and even the private sector to bear the burden and provide adequate school facilities for all children. That is the purpose of the enclosed legislation.

In order to have maximum impact, our bill would leverage State, local, and private support for school construction, rather than paying for 100 percent of the cost of construction projects. The proposal would provide interest subsidies for school construction bonds, or other financing mechanisms, to States and major urban school districts. States would, in turn, pass these subsidies along to localities, use them to reduce the servicing costs of State bonds or other financing vehicles, use them to capitalize State revolving funds for school construction, or use them for other, similar purposes. The maximum amount of Federal subsidy would be the equivalent of 50 percent of the interest cost on bonds. Through this mechanism, every dollar of Federal money would be matched by a minimum of three dollars of State, local, or private money.

The Federal Government would not determine the specific construction projects that would be funded. Rather, States and localities would use the Federal subsidy for the costs of construction projects that reflect their highest needs, such as addressing health and safety problems or problems with air quality, plumbing, heating, and lighting; removal of architectural barriers in order to ensure access for individuals with disabilities; projects to increase energy efficiency; construction to facilitate the use of modern educational technologies; and new construction needed to accommodate increased enrollments. While the State and local recipients would have the flexibility to determine which of these types of construction activities are their highest priority, they would have to base their use of the Federal funds on a thorough survey of State or local school construction needs and use the funds in a manner consistent with several other general criteria such as, at the State level, awarding the subsidy to communities with the greatest construction needs and the least ability to meet those needs with their own resources.

Under the program, the Department would allocate one-half of a $5 billion mandatory appropriation to States using the existing "Title I" basic grants formula. The remainder would flow directly to the 100 districts that enroll the greatest numbers of children living in poverty; those urban districts, according to the GAO data, have far and away the greatest school construction needs. Of the amount available for direct assistance to urban districts, the Department would allocate seventy percent by formula, again on a Title I basis, and make the remainder available competitively to districts that have particularly severe needs and are willing to provide the most support for infrastructure improvements from non-Federal resources.

Under both the State and local programs, a critical objective would be to spur additional construction paid for with non-Federal dollars. For this reason, the bill would prohibit recipients from using the Federal funds to supplant State and local support for school construction. In addition, each State or locality receiving assistance would have to assure the Department that it will increase, over a four-year period, the amount of school construction paid for with non-Federal funds compared to the level expended during the preceding four-year period. These provisions would ensure that a one-time Federal stimulus has an impact far beyond the immediate benefit attributable to the Federal expenditures.

Administration of the program would be kept simple. The Department would make a single award to each State and locality receiving direct assistance. We would allow the recipients to invest the Federal funds in a prudent manner, and use the returns from that investment to meet bond payments and other costs. All of the mandatory appropriation would become available in fiscal year 1998, and all the payments would be made within a four-year period.

To summarize, our bill reflects the following principles: (1) The Federal Government should make available a one-time $5 billion mandatory appropriation to address the major national problem of inadequate school infrastructure; (2) The Federal funds will have their greatest impact if they are used to leverage additional State, local, and private effort rather than for direct support for the entire cost of construction projects; (3) Because the largest cities have the most school construction needs, and often the fewest resources for meeting those needs, they should receive a major share of the funding; and (4) States and localities should have the flexibility to use the Federal subsidy to carry out the construction projects they deem most important, but they should do so only after completing a careful survey of their construction needs. Further, both the States and the Federal Government should direct the subsidy to the most needy communities.

I urge the Congress to take prompt and favorable action on this proposal. Its enactment would spur States and communities nationwide to bring their school facilities up to the standard our children need and deserve.

The Office of Management and Budget advises that there is no objection to the submission of this proposal to the Congress and that its adoption would be in accord with the program of the President.

Yours sincerely,

RICHARD W. RILEY.

IMPACT OF INADEQUATE SCHOOL FACILITIES ON STUDENT LEARNING

A number of studies have shown that many school systems, particularly those in urban and high-poverty areas, are plagued by decaying buildings that threaten the health, safety, and learning opportunities of students. Good facilities appear to be an important precondition for student learning, provided that other conditions are present that support a strong academic program in the school. A growing body of research has linked student achievement and behavior to the physical building conditions and overcrowding.

PHYSICAL BUILDING CONDITIONS

Decaying environmental conditions such as peeling paint, crumbling plaster, nonfunctioning toilets, poor lighting, inadequate ventilation, and inoperative heating and cooling systems can affect the learning as well as the health and the morale of staff and students.

Impact on student achievement

A study of the District of Columbia school system found, after controlling for other variables such as a student's socioeconomic status, that students' standardized achievement scores were lower in schools with poor building conditions. Students in school buildings in poor condition had achievement that was 6% below schools in fair condition and 11% below schools in excellent condition. (Edwards, 1991)

Cash (1993) examined the relationship between building condition and student achievement in small, rural Virginia high schools. Student scores on achievement tests, adjusted for socioeconomic status, was found to be up to 5 percentile points lower in buildings with lower quality ratings. Achievement also appeared to be more directly related to cosmetic factors than to structural ones. Poorer achievement was associated with specific building condition factors such as substandard science facilities, air conditioning, locker conditions, classroom furniture, more graffiti, and noisy external environments.

Similarly, Hines' (1996) study of large, urban high schools in Virginia also found a relationship between building condition and student achievement. Indeed, Hines found that student achievement was as much as 11 percentile points lower in substandard buildings as compared to above-standard buildings.

A study of North Dakota high schools, a state selected in part because of its relatively homogeneous, rural population, also found a positive relationship between school condition (as measured by principals' survey responses) and both student achievement and student behavior. (Earthman, 1995)

McGuffey (1982) concluded that heating and air conditioning systems appeared to be very important, along with special instructional facilities (i.e., science laboratories or equipment) and color and interior painting, in contributing to student achievement. Proper building maintenance was also found to be related to better attitudes and fewer disciplinary problems in one cited study.

Research indicates that the quality of air inside public school facilities may significantly affect students' ability to concentrate. The evidence suggests that youth, especially those under ten years of age, are more vulnerable than adults to the types of contaminants (asbestos, radon, and formaldehyde) found in some school facilities (Andrews and Neuroth, 1988).

Impact on teaching

Lowe (1988) interviewed State Teachers of the Year to determine which aspects of the physical environment affected their teaching the most, and these teachers pointed to the availability and quality of classroom equipment and furnishings, as well as ambient features such as climate control and acoustics

as the most important environmental factors. In particular, the teachers emphasized that the ability to control classroom temperature is crucial to the effective performance of both students and teachers.

A study of working conditions in urban schools concluded that "physical conditions have direct positive and negative effects on teacher morale, sense of personal safety, feelings of effectiveness in the classroom, and on the general learning environment." Building renovations in one district led teachers to feel "a renewed sense of hope, of commitment, a belief that the district cared about what went on in that building." In dilapidated buildings in another district, the atmosphere was punctuated more by despair and frustration, with teachers reporting that leaking roofs, burned out lights, and broken toilets were the typical backdrop for teaching and learning." (Corcoran et al., 1988)

Corcoran et al. (1988) also found that "where the problems with working conditions are serious enough to impinge on the work of teachers, they result in higher absenteeism, reduced levels of effort, lower effectiveness in the classroom low morale, and reduced job satisfaction. Where working conditions are good, they result in enthusiasm, high morale, cooperation, and acceptance of responsibility."

A Carnegie Foundation (1988) report on urban schools concluded that "the tacit message of the physical indignities in many urban schools is not lost on students. It bespeaks neglect, and students' conduct seems simply an extension of the physical environment that surrounds them." Similarly, Poplin and Weeres (1992) reported that, based on an intensive study of teachers, administrators, and students in four schools, "the depressed physical environment of many schools . . . is believed to reflect society's lack of priority for these children and their education."

OVERCROWDING

Overcrowded schools are a serious problem in many school systems, particularly in the inner cities, where space for new construction is at a premium and funding for such construction is limited. As a result, students find themselves trying to learn while jammed into spaces never intended as classrooms, such as libraries, gymnasiums, laboratories, lunchrooms, and even closets. Although research on the relationship between overcrowding and student learning has been limited, there is some evidence, particularly in high-poverty schools, that overcrowding can have an adverse impact on learning.

A study of overcrowded schools in New York City found that students in such schools scored significantly lower on both mathematics and reading exams than did similar students in underutilized schools. In addition, when asked, students and teachers in overcrowded schools agreed that overcrowding negatively affected both classroom activities and instructional techniques. (Rivera-Batiz and Marti, 1995)

Corcoran et al. (1988) found that overcrowding and heavy teacher workloads created stressful working conditions for teachers and led to higher teacher absenteeism.

Crowded classroom conditions not only make it difficult for students to concentrate on their lessons, but inevitably limit the amount of time teachers can spend on innovative teaching methods such as cooperative learning and group work or, indeed on teaching anything beyond the barest minimum of required material. In addition, because teachers must constantly struggle simply to maintain order in an overcrowded classroom, the likelihood increases that they will suffer from burnout earlier than might otherwise be the case.

CASE STUDIES

BROWARD COUNTY/FT. LAUDERDALE

The problem

Broward County is located in Southern Florida and is the fifth largest school district in the nation. Its schools suffer from severe overcrowding: 34,000 students without permanent desks; approximately 10,000 new students added to the school system each year; and in the past nine years, Broward has built 36 new schools and rebuilt 23 schools, and continues to have a difficult time meeting its demand.

Broward would have to build a new school every month to meet this demand adequately. Citing the approximately 2,000 portable classrooms in the county, the budget director for the county public schools described Broward as "the portable capital of the world." One high school has 46 portable classrooms in use during this school year alone.

Needs and available resources

A recent needs analysis estimated Broward's capital construction needs at $2.4 billion, $200 million of which is needed for technology improvements alone. The last bond approved for school construction was for $317 million in 1987. Mobilizing local support for new tax or bond referenda has been difficult. In fact, in September, 1995, a tax referendum to increase the sales tax by one penny to raise $1 billion for school construction was defeated.

Potential impact of the Partnership to Rebuild America's Schools Act

Under the President's legislative proposal, approximately $16.4 million would be allocated to the county school district. Broward could use these funds to subsidize interest costs for a local bond to cover a substantial part of its school construction costs. This funding could support nearly $70 million in leveraged funds to assist in rebuilding a number of local schools.

These new funds would be used primarily to ease overcrowding in schools by funding new schools as well as renovations and additions to existing schools that would expand seating capacity. Broward also wants to reduce its reliance on portable classrooms due to the fact that—with a life expectancy of approximately 20 years—portables are not a good long-term investment compared to a traditional school structure. In addition, portables cannot be wired for technology the same way as a traditional classroom.

LOS ANGELES UNIFIED SCHOOL DISTRICT

I. The problem/current needs

The Los Angeles Unified School District is one of the largest institutions of any kind in the nation with an enrollment of 670,000 students. The prevalence of aging school facilities in Los Angeles poses a number of expensive problems for the district, which estimates its current deferred maintenance costs at more than $600 million. A majority of Los Angeles school buildings are more than 40 years old. As a result, most schools are not wired for technology, and most are not equipped with modern security systems, telecommunications systems, or air conditioning. Many facilities face similar repair needs—roof replacement is needed for 245 schools, repainting at more than 600 schools, boiler replacement at more than 50 schools, and playground re-pavement at almost 400 schools.

A rebounding economy and an influx of immigrants is driving steady growth in the Los Angeles schools. The number of students grew by 18,000 this year, and school officials predict enrollment will grow another 15,000 next year.

A State of California mandate to lower class size in the earliest grades consumed the limited number of vacant classrooms that existed. The need for more classrooms is illustrated by the fact that the district transports about 12,000 students a day to more distant schools because of overcrowding in their area school.

II. Needs versus available resources

The State of California school construction program uses two mechanisms to provide funds to local districts for new construction and modernization. In the more common approach, the state pays one-half of the "allowable" costs as defined by the state. Otherwise, the state pays the full bill, but in a very limited number of projects. Additionally, the state offers a small deferred maintenance program in which it provides matching funds of up to one-half of 1 percent of the district's general funds. In recent years, the Los Angeles district has been eligible for about $17 million through this program, but the state has not fully funded it in recent budgets.

District officials in Los Angeles report that a significant impediment to raising funds for construction is the requirement imposed by the state Constitution, which requires a two-third majority vote for the passage of school bonds financed by property tax increases. The last time the Los Angeles Unified School District passed a bond measure was 1971. (This vote came shortly after the Sylmar earthquake closed many schools and raised serious safety questions about others. The measure received 66.5 percent of the vote, but under state law, this bond required only a majority vote because it pertained to buildings deemed structurally unsafe.)

III. The impact of the President's initiative

A $2.4 billion school bond measure on the ballot in November 1996 for school construction and modernization received 65.5 percent of the vote, just missing the two-thirds majority needed for passage. In December 1996, the board of Education voted to put another $2.4 billion bond measure on the ballot in April 1997. The President's initiative could accelerate the development of the long overdue projects that would be financed by this bond.

THE STATE OF MAINE

I. The problem/current needs

Maine is struggling to cope with two major factors related to school facilities—booming economy driving explosive growth in the southern part of the state, and the continued use of one-room schools and other antiquated buildings—some dating 100 years—throughout the state.

The Bowdoin Community School offers an instructive example. The dozen portable classrooms now in use exceed the number of permanent classrooms inside the main structure. A proposed expansion of the school has been shelved since 1987 because of insufficient state funding to support the project.

II. Needs versus available resources

Support from the state of Maine for local school construction projects is restricted to debt service subsidies, and the level of available support is extremely limited. In fiscal 1998, school districts requested such subsidies for 83 projects. However, the $65.8 million authorized by the state is expected to be

consumed by the four projects given the highest priority.

Schools districts in Maine are generally successful in getting voter approval for bond measures, but most districts in the state cannot cover the total cost of the bond. The lack of support from the state for debt service is cited as the leading reason why school districts fall short in raising financing, leading to the deferment of these sorely needed projects.

III. The potential impact of the Presidential Initiative

The executive director of the Maine Municipal Bond Bank noted that the President's school construction initiative could help Maine schools in two ways. The state could choose to use its allocation all at once to supplement its debt service subsidy program, or it could use that money to establish a revolving loan fund that would commit its revenues to debt service subsidies.

THE STATE OF MARYLAND

I. The problem/current needs

There are two primary problems facing Maryland school facilities: aging structures and rising enrollments.

A review of the list of Capital Improvement requests to the state for the coming year reveals the extent of aging school facilities. Requests are filled with descriptions of items in need of repair or replacement, such as roofs as much as 44 years old, HVAC systems that are 25 years old or more, boilers and chillers that date to the 1950s, and windows and doors in use since the 1960s.

Over the last decade, enrollment in Maryland schools has grown by approximately 150,000 students. State officials expect enrollment to continue climbing by another 30,000 or so annually over the next five to ten years. Overall, local districts requested approximately $310 million for 459 construction and renovation projects for FY 1998. While a district might request more than one project for a school, these figures suggest that districts are seeking assistance with construction and renovation projects that could affect a third of the state's 1,280 schools.

II. Needs versus available resources

The Maryland State Public School Construction Program is designed to help local districts with costs related to planning and funding of school construction and renovation projects.

Early in the program, the state covered 100 percent of eligible costs for approved projects. However, since the mid-1980s, the state use a sliding scale based on need to determine how much assistance a district receives.

Since the program's inception,the amount of funds requested each year by local districts has exceeded program allocations. For example, in FY 73, the program funded 72 percent of district requests—the highest proportion in the program's history. In FY 89, the state supported an all-time low of 24 percent of requests. In the current fiscal year, the state funded 51 percent of requests, totaling $274 million.

III. The potential impact of the Presidential initiative

State officials see three possibilities for the use of federal funds from the proposed School Construction Initiative.

First, the funds could subsidize additional state general obligation bonds. Therefore, the amount of assistance going to local districts with eligible costs would increase, and more projects would be funded. The federal funds could be targeted at poorer districts with larger projects that have been delayed due to fiscal constraints. It should be noted that an increase in the state funds for the Public School Construction Program might lead more districts to seek state assistance for additional projects. At this time, there are projects for which local districts do not submit requests because the district senses these projects will be deferred due to state fiscal constraints.

A second option would allow the state to use a portion of the funds to subsidize a combination of additional state bonds and country general obligation bonds. Finally, the state could use all the federal funds to subsidize additional county general obligation bonds.

NEW YORK CITY SCHOOL DISTRICT

I. The problem/current needs

New York is experiencing enrollment growth of 20,000 to 23,000 students a year. In addition, more than half of the over 1,000 school buildings are 50 years old or more. The district must upgrade these facilities and accommodate its burgeoning student population.

There are limits to the amount of money the district can raise through general obligation bonds, and this mechanism is not sufficient to meet the district's needs. There is a state constitutional limit on the amount of debt the district can issue (as a percentage of total assessed property value), and the district is running up against this limit.

The fiscal year 1997 capital expenditures budget for the Board of Education is just over $1 billion, out of a total city capital budget of just over $4 billion. A proposed 10-year capital plan has just been put forth for $12.6 billion, which includes an amount contingent on receipt of federal funds. One of the main emphasis of this plan is to address the district's overcrowding, using strategies such as new construction, other ways of handling seating capacity, and converting some schools to a year-round schedule, which could increase seating capacity by 25 to 33 percent.

II. The potential impact of the Presidential initiative

New York expects that it could leverage federal funds to address several needs. Among the most dire needs is for additional seats for children. The districts proposed 10-year plan was increased by about $700 million to address seating capacity needs. The district envisions six different avenues for the use of this money to increase seating capacity: Leasing new facilities, transportables, modular construction, rehabilitation of existing facilities to increase size, new construction, and converting schools to a year-round schedule (which necessitates putting in air-conditioning.)

PHILADELPHIA SCHOOL DISTRICT

The problem/current needs

The Philadelphia story has two strands. First, the district estimates that it will need about two-thirds of a billion dollars to bring its 257 existing building sites up to standard. This includes major renovations, repairs, improvements, and technology needs (schools need to be wired for computers, but 60 of Philadelphia's schools are over 70 years old.)

Second, to accommodate expected population growth, approximately one-quarter of a billion dollars in additional funding may be necessary. In the past five years, the public school population has grown 9.2 percent, and in the past seven years it has grown 12.6 percent. The district expects this growth to continue by 1.4 percent the next year and by 2.5 percent the following year. In one area, the district deals with overcrowding through a combination of classrooms under stairwells, walling off the ends of hallways to create classrooms, and portables.

II. Needs versus available resources.

The district knows that its capital needs in the next 5 to 10 years seriously exceed its current budgeted capital capacity. A Long Range Facilities Plan is being developed, and it is expected that the total need will ultimately be between $1–$1.4 billion.

III. The potential impact of the Presidential Initiative

The district says that federal funds could be extremely helpful by supporting preventive maintenance projects. With shrinking operation budgets, it is preventive maintenance that gets cut from the budget. These projects include minor roof and gutter repair, HVAC system cleaning, and yearly boiler maintenance. These activities get pushed aside for emergency projects and educational needs. Yet today's preventive maintenance project is tomorrow's capital project. Roofs, boilers, and heating systems wear out years before their time because preventive maintenance funds are scarce. The failure of these systems also causes additional capital damage, such as water and pipe damage. Much of this could be avoided and long-term capital budget could be brought down with additional resources for preventive maintenance.

SANTA ANA UNIFIED SCHOOL DISTRICT

I. The problem/current needs

Santa Ana is an extremely densely populated area. In its 24 square miles, there are 350,000 resident, and 52,000 students. There is a school approximately every two blocks.

The primary problem in the district is school overcrowding, the result of a lack of construction funding during a period of raid enrollment growth. The district has grown from 31 thousand student in 1980 to 52,000 students in 1996.

The school district has converted 22 of 31 elementary schools and four of seven intermediate schools to multi-track, year-round schedules. Although other school districts in California and around the country use year-round schooling, it is unusual to have such a high percentage of schools on this tract. The district has 534 portable classrooms on existing sites, which is the equivalent of 24 free standing elementary schools. Santa Ana estimates that it now spends $1 million to lease portable classrooms.

A secondary, but also severe problem is maintaining ill-equipped and deteriorating facilities. The district prepared a state-mandated five-year plan to deferred maintenance needs, which is updated annually—the currently version projects a $15 million need.

II. Needs versus available resources

Santa Ana Unified has a need for three elementary schools plus a new high school. Enrollment growth has averaged over 1300 students annually since 1980. The need is accentuated by the fact that the State School Building Program is, "broke" and it is not clear when there will be another bond measure.

III. The potential impact of the President's initiative

President Clinton's initiative would potentially provide major benefits to the Santa Ana Community. The district needs adequate classrooms equipped with up-to-date education technology will be available to educate the rapidly growing student population. If the district received an estimated six million dollars from the federal government, it

could leverage those funds to pay for additional elementary schools.

Ms. MOSELEY-BRAUN. I would also like to call to my colleagues' attention the reports and the work done by the General Accounting Office recently, both with regard to the condition of America's schools, State efforts to address the issue of crumbling schools, and the most recent GAO report on school finance generally. These reports speak to the ability or the efforts taken by State and local governments to address the disparities between wealthy and poor and middle-class school districts.

The fact of the matter is that this disparity, this gap in school funding, does not serve our national interest, does not serve the interest of taxpayers, and does not serve the interest of our children.

I believe we have an obligation to put aside the old debates of whether or not school funding should happen here or happen there, and we should look at developing a partnership in which everybody plays a part, in which all levels of government collaborate, in which communities, parents, property taxpayers, and income taxpayers cooperate to prepare our people for the 21st century and the challenges they face.

Mr. KENNEDY. Mr. President, I give my strong support to President Clinton's Partnership to Rebuild America's Schools Act of 1997, introduced today by Senator MOSELEY-BRAUN.

The Nation's schools are facing enormous problems of physical decay. Fourteen million children in one-third of the schools are learning in substandard school buildings. Half the schools have at least one unsatisfactory environmental condition.

Massachusetts is no exception. Forty-one percent of Massachusetts schools report that at least one building needs extensive repair or should be replaced; 75 percent report serious problems in buildings, such as plumbing or heating defects; 80 percent have at least one unsatisfactory environmental factor.

It is difficult to teach or learn in dilapidated classrooms. Student enrollments are at an alltime high and are continuing to rise. We cannot tolerate a situation in which facilities deteriorate while enrollments escalate.

GAO estimates that schools need $112 billion just to repair their facilities. Obviously, the Federal Government cannot meet all of these needs. The Partnership to Rebuild America's Schools Act encourages State, local, and private support by providing interest subsidies for school construction bonds. The Federal Government will pay up to 50 percent of interest on bonds used to finance school repair, renovation, modernization, and construction.

Half of the $5 billion in Federal funds earmarked for this program over the next four years will be allocated to States using the existing title I formula. States and localities will distribute these funds to communities with the greatest construction needs and the least ability to meet their needs with their own resources. Massachusetts would receive $48 million for grants to local communities.

The rumaining Federal funds will be distributed by the U.S. Department of Education among the 100 school districts that enroll the greatest number of students living in poverty. Thirty percent of this funding will be allocated competitively to school districts that have particularly severe needs and obtain the most support for their construction projects from non-Federal sources. Under this part of the bill, Massachusetts would receive an estimated $25 million.

I hope that the Partnership To Rebuild America's Schools Act will receive the bipartisan support it deserves, so that it can be in place for the beginning of the next academic year. Investing in education is investing in a stronger America here at home and around the world. I look forward to working with my colleagues on both sides of the aisle to enact this important measure.

By Mr. CAMPBELL:

S. 457. A bill to amend section 490 of the Foreign Assistance Act of 1961 to provide alternative certification procedures for assistance for major drug producing countries and major drug transit countries; to the Committee on Foreign Relations.

THE MEXICO PROBATIONARY CERTIFICATION ACT

Mr. CAMPBELL. Mr. President, this month Congress has been considering the important issue of whether to uphold or overturn the President's certification of Mexico as fully cooperating with the United States to fight drug trafficking. I am concerned that without congressional action, the Senate must choose between two less than ideal options: First, to support the President's certification of Mexico and continue business as usual, thereby downplaying serious deficiencies in Mexico's efforts; or second, to decertify Mexico, with or without a waiver, which might destabilize an important country along our southern border.

Under current law, notice provided to the target country is often too late and not specific enough to fix the problems. Moreover, access to more timely and specific information would assist Congress in exercising its legislative and oversight responsibilities.

Therefore, today I propose a bill to provide an alternative approach. This legislation would provide the administration a new option to certify countries such as Mexico on probationary status for 7 months, which extends from March 1 through September 30, the end of the fiscal year. However, during this time period, the country on probationary certification is expected to comply with certain conditions stipulated by the President. If these conditions are not met at the end of this 7-month period, the United States will act firmly, such as by cutting off aid.

This alternative would put countries on notice that the United States has serious concerns about their lack of cooperation. But, it would provide a fair period of time during which those countries could address U.S. concerns.

This constructive notice period would be less disruptive to our bilateral relations. We saw last week some of the damage which could occur in our relationship with Mexico after the House voted to decertify Mexico within 90 days if certain criteria are not met. News reports quoted Mexico's President, Ernesto Zedillo, as stating: "This is where we draw the line. Our sovereignty and dignity as a nation are not negotiable."

My bill also provides better notice to Congress. Under this alternative, Congress would be informed about those specific concerns which the President identified regarding a country's lack of cooperation. Congress also would be able to track that country's progress during the 7-month probationary period and, of course, maintain its prerogative to pass legislation as it deems necessary. I believe this would help avoid the contentious battle in which the Congress and the administration currently are engaged this month over Mexico.

It is no surprise that many Senators feel strongly about decertifying Mexico. Reports indicate that as much as 70 percent of the cocaine entering the United States comes through Mexico; up to 30 percent of the heroin used in the United States comes through Mexico; and 80 percent of imported marijuana comes through Mexico.

Recent developments in that country have exacerbated what is already a serious flow of illegal drugs into the United States. For example, according to a news report in the March 2 San Diego Union Tribune, Mexican authorities are now preventing our DEA agents and law enforcement officers from carrying their weapons into Mexico. In response, the DEA reportedly pulled its agents out of cross-training and intelligence-gathering projects in Mexico along the border. Agents and officers now fear they will become targets for gangs and drug traffickers, especially if Mexico's certification is revoked. This is intolerable.

Further motivating the push to decertify Mexico is the recent arrest of Mexico's drug czar, Gen. Jesus Gutierrez Rebollo, on allegations he was being paid to protect one of Mexico's top drug lords. The general is reported to have extensive drug ties, dating back to at least 1993, at the same time he was supposed to be fighting drug use and trade in his country.

Any information that the general may have possessed has been compromised. Nor is he alone in being corrupt. According to a Los Angeles Times report on March 3, court documents from two drug gang assassins indicate that approximately 90 percent of the law enforcement officers in Tijuana and the State of Baja California in Mexico are corrupt.

These developments raise serious concerns among DEA agents, who cannot adequately do their job if they do not receive the help of their Mexican counterparts. During his testimony before the House Subcommittee on National Security on February 27, 1997, Thomas Constantine, the Administrator of the DEA, called fighting drug trafficking without assistance from other countries nearly impossible.

In light of these disturbing developments, I wrote to the President last Friday expressing my concern with his certification of Mexico. I also urged the administration to take all necessary steps to ensure Mexico does its fair share in controlling the flow of illicit drugs across its border into the United States.

Decertifying Mexico will not make this process any easier. Yet, we cannot risk the implication that we condone Mexico's failed drug policy by fully certifying Mexico without certain conditions. Certification of Mexico in light of the compelling facts of that country's involvement in drug trafficking also makes a mockery of the certification provisions of the Foreign Assistance Act.

In light of these facts, I am concerned that the President has certified Mexico as fully cooperating with the United States. However, I am also concerned that decertifying Mexico could destabilize a country important to us and cause a potential crisis on our southern border. Unfortunately, that is the choice the administration has under existing law.

Therefore, the bill I introduce today would amend the existing law to avoid this type of problem in the future. The current certification process is set forth in section 490 of the Foreign Assistance Act of 1961. It requires the President to submit to Congress by March 1 of each year a list of major illicit drug producing and transiting countries which he certifies are fully cooperating with the United States. This bill offers a good middleground—I urge support.

Under existing law, the President has three options: One, certify a country which has cooperated fully with U.S. anti-drug efforts or has taken adequate steps on its own to comply with the 1988 U.N. antidrug trafficking convention. Two, decertify a country for not fully cooperating. Or three, decertify a country but provide a waiver because it is in the national interests of the United States to continue to provide aid.

Under this law, when a country is decertified, at least 50 percent of U.S. bilateral foreign aid is suspended in the current fiscal year. In fact, that county may lose more than 50 percent of its current funding if the State Department has not yet released the aid. Unless the country is recertified, all U.S. aid is suspended in subsequent fiscal years. And, the United States is required to vote against loans in the multilateral development banks, such as the World Bank and the Inter-American Development Bank.

Congress has 30 days from receipt of the President's certification to enact a joint resolution disapproving the President's action. If Congress passes such a resolution, the President can veto it and require a two-thirds majority vote in Congress to override the veto.

Congress also has its prerogative to pass a resolution with other timeframes, which would be subject to a Presidential veto. We saw this last week when the House passed a resolution to decertify Mexico within 90 days if certain criteria are not met.

On February 28, 1997, the President submitted his annual list to Congress. This report indicated that 23 countries, including Mexico, are certified as fully cooperating; three countries were determined not to be fully cooperating, but were deemed in the national interest—Belize, Lebanon, and Pakistan—and six countries were decertified (Afghanistan, Burma, Colombia, Iran, Nigeria, and Syria.

The impact of this process on Mexico could be dramatic. If Congress were to pass a resolution of disapproval within the 30-day review period and the President does not exercise his waiver authority, the impact would include: Suspension of at least 50 percent of United States assistance for the current fiscal year; total suspension of aid in the next fiscal year, unless Mexico were recertified; and the United State would vote against loans to Mexico in the multilateral development banks. Mexico receives $17 million in bilateral aid from the United States and, according to the Export-Import Bank, 56 applications from Mexico could be affected which total $3.24 billion.

The alternative that I am proposing today provides a middle ground because it revisits the certification issue more often during the course of the year. The President also is given more flexibility in labelling countries more accurately.

I'm also concerned that under existing law, we are giving a free ride to countries which are decertified but then are granted a waiver and continue to receive aid because it is deemed in the national interest of the United States. These waivers, in essence, allow the provision of aid year after year to countries not fully cooperating with the United States. What incentive do these countries have to improve their cooperation?

My legislation builds on the existing carrot and stick approach in the certification process. This type of approach has been successful with other problems in the past, and I think it would go a long way to avoid similar controversies in the future like the one we have seen surrounding the Mexico certification this month.

Under my bill, the carrot is certification, although for a finite period of time of 7 months. During this probationary period, all U.S. aid continues to flow and the United States remains supportive in international development banks. The President also stipulates which specific conditions must be met by that country to improve its cooperation with the United States and to continue receiving U.S. aid. Not only is sufficient notice provided to the country, but to the Congress as well.

The stick is a penalty similar to that under existing law. If after 7 months the country does not comply with the stipulations made by the President to improve its cooperation with the United States, 100 percent of U.S. bilateral aid is cut off. The United States also would vote against aid in the multilateral development banks if the country does not comply with U.S. stipulations, as provided for under current law. These penalties would remain in effect until the President notifies Congress that the country has complied with the stipulations made in the President's original probationary certification.

In my opinion, this alternative approach would force fuller compliance by countries and, in future cases similar to Mexico, help avoid a potential crisis in those countries.

We need to send a very strong message to our neighbors in Mexico and similarly situated countries when we do not believe that they are fully cooperating with United States efforts to combat drug trafficking. But, to risk a crisis along our own border is asking for greater trouble.

I believe that a compromise solution, as outlined in my proposal, is the most reasonable way to address similar circumstances in the future, and I urge my colleagues to support this bill.

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. 457

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

SECTION 1. ALTERNATIVE CERTIFICATION PROCEDURES FOR ASSISTANCE FOR MAJOR DRUG PRODUCING AND DRUG TRANSIT COUNTRIES.

(a) IN GENERAL.—Section 490 of the Foreign Assistance Act of 1990 (22 U.S.C. 2291j) is amended by adding at the end the following:

"(i) ALTERNATIVE CERTIFICATION PROCEDURES.—

"(1) IN GENERAL.—In lieu of submitting a certification with respect to a country under subsection (b), the President may submit the certification described in paragraph (2). The President shall submit the certification under such paragraph at the time of the submission of the report required by section 489(a).

"(2) CERTIFICATION.—A certification with respect to a country under this paragraph is a certification specifying—

"(A) that the withholding of assistance from the country under subsection (a)(1) and the opposition to assistance to the country under subsection (a)(2) in the fiscal year concerned is not in the national interests of the United States; and

"(B) the conditions which must be met in order to terminate the applicability of paragraph (4) to the country.

"(3) EFFECT OF CERTIFICATION IN FISCAL YEAR OF CERTIFICATION.—If the President submits a certification with respect to a country under paragraph (1) for a fiscal year—

"(A) the assistance otherwise withheld from the country pursuant to subsection (a)(1) may be obligated and expended in that fiscal year; and

"(B) the requirement of subsection (a)(2) to vote against multilateral development bank assistance to the country shall not apply to the country in that fiscal year.

"(4) EFFECT OF CERTIFICATION IN LATER FISCAL YEARS.—

"(A) IN GENERAL.—Subparagraph (B) shall apply to a country covered by a certification submitted under this subsection during the period beginning on October 1 of the year in which the President submits the certification and ending on the date on which the President notifies Congress that the conditions specified with respect to the country under paragraph (2)(B) have been met.

"(B) PROHIBITION ON ASSISTANCE.—

"(i) BILATERAL ASSISTANCE.—During the applicability of this subparagraph to a country, no United States assistance allocated for the country in the report required by section 653 may be obligated or expended for the country.

"(ii) MULTILATERAL ASSISTANCE.—During the applicability of this subparagraph to a country, the Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vote against any loan or other utilization of the funds of such institution to or by the country.

"(5) DEFINITION.—For purposes of this subsection, the term 'multilateral development bank' shall have the meaning given the term in subsection (a)(2).".

(b) CONFORMING AMENDMENTS.—Subsection (a) of such section is amended by striking "subsection (b)" each place it appears and inserting "subsections (b) and (i)".

By Mr. FAIRCLOTH (for himself, Mr. KYL, Mr. WARNER, Mr. LUGAR, Mr. SHELBY, Mr. INHOFE, Mr. BENNETT, Mr. CRAIG, Mr. ENZI and Mr. HAGEL):

S. 458. A bill to provide for State housing occupancy standards, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE HOUSING PROTECTION ACT

Mr. FAIRCLOTH. Mr. President, I am pleased to introduce today a bill to protect housing. This bill will ensure that all residents have a peaceful, well-maintained, and managed community with the services they deserve.

The Housing Protection Act prohibits the Department of Housing and Urban Development [HUD] from establishing a national occupancy standard and transfers the authority to set those standards to the States. In the absence of a State standard, a two-person-per-bedroom standard would be presumed reasonable.

In 1995, Senator KYL and I introduced this same piece of legislation, after HUD's General Counsel Nelson Diaz issued a memorandum which, in effect, attempted to supplant the reasonable two-person-per-bedroom standard with conditions which could have forced housing owners to accept six, seven, even eight people in a two-bedroom apartment. The House of Representatives passed it as part of its public housing reform bill, but the bill failed to pass out of conference last year.

Too often apartments are crowded with excessive numbers of people. When this happens, apartment complexes experience excessive noise, lower levels of safety and most often deterioration of the units. Building codes are in place for a reason. They are designed to determine the maximum amount of people who may safely exit a building during a fire or other emergency. Occupancy standards, on-the-other-hand, determine how many residents can be accommodated and for whom they can properly provide services on the premises.

The purpose of occupancy standards is to provide decent, safe, comfortable housing and a peaceful living environment for all residents. They also help maintain properties in excellent condition. While housing providers set their own occupancy standards, such private standards are in effect limited by state-set laws or policies which establish the minimum occupancy levels at which housing providers achieve safe harbor from charges of familial discrimination.

This bill is widely supported by housing industry associations such as the National Association of Homebuilders and the National Apartment Association, among others. Many of our colleagues have joined us in support of this bill, and I urge others to consider cosponsoring it.

Mr. KYL. Mr. President, I am pleased to introduce the State Housing Protection Act. I thank Senator FAIRCLOTH for his leadership on this issue and joining in sponsoring this bill. This bill prohibits the Department of Housing and Urban Development [HUD] from enforcing a complaint of discrimination on the basis of a housing provider's occupancy standard, and thereby, transfers from HUD to the States the authority to set occupancy standards.

Mr. President, in July 1995, HUD General Counsel Diaz issued a memorandum which, in effect, tried to supplant the traditional two-per-bedroom occupancy standard, and could have forced housing owners to accept six, seven, eight, or even nine people in a two-bedroom apartment. HUD should not be establishing national occupancy standards.

In 1995, Senator FAIRCLOTH and I blocked HUD from imposing national occupancy standards until it completed an official rule. Soon thereafter, along with Representative MCCOLLUM, we introduced our bill to permanently transfer authority back to the States. The House passed it as part of its public housing reform bill, but it died in the conference committee late last year.

By pursuing a policy that encourages overcrowding, thereby depreciating housing stock that is scarce to begin with, HUD is poorly serving lower income families and defeating its own charter. Our bill will help correct the problem. It is supported by the Council for Affordable and Rural Housing, the Council of Larger Public Housing Authorities, the Multi Housing Institute, the National Apartment Association, the National Assisted Housing Management Association, the National Association of Home Builders, the National Association of Housing and Redevelopment Officials, the National Leased Housing Association, the National Multi Housing Council, and the Public Housing Authorities Directors Association.

Several States have an occupancy standard; the one in my own home State of Arizona has worked well. The intrusion of a Federal bureaucracy often does more harm than good. That is why Senator FAIRCLOTH and I have reintroduced this bill. I urge my colleagues to join us and cosponsor it.

By Mr. CAMPBELL (for himself, Mr. MCCAIN, Mr. DOMENICI, Mr. MURKOWSKI, and Mr. INOUYE):

S. 459. A bill to amend the Native American Programs Act of 1974 to extend certain authorizations, and for other purposes; to the Committee on Indian Affairs.

THE NATIVE AMERICAN PROGRAMS ACT OF 1974 REAUTHORIZATION ACT OF 1997

Mr. CAMPBELL. Mr. President, I am pleased to introduce a bill to extend the authorization for certain programs under the Native American Programs Act of 1974. This bill is critical to continue the availability of a modest amount of grant funds used by native communities nationwide to foster economic growth, develop tools for good governance methods, and promote social welfare.

The authorization for most of these programs has expired and though the administration has requested funding for fiscal year 1998 at fiscal year 1997 levels, it has not introduced legislation to reauthorize the act. The legislation I am introducing today would do just that.

These programs are administered through the Administration for Native Americans [ANA] located within the Department of Health and Human Services. By awarding annual grants on a competitive basis, the Native American Programs Act promotes self-sufficiency and self-determination by encouraging tribes, villages, and other native communities to develop and plan local strategies in economic and social development. The program is designed to build greater capacity at the tribal level for better governance, more vibrant and diversified economies, and social development.

The ANA Program has proven successful for native communities since its inception and has generated widespread support by America's native communities. The centerpiece of the program are grants made under the Social and Economic Development Strategies (SEDS) Program; grants to tribes enhance tribal environmental regulatory capabilities; and grants made to preserve and rehabilitate native languages.

This legislation will simply extend for 4 years until fiscal year 2000 the authorization for these modestly funded yet very successful programs to strengthen and rebuild tribal communities around the United States.

I urge my colleagues to join with me in enacting this reauthorization so that these proven tools for development can again be made available to native peoples around the Nation. I ask unanimous consent that a section-by-section summary and the bill language be printed in the RECORD.

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

BILL LANGUAGE

SECTION 1. AUTHORIZATION OF CERTAIN APPROPRIATIONS UNDER THE NATIVE AMERICAN PROGRAMS ACT OF 1974.

Section 816.—Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) in subsection (a), by striking "for fiscal years 1992, 1993, 1994, and 1995." and inserting "for each of fiscal years 1997, 1998, 1999, and 2000";

(2) in subsection (c), by striking "for each of the fiscal years 1992, 1993, 1994, 1995, and 1996," and inserting "for each of fiscal years 1997, 1998, 1999, and 2000,"; and

(3) in subsection (e), by striking "$2,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, 1996, and 1997." and inserting "such sums as may be necessary for fiscal years 1997, 1998, 1999, and 2000."

SECTION-BY-SECTION ANALYSIS

The purpose of this bill is to amend the 1974 Native American Programs Act, P.L. 93–644 (42 U.S.C. 2991 et seq.) to extend to fiscal year 2000 the authorization of appropriations for three grant programs administered by the Administration for Native Americans (ANA) in the Department of Health and Human Services (HHS).

Section 1. Authorization of Certain Appropriations Under the Native American Programs Act of 1974.

Section 816.—

(a) this subsection provides for a four year extension to fiscal year 2000 of the present authority to appropriate such sums as may be necessary to carry out the general grant provisions of the Native American Programs Act of 1974 (42 U.S.C. 2992d). The bill would continue the current "such sums as may be necessary" language contained in current law.

(c) this subsection provides for a four year extension to fiscal year 2000 of the present authority to appropriate funds for the purpose of carrying out the provisions related to grants for tribal regulation of environmental quality (42 U.S.C. Sec. 2991b(d). The bill would continue the current authorized level of $8 million for such grants.

(e) this subsection provides for a four year extension to fiscal year 2000 of the present authority to appropriate such sums as may be necessary for the purpose of carrying out the provisions related to grants for the preservation of Native languages (42 U.S.C. Sec. 2991b-3). The bill would strike the current authorized appropriaitons level of $2 million for Native language grants and instead would substitute "such sums as may be necessary".

Mr. DOMENICI. Mr. President, I am pleased to join my colleagues Senators CAMPBELL, MCCAIN, and MURKOWSKI in sponsoring this act to extend the authorization of several important programs for American Indians. The U.S. Department of Health and Human Services [HHS] administers these programs through the Administration for Native Americans [ANA]. Over the past 5 years, funding has ranged from $34.5 million to $38.6 million. In fiscal year 1997, the funding was $34.9 million.

Our bill will reauthorize important programs to promote economic development, strengthen tribal governments, and provide for the better coordination of social programs available to tribes. The ANA funding policy is to assist Indian Tribes and Native American organizations to plan and implement their own long-term strategies for social and economic development. The aim is to increase local productivity and reduce dependence on government social services.

Competitive grants are the means for distributing these vital funds. In New Mexico, the Pueblos of Laguna ($382,000), Picuris ($167,000), Pojoaque ($120,000), Sandia ($133,890), Tesuque ($125,000), San Juan ($232,000), Santa Ana ($112,000), and Santo Domingo ($110,464) all received grants from fiscal year 1996 funds. New Mexico Tribes and Pueblos have participated in ANA grant activity for about three decades.

The Social and Economic Development Strategies [SEDS] program fosters the development of stable, diversified local economies. SEDS grant funds are used to develop the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy. Social infrastructure includes the maintenance of a tribe's cultural integrity. Pojoaque Pueblo's Cultural Center is the beneficiary of an ANA grant.

Other ANA grants are used to establish or expand business activity or to stabilize and diversify a tribe's economic base. Micro enterprises and other private sector development are encouraged.

Mr. President, I thank Chairman CAMPBELL of the Senate Committee on Indian Affairs for his good work to extend the authorization for these valuable resources to improve tribal opportunities for self-sufficiency. I urge my colleagues to support the reauthorization of these Administration for Native Americans Programs.

Mr. INOUYE. Mr. President, I rise today to cosponsor a measure to reauthorize the Native American Programs Act of 1974. The purpose of this bill is to amend the Native American Programs Act to extend the authorization of appropriations for programs administered by the administration for Native Americans within the Department of Health and Human Services to fiscal year 2000.

In 1974, the Native American Programs Act was enacted by the Congress to assist tribes and other Native American entities with developing social, economic, and governance strategies in order to become viable and economically self-sufficient communities.

In the decades since its enactment, hundreds of tribes, reservation communities, and native organizations have benefited from the programs funded under this act. In fiscal year 1994 alone, the administration for Native Americans provided 215 grants for governance, social, and economic development projects, several dozen grants to assist with tribal recognition efforts, 26 grants for projects to assist tribes in their capacity to meet environmental requirements, 18 grants to support projects assisting the survival and preservation of Native American languages, and funds to support the Native Hawaiian revolving loan fund. These projects have served to improve the quality of living for thousands of Native American families and communities.

Over 2 years ago, on March 7, 1995, Senators MCCAIN, CAMPBELL and I introduced S. 510, a bill which reauthorized programs under the Native American Programs Act. On May 11, 1996 this body passed S. 510, as amended in committee, by unanimous consent, but the bill was subsequently not acted upon by the House prior to the adjournment of the 104th Congress.

The bill being introduced today is substantially similar to S. 510, as introduced in the last Congress. I am pleased that once again, the chairman, as his predecessor did, is willing to consider the inclusion of provisions that would reauthorize for a period of 1 year, the Native Hawaiian revolving loan fund.

Mr. President, the programs authorized in this measure are critical to fostering Native American social and economic self-sufficiency—a goal shared by this Congress as we move toward greater fiscal responsibility.

I urge my colleawues to act favorably and expeditiously on this measure.

By Mr. BOND (for himself, Ms. SNOWE, Mr. NICKLES, Mr. BURNS, Mr. WARNER, Mr. FAIRCLOTH, Mr. MURKOWSKI, Mr. INHOFE, Mr. ENZI, Mr. HUTCHINSON, Mr. MACK, Ms. MIKULSKI and Mr. GRAMS):

S. 460. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes; to the Committee on Finance.

THE HOME-BASED BUSINESS FAIRNESS ACT OF 1997

Mr. BOND. Mr. President, home-based businesses are a significant and often overlooked part of this country's economy. Some people may be surprised to learn that over 9 million men and women in this country now operate home-based businesses, and over 14 million individuals earn income through home-based businesses. Even more impressive is the fact that a majority of these enterprises are owned by women, and the Small Business Administration estimates that women in this country are starting over 300,000 new home-based businesses each year.

There are a number of reasons for the explosive growth of home-based businesses. Recent innovations in computer and communication technology have made the virtual office a reality and allow many Americans to compete in marketplaces that a few years ago required huge investments in equipment and personnel. In addition, many men and women in this country turn to home-based business in an effort to spend more time with their children. By working at home, these families can bring in two incomes, while avoiding the added time and expense of day-care and commuting. Corporate downsizing, too, contributes to the growth in this sector as many skilled individuals convert their knowledge and experience from corporate life into successful enterprises operated from their homes.

The rewards of owning a home-based business are also numerous. The added independence and self-reliance of having your own business provides not only economic rewards but also personal satisfaction. You are the boss: you set your own hours, develop your own business plans, and choose your customers and clients. In many ways, home-based businesses provide the greatest avenue for the entrepreneurial spirit, which has long been the driving force behind the success of this country.

But with these rewards comes a number of obstacles, not the least of which are regulations and burdens imposed by the Federal Government. In fact, the tax laws, and in particular the IRS, are frequently cited as the most significant problems for home-based businesses today. Changes in tax policy must be considered by this Congress to ensure that our laws do not stall the growth and development of this successful sector of our economy.

Mr. President, in answer to this call for help, I am introducing today the Home-Based Business Fairness Act of 1997. This legislation is the product of extensive input from actual home-based business owners and the efforts of my colleagues Senators OLYMPIA SNOWE and DON NICKLES. The bill is designed to address three tax issues that currently pose significant problems for home-based businesses.

DEDUCTIBILITY OF HEALTH-INSURANCE COSTS FOR THE SELF-EMPLOYED

First, the bill addresses the deductibility of health-insurance costs for the self-employed. During the 104th Congress, we made significant progress in this area. First, we made the deduction permanent after years of uncertainty. Then, last summer, we passed legislation that will increase the deduction for these health-care costs to 80 percent incrementally by 2006. While I fully supported that increase, the self-employed cannot wait 10 years for partial deductibility when their large corporate competitors can fully deduct such costs today.

With the self-employed able to deduct only 40 percent of their health-insurance costs today, it comes as no surprise that nearly a quarter of the self-employed, many of whom operate home-based businesses, do not have health insurance. In fact, 4 million households in this country headed by a self-employed individual do not have health insurance.

In order to make it easier for home-based business owners and their families to have health insurance, we must level this playing field. My bill will increase the deductibility of health insurance for the self-employed to 100 percent beginning this year. A full deduction will make health insurance more affordable to home-based business owners and help them and their families get the health insurance coverage that they need and deserve.

HOME-OFFICE DEDUCTION

Second, the Home-Based Business Fairness Act will restore the home-office deduction and further level the playing field for home-based businesses. After the Supreme Court's 1993 Soliman decision, the only home-based businesses that can deduct the costs associated with their home office are those that see their clients in the home and that generate their income within the home office. That narrow interpretation of the law denies the home-office deduction to service providers like construction contractors, landscaping professionals, and sales representatives, who must by necessity perform their services outside of the home.

It is patently unfair to prevent these individuals from deducting their utility costs, property taxes, and other expenses related to the home office, when they could do so if they rented an office separate from the home. I thank my colleague from Utah, Senator HATCH, for his willingness to allow us to work together on this issue. My bill incorporates the legislation that Senator HATCH introduced earlier this month and will permit a home office to include one where the individual performs his essential administrative and management activities such a billing and record keeping. In order to qualify for the deduction, the bill requires that the business owner perform these activities on a regular, on-going, and nonincidental basis and have no other office in which to perform them.

The restoration of the home-office deduction for home-based businesses not only puts them on an equal footing with their larger competitors, but also frees important capital that can be used to expand the business. For too long home-based businesses have lived with the fear of an IRS audit fueled by the Soliman decision. It is time to eliminate this obstacle to the continued success of these important entrepreneurs.

CLARIFICATION OF INDEPENDENT-CONTRACTOR STATUS

The final element of the Home-Based Business Fairness Act is relief for entrepreneurs seeking to be treated as independent contractors and for businesses needing to hire independent contractors. As the chairman of the Small Business Committee, I have heard from countless small business owners who are caught in the environment of fear and confusion that now surrounds the classification of workers. This situation is stifling the entrepreneurial spirit of many small business owners who find that they do not have the flexibility to conduct their businesses in a manner that makes the best economic sense and that serves their personal and family goals.

Mr. President, the root of this problem is found in the IRS' test for determining whether a worker is an independent contractor or an employee. Over the past three decades, the IRS has relied on a 20-factor test based on the common law to make this determination. On first blush, a 20-factor test sounds like a reasonable approach: if a taxpayer demonstrates a majority of the factors, he or she is an independent contractor. Not surprisingly,

the IRS' test is not that simple. It is a complex set of extremely subjective criteria with no clear weight assigned to any of the factors. As a result, a small business taxpayer is not able to predict which of the 20 factors will be most important to a particular IRS agent, and finding a certain number of these factors in any given case does not guarantee the outcome.

To make matters worse, the IRS' determination inevitably occurs 2 or 3 years after the parties have determined in good faith that they have an independent-contractor relationship. And the consequences can be devastating. The business recipient of the services is forced to reclassify the independent contractor as an employee and must pay the payroll taxes the IRS says should have been collected in the prior years. Interest and penalties are also added on. The result for many small businesses is a tax bill that bankrupts the company. And that's not the end of the story. The IRS then goes after the service provider, who is now classified as an employee, and disallows a portion of his business expenses—again resulting in additional taxes, interest, and penalties.

Mr. President, all of us in this body recognize that the IRS is charged with the duty of collecting Federal revenues and enforcing the tax laws. The problem in this case is that the IRS is using a procedure that is patently unfair and is doing so on an increasingly frequent basis. Between 1988 and 1994, the IRS' use of the 20-factor test resulted in some 11,000 audits, 483,000 worker reclassifications, and $751 million in back taxes and penalties. These facts make me wonder whether the IRS is using this test as a de facto source of enhanced revenue collection when the classification decision does not alter the aggregate tax liability to the Federal Government at all.

For its part, the IRS has just released its revised worker classification training manual. In the Commissioner's accompanying memo, she describes the manual as an "attempt to identify, simplify, and clarify the relevant facts that should be evaluated in order to accurately determine worker classification. . . ." There can be no more compelling reason for immediate action on this issue. The revised manual is over 150 pages—even longer than the original draft. If it takes this many pages to teach revenue agents how to simplify and clarify this small business tax issue, I think we can be fairly sure how simple and clear it is going to seem to the taxpayer who tries to figure it out on his own.

The Home-Based Business Fairness Act removes the need for so many pages of instruction on the 20-factor test by establishing a clear safe harbor based on objective criteria. Under these criteria, if there is a written agreement between the parties, and if an individual demonstrates economic independence and independence with respect to the workplace, he will be treated as an independent contractor rather than an employee. And the service recipient will not be treated as an employer. In addition, individuals who perform services through their own corporations will also qualify for the safe harbor as long as there is a written agreement and the individuals provide for their own benefits.

The safe harbor is simple, straightforward, and final. To take advantage of it, payments above $600 per year to an individual service provider must be reported to the IRS, just as is required under current law. This will help ensure that taxes properly due to the Treasury will continue to be collected.

Mr. President, the IRS contends that there are millions of independent contractors who should be classified as employees, which costs the Federal Government billions of dollars a year. This assertion is plainly incorrect. Classification of a worker has no cost to the Government. What costs the Government are taxpayers who do not pay their taxes. My bill has two requirements that I believe will improve compliance among independent contractors using the safe harbor. First, there must be a written agreement between the parties—this will help the independent contractor know from the beginning that he is responsible for his own tax payments. Second, the safe harbor will not apply if the service recipient does not comply with the reporting requirements and issue 1099's to individuals who perform services.

My bill also provides relief for businesses and independent contractors when the IRS determines that a worker was misclassified. Under the bill, if the business and the independent contractor have a written agreement, if the applicable reporting requirements were met, and if there was a reasonable basis for the parties to believe that the worker is an independent contractor, then any IRS reclassification upheld in court will only apply prospectively. This provision gives important peace of mind to small businesses that act in good faith by removing the unpredictable threat of retroactive reclassification and substantial interest and penalties.

A final provision of this legislation, Mr. President, is the repeal of section 1706 of the 1986 Tax Reform Act. This provision effectively barred an entire group of independent contractors from the protection available in section 530 of the Revenue Act of 1978. When section 1706 was enacted, its proponents argued that technical service workers—such as engineers, designers, and computer programmers—were less compliant in paying their taxes. Later examination of this issue by the Treasury Department found that technical service workers are in fact more likely to pay their taxes than most other types of independent contractors. This revelation underscores the need to repeal section 1706 and level the playing field for individuals in these professions. In the 104th Congress, proposals to repeal section 1706 enjoyed wide bipartisan support, and it is my hope that the 105th Congress will finally act on this proposal to restore equality for these professionals.

Mr. President, the importance of adding clarity to the independent-contractor situation is underscored by the fact that the 2,000 delegates to the 1995 White House Conference on Small Business voted to designate it as their top priority. At that conference, IRS Commissioner Richardson noted that either classification—independent contractor or employee—can be a valid and appropriate business choice as long as the individual pays his taxes. This conclusion was later affirmed in the IRS' new worker classification training manual. It is time that the law reflect this conclusion and allow small businesses to hire employees or independent contractors as their business needs demand, without the fear and uncertainty that now prevails.

The Home-Based Business Fairness Act is a common-sense measure that will provide tax fairness for the increasing number of individuals who operate their businesses from home and contribute so significantly to the strength of our economy. These business owners have waited far too long. I urge the members of the Finance Committee to work with Senator NICKLES and to report out a bill that provides these three much needed changes in the tax law so that we do not keep them waiting any longer.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 460

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 "Home-Based Business Fairness Act of 1997".

SEC. 2. DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS INCREASED.

(a) IN GENERAL.—Section 162(l)(1) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended to read as follows:

"(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, the taxpayer's spouse, and dependents."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 3. CLARIFICATION OF DEFINITION OF PRINCIPAL PLACE OF BUSINESS.

(a) IN GENERAL.—Subsection (f) of section 280A of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

"(A) the office is the location where the taxpayer's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the taxpayer, and

"(B) the office is necessary because the taxpayer has no other location for the performance of the essential administrative or management activities of the business."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 4. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

(a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by adding after section 3510 the following new section:

"SEC. 3511. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

"(a) SAFE HARBOR.—

"(1) IN GENERAL.—For purposes of this title, if the requirements of subsections (b), (c), and (d), or the requirements of subsections (d) and (e), are met with respect to any service performed by any individual, then with respect to such service—

"(A) the service provider shall not be treated as an employee,

"(B) the service recipient shall not be treated as an employer,

"(C) the payor shall not be treated as an employer, and

"(D) compensation paid or received for such service shall not be treated as paid or received with respect to employment.

"(2) AVAILABILITY OF SAFE HARBOR NOT TO LIMIT APPLICATION OF OTHER LAWS.—Nothing in this section shall be construed—

"(A) as limiting the ability of a service provider, service recipient, or payor to apply other applicable provisions of this title, section 530 of the Revenue Act of 1978, or the common law in determining whether an individual is not an employee, or

"(B) as a prerequisite for the application of any provision of law described in subparagraph (A).

"(b) SERVICE PROVIDER REQUIREMENTS WITH REGARD TO THE SERVICE RECIPIENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider, in connection with performing the service—

"(1) has the ability to realize a profit or loss,

"(2) incurs unreimbursed expenses which are ordinary and necessary to the service provider's industry and which represent an amount at least equal to 2 percent of the service provider's adjusted gross income attributable to services performed pursuant to 1 or more contracts described in subsection (d), and

"(3) agrees to perform services for a particular amount of time or to complete a specific result or task.

"(c) ADDITIONAL SERVICE PROVIDER REQUIREMENTS WITH REGARD TO OTHERS.—For the purposes of subsection (a), the requirements of this subsection are met if the service provider—

"(1) has a principal place of business,

"(2) does not primarily provide the service at a single service recipient's facilities,

"(3) pays a fair market rent for use of the service recipient's facilities, or

"(4) operates primarily with equipment not supplied by the service recipient.

"(d) WRITTEN DOCUMENT REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met if the services performed by the service provider are performed pursuant to a written contract between such service provider and the service recipient, or the payor, and such contract provides that the service provider will not be treated as an employee with respect to such services for Federal tax purposes.

"(e) BUSINESS STRUCTURE AND BENEFITS REQUIREMENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider—

"(1) conducts business as a properly constituted corporation or limited liability company under applicable State laws, and

"(2) does not receive from the service recipient or payor benefits that are provided to employees of the service recipient.

"(f) SPECIAL RULES.—For purposes of this section—

"(1) FAILURE TO MEET REPORTING REQUIREMENTS.—If for any taxable year any service recipient or payor fails to meet the applicable reporting requirements of section 6041(a) or 6041A(a) with respect to a service provider, then, unless the failure is due to reasonable cause and not willful neglect, the safe harbor provided by this section for determining whether individuals are not employees shall not apply to such service recipient or payor with respect to that service provider.

"(2) BURDEN OF PROOF.—For purposes of subsection (a), if—

"(A) a service provider, service recipient, or payor establishes a prima facie case that it was reasonable not to treat a service provider as an employee for purposes of this section, and

"(B) the service provider, service recipient, or payor has fully cooperated with reasonable requests from the Secretary or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

"(3) RELATED ENTITIES.—If the service provider is performing services through an entity owned in whole or in part by such service provider, the references to 'service provider' in subsections (b) through (e) may include such entity, provided that the written contract referred to in subsection (d) is with such entity.

"(g) DETERMINATIONS BY THE SECRETARY.—For purposes of this title—

"(1) IN GENERAL.—

"(A) DETERMINATIONS WITH RESPECT TO A SERVICE RECIPIENT OR A PAYOR.—A determination by the Secretary that a service recipient or a payor should have treated a service provider as an employee shall be effective no earlier than the notice date if—

"(i) the service recipient or the payor entered into a written contract satisfying the requirements of subsection (d),

"(ii) the service recipient or the payor satisfied the applicable reporting requirements of section 6041(a) or 6041A(a) for all taxable years covered by the agreement described in clause (i), and

"(iii) the service recipient or the payor demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

"(B) DETERMINATIONS WITH RESPECT TO A SERVICE PROVIDER.—A determination by the Secretary that a service provider should have been treated as an employee shall be effective no earlier than the notice date if—

"(i) the service provider entered into a contract satisfying the requirements of subsection (d),

"(ii) the service provider satisfied the applicable reporting requirements of sections 6012(a) and 6017 for all taxable years covered by the agreement described in clause (i), and

"(iii) the service provider demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

"(C) REASONABLE CAUSE EXCEPTION.—The requirements of subparagraph (A)(ii) or (B)(ii) shall be treated as being met if the failure to satisfy the applicable reporting requirements is due to reasonable cause and not willful neglect.

"(2) CONSTRUCTION.—Nothing in this subsection shall be construed as limiting any provision of law that provides an opportunity for administrative or judicial review of a determination by the Secretary.

"(3) NOTICE DATE.—For purposes of this subsection, the notice date is the 30th day after the earlier of—

"(A) the date on which the first letter of proposed deficiency that allows the service provider, the service recipient, or the payor an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

"(B) the date on which the deficiency notice under section 6212 is sent.

"(h) DEFINITIONS.—For the purposes of this section—

"(1) SERVICE PROVIDER.—The term 'service provider' means any individual who performs a service for another person.

"(2) SERVICE RECIPIENT.—Except as provided in paragraph (4), the term 'service recipient' means the person for whom the service provider performs such service.

"(3) PAYOR.—Except as provided in paragraph (4), the term 'payor' means the person who pays the service provider for the performance of such service in the event that the service recipient does not pay the service provider.

"(4) EXCEPTIONS.—The terms 'service recipient' and 'payor' do not include any entity in which the service provider owns in excess of 5 percent of—

"(A) in the case of a corporation, the total combined voting power of stock in the corporation, or

"(B) in the case of an entity other than a corporation, the profits or beneficial interests in the entity.

"(5) IN CONNECTION WITH PERFORMING THE SERVICE.—The term 'in connection with performing the service' means in connection or related to the operation of the service provider's trade or business.

"(6) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

"(A) the office is the location where the service provider's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the service provider, and

"(B) the office is necessary because the service provider has no other location for the performance of the essential administrative or management activities of the business.

"(7) FAIR MARKET RENT.—The term 'fair market rent' means a periodic, fixed minimum rental fee which is based on the fair rental value of the facilities and is established pursuant to a written agreement with terms similar to those offered to unrelated persons for facilities of similar type and quality."

(b) CLARIFICATION OF RULES REGARDING EVIDENCE OF CONTROL.—For purposes of determining whether an individual is an employee under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), compliance with statutory or regulatory standards shall not be treated as evidence of control.

(c) REPEAL OF SECTION 530(d) OF THE REVENUE ACT OF 1978.—Section 530(d) of the Revenue Act of 1978 (as added by section 1706 of the Tax Reform Act of 1986) is repealed.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

"Sec. 3511. Safe harbor for determining that certain individuals are not employees."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by, and the provisions of, this section shall apply to services performed after the date of enactment of this Act.

(2) DETERMINATIONS BY SECRETARY.—Section 3511(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to determinations after the date of enactment of this Act.

(3) SECTION 530(d).—The amendment made by subsection (c) shall apply to periods ending after the date of enactment of this Act.

HOME-BASED BUSINESS FAIRNESS ACT OF 1977—DESCRIPTION OF PROVISIONS

SHORT TITLE

Under Section 1 of the bill, the name of the legislation is "Home-Based Business Fairness Act of 1997."

INCREASE IN THE DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

Section 2 of the bill amends section 162(*l*)(1) of the Internal Revenue Code of 1986 to increase the deduction for health insurance costs for self-employed individuals to 100 percent beginning on January 1, 1997. Currently the limit on deductibility of health insurance costs for these individuals is 40 percent, and it is scheduled to rise to 80 percent by 2006, under the provisions in the Health Insurance Portability and Accountability Act of 1996, which was signed into law in August 1996. The bill is designed to place self-employed individuals on an equal footing with large businesses which can currently deduct 100% of the health insurance costs of all of their employees.

RESTORATION OF THE HOME-OFFICE DEDUCTION

Section 3 of the bill clarifies the definition of "principal place of business," which relates to the home-office deduction under section 280A of the Internal Revenue Code. The bill permits a home office to include an office where a taxpayer performs his or her essential administrative or management activities such as billing and recordkeeping. In order to qualify for the new definition, the taxpayer must perform these activities on a regular, on-going, and non-incidental basis in the home office and have no other location at which to perform these business activities. This section of the bill will be effective on January 1, 1997.

The bill is designed to address the ambiguities resulting from the Supreme Court's 1993 decision, *Commissioner* v. *Soliman*. That case has been interpreted to require two new tests for the home-office deduction: (1) the customers of a home business must physically visit the home office, and (2) the taxpayer's business income must be generated within the home office itself—not from transactions that occur outside of the home office. The bill is intended to permit taxpayers who perform their services outside the home but use their home office for essential billing and recordkeeping to qualify for the home-office deduction.

SAFE HARBOR FOR INDEPENDENT CONTRACTORS

Section 4 of the bill addresses the worker-classification issue (*e.g.*, whether a worker is an employee or an independent contractor) by creating a new section 3511 of the Internal Revenue Code. The new section will provide a general safe harbor and protection against retroactive reclassification of an independent contractor in certain circumstances. The bill is designed to provide certainty for businesses that enter into independent-contractor relationships and minimize the risk of huge tax bills for back taxes, interest, and penalties if a worker is misclassified.

General safe harbor

Under the general safe harbor, if either of two tests is met, an individual will be treated as an independent contractor and the service recipient will not be treated as an employer. The first test requires that the independent contractor demonstrate economic independence and workplace independence and have a written contract with the service recipient.

Economic independence exists if all of the following apply: the independent contractor has the ability to realize a profit or loss, he or she incurs unreimbursed expenses that are consistent with industry practice and that equal at least 2 percent of the independent contractor's adjusted gross income from the performance of services during the taxable year, and the independent contractor agrees to perform services for a particular amount of time or to complete a specific result or task.

Workplace independence exists if one of the following applies: the independent contractor has a principal place of business (the definition of which includes the provisions of section 3 of the bill, which address the *Soliman* decision); he or she performs services at more than one service recipient's facilities; he or she pays a fair-market rent for the use of the service recipient's facilities, or the independent contractor uses his or her own equipment.

The written contract between the independent contractor and the service recipient must provide that the independent contractor will not be treated as an employee.

Under the second alternative test, an individual will be treated as an independent contractor if he or she conducts business through a corporation or a limited liability company and the independent contractor does not receive benefits from the service recipient—instead the independent contractor would be responsible for his or her own benefits. The independent contractor must also have a written contract with the service provider stating that the independent contractor will not be treated as an employee.

The general safe-harbor provisions also apply to three-party situations in which the independent contractor is paid by a third party, such as a payroll company, rather than directly by the service recipient. The general safe harbor, however, will not apply to a service recipient or a third-party payor if they do not comply with the existing reporting requirements and file 1099s for individuals who work as independent contractors. A limited exception is provided for cases in which the failure to file a 1099 is due to reasonable cause and not willful neglect.

The bill also provides additional relief for cases in which a worker is treated as an independent contractor under the general safe harbor and the IRS later contends that the safe harbor does not apply. In that case, the burden falls on the IRS, rather than the taxpayer, to prove that the safe harbor does not apply. To qualify for this relief the taxpayer must demonstrate a credible argument that it was reasonable to treat the service provider as an independent contractor, and the taxpayer must fully cooperate with reasonable requests from the IRS.

In the event that the general safe harbor does not apply, the bill makes clear that the independent contractor or service recipient can still rely on the 20-factor common law test or other provisions of the Internal Revenue Code applicable in determining whether an individual is an employee or an independent contractor. In addition, the bill does not limit any relief that a taxpayer may be entitled to under Section 530 of the Revenue Act of 1978. The bill also makes clear that the general safe harbor will not be construed as a prerequisite for these other provisions of the law concerning worker classification.

Protection against retroactive reclassification

The bill also provides protection against retroactive reclassification by the IRS of an independent contractor as an employee. For many service recipients who make a good faith effort to classify the worker correctly, this event can result in extensive liability for back employment taxes, interest, and penalties.

Under the bill, if the IRS notifies a service recipient that an independent contractor should have been classified as an employee, the IRS' determination can become effective only 30 days after the date that the IRS sends the notification. To qualify for this provision, the service recipient must show that: There was a written agreement between the parties; the service recipient satisfied the applicable reporting requirements for all taxable years covered by the contract; and there was a reasonable basis for determining that the independent contractor was not an employee and the service provider made the determination in good faith. The bill provides similar protection for independent contractors who are notified by the IRS that they should have been treated as an employee.

The protection against retroactive reclassification is intended to remove some of the uncertainty for taxpayers who must use the IRS's 20-factor common law test. While the bill would prevent the IRS from forcing a service recipient to treat an independent contractor as an employee for past years, the bill makes clear that a service recipient or an independent contractor can still challenge the IRS's prospective reclassification of an independent contractor through administrative or judicial proceedings.

Additional independent contractor provisions

Section 4 of the bill contains two additional provisions designed to assist independent contractors. The first clarifies that an individual's compliance with a statutory or regulatory requirement will not be treated as evidence of control. The 20-factor common law test focuses in part on the business' control over a worker. When the business can direct how, when and where a worker

performs a task; such control usually indicates that the worker is an employee rather than an independent contractor. Certain statutory and regulatory requirements, which a business and/or a worker must follow, have been interpreted by the IRS as demonstrating evidence of this type of control when the majority of other factors would lead to the conclusion that a worker is an independent contractor. The bill clarifies that compliance with statutory or regulatory requirements should not be a factor in determining whether an individual is an independent contractor.

Second, the bill would repeal section 530(d) of the Revenue Act of 1978, which was added by section 1706 of the Tax Reform Act of 1986. This provision precludes technical service providers (e.g., engineers, designers, drafters, computer programmers, systems analysts, and other similarly qualified individuals) who work through a third party, such as a placement broker, from applying the safe harbor under section 530. The bill is designed to level the playing field for individuals in these professions.

Effective dates

In general, the independent-contractor provisions of the bill, including the general safe harbor, will be effective for service performed after the date of enactment of the bill. The protection against retroactive reclassification will be effective for IRS determinations after the date of enactment, and the repeal of section 530(d) will be effective for periods ending after the date of enactment of the bill.

Mr. NICKLES. Mr. President, I am pleased to join my friend and colleague from Missouri, Senator BOND, in the introduction of the Home-Based Business Fairness Act. I compliment Senator BOND for his leadership on these issues and all matters affecting small business as chairman of the Senate Committee on Small Business.

The small, independent business is the engine which drives innovation, job creation, and increased economic activity in this country. I am proud to live in a country where any person can use talent, intelligence, and hard work to start a business. I believe these businesses are the foundation of our free enterprise economy, and the very essence of capitalism.

There are 5 million independent contractors in America according to the Small Business Administration, and almost one-third of all companies use independent contractors to some degree. Further, the SBA estimates that more than 14 million individuals earn some income from home-based businesses, and some 300,000 women start home-based businesses every year.

Unfortunately, Mr. President, the Internal Revenue Code does not always treat small businesses fairly, and it often acts to limit and repress the entrepreneurial spirit. The legislation we are introducing today is intended to address some of the Tax Code's inequities and remove the roadblocks to the creation of new small businesses.

A perfect example of the Tax Code's bias against small business is the treatment of health insurance expenses. Corporations can currently deduct 100 percent of the health insurance costs of their employees. As recently as 2 years ago, self-employed individuals were only allowed to deduct 25 percent of their health insurance costs. Fortunately, the Health Insurance Portability and Accountability Act of 1996 increased this limit to 40 percent this year, with a scheduled increase to 80 percent by 2006. However, the bias against small business continues. Our legislation increases the deduction for health insurance cost for self-employed individuals to 100 percent beginning on January 1, 1997.

For some small business taxpayers, the enemy has not been the IRS or the Congress, but the judiciary. A 1993 Supreme Court decision, Commissioner versus Soliman has been interpreted to require two new tests for the home-office deduction: First, the customers of a home business must physically visit the home office, and second, the taxpayer's business income must be generated within the home office itself—not from transactions that occur outside of the home office. This interpretation has effectively prevented millions of taxpayers from deducting valid, reasonable, and necessary business expenses. The Home-Based Business Fairness Act will permit taxpayers who perform their services outside the home but use their home office for essential billing and recordkeeping to qualify for the home-office deduction, provided they perform these activities on a regular, ongoing, and nonincidental basis in the home office and have no other location at which to perform these business activities. This section of the bill will be effective on January 1, 1997.

Finally, Mr. President, our legislation addresses a major, continuing problem for the small business community. The problem is worker classification—independent contractor or employee. In a perfect world, this issue should be irrelevant. The relationship between a worker and a business would be strictly based on their individual needs, and the Government's only interest would be to collect the same amount of taxes regardless of the relationship.

Unfortunately, however, this is not a perfect world. The complexity of the Tax Code and Congress' failure to provide adequate guidance to small businesses and their workers has resulted in a confusing mess. Left to their own devices, the Internal Revenue Service has adopted an aggressive, proemployee agenda.

For the last 20 years, the classification of workers as contractors or employees has been controlled by a 20-factor common law test which attempts to define a business' control over a worker. This common law test is the bane of employers and workers across the country. The General Accounting Office has called the common law test unclear and subject to conflicting interpretations. Even the Treasury Department has testified that:

> Applying the common law test in employment tax issues does not yield clear, consistent, or even satisfactory answers, and reasonable persons may differ as to the correct classification.

Beyond the 20-factor test, some businesses may avail themselves of a safe harbor enacted in 1978. The section 530 safe harbor prohibits the IRS from reclassifying workers as employees if the business had a reasonable basis for treatment of the workers as independent contractors, or if a past IRS audit did not dispute the workers' classification.

Our bill creates a new worker classification safe harbor and provides limited relief from retroactive worker reclassification, two changes which will resolve many of the problems small businesses face with the IRS. Our bill does not repeal the 20-factor common law test, it does not repeal the section 530 safe harbor, and it does not affect other special worker classification situations such as statutory employees or direct sellers. Put simply, our bill will benefit those businesses and contractors who have not resolved their status with the IRS, while preserving current law for those who are satisfied with it.

To summarize briefly, our legislation protects businesses and contractors who meet one of two tests. The first test measures a worker's economic risk and workplace independence, and requires the two parties to have a written contract and comply with all tax reporting requirements. Under the second test, a worker who conducts business through a corporation or a limited liability company, does not receive benefits from the service recipient, and has a written contract will be treated as an independent contractor.

Our bill also protects businesses from retroactive reclassification of workers and the associated liability for back taxes, interest, and penalties, provided the business had a written contract with the workers, complied with all tax reporting requirements, and had a reasonable basis to treat the workers as contractors. Finally, our legislation repeals section 1706 of the Tax Reform Act of 1986 which precludes third-party technical service workers from the section 530 safe harbor, and it clarifies that compliance with a statutory or regulatory requirements will not be treated as evidence of control for the purpose of worker classification.

Mr. President, the Tax Code reforms included in the Home-Based Business Fairness Act are commonsense solutions to the real problems faced by small businesses. With this bill, Senator BOND and I have tried to address those problems which we believe are most critical to the creation of new small businesses, new jobs, and new economic growth. I encourage my colleagues to give this legislation their

thoughtful consideration and join us in this initiative.

Mr. ENZI. Mr. President, I rise in strong support of The Home-Based Business Fairness Act of 1997, introduced today by the chairman of the Small Business Committee, Senator BOND. I know that Senator BOND, Senator NICKLES and Senator SNOWE have worked hard to draft this bill and I am proud to be an original cosponsor. It addresses three concerns that have weighed heavily on the small business community for years: First health insurance fairness; second the home-office deduction; and third the status of independent contractors. I hope the Senate and the House will move quickly to pass this legislation.

It is a good bill because it responds directly to what small businesses have been asking us to do. It will help create jobs that will put people on welfare back to work. This is an issue that policymakers have been concentrating on since last year's welfare debate—the President has proposed a Welfare to Work Program while Congress is looking at the best ways to stimulate the economy and create jobs. Toward that effort, it is impossible to overlook the importance of small business. Small businesses create nearly 100 percent of this country's new jobs and employ over 65 percent of Americans working in the private sector. And I guarantee it would be small businesses that hire the majority of today's welfare recipients if Government would make it affordable to do so.

Small business is more than the backbone of this country. Small business is the engine of the American Dream. But it needs a system that empowers people, not government. This bill would help people by removing just a couple of the obstacles in the way of that Dream.

When I was elected to the Senate last November, my first choice of committee assignments was the Small Business Committee. My wife, Diana, and I were small businessowners and we have experienced—at one time or another—nearly all of the obstacles that can stand in the way of a successful small business. At this time last year, in fact, my wife and I were balancing our books and paying our taxes—hoping to find that the books still balanced after paying the taxes! So I know what small businessowners are going through. Very recently, I have been there.

There is a lot of talk in this legislative body about improving the environment for small business. In fact, I doubt that any Member would stand up and say he or she does not support small business. We hold hearings and listen to testimony, we provide for White House conferences on small business, we receive stacks of polling data and we create commission after commission to tell us what needs to be done. In the end, we find out what I think we already know—the problem is taxes. Too many and too much.

This bill is a small step in the Tax Code, but a giant step for sensibility. It recognizes some of the revolutionary changes in American business. The advent of personal computers, high speed modems, cell phones, pagers, and fax machines that have enabled Americans to work via audio and video conferencing, from satellite offices, and by telecommuting. Our tax laws have not kept up with the sea of change in American business.

One example of this change is the increasing number of women in our Nation's work force. According to the Bureau of Labor Statistics, 76 percent of mothers with school-age children now work. Among two-parent households, 63 percent report that both parents must work outside the home—in many cases, one works to pay the bills, while the other works to pay the taxes. And of these women entering the work force, 1 in 20 are starting their own businesses and many are home based and that number is rising rapidly. In fact, women start new businesses at twice the rate of men—and with a very good success rate. But the Tax Code needs improvement. It discourages self-employment and home-based business through discrimination and complexity. This bill would change that.

The Home-Based Business Fairness Act would finally put an end to our regressive, two-tiered system that makes self-employed people pay more for their health insurance. It is time to give small business competitive parity with big business. All the technical assistance and loan guarantees in the world cannot overcome unfair tax treatment and disproportionately burdensome regulations. Last year, Congress recognized the inequality by voting to phase in an 80-percent deductibility for health insurance costs. That's a good start. But if we know the tax treatment is not fair, then shouldn't we make it right? America's small businesses need fair and equal treatment.

This legislation would also add fairness for people who work in their homes. Our current outdated Tax Code discriminates against home-based people by restricting their ability to deduct office expenses. The message is, if you can't afford a real office, then you can't deduct your expenses. In this way, we increase the hurdles for entrepreneurs who want to earn a living, but can't afford to rent separate office space. This part of the legislation will benefit thousands of home-based women and men. It is very important and deserves a thoughtful consideration by the Senate.

Another puzzling antibusiness setup that this bill would simplify is the definition of independent contractor. American entrepreneurs—and especially home-based business owners—need a simpler test. I have always believed we could make things a lot easier if we just followed the payroll taxes. Who pays them? Is there a written contract? It does not have to be "rocket science." This legislation would simplify the test so that everyone can understand it—not just the tax attorneys at the Internal Revenue Service.

On that subject, in Wyoming recently, the IRS has taken after the last bastion of budding entrepreneurs, our paper boys. Once again, the thirsty IRS auditors are devising ways to haunt working people—presumed guilty until proven innocent. When did the IRS decide to pick on the hard-earned wages of independent paperboys and girls? They are not now, and never have been, salaried newspaper employees. They are just kids who want to earn some money by working before or after school.

I think we should call this part of the bill, The Paperboy Protection Act. The last bastion for new entrepreneurs needs our help. The small business owners of tomorrow are counting on us to pass this legislation. I thank my colleagues on the Small Business Committee, and the assistant majority leader, for their hard work on the bill. I urge other Senators to support it.

By Mrs. HUTCHISON (for herself, Mr. INHOFE, and Mr. HELMS):

S. 461. A bill to amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, and for other purposes; to the Committee on Labor and Human Resources.

THE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT OF 1997

Mrs. HUTCHISON. Mr. President, I rise today to introduce, along with my colleagues, Mr. INHOFE and Mr. HELMS, the Occupational Safety and Health Reform Act of 1997. This legislation will transform OSHA from an agency that generates fines and paperwork to one that plays a more constructive role in improving worker safety.

Mr. President, the Occupational Safety and Health Act was enacted in 1970. It may not surprise my colleagues that since that time, the incidence of work-related injuries and illnesses has steadily declined. But it may surprise them to learn that in the 25 years prior to enactment of OSHA, workplace injuries declined almost twice as fast as they have since the enactment of OSHA. The reduction of workplace injuries, which had been occurring before OSHA was created, has actually slowed since the agency was created.

One may reasonably ask, why is that the case? Mr. President, I have talked to hundreds of business people throughout my State of Texas and throughout

the Nation. Time and again, I have heard stories of burdensome and complex OSHA requirements and of arbitrary and unfair inspections and fines.

The vast majority of other employers in this country desire and strive to see to it that their employees have a safe place to work. Indeed, it is in their own best interest to do so. Injuries are costly: They interrupt production schedules, cause a loss of productivity and increase the burgeoning expense of workers' compensation, not to mention the impact on overall employee morale and productivity.

Many of the employers I speak with would like to work with, rather than against OSHA, but fear that if they take any affirmative steps to improve and review the safety of their workplace, it will only serve to attract aggressive OSHA inspectors. Thus, rather than helping to raise the safety level of American workers, the Occupational Safety and Health Act actually discourages employers in many cases from aggressively working to improve workplace health and safety.

Remarkably, OSHA's response to the growing call for reform of its enforcement tactics has been to seek to expand its territory. Most recently, OSHA has worked on establishing new and enormously costly standards on ergonomics and even on the prevention of nighttime crime at retail stores.

Mr. President, when Congress established OSHA, it did so with the intent that the agency, employers, and employees would all work toward the common purpose of creating safer and healthier workplace environments. Unfortunately, the culture of OSHA has evolved into one of regulatory excess, punitive enforcement, and standard setting based on arbitrariness rather than sound cost/benefit analysis. Things have gotten so bad that OSHA inspectors have even testified that they have been required to meet monthly quotas for citations and fines.

The bill I am introducing today will restore OSHA to its intended mission by requiring the agency to take a commonsense approach to establishing safety standards and by encouraging cooperation and voluntary improvement rather than confrontation. In brief, the bill:

Requires that OSHA, prior to setting a new standard, establish that a worksite safety hazard exists and consider whether it can economically be corrected using feasible technology;

It provides safety consultation and assistance to small businesses to encourage OSHA compliance;

It gives employers an opportunity to correct problems identified by employees before a formal OSHA complaint is filed, and protects employees who raise safety concerns to their employers;

It stops the practice of citing contractors for the violations of subcontractors whose employees are not under the contractor's control;

It limits employers' liability for the unsafe conduct of employees who have been properly trained and equipped by their employer;

It requires that fines for violations be proportional to their actual impact on employee safety; and

It will end the de facto practice of establishing quotas for enforcement activities.

Mr. President, I realize that there are employers out there who may not care about the safety of their employees. To them, I say, beware. Under this bill, OSHA will be freed to concentrate its resources and enforcement efforts on those employers who willfully disregard workplace safety.

But to the other 99 percent of the honest, hardworking business people in America who want to do right by their employees, I say: We have heard your call for action, and help is on the way. I urge them and I urge my colleagues to support this important legislation.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 461

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

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Occupational Safety and Health Reform Act of 1997".

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

SEC. 2. USE OF OSHA IN PRIVATE LITIGATION.

Section 4(b)(4) (29 U.S.C. 653(b)(4)) is amended by adding at the end the following: "An allegation of a violation, a finding of a violation, or an abatement of an alleged violation, under this Act or the standards promulgated under this Act shall not be admissible as evidence in any civil action or used to increase the amount of payments received under any workmen's compensation law for any work-related injury.".

SEC. 3. DUTIES OF EMPLOYERS AND EMPLOYEES.

Section 5 (29 U.S.C. 654) is amended by adding at the end the following:

"(c) On multiemployer work sites, an employer may not be cited for a violation of this section if the employer—

"(1) has no employees exposed to the violation; and

"(2) has not created the condition that caused the violation or assumed responsibility for ensuring compliance by other employers on the work site.".

SEC. 4. STANDARD SETTING.

(a) STANDARDS.—Section 6(b)(5) (29 U.S.C. 655(b)(5)) is amended to read as follows:

"(5) The development of a standard under this section shall be based on the latest scientific data in the field and on research demonstrations, experiments, and other information that may be appropriate. In establishing the standard, the Secretary shall consider, and make findings based on, the following factors:

"(A) The standard shall be needed to address a significant risk of material impairment to workers and shall substantially reduce that risk.

"(B) The standard shall be technologically and economically feasible.

"(C) There shall be a reasonable relationship between the costs and benefits of the standard.

"(D) The standard shall provide protection to workers in the most cost-effective manner and minimize employment loss due to the standard in the affected industries and sectors of industries.

"(E) The standard shall set forth objective criteria and the performance desired.".

(b) VARIANCES.—Section 6(d) (29 U.S.C. 655(d)) is amended by adding at the end the following: "No citation shall be issued for a violation of an occupational safety and health standard that is the subject of a good faith application for a variance during the period the application is pending before the Secretary.".

(c) STANDARD PRIORITIES.—The second sentence of section 6(g) (29 U.S.C. 655(g)) is amended to read as follows: "In determining the priority for establishing standards with regard to toxic materials or the physical agents of toxic materials, the Secretary shall consider the number of workers exposed to the substance, the nature and severity of potential impairment, and the likelihood of the impairment based on information obtained by the Secretary from the Environmental Protection Agency, the Department of Health and Human Services, and other appropriate sources.".

(d) REGULATORY FLEXIBILITY ANALYSIS.—Section 6 (29 U.S.C. 655) is amended by adding at the end the following:

"(h) In promulgating an occupational safety and health standard under subsection (b), the Secretary shall perform a regulatory flexibility analysis described in sections 603 and 604 of title 5, United States Code.

"(i) In promulgating any occupational safety and health standard under subsection (b), the Secretary shall minimize the time, effort, and costs involved in the retention, reporting, notification, or disclosure of information to the Secretary, to third parties, or to the public. Compliance with the requirement of this subsection may be considered in a review of a petition filed under subsection (f).".

SEC. 5. INSPECTIONS.

(a) AUTHORITY OF SECRETARY.—Section 8(a) (29 U.S.C. 657(a)) is amended by striking paragraph (2) and inserting the following:

"(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials in such place of employment.

In conducting inspections and investigations under paragraph (2), the Secretary may question any such employer, owner, operator, agent or employee. An interview of an employee by the Secretary may only be in private with the consent of the employee.".

(b) RECORDKEEPING.—

(1) GENERAL MAINTENANCE.—The first sentence of section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended to read as follows: "Each employer shall make, keep and preserve, and make available, upon reasonable request and within reasonable limits, to the Secretary or the Secretary of Health and Human Services, such records regarding the activities of the employer relating to this Act as the Secretary, in cooperation with the Secretary of

Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses.".

(2) RECORDS OR REPORTS ON INJURIES.—Section 8(c) (29 U.S.C. 657(c)) is amended by adding at the end the following:

"(4) In prescribing regulations under this subsection, the Secretary may not require employers to maintain records of, or to make reports on, injuries that do not involve lost work time or that involve employees of other employers.

"(5) In prescribing regulations requiring employers to report work-related deaths and multiple hospitalizations, the Secretary shall include provisions that provide an employer at least 24 hours in which to make the report.".

(c) INSPECTIONS BASED ON EMPLOYEE COMPLAINTS.—Section 8(f) (29 U.S.C. 657(f)) is amended to read as follows:

"(f)(1)(A) An employee or representative of an employee who believes that a violation of a safety or health standard promulgated under this Act exists in the place of employment of the employee that threatens physical harm, or that an imminent danger exists in the place of the employment of the employee, may request an inspection by providing notice to the Secretary or an authorized representative of the Secretary of the violation or danger.

"(B) The notice under subparagraph (A) shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall state that the alleged violation or danger described in this subparagraph has been brought to the attention of the employer and the employer has refused to take any action to correct the alleged violation or danger.

"(C)(i) The notice under subparagraph (A) shall be signed by the employee or representative of the employee and a copy of the notice shall be provided to the employer or the agent of the employer no later than the time of arrival of an occupational safety and health agency inspector to conduct the inspection.

"(ii) Upon the request of the employee providing the notice under subparagraph (A), the name of the employee and the names of individual employees referred to in the notice shall not appear in the copy or on any record published, released, or made available pursuant to subsection (i), except that the name of the employee and the names of individual employees shall not be privileged from discovery in a contested case.

"(D) The Secretary may not make an inspection under this subsection except upon request by an employee or a representative of an employee.

"(E) If upon receipt of the notice under subparagraph (A), the Secretary determines that the employee or the representative of the employee has brought the alleged violation or danger to the attention of the employer and the employer has refused to take corrective action, and that there are reasonable grounds to believe the alleged violation or danger still exists, the Secretary shall make a special inspection in accordance with this subsection not later than 30 days after the receipt of the notice under subparagraph (A). The special inspection shall be conducted for the limited purpose of determining whether the alleged violation or danger exists.

"(2) If the Secretary determines either before, or as a result of, an inspection that there are not reasonable grounds to believe a violation or danger described in paragraph (1)(A) exists, the Secretary shall notify the complaining employee or the representative of the employee of the determination and, upon request by the employee or the representative of the employee, shall provide a written statement of the reasons for the determination.".

(d) TRAINING AND ENFORCEMENT.—Section 8 (29 U.S.C. 657) is amended—

(1) by redesignating subsection (g) as subsection (j); and

(2) by inserting after subsection (f) the following:

"(g) Inspections conducted under this section shall be conducted by at least 1 person who has training in, and is knowledgeable of, the industry or types of hazards being inspected.

"(h)(1) Except as provided in paragraph (2), the Secretary shall not conduct routine inspections of, or enforce any standard, rule, regulation, or order under this Act with respect to—

"(A) an employer who is engaged in a farming operation that does not maintain a temporary labor camp and employs 50 or fewer employees; or

"(B) an employer of not more than 50 employees if the employer is included within a category of employers having an occupational injury or a lost workday case rate (determined under the Standard Industrial Classification Code for which such data are published) that is less than the national average rate as most recently published by the Secretary acting through the Bureau of Labor Statistics under section 24.

"(2) In the case of an employer described in subparagraph (B) of paragraph (1), such paragraph shall not be construed to prohibit the Secretary, with respect to the employer, from—

"(A) providing under this Act consultations, technical assistance, and educational and training services;

"(B) conducting under this Act surveys and studies;

"(C) conducting inspections or investigations in response to employee complaints, issuing citations for violations of this Act found during an inspection, and assessing a penalty for the violations that are not corrected within a reasonable abatement period;

"(D) taking any action authorized by this Act with respect to imminent dangers;

"(E) taking any action authorized by this Act with respect to a report of an employment accident that is fatal to at least 1 employee or that results in hospitalization of at least 3 employees and taking any action pursuant to an investigation of such report; and

"(F) taking any action authorized by this Act with respect to a complaint of discrimination against employees for exercising their rights under this Act.

"(i) Any records or other information created by or for an employer for the purpose of conducting safety and health inspections, audits, or reviews not required by this Act shall not be required to be disclosed by the employer or the agent of the employer in any inspection, investigation, or enforcement proceeding conducted pursuant to this Act.".

SEC. 6. VOLUNTARY COMPLIANCE.

(a) PROGRAM.—The Occupational Safety and Health Act of 1970 (21 U.S.C. 651 et seq.) is amended by inserting after section 8 the following:

"SEC. 8A. VOLUNTARY COMPLIANCE.

"(a) IN GENERAL.—The Secretary shall by regulation establish a program to encourage voluntary employer and employee efforts to provide safe and healthful working conditions.

"(b) EXEMPTION.—In establishing a program under subsection (a), the Secretary shall, in accordance with subsection (c), provide an exemption from all safety and health inspections and investigations with respect to a place of employment maintained by the employer participating in the program, except that this subsection shall not apply to inspections and investigations conducted for the purpose of—

"(1) determining the cause of a workplace accident that resulted in the death of 1 or more employees or the hospitalization of 3 or more employees; or

"(2) responding to a request for an inspection pursuant to section (8)(f)(1).

"(c) REQUIREMENTS FOR EXEMPTION.—In order to qualify for the exemption provided under subsection (b), an employer shall provide to the Secretary evidence that—

"(1) the place of employment of the employer or conditions of employment have, during the preceding year, been reviewed or inspected under—

"(A) a consultation program provided by any State agency relating to occupational safety and health;

"(B) a certification or consultation program provided by an insurance carrier or other private business entity pursuant to a State program, law, or regulation; or

"(C) a workplace consultation program provided by any other person certified by the Secretary for purposes of providing workplace consultations; or

"(2) the place of employment has an exemplary safety record and the employer maintains a safety and health program for the workplace that—

"(A) includes—

"(i) procedures for assessing hazards to the employees of the employer that are inherent to the operations or business of the employer;

"(ii) procedures for correcting or controlling the hazards in a timely manner based on the severity of the hazard; and

"(iii) employee participation in the program including, at a minimum—

"(I) regular consultation between the employer and the nonsupervisory employees of the employer regarding safety and health issues; and

"(II) the opportunity for the nonsupervisory employees of the employer to make recommendations regarding hazards in the workplace and to receive responses or to implement improvements in response to the recommendations; and

"(B) that requires that participating nonsupervisory employees of the employer have training or expertise on safety and health issues consistent with the responsibilities of the employees.

A program under subparagraph (A) or (B) of paragraph (1) shall include methods that ensure that serious hazards identified in the consultation are corrected within an appropriate time.

"(d) CERTIFICATION.—The Secretary may require that an employer in order to claim the exemption under subsection (b) provides certification to the Secretary, and notice to the employees of the employer, of the eligibility of the employer for an exemption.".

(b) DEFINITION.—Section 3 (29 U.S.C. 652) is amended by adding at the end the following:

"(15) The term 'exemplary safety record' means that an employer has had, in the most recent annual reporting of the employer required by the Occupational Safety and

Health Administration, no employee death caused by occupational injury and fewer lost workdays due to occupational injury and illness than the average for the industry of which the employer is a part.".

SEC. 7. EMPLOYER DEFENSES.

Section 9 (29 U.S.C. 658) is amended by adding at the end the following:

"(d) No citation may be issued under subsection (a) to an employer unless the employer knew or with the exercise of reasonable diligence would have known of the presence of an alleged violation. No citation shall be issued under subsection (a) to an employer for an alleged violation of section 5, any standard, rule, or order promulgated pursuant to section 6, any other regulation promulgated under this Act, or any other occupational safety and health standard, if the employer demonstrates that—

"(1) employees of the employer have been provided with the proper training and equipment to prevent such a violation;

"(2) work rules designed to prevent such a violation have been established and adequately communicated to employees by the employer; and

"(3) the failure of employees to observe work rules led to the violation.

"(e) A citation issued under subsection (a) to an employer that violates the requirements of any standard, rule, or order promulgated pursuant to section 6 or any other regulation promulgated under this Act shall be vacated if the employer demonstrates that employees of the employer were protected by alternative methods that were equally or more protective of the safety and health of the employees than the methods required by the standard, rule, order, or regulation in the factual circumstances underlying the citation.

"(f) Subsections (d) and (e) shall not be construed to eliminate or modify other defenses that may exist to any citation.".

SEC. 8. THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(a) PROCEDURE FOR ENFORCEMENT.—

(1) NOTIFICATION.—The first sentence of section 10(b) (29 U.S.C. 659(b)) is amended to read as follows: "If the Secretary has reason to believe an employer has failed to correct a violation, for which a citation has been issued, within the period permitted for the correction of the violation, the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has 15 working days after the receipt of such a notification to notify the Secretary that the employer desires to contest the notification of the Secretary or the proposed assessment of penalty. The period for the correction of the violation described in the first sentence shall not begin to run until the time for contestation has expired or the entry of a final order by the Commission in a contested case initiated by the employer in good faith and not solely for delay or avoidance of penalties.".

(2) BURDEN OF PROOF.—Section 10 (29 U.S.C. 659) is amended by adding at the end the following:

"(d) In all hearings before the Commission relating to a contested citation, there shall be no presumption of a violation of standard, or an existence of a hazard, under this Act. In such cases, the Secretary shall have the burden of proving by a preponderance of the evidence—

"(1) the existence of a violation;

"(2) that the violation for which the citation was issued constitutes a realistic hazard to the safety and health of the affected employees;

"(3) that there is a likelihood that the hazard will result in employee injury;

"(4) that the employer knew or with the exercise of reasonable diligence should have known of the hazard and violation; and

"(5) that a technically and economically feasible method of compliance exists.".

(b) JUDICIAL REVIEW.—Section 11(a) (29 U.S.C. 660(a)) is amended by inserting after "conclusive." at the end of the sixth sentence the following: "The court shall make its own determination as to questions of law, including the reasonable interpretation of standards promulgated under this Act, and shall not accord deference to either the Commission or the Secretary.".

SEC. 9. DISCRIMINATION.

(a) COMPLAINT.—Section 11(c)(2) (29 U.S.C. 660(c)(2)) is amended to read as follows:

"(2)(A)(i) Any employee who believes that such employee has been discharged or otherwise discriminated against by the employer of the employee in violation of this subsection may, within 30 days after such violation occurs, file a complaint with the Secretary alleging the discrimination.

"(ii) A complaint may not be filed under clause (i) after the expiration of the 30-day period described in such clause.

"(B)(i) Upon receipt of a complaint under subparagraph (A) and as the Secretary considers appropriate, the Secretary shall conduct an investigation.

"(ii) If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, the Secretary shall attempt to eliminate the alleged violation by informal methods.

"(iii) Nothing stated or done, during the use of the informal methods applied under clause (ii) may be made public by the Secretary or used as evidence in any subsequent proceeding.

"(iv) The Secretary shall make a determination concerning the complaint as soon as possible and, in any event, not later than 90 days after the date of the filing of the complaint.

"(C) If the Secretary is unable to resolve the alleged violation through informal methods, the Secretary shall notify the parties in writing that conciliation efforts have failed.

"(D)(i) Not later than 90 days after the date on which the Secretary notifies the parties under subparagraph (C) in writing that conciliation efforts have failed, the Secretary may bring an action in any appropriate United States district court against an employer described in subparagraph (A).

"(ii) The employer against whom an action under clause (i) is brought may demand that the issue of discrimination be determined by jury trial.

"(E) Upon a showing of discrimination in an action brought under subparagraph (D)(i), the Secretary may seek, and the court may award, any and all of the following types of relief:

"(i) An injunction to enjoin a continued violation of this subsection.

"(ii) Reinstatement of the employee to the same or equivalent position.

"(iii) Reinstatement of full benefits and seniority rights.

"(iv) Compensation for lost wages and benefits.

"(F) This subsection shall be the exclusive means of securing a remedy for any aggrieved employee.".

(b) ACCESS TO RECORDS.—Section 11(c)(3) (29 U.S.C. 660(c)(3)) is amended to read as follows:

"(3) Any records of the Secretary, including the files of the Secretary, relating to investigations and enforcement proceedings pursuant to this subsection shall not be subject to inspection and examination by the public while such inspections and proceedings are pending in the United States district court.".

SEC. 10. INJUNCTION AGAINST IMMINENT DANGER.

Section 13 (29 U.S.C. 662) is amended—

(1) by striking subsection (c);

(2) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(3) by inserting before subsection (b) (as so redesignated by paragraph (2)) the following:

"(a)(1)(A)(i) If the Secretary determines, on the basis of an inspection or investigation under this section, that a condition or practice in a place of employment is such that an imminent danger to safety or health exists that could reasonably be expected to cause death or serious physical harm or permanent impairment of the health or functional capacity of employees if not corrected immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act, the Secretary—

"(I) may inform the employer, and provide notice, by posting at the place of employment, to the affected employees of the danger; and

"(II) shall request the employer that the condition or practice be corrected immediately or that the affected employees be immediately removed from exposure to such danger.

"(ii) A notice under clause (i) shall be removed by the Secretary from the place of employment not later than 72 hours after the notice was first posted unless a court in a proceeding under subsection (c) requires that the notice be maintained.

"(B) The Secretary shall not prevent the continued activity of the employees of the employer whose presence in the place of employment is necessary—

"(i) to avoid, correct, or remove the imminent danger;

"(ii) to maintain the capacity of a continuous process operation to resume the normal operations of the employer without a cessation of the operations; or

"(iii) to permit the cessation of the operations of the employer to be accomplished in a safe and orderly manner, where the cessation of the operations is necessary.

"(2) No employer shall discharge, or in any manner discriminate against any employee, because the employee has refused to perform a duty that has been identified as the source of an imminent danger by a notice posted pursuant to paragraph (1).".

SEC. 11. SMALL BUSINESS ASSISTANCE AND TRAINING.

Section 16 (29 U.S.C. 665) is amended—

(1) by inserting "(a)" after "16."; and

(2) by adding at the end the following:

"(b) The Secretary shall publish and make available to employers a model injury prevention program that if completed by the employer shall be deemed to meet the requirement for an exemption under section 8A or a reduction in penalty under section 17(a)(3)(B).

"(c) The Secretary shall establish and implement a program to provide technical assistance and consultative services for employers and employees, either directly or by grant or contract, concerning work site safety and health and compliance with this Act. The assistance shall be targeted at small employers and the most hazardous industries.

"(d) Consultative services shall be provided to employers through cooperative agreements between the States and the Occupational Safety and Health Administration.

The consultative services provided under a cooperative agreement under this subsection shall be the same type of services described in part 1908 of title 39 of the Code of Federal Regulations.

"(e) Not less than one-fourth of the annual appropriation made to the Secretary to carry out this Act shall be expended for the activities described in this section.".

SEC. 12. PENALTIES.

(a) IN GENERAL.—Section 17 (29 U.S.C. 666) is amended—

(1) by striking subsections (a), (b), (c), (f), (i), (j), and (k);

(2) by redesignating subsections (d), (e), (g), (h), and (l) as subsections (b), (c), (d), (e), and (f), respectively; and

(3) by inserting after "17." the following:

"(a)(1) Any employer who violates the requirements of section 5, any standard, rule, or order promulgated pursuant to section 6, or any other regulation promulgated under this Act may be assessed a civil penalty of not more than $7,000. The Commission shall have authority to assess all civil penalties provided for in this section, giving due consideration to the appropriateness of the penalty with respect to—

"(A) the size of the employer;

"(B) the number of employees exposed to a violation;

"(C) the likely severity of any injuries directly resulting from the violation;

"(D) the probability that the violation could result in injury or illness;

"(E) the good faith of the employer in correcting the violation after the violation has been identified;

"(F) the extent to which employee misconduct was responsible for the violation; and

"(G) the effect of the penalty on the ability of the employee to stay in business.

"(2) In assessing penalties for violations under this section, the Commission shall have authority to determine whether violations should be classified as willful, repeated, serious, other than serious, or de minimus. Regardless of the classification of a violation, there shall be only 1 penalty assessed for each violation. The Commission may not enhance the penalty based on the number of employees exposed to the violation or the number of instances of the same violation.

"(3)(A) A penalty assessed under paragraph (1) shall be reduced by 25 percent in any case in which the employer—

"(i) maintains a written safety and health program for the work site where the violation, for which the penalty was assessed, occurred; or

"(ii) shows that the work site where the violation, for which the penalty was assessed, occurred has an exemplary safety record.

"(B) If the employer maintains a program described in subparagraph (A)(i) and has the record described in subparagraph (A)(ii), the penalty shall be reduced by 50 percent.

"(4) No penalty shall be assessed against an employer for a violation other than a violation previously cited by the Secretary, a violation that creates an imminent danger, a violation that has caused death, or a willful violation that has caused serious injury to an employee, unless the Secretary provides—

"(A) the employer with a written notification of the violation; and

"(B) the employer a reasonable time (but not less than 10 days after the receipt by the employer of the written notification) to correct the violation.".

(b) CRIMINAL PENALTIES.—Section 17(c) (29 U.S.C. 666(c)) (as so redesignated by subsection (a)) is amended by adding at the end the following: "No employer shall be subject to any State or Federal criminal prosecution arising out of a workplace accident other than under this subsection.".

SEC. 13. TRANSFER OF CERTAIN OCCUPATIONAL SAFETY AND HEALTH FUNCTIONS.

(a) TRANSFER OF FUNCTIONS; REPEAL.—

(1) NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY AND HEALTH.—The functions and authorities provided to the National Institute of Occupational Safety and Health under section 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671) are transferred to the Secretary of Labor.

(2) SECRETARY OF HEALTH AND HUMAN SERVICES.—The responsibilities and authorities of the Secretary of Health and Human Services under sections 20, 21, and 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669, 670, and 671) are transferred to the Secretary of Labor.

(3) REPEAL.—Section 22 (29 U.S.C. 671) is repealed.

(b) ADDITIONAL FUNCTIONS.—In carrying out the functions transferred under subsection (a), the Secretary of Labor shall take such actions as are necessary to avoid duplication of programs and to maximize training, education, and research under the Occupational Safety and Health Act of 1970 (29 U.S.C. 671 et seq.).

(c) REFERENCES.—

(1) IN GENERAL.—Each reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

(A) the head of the transferred office, or the Secretary of Health and Human Services, with regard to functions transferred under subsection (a), shall be deemed to refer to the Secretary of Labor; and

(B) a transferred office with regard to functions transferred under subsection (a), shall be deemed to refer to the Department of Labor.

(2) DEFINITION.—For the purpose of this subsection, the term "office" includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

(d) CONFORMING AMENDMENTS.—Not later than 180 days after the effective date of this Act, if the Secretary of Labor determines (after consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget) that technical and conforming amendments to Federal statutes are necessary to carry out the changes made by this section, the Secretary of Labor shall prepare and submit to Congress recommended legislation containing the amendments.

SEC. 14. ECONOMIC IMPACT ANALYSIS.

The Secretary of Labor shall conduct a continuing comprehensive analysis of the costs and benefits of each standard in effect under section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The Secretary shall report the results of the analysis to Congress upon the expiration of the 2-year period beginning on the date of enactment of this Act and every 2 years thereafter.

SEC. 15. LABOR RELATIONS.

(a) DEFINITIONS.—Paragraph (5) of section 2 of the National Labor Relations Act (29 U.S.C. 152(5)) is amended by adding at the end the following: "The term does not include a safety committee that is comprised of an employer and the employees of the employer and that is jointly established by the employer and the employees of the employer, or by the employer and a labor organization representing the employees of the employer, to carry out efforts to reduce injuries and disease arising out of employment.".

(b) UNFAIR LABOR PRACTICES.—Section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) is amended by inserting before the semicolon at the end the following: ": *Provided further*, That it shall not constitute an unfair practice under this paragraph for an employer and the employees of the employer, or for an employer and a labor organization representing the employees of the employer, to jointly establish a safety committee in which the employer and the employees of the employer carry out efforts to reduce injuries and disease arising out of employment".

By Mr. MACK (for himself, Mr. D'AMATO, Mr. BOND, Mr. FAIRCLOTH and Mr. GRAMS):

S. 462. A bill to reform and consolidate the public and assisted housing programs of the United States, and to redirect primary responsibility for these programs from the Federal Government to States and localities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE PUBLIC HOUSING REFORM AND RESPONSIBILITY ACT OF 1997

Mr. MACK. Mr. President, I am today introducing, along with Senators D'AMATO, BOND, FAIRCLOTH, and GRAMS, the Public Housing Reform and Responsibility Act of 1997. This bill is similar to public and assisted housing reform legislation, S. 1260, that was introduced in the 104th Congress and passed unanimously by the Senate.

The Public Housing Reform and Responsibility Act of 1997 addresses a public housing system fraught with counterproductive rules and regulations that make it impossible for even the best run public housing authorities [PHA's] to operate effectively and efficiently. It will help to make public housing a platform from which residents can achieve the goal of economic independence and self-sufficiency. In addition, it promotes increased residential choice and mobility by increasing opportunities for residents to use tenant-based assistance.

Most public housing today serves only the poorest of the poor—on average those with incomes at 17 percent of area median. The gap between tenant rent contributions and the cost of operating public housing is growing wider than the ability of Federal housing subsidy funds to close it. PHA's are denied the flexibility necessary to maintain the existing supply of public housing in decent and safe condition, and in some cases are even constrained from demolishing vacant or nonviable public housing developments.

Just as these rules have made it difficult for housing authorities to provide and maintain decent and safe housing or to meet basic operating costs, these rules have been even worse for tenants. They have destroyed the ability of families to move up and out

of public housing and become economically self-sufficient. Public housing rent rules, in particular, create strong economic disincentives for residents to work or seek higher paying jobs.

The following reforms contained in the Public Housing Reform and Responsibility Act represent significant improvements in current public and assisted housing policies.

First, the bill consolidates a multitude of programs into two flexible block grants to expand the eligible uses of funds and allow more creative and efficient use of resources. The bill also repeals a number of current programs that are obsolete, unused, or unfunded.

Second, it institutes permanent rent reforms such as ceiling rents, earned income adjustments, and minimum rents that provide PHA's with the tools to develop rental policies that encourage and reward work and further the goal of creating mixed-income communities. The bill also removes the floor on rents that may be charged under the Brooke amendment, while assuring that poor families will not pay more than 30 percent of their income for rent.

Third, the bill requires tough, swift action against PHA's with severe management deficiencies and provides HUD or court-appointed receivers with the necessary tools and powers to deal with troubled agencies and protect public housing residents.

Fourth, it requires intervention with respect to severely distressed public housing developments that trap residents in deplorable living conditions and are costly to operate or maintain. It provides residents with alternative housing using vouchers or other available housing.

Fifth, the bill permanently repeals the one-for-one replacement requirement and streamlines the demolition and disposition process to permit PHA's to demolish or sell vacant or obsolete public housing.

Sixth, it gives PHA's broad flexibility to develop or participate with other providers of affordable housing in the development of mixed-income, mixed finance developments.

Seventh, it repeals Federal preferences that have had the unintended consequence of concentrating the poorest of the poor in public housing developments and allows PHA's to operate according to locally established preferences consistent with local housing needs. The bill still maintains the requirement that most housing assistance be targeted to very low-income households.

Eighth, the Public Housing Reform and Responsibility Act calls on PHA's to increase coordination with State and local welfare agencies to ensure that welfare recipients living in public housing will have the full opportunity to move from welfare to work.

Ninth, the bill provides residents with an active voice in developing the local PHA plans that will govern the operations and management of housing and for direct participation on housing authority boards of directors. It also authorizes funds for resident organizations to develop resident management and empowerment activities.

Finally, it merges the Section 8 voucher and certificate programs into a single, choice-based program designed to operate more effectively in the private marketplace. It repeals requirements that are administratively burdensome to landlords, such as take-one, take-all, endless lease and 90-day termination notice requirements. These reforms will make participation in the section 8 tenant-based program more attractive to private landlords and increase housing choices for lower income families.

The reforms contained in this legislation will significantly improve the nation's public housing and tenant-based rental assistance program and the lives of those who reside in Federally assisted housing. The funding flexibility, substantial deregulation of the day-to-day operations and policies of public authorities, encouragement of mixed-finance developments, policies to deal with distressed and troubled public housing, and rent reforms will change the face of public housing for PHA's, residents, and local communities.

Reform of the public housing system has been and should remain a bipartisan effort. I look forward to working with all of my colleagues toward early passage of this legislation.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

PUBLIC HOUSING REFORM AND RESPONSIBILITY ACT OF 1997 SUMMARY OF KEY PROVISIONS

FINDINGS

Recognizes the Federal government's limited capacity and expertise to manage and oversee 3,400 public housing agencies nationwide. Acknowledges the concentration of the very poor in very poor neighborhoods, disincentives for economic self-sufficiency, and lack of resident choice have been the unintended consequences resulting from Federal micromanagement of housing programs in the past.

PURPOSE

To reform the public housing system by consolidating programs, streamlining program requirements, and providing maximum flexibility and discretion to public housing authorities [PHAs] who perform well with strict accountability to residents and localities, and to address the problems of housing authorities with severe management deficiencies.

BASIC PROVISIONS

Program Consolidation. Consolidates public housing programs into two flexible block grants—one for operating expenses and one for capital needs. Requires HUD to establish new formulas through negotiated rulemaking. Funding for section 8 tenant-based program will continue to be funded as a separate program.

Elimination of Obsolete Regulations. Eliminates all current HUD rules, regulations, handbooks, and notices pertaining to public housing and section 8 tenant-based programs under the United States Housing Act of 1937 one year after enactment; requires HUD to propose new regulations necessary to carry out the revised Act within 9 months.

Public Housing Agency Plan [PHAP]. Refocuses the responsibility for administering public housing back to the PHA, the tenants and the local community. Requires each PHA to submit a comprehensive public housing agency plan to HUD, consistent with the local Comprehensive Housing Affordability Strategy [CHAS] and developed in conjunction with a resident advisory board.

The plan is intended to serve as an operating, management and planning tool for PHAs. Plan requirements, to be established through negotiated rulemaking, would include: a description of the PHA's uses for operating and capital funds; a description of the PHA's management policies; procedures relating to eligibility, selection, and admission; plans for capital improvements and demolition and disposition or properties; and policies regarding rents, security, and tenant empowerment activities. The plan would also include a statement of needs which would describe the needs of the low-income families in the community and on the waiting list and how the PHA intends to address those needs.

HUD review of the public housing agency plan would be limited to determine whether the contents of the plan: (1) set forth the information required to be contained in the plan; (2) are consistent with the information and data available to HUD; and (3) are not prohibited by or inconsistent with the requirements of this Act or any applicable law.

The bill allows HUD to require additional information from troubled PHAs, and a streamlined plan for high-performing PHAs and small PHAs with less than 250 units.

Vouchering Out of Public Housing. Allows PHAs to convert any public housing development to a tenant-based or "voucher" system, but requires the vouchering out of all severely "distressed" public housing. Requires each PHA, within 2 years, to assess all public housing for the purpose of vouchering out by performing a cost and market analysis and an impact analysis on the affected community; provides HUD with waiver authority for PHAs to conduct the assessment.

Choice and Opportunity for Residents. Provides public housing families with an active voice in developing a PHA plan that is responsive to their needs. Provides funds for resident organizations to develop resident management and empowerment activities.

Federal Preferences. Repeals Federal preferences and allows PHAs to operate according to locally established preferences consistent with local housing needs.

Income Targeting and Eligibility. Allows PHAs in any fiscal year to make units available for initial occupancy to families with incomes up to 80% of median income, except that at least 40% of the units must be reserved for families whose income does not exceed 30% of the area median and at least 75% of the units must be reserved for families whose income does not exceed 60% of area median; requires PHAs to include a plan in the public housing agency plan for achieving a diverse income mix among tenants in

each project and among scattered-site public housing. Income targeting provisions for the section 8 tenant-based program are similar to public housing except 50% of vouchers must be reserved for families whose income does not exceed 30% of the area median.

Rent Flexibility. Allows PHAs to set rents at a level not to exceed 30% of a tenant's adjusted income. Encourages PHAs to develop rental policies that reward employment and upward mobility.

Ceiling Rents. Allows PHAs to set ceiling rents that reflect the reasonable rental value of units in order to remove the disincentive for residents to work or seek higher paying jobs where rents are based on a percentage of income.

Minimum Rents. Allows PHAs to set a minimum rent for both Section 8 and public housing units, not to exceed $25 per month.

Income Adjustments. Allows a PHA to disregard certain income in calculating rents to take away the disincentive for tenants to work and earn higher incomes.

Troubled PHAs. Requires HUD to take over or appoint a receiver for PHAs that are in substantial default within one year of enactment. Expands HUD's powers for dealing with troubled PHAs by allowing it to break up troubled agencies into one or more agencies, abrogate contracts that impede correction of the agency's default, and demolish and dispose of a PHA's assets. Allows HUD to provide technical assistance to assist near-troubled PHAs from becoming troubled.

Demolition and Disposition. Repeals the one-for-one replacement requirement and streamlines and makes flexible the demolition and disposition process to permit PHAs to demolish and dispose of vacant or obsolete housing. Authorizes HUD to disapprove any demolition or disposition that is clearly inconsistent with the information and data available to HUD.

No Net Increase in Public Housing Units. Prohibits PHAs from using capital or operating funds to increase the overall number of public housing units they own and/or operate.

Substance, Alcohol Abuse, Criminal Activity. Retains provisions enacted as part of last year's Housing Opportunity Program Extension Act that: (1) require PHAs to prohibit occupancy by, or terminate tenancy of, any person a PHA determines is illegally using a controlled substance or has reasonable cause to believe his/her drug use or alcohol abuse could/does interfere with the health, safety, or right to peaceful enjoyment of other tenants; (2) strengthen the ability of PHAs to evict residents for drug-related criminal activity; (3) deny housing assistance to residents evicted for drug-related activities for up to three years; and (4) provide PHAs with greater access to the criminal conviction records of adult applicants and residents.

Consortia and Joint Ventures. Allows PHAs to form a consortium with other PHAs, form and operate wholly-owned or controlled subsidiaries, or enter into joint ventures, partnerships or other business arrangements to administer housing programs; requires any income to be used for low-income housing or to benefit the tenants of the PHA.

Designated Housing for the Elderly and Disabled. Retains provisions enacted as part of last year's Housing Opportunity Program Extension Act that: (1) permits PHAs, in their own discretion, to designate public housing projects (or portions thereof) as elderly-only, disabled only, or elderly and disabled housing under their Public Housing Agency Plans; (2) permits PHAs, for purposes of elderly-only housing, to provide a secondary preference for occupancy for near elderly families; and (3) prohibits the eviction of existing tenants as a result of the designation of a public housing project (or portion).

Community Work Requirements. Requires residents to perform at least 8 hours of community work per month with the exception for the elderly, disabled and those working full-time, those in school or receiving vocational training, and single parents or the spouse of an otherwise exempt individual who is the primary caretaker of young children.

Coordination with Welfare Agencies. Calls on PHAs, to the maximum extent possible, to enter into cooperation agreements with State and local welfare agencies to share information regarding rents, income, and benefits to assist such entities in carrying out their appropriate functions.

Public Housing Homeownership Opportunities. Authorizes PHAs to sell public housing units to the low-income tenants of the PHA or to any organization that serves as a conduit for sales to such persons. Allows PHAs to assist residents to purchase a principal residence not located in a public housing project.

Mixed-Finance Projects. Allows PHAs to own, operate, assist, or otherwise participate in one or more mixed-finance projects. Permits consistency with the rent requirements of the low-income housing tax credit. Provides broad flexibility for the development of mixed-finance projects, while maintaining the requirements of the public housing program for units which receive assistance as public housing units.

Public Housing Mortgages and Security Interests. Authorizes HUD to develop requirements, subject to certain criteria, for PHAs to mortgage or otherwise grant a security interest in any public housing project. Prohibits any action taken under this section to result in any liability to the Federal government.

Revitalization of Severely Distressed Public Housing. Revises current severely distressed public housing program and sunsets it on October 1, 1999. Permits competitive grants for: demolition of obsolete public housing; site revitalization; and providing replacement housing, including tenant-based assistance.

Section 8 Tenant Based Assistance. Merges the voucher and certificate program into a single voucher program that emphasizes lease requirements similar to the market place. Repeals requirements that are administratively burdensome to landlords, such as "take one take all", endless lease, Federal preferences, and ninety-day termination notice requirements.

Program Repeals. Repeals several programs, demonstrations, and studies that are either merged into the new block grants, expired, inactive, or already completed including: the Public Housing One-Stop Perinatal Services Demonstration, Public Housing Childhood Development Program, Indian Housing Childhood Development Program, Public Housing Mincs Demonstration, Public Housing Energy Efficiency Demonstration, Public and Assisted Housing Youth Sports Programs, Moving to Opportunity for Fair Housing Program, Report Regarding Fair Housing Objectives, and Special Projects for Elderly and Handicapped Families.

Mr. D'AMATO. Mr. President, I rise to cosponsor the Public Housing Reform and Responsibility Act of 1997. This important legislation contains significant policy reforms which will greatly improve our Nation's public and tenant based housing programs. The Public Housing Reform and Responsibility Act of 1997 is very similar to legislation (S. 1260) which was passed unanimously by the Senate in January 1996.

I wish to salute Senator CONNIE MACK, chairman of the Banking Committee's Subcommittee on Housing and Community Opportunity, for his successful leadership in the development and passage of public housing reform legislation in the 104th Congress. I commend Senator MACK for his initiative and steadfastness in producing an improved housing bill which builds on the lessons learned during the last Congress. Substantial input from the Department of Housing and Urban Development [HUD], resident associations, public housing authorities and other interested parties has been received and incorporated into this legislation.

This legislation addresses just one area of long overdue reform needed at HUD. Given limited Federal resources and the need to balance the budget by the year 2002, Congress must find more cost-effective ways to provide affordable housing. This bill represents a concrete step in the fulfillment of Congress' responsibility to the American taxpayer to ensure that every Federal dollar is maximized to its greatest potential.

The reform provisions contained in this bill will help to ensure the long-term viability of our Nation's existing stock of affordable housing and reaffirms our commitment to providing decent, safe, and affordable housing. Efficiencies will be realized from the elimination and consolidation of duplicative and burdensome Federal regulations, while the essential mission of our housing programs is retained and strengthened.

Mr. President, I would like to comment on several guiding principles of the legislation. First, it will reform the public housing system through the devolution of control from the Federal Government to high performing public housing authorities and their residents. It will streamline program requirements, consolidate programs and provide increased flexibility to public housing authorities which have demonstrated a track record of good management. Federal oversight and enforcement of troubled housing authorities will be increased significantly.

The bill provides incentives to empower public housing residents and facilitate the transition from welfare to work. It provides important linkages to the welfare reform bill which became law last year. This will allow our Nation's public housing residents a greater opportunity to achieve economic independence.

Mr. President, the bill seeks to increase the local accountability of housing authorities through the implementation of a local planning process. Public housing authorities will prepare 5-year and annual plans which will include all significant matters related to the operation of the housing authority. These plans will be required to be consistent with relevant State and local comprehensive plans. In addition, plans will be reviewed by resident advisory boards.

The bill recognizes that public housing is most effective when there is a viable income mix among its residents. Federal preferences will be repealed. The Brooke amendment, which requires residents to pay 30 percent of their income as rent, would be altered to allow tenants to pay "up to" 30 percent of their incomes in rent. This will remove a work disincentive which has hampered the economic livelihoods of many residents, while retaining the 30 percent limit as a cap.

The bill has additional rent reforms such as income disregards which will allow welfare recipients to move to work without losing 30 percent of their new-found income to rent, and ceiling rents which will allow working families to continue to move up the economic ladder without a 30 percent tax on income.

Mr. President, this legislation ensures that a significant percentage of units that become vacant in a given year will be set aside for the lowest income families. I believe this bill achieves the delicate balance between fostering the growth of mixed-income communities while ensuring that our neediest citizens will continue to be served.

The safety and security of the residents of public and assisted housing is a paramount objective. Many safety and security measures, including allowing public housing authorities increased access to criminal conviction records and greater flexibility in the eviction of drug criminals, were passed last year in legislation which I introduced, the Housing Opportunity Program Extension Act (Pub. L. 104–120). This legislation includes numerous additional safety and security provisions, including allowing HUD to waive rent requirements to permit police officers a lower rent as an inducement to living in project-based section 8 housing.

Furthermore, the bill will streamline the demolition and disposition process of distressed housing projects through the repeal of the one-for-one replacement requirement and other measures. This impractical and counterproductive Federal requirement has been waived for the last 2 fiscal years through the appropriations process. By making this repeal permanent, our housing authorities will be able to operate with certainty.

Mr. President, the Banking Committee and its Housing Subcommittee will continue to evaluate proposals for HUD reorganization. Legislation to reform HUD's Federal Housing Administration insured and section 8 assisted multifamily properties will be introduced this spring. Additional legislative initiatives to reform HUD and its multitude of duplicative programs also will be considered.

We must remember that the fundamental goal of this process is to address adequately the affordable housing and community development needs of our citizens in a time of dwindling Federal resources. It is imperative that we protect our needy poor and working class residents whom these programs are intended to serve. Reforms must be made with caution and careful consideration.

This legislation has been crafted with the benefit of a lengthy and productive debate in the 104th Congress. The Banking Committee conducted a series of hearings on HUD and its public and assisted housing programs during the 104th Congress. Additional hearings are planned for this year. The Banking Committee will seek to achieve the swift implementation of needed reforms. The committee will utilize an open process with an opportunity for input from all concerned parties, which has as its goal the formation of a consensus for change.

Mr. President, I believe this bill appropriately balances the social purpose of public and assisted housing programs while also responding to Federal fiscal constraints. I look forward to working with all Members of the Banking Committee on a bipartisan basis to ensure the speedy passage of this important housing initiative.

Mr. BOND. Mr. President, I rise in support with Senators MACK and D'AMATO in introducing the Public Housing Reform and Responsibility Act of 1997. This legislation is substantially the same as S. 1260 which passed the Senate in the 104th Congress, but fell short of enactment in the waning days of that Congress.

This legislation is a critical step to the needed reform of the Department of Housing and Urban Development, as well as a major reform bill in its own right. This legislation consolidates the public housing and section 8 tenant-based assistance programs, and redirects the responsibility and authority for public housing and section 8 back to federally assisted residents, the public housing agencies, the localities, and the States.

This bill also dovetails with many of the public housing reforms contained in the VA/HUD fiscal years 1996 and 1997 appropriations bills and reflects the need to provide streamlined programs and local responsibility as the most appropriate method to address local housing needs.

I cannot emphasize enough the need to find a measured solution to the housing problems of this Nation and to HUD's overregulation of housing and community issues that are better addressed at the local level. This bill represents a complete overhaul of the public housing system and the section 8 tenant-based program and a move away from HUD's all too common one-size-fits-all mentality.

The linchpin of this legislation is to place the responsibility for the decisionmaking for public housing issues, from the demolition of obsolete units to the issue of elderly only housing to the voluntary conversion of public housing to tenant-based assistance, in the hands of local public housing agencies through public housing agency plans developed in conjunction with residents and consistent with state and local housing plans.

In addition, this legislation would continue to protect the poorest of the poor by requiring PHA's to continue to make 40 percent of all units available to families whose incomes do not exceed 30 percent of the area median income, 75 percent of all units to families whose incomes do not exceed 60 percent of median income and to make all other units available to families with incomes no greater than 80 percent of median income.

This bill also reforms and consolidates the section 8 voucher and certificate program into a single voucher program which will reduce administrative burden and increase the acceptability of vouchers in the private housing market.

Finally, the bill continues the Distressed Public Housing Program for the demolition of obsolete and uninhabitable public housing. Obsolete public housing has long been a drag on communities, and I consider it an absolute priority to remove these projects and provide low-income families with positive, affordable housing choices.

I see this bill as part of a downpayment on a larger HUD reform effort which I expect to be pursued throughout this Congress. I look forward to working with my colleagues on these important issues and I am optimistic that we can address many of them.

By Mrs. MURRAY:

S. 464. A bill to amend title 38, United States Code, to allow revision of veterans' benefits decisions based on clear and unmistakable error; to the Committee on Veterans' Affairs.

THE CLEAR AND UNMISTAKABLE ERROR LEGISLATION

Mrs. MURRAY. Mr. President, I am introducing today legislation to ensure that the Board of Veterans' Appeals errs on behalf of our veterans rather than on the side of the Federal Government. Specifically, my legislation will allow a veteran to correct a rating decision which is a clear and unmistakable error.

I am pleased to be joining with Congressman LANE EVANS in introducing

this legislation. Congressman EVANS has been a champion in this cause and he has shepherded clear and unmistakable error legislation through the House of Representatives in the last two Congresses. The House Veterans' Affairs Committee will markup this legislation later this week; again, paving the way for House passage of this legislation. This is the first time that Senate legislation has been introduced on clear and unmistakable error. I look forward to working with my colleagues at the Senate Veterans' Affairs Committee to raise the profile of this issue in the Senate in the coming days.

Since joining the Senate Veterans' Affairs Committee in the last Congress, I have made it a priority to work closely with the veterans of my State. This legislative initiative is a direct result of that partnership between my office and the veterans of Washington State. Several veterans service organizations have contacted me in support of this legislation, and I do also know that this issue is a priority for the Disabled American Veterans.

For the record, I want to detail a vivid example of a clear and unmistakable error. The Department of Veterans Affairs schedule for rating disabilities prescribes a 40-percent disability rating for an amputation of the leg below the knee and a 60-percent disability rating for an amputation of the leg above the knee. In an instance where a veteran had an above the knee amputation but was assigned a 40-percent rating, the rating decision is indisputably wrong—clear and unmistakably wrong. My legislation would ensure that egregious errors like this at any administrative level of adjudication would be subject to review.

In recent months, I've handled several cases with the Department of Veterans Affairs that directly involved clear and unmistakable error. In one case, a veteran with a serious shoulder injury dating back to the Vietnam war was rated incorrectly for more than 20 years. In another case, a veteran with PTSD also dating to service in Vietnam was misdiagnosed for a lengthy period, affecting his disability rating and benefits and the treatment he received. To the VA's credit, some cases of clear and unmistakable error are reversible but it depends on where the veteran is in the VA process. Some cases of clear and unmistakable error no longer offer recourse to the veteran. My legislation seeks to correct this. I believe that we must make available every opportunity to right a wrong on behalf of a veteran.

Importantly, this legislation will also allow a veteran who under current law cannot seek to have a clear and unmistakable error claim reviewed the opportunity to request that the Board of Veterans' Appeals review its prior decision. So often we in Congress talk about providing for veterans or about meeting our obligations to veterans. That is what this bill is all about; it gives a veteran the right to request a review rather than subjecting an ailing vet to a sometimes faceless bureaucracy hesitant to correct its mistakes.

This issue has been cast by some as arcane and complicated. And it is. But let me break it down to its most basic element for the Members of the Senate. Clear and unmistakable errors are errors that have deprived and continue to deprive veterans of benefits for which their entitlement is undeniable. To deny a veteran due to a bureaucratic mistake is beyond comprehension. When I first heard of this problem, I doubted the severity of the problem. But for a small number of veterans, the problem is real, very real, and it is causing hardships for some in meeting the challenges of everyday life.

The Congressional Budget Office determined a previous version of this legislation to be budget neutral. Stated another way, this legislation would not require additional resources for the VA or take needed resources from other VA programs or benefits.

The Department of Veterans Affairs does have a number of objections to the legislation. I do look forward to working with Secretary Jesse Brown to address these concerns so that this important veterans legislation can go forward. Secretary Brown is the most passionate advocate for veterans within government service. I have every confidence that he will work with me and other concerned Members to ensure that the VA works for the veteran.

Mr. President, I ask my colleagues to review this legislation and join me as cosponsors of this important initiative on behalf of veterans.

By Mr. DORGAN (for himself, Mr. BYRD and Mr. SARBANES):

S. 465. A bill to establish an Emergency Commission To End the Trade Deficit; to the Committee on Finance.

THE EMERGENCY COMMISSION TO END THE TRADE DEFICIT ESTABLISHMENT ACT

Mr. DORGAN. Mr. President, I am pleased to be on the floor of the Senate today with my distinguished colleague, the Senator from West Virginia, Senator BYRD. There is no one in the Senate for whom I have greater respect. I am pleased today to join him in introducing a piece of legislation dealing with a very important issue for this country, the trade deficit. Most especially, the merchandise trade deficit.

On behalf of myself, Senator BYRD, and Senator SARBANES, we are introducing legislation today which will establish a commission that will meet and make recommendations on how to end the crippling and growing merchandise trade deficit in our country.

We have had a great deal of discussion about the budget deficit in the U.S. Senate, and in Congress in recent months. In fact, it was not too long ago we had a stack of books, I venture to say 5-foot high, stacked on a desk that was, I think, to demonstrate deficits in various budgets for many years. That was one deficit.

That deficit is a difficult and a serious issue and one we must address. The question was whether it should be addressed through an attempt to alter the Constitution of the United States. There was great controversy about that. Yet, there was no disagreement about whether we had a responsibility to address the fiscal policy deficits. We have addressed them. We need to do more. They are coming down. They have been decreased by over 60 percent. The budget deficit has been coming down substantially for 4 years in a row. We have made progress, but we have a ways to go.

But there is another deficit in this country that is not even whispered about in this town or on the floor of Senate save for a couple of Members who care about it and come to speak about it. That is the merchandise trade deficit. That is a deficit that has not been reduced each of the last 4 years, as has the budget deficit.

This is a deficit that has been growing each of the last 4 years. This is a deficit that last year was the largest in our country's history. This is a deficit that, added on top of other trade deficits which have occurred for 21 consecutive years, now stacks up to a pile of $2 trillion. We have nearly $2 trillion of accumulated merchandise trade deficits that this country must repay some day with a lower standard of living here in the United States.

This is the third straight year of record trade deficits. It is the third straight year of new record levels in a string of 21 consecutive years of trade deficits. The last trade surplus in this country was in the year 1975.

Now, I have a chart I will show that demonstrates the fact that the United States has moved from a net creditor position to a net debtor position.

We are the largest debtor nation in the world. This has happened in a very short period of time. This shows what has happened to our position. We used to export more than we imported. We now import far, far more than we export. The question is, what do we import in this country?

This describes, of course, the yearly merchandise trade deficits, and this chart has enough red on it to demonstrate where we have been and where we are going. This is a very sad picture. It cries out for a remedy. This is not the picture of a strong economy. This is not a road map to a strong economic future.

The next chart shows that the U.S. imports that are coming into this country consist particularly of manufactured goods, and they make up 85 percent of our Nation's imports. These manufactured goods are mostly high-

value goods that come from skilled labor. In fact, 75 percent of our trade deficit consists of high-value manufactured goods, such as automobiles, auto equipment, electronics goods and telecommunications equipment.

I have another chart that shows the U.S. imports of manufactured goods. You will see that we now import goods sufficient to match slightly over half of all that we make here. That is quite a statistic. You can see the growth of it. It is almost exponential growth. Imported manufactured goods as a percentage of the U.S. manufacturing gross domestic product have increased from 11 percent in 1970 to 56 percent this past year. As I showed from the previous chart, most of it is high-value manufactured goods.

If I might make a point with respect to our neighbor to the south, Mexico. Mexico now sends us more automobiles than we ship to the rest of the world. Let me repeat that. Today, the United States imports more automobiles from Mexico than we send to the rest of the world.

The next chart shows that the trade deficit we have is principally with six other countries. With Japan, we have had a $50 billion to $60 billion-a-year trade deficit for a long period. We now have a substantial deficit with China, amounting to nearly $40 billion. With Canada and Mexico, our two nearest neighbors, we have a combined deficit of nearly $40 billion.

You can see the dilemma in this country, where we have growing trade deficits with respect to Canada and Mexico and substantially growing trade deficit with respect to China and long-abiding deficits with respect to Japan. You can see what is happening. It is sapping the economic strength of our manufacturing sector in this country.

Yesterday, on a radio program, the talk radio announcer said, "I don't understand, Senator DORGAN. Unemployment has come down, and our economy seems strong." I said, "Yes, all that seems to be the case." I know that there are neighbors, no doubt, who seem to have great-looking homes, a shiny new car, maybe newly poured cement for a new driveway, and they have all the latest gadgets. But you don't see their credit statement. They may well be deep in debt with all that shiny new equipment in their garage.

The question is not how things appear, but what are the fundamentals of our economy? What does the foundation look like? The foundation of an economy that works and one that will grow and provide jobs in the future has a strong manufacturing sector. No country will long remain a world economic power if it does not retain a strong manufacturing base.

I have said often—and people probably get tired of hearing it from me—that you cannot measure this country's economic strength, as the economists so often do, by measuring what we consume every month or quarter. That is not a measurement of economic strength. Our economic strength is measured by what we produce, not what we consume.

What we produce from our manufacturing sector is all too often now moving. Our productive sector is moving out from our country to other countries. Jobs are moving from here to there. It weakens our country internally and weakens our manufacturing sector.

The next chart talks about trade and jobs. There has been an old formula—in fact, they used this formula to sell the NAFTA trade package to us. They said every billion dollars in trade is the equivalent of 20,000 jobs. What would that mean? In 1996, our trade deficit meant we had a loss of 3.8 million good jobs; 3.8 million good jobs were lost. Just the increase in the deficit from 1995 to 1996—means another 300,000 jobs are gone. They have gone across the border, offshore, overseas. That is the dilemma.

Now, what do people say will happen to the trade deficit? We have the largest trade deficit in this country's history. You can see what has happened to it. It has been a steady, growing deficit. It continues to be a serious problem, and now it is at record levels. Some forecasters say that this deficit is going to continue to reach new record levels. In fact, one expert is predicting a deficit of $354 billion by 2007.

You know, we must think about what these trends mean. What is this all about? If I might simplify it for people, let us look at Japan. This is an ally of ours, a good country, a country that, by all accounts, has citizens who work hard and strive to compete aggressively in the world marketplace and do very, very well. We have become a sponge for much of their manufactured goods, and they make pretty good manufactured goods. They are tough, shrewd international competitors.

But when we send a pound of T-bone steak to Tokyo, guess what? A North Dakota rancher is often out during calving time in some pretty tough weather. He works really hard to deal with the tasks of everyday life on the ranch to care for maybe a 300-cow herd. That rancher raises some beef and then markets the beef. Eventually the beef finds a market, some in this country and some we want to export. When that North Dakota rancher wants to export beef to Japan, guess what happens to that beef? Japan regularly slaps a 50-percent tariff on every pound of beef going into Japan.

Does anybody think that is reasonable? And this is after our negotiations. It is after we have supposedly succeeded in negotiating down the tariffs on beef going into Japan. We have a celebration, but there still is a 50-percent tariff on T-bone steak going to Tokyo.

Guess what? Under any other standards of measurement, that would be considered a failure in international trade negotiations. Only because we have such low expectations from those with whom we trade are we willing to say that is a success. It is not a success, as far as I am concerned.

Why did we get to this position? Well, briefly, after the Second World War, our trade policy was foreign policy. Our trade policy was structured on the premise that we were the biggest, the best, the most, the strongest country on the face of the Earth, and we could compete with almost anybody in this world with one hand tied behind our back and win the competition. So our trade policy with Japan and European countries and others was largely foreign policy.

What we needed to do to at that time was to construct a trade relationship with our allies that helped them? We could certainly afford to help them, and we felt we must help them. That was our trade policy. For a quarter century it was necessary, and it worked, and guess what? We helped grow and nurture the restoration of post-Second-World-War economies, sufficient so that, I am pleased to say and I think others would be as well, that we now have very tough, shrewd competitors in the world marketplace. They are allies, friends and, yes, in the market system they are competitors.

It is time that we understand that this country can no longer win with one hand tied behind its back. It is time to understand that trade policy must be more than foreign policy, and we must insist on reciprocal trade treatment from our allies and trading partners. We must insist on not only free and open and expanded trade, but especially fair trade.

It upsets me to discover what we negotiated in a trade agreement with our neighbor to the north, a wonderful country with good people in it, Canada. We discover what is inside. It is like peeling an onion. You get the layers off and figure out what is in the middle of the treaty.

You discover that literally hundreds of semi-trucks come south from Canada into our country with durum wheat and barley. These are crops that we already grow in substantial surplus. Then I get in a little truck—a little, 12-year-old, 2-ton orange truck—with a North Dakota farmer with 220 bushels of wheat, and we go up to the Canadian border near Portal, ND. And we are stopped. They say, "What do you have in the truck?" "We have 220 bushels of wheat." "You can't go into Canada with wheat." "Gee. We just passed 20 semitrucks coming south into our marketplace with wheat." "Well, that may be but you can't take American wheat into Canada."

That is the sort of thing that is fundamentally wrong with our trade agreements. We need fully reciprocal trade with all of our trade allies.

Let me finally in the last chart talk about what we are here to propose: An emergency commission to end the trade deficit. We need to respond to and deal with the growing, burgeoning problem in this country. That is the record merchandise trade deficits that we face and that our children and their children must repay with a lower standard of living. We must stop it. How do we stop it?

Senator BYRD, myself, and Senator SARBANES propose that a commission be impaneled that addresses the wide range of concerns: The manner in which the Government establishes and administers our trade policies and objectives; the causes and consequences of the persistence and growth of the overall trade deficit, as well as the specific bilateral trade deficits I mentioned; the relationship of United States trade deficits to both comparative and competitive advantages; the relationship between investment flows, both in and out of the United States; and, the development of policies and alternative strategies to end the trade deficit by 2007 and improve the economic well-being of our citizens.

Mr. President, I am delighted that Senator BYRD is on the floor today. I want to make one additional comment.

Those who talk about trade in public discourse here in the U.S. Congress and about town are generally divided into two groups. There is the group that is in favor of free trade and has been for a couple of decades. They are called the free traders, and they are described as those with world vision, those who can see over the horizon, who have the creative ability to think expansively about what our obligations are and what the future will be. And then there are others. They are classified as the xenophobic isolationist stooges who simply don't get it.

The minute you speak about the trade problem and the trade deficit, they say you are a "protectionist," a "xenophobic isolationist. That is who that is."

I come from a State in which about half of what we produce must find a foreign home. I am the last person that would want to create walls around our border. I want expanded trade. I want open trade. I want free trade. But I demand that trade be fair.

American businesses and American workers ought to be able to expect that they are going to compete in a marketplace that is a fair marketplace. They should not be expected to compete against a 14-year-old that works 14 hours a day and is paid 14 cents an hour in some foreign factory producing a good that is then shipped to Fargo, Pittsburgh, or Denver. That is not fair trade, and American workers ought not to expect that.

We simply say there is a chronic and growing problem that ought to be addressed. We propose that an emergency commission be impaneled to end the trade deficit and make recommendations on how to do it.

By Mr. LAUTENBERG (for himself, Mr. KENNEDY, Mr. KERRY, Mrs. FEINSTEIN and Mr. TORRICELLI):

S. 466. A bill to reduce gun trafficking by prohibiting bulk purchases of handguns; to the Committee on the Judiciary.

THE ANTI-GUN TRAFFICKING ACT OF 1997

Mr. LAUTENBERG. Mr. President, I rise today to introduce legislation to stop the growing gun violence and death associated with interstate gun trafficking.

Recently, the scourge of gun violence invaded all of our homes, when a madman opened fire on innocent tourists atop the Empire State Building. When the shooting stopped, one person was dead, and six were injured. One of the victims was 27-year-old Matthew Gross of Montclair, NJ. Matthew Gross was shot in the head, and lingered in a coma, connected to a ventilator, for 8 agonizing days. Thankfully, this courageous young man has come out of the coma and is beginning the long and arduous task of recovery.

Mr. President, this gun violence must stop. It is too easy to obtain a gun in America. This morning, I stood with Matthew's father and brother and we all committed ourselves to intensify the fight against gun violence. Because Matthew Gross wasn't only a victim of a disturbed gunman. He was a victim of the epidemic of gun violence. Reducing this violence must be a top national priority.

Today, Mr. President, I am introducing the Anti-Gun Trafficking Act, to reduce interstate gun trafficking by prohibiting bulk purchases of handguns. The bill would prohibit the purchase of more than one handgun during any 30-day period. I am joined in this effort by Senators KENNEDY, JOHN KERRY, FEINSTEIN, and TORRICELLI.

Mr. President, no one needs more than one gun a month. In New Jersey, we have banned assault weapons, and we have established strict permitting requirements for handgun purchases. Yet the effectiveness of these restrictions is substantially diminished because the controls in other States are far less strict.

Unfortunately, many gun traffickers make bulk purchases of handguns in States with weak firearm laws, and then transport them to other States with tougher laws for illegal sale on the streets. This has helped spread the plague of gun violence nationwide. And without Federal limits, there is little that any one State can do about it.

A few years ago, Mr. President, the State of Virginia enacted legislation designed to prevent gunrunners from buying large quantities of handguns in Virginia for export to other States. Under that State law, as under my proposal, handgun purchases are limited to one per month. This Virginia statute has proven to be very effective in controlling gun trafficking from Virginia.

Before the ban, Virginia had become the firearm supermarket of the East Coast. It supplied more than 40 percent of the guns used in crimes in New York City. But under the new legislation, the results were dramatic. The percentage of guns traced back to Virginia gun dealers fell by 61 percent for guns recovered in New York, 67 percent for guns recovered in Massachusetts, and 38 percent for guns recovered in New Jersey.

Mr. President, Virginia's experience suggests that a ban on bulk purchases can substantially reduce gunrunning. However, to be truly effective, such a limit must be enacted nationwide. Otherwise, gunrunners will simply move their operations to other States. The only way to close down the "iron pipeline" is to plug it up at all ends.

The Anti-Gun Trafficking Act will impose such a nationwide limit on bulk gun purchases. I do not claim this restriction would end all handgun violence. And, personally, I don't see why anyone needs even 12 guns a year. However, it is a reasonable and modest step in the right direction.

Mr. President, a one-gun-a-month law would take a bite out of gunrunning without imposing any burden on hunters and other law-abiding gun users. After all, who but gang members, drug dealers, and other criminals needs more than 12 guns a year? Law abiding citizens are made safer by limiting the number of firearms available for purchase at one time.

Mr. President, this is a sensible approach, and one which will help to make our families, our streets, our communities, and our country safer. I urge my colleagues to support restrictions on bulk purchases on handguns and to join in cosponsoring "One Gun a Month."

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. 466

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 "Anti-Gun Trafficking Act of 1997".

SEC. 2. PROHIBITION AGAINST MULTIPLE HANDGUN SALES OR PURCHASES.

(a) PROHIBITION.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(y) PROHIBITION AGAINST MULTIPLE HANDGUN SALES OR PURCHASES.—

"(1) IN GENERAL.—It shall be unlawful for an licensed dealer—

"(A) during any 30-day period, to sell 2 or more handguns to an individual who is not licensed under section 923; or

"(B) to sell a handgun to an individual who is not licensed under section 923 and who purchased a handgun during the 30-day period ending on the date of the sale.

"(2) TIME LIMITATION.—It shall be unlawful for any individual who is not licensed under section 923 to purchase 2 or more handguns during any 30-day period.

"(3) EXCHANGES.—Paragraph (1) does not apply to an exchange of 1 handgun for 1 handgun.".

(b) PENALTIES.—Section 924(a)(2) of title 18, United States Code, is amended by striking "or (o)" and inserting "(o), or (y)".

SEC. 3. INCREASED PENALTIES FOR MAKING KNOWINGLY FALSE STATEMENTS IN CONNECTION WITH FIREARMS.

Section 924(a)(3) of title 18, United States Code, is amended by striking "one year" and inserting "5 years".

SEC. 4. DEADLINES FOR DESTRUCTION OF RECORDS RELATED TO CERTAIN FIREARMS TRANSFERS.

(a) HANDGUN TRANSFERS SUBJECT TO THE WAITING PERIOD.—Section 922(s)(6)(B)(i) of title 18, United States Code, is amended by striking "20 business days" and inserting "35 calendar days".

(b) FIREARMS TRANSFERS SUBJECT TO INSTANT CHECK.—Section 922(t)(2)(C) of title 18, United States Code, is amended by inserting "not later than 35 calendar days after the date the system provides the licensee with the number," after "[(C)]".

SEC. 5. REVISED DEFINITION.

Section 921(a)(21)(C) of title 18, United States Code, is amended by inserting ", except that such term shall include any person who transfers more than 1 handgun in any 30-day period to a person who is not a licensed dealer" before the semicolon.

By Mr. WELLSTONE (for himself, Mrs. MURRAY, Mr. WYDEN, and Mr. DORGAN):

S. 467. A bill to prevent discrimination against victims of abuse in all lines of insurance; to the Committee on Labor and Human Resources.

VICTIMS OF ABUSE INSURANCE PROTECTION ACT

Mr. WELLSTONE. Mr. President, I am very pleased to be joined by my colleagues and original cosponsors Senator RON WYDEN, Senator PATTY MURRAY, and Senator BYRON DORGAN in reintroducing the Victims of Abuse Insurance Protection Act, legislation that will outlaw discrimination by insurance companies against the victims of domestic violence in all lines of insurance. Congressman BERNIE SANDERS is introducing an identical bill in the House this week.

With this legislation, we are trying to correct an abhorrent practice by many insurance companies—the denial of coverage to battered women. It is plain, old-fashioned discrimination. It is profoundly unjust and wrong. And, it is the worst of blaming the victim. Denying women access to the insurance they require to foster their mobility out of an abusive situation must be stopped.

While we were successful in including language in the Kassebaum-Kennedy law which prohibits insurers from denying insurance because the applicant is a victim of abuse, insurance companies can still charge victims of abuse a higher rate.

In Minnesota, three insurance companies denied an entire women's shelter insurance because, as a battered women's shelter, we were high risk. The Women's Shelter in Rochester, MN, was told that it was considered uninsurable because its employees are almost all battered women.

Another shelter in rural Minnesota purchased a car so that women and children in danger who were trying to leave an abusive situation could use this anonymous vehicle and thus the abuser could not track their automobile to find them. The shelter could not find a company to provide them with automobile insurance once the companies knew of the risks surrounding battered women.

A woman in Iowa named Sandra was denied life insurance after the company found out that she had been beaten up twice. In one incident, she had been so badly beaten by an ex-boyfriend that her cheekbones were splintered, and one of her eyes had to be put back in its socket. Her mother, Mary, was the one who originally applied for the life insurance policy, explaining, "I didn't ask for a lot of coverage. I just wanted to apply for $1,000 coverage, just enough that if something happened, God forbid, that we could at least bury her."

Mary was angry about the denial, so she wrote to State officials and the Iowa insurance commissioner's office tried to intervene on their behalf. In four separate letters, the insurance company officials stated they denied the coverage because of a history of assaults. In one letter they defended their decision by citing numerous documents which showed that people involved in domestic violence incidents are at a higher risk of death and injury than others, and, therefore, not a good risk.

There are, unfortunately, many other instances of victims of domestic abuse being denied fire insurance, homeowners insurance, life insurance, and health insurance—denied because they were victims of a crime.

This bill goes a long way toward treating domestic violence as the crime that it is—not a voluntary risky behavior that can be easily changed and not as a pre-existing condition. Insurance company policies that deny coverage to victims only serve to perpetuate the myth that victims are responsible for their abuse.

In order to address the practice of insurers using domestic violence as a basis for determining whom to cover and how much to charge with respect to health, life, disability, homeowners, and auto insurance, this legislation prohibits insurance companies from discriminating against victims in any of the following ways:

First, denying or terminating insurance; second, limiting coverage or denying claims; third, charging higher premiums; or fourth, terminating health coverage for victims of abuse in situations where coverage was originally issued in the abuser's name, and acts of the abuser would cause the victim to lose coverage.

This legislation also keeps victims' information confidential by prohibiting insurers from improperly using, disclosing, or transferring abuse-related information for any purpose unrelated to the direct provision of health care services.

Insurance companies should not be allowed to discriminate against anyone for being a victim of domestic violence. We may never know the full extent of the problem, but it is a grossly unfair practice and should be prohibited.

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. 467

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 "Victims of Abuse Insurance Protection Act".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) ABUSE.—The term "abuse" means the occurrence of one or more of the following acts by a current or former household or family member, intimate partner, or caretaker:

(A) Attempting to cause or causing another person bodily injury, physical harm, substantial emotional distress, psychological trauma, rape, sexual assault, or involuntary sexual intercourse.

(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority and under circumstances that place the person in reasonable fear of bodily injury or physical harm.

(C) Subjecting another person to false imprisonment or kidnapping.

(D) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(2) ABUSE-RELATED MEDICAL CONDITION.—The term "abuse-related medical condition" means a medical condition which arises in whole or in part out of an action or pattern of abuse.

(3) ABUSE STATUS.—The term "abuse status" means the fact or perception that a person is, has been, or may be a subject of abuse, irrespective of whether the person has sustained abuse-related medical conditions or has incurred abuse-related claims.

(4) HEALTH BENEFIT PLAN.—The term "health benefit plan" means any public or private entity or program that provides for payments for health care, including—

(A) a group health plan (as defined in section 607 of the Employee Retirement Income

Security Act of 1974 (29 U.S.C. 1167)) or a multiple employer welfare arrangement (as defined in section 3(40) of such Act (29 U.S.C. 1102(40)) that provides health benefits;

(B) any other health insurance arrangement, including any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract;

(C) workers' compensation or similar insurance to the extent that it relates to workers' compensation medical benefits (as defined by the Federal Trade Commission); and

(D) automobile medical insurance to the extent that it relates to medical benefits (as defined by the Federal Trade Commission).

(5) HEALTH CARRIER.—The term "health carrier" means a person that contracts or offers to contract on a risk-assuming basis to provide, deliver, arrange for, pay for or reimburse any of the cost of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation or any other entity providing a plan of health insurance, health benefits or health services.

(6) INSURED.—The term "insured" means a party named on a policy, certificate, or health benefit plan, including an individual, corporation, partnership, association, unincorporated organization or any similar entity, as the person with legal rights to the benefits provided by the policy, certificate, or health benefit plan. For group insurance, such term includes a person who is a beneficiary covered by a group policy, certificate, or health benefit plan. For life insurance, the term refers to the person whose life is covered under an insurance policy.

(7) INSURER.—The term "insurer" means any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, or other legal entity engaged in the business of insurance, including agents, brokers, adjusters, and third party administrators. The term also includes health carriers, health benefit plans, and life, disability, and property and casualty insurers.

(8) POLICY.—The term "policy" means a contract of insurance, certificate, indemnity, suretyship, or annuity issued, proposed for issuance or intended for issuance by an insurer, including endorsements or riders to an insurance policy or contract.

(9) SUBJECT OF ABUSE.—The term "subject of abuse" means a person against whom an act of abuse has been directed, a person who has prior or current injuries, illnesses, or disorders that resulted from abuse, or a person who seeks, may have sought, or had reason to seek medical or psychological treatment for abuse, protection, court-ordered protection, or shelter from abuse.

SEC. 3. DISCRIMINATORY ACTS PROHIBITED.

(a) IN GENERAL.—No insurer or health carrier may, directly or indirectly, engage in any of the following acts or practices on the basis that the applicant or insured, or any person employed by the applicant or insured or with whom the applicant or insured is known to have a relationship or association, is, has been, or may be the subject of abuse:

(1) Denying, refusing to issue, renew or reissue, or canceling or otherwise terminating an insurance policy or health benefit plan.

(2) Restricting, excluding, or limiting insurance or health benefit plan coverage for losses incurred as a result of abuse or denying a claim incurred by an insured as a result of abuse, except as otherwise permitted or required by State laws relating to life insurance beneficiaries.

(3) Adding a premium differential to any insurance policy or health benefit plan.

(4) Terminating health coverage for a subject of abuse because coverage was originally issued in the name of the abuser and the abuser has divorced, separated from, or lost custody of the subject of abuse or the abuser's coverage has terminated voluntarily or involuntarily and the subject of abuse does not qualify for extension of coverage under part 6 of subtitle B of title I or the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.) or 4980B of the Internal Revenue Code of 1986. Nothing in this paragraph prohibits the insurer from requiring the subject of abuse to pay the full premium for the subject's coverage under the health plan if the requirements are applied to all insureds of the health carrier. The insurer may terminate group coverage after the continuation coverage required by this paragraph has been in force for 18 months if it offers conversion to an equivalent individual plan. The continuation of health coverage required by this paragraph shall be satisfied by any extension of coverage under part 6 of subtitle B of title I or the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.) or 4980B of the Internal Revenue Code of 1986 provided to a subject of abuse and is not intended to be in addition to any extension of coverage provided under part 6 of subtitle B of title I or the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.) or 4980B of the Internal Revenue Code of 1986.

(b) USE OF INFORMATION.—

(1) IN GENERAL.—No person employed by or contracting with an insurer or health benefit plan may use, disclose, or transfer information relating to an applicant's or insured's abuse status or abuse-related medical condition or the applicant's or insured's status as a family member, employer, or associate, person in a relationship with a subject of abuse for any purpose unrelated to the direct provision of health care services unless such use, disclosure, or transfer is required by an order of an entity with authority to regulate insurance or an order of a court of competent jurisdiction. In addition, such a person may not disclose or transfer information relating to an applicant's or insured's location or telephone number. Nothing in this paragraph shall be construed as limiting or precluding a subject of abuse from obtaining the subject's own insurance records from an insurer.

(2) AUTHORITY OF SUBJECT OF ABUSE.—A subject of abuse, at the absolute discretion of the subject of abuse, may provide evidence of abuse to an insurer for the limited purpose of facilitating treatment of an abuse-related condition or demonstrating that a condition is abuse-related. Nothing in this paragraph shall be construed as authorizing an insurer or health carrier to disregard such provided evidence.

SEC. 4. INSURANCE PROTOCOLS FOR SUBJECTS OF ABUSE.

Insurers shall develop and adhere to written policies specifying procedures to be followed by employees, contractors, producers, agents and brokers for the purpose of protecting the safety and privacy of a subject of abuse and otherwise implementing the provisions of this Act when taking an application, investigating a claim, or taking any other action relating to a policy or claim involving a subject of abuse.

SEC. 5. REASONS FOR ADVERSE ACTIONS.

An insurer that takes an action that adversely affects a subject of abuse, shall advise the subject of abuse applicant or insured of the specific reasons for the action in writing. Reference to general underwriting practices or guidelines does not constitute a specific reason.

SEC. 6. LIFE INSURANCE.

Nothing in this Act shall be construed to prohibit a life insurer from declining to issue a life insurance policy if the applicant or prospective owner of the policy is or would be designated as a beneficiary of the policy, and if—

(1) the applicant or prospective owner of the policy lacks an insurable interest in the insured; or

(2) the applicant or prospective owner of the policy is known, on the basis of police or court records, to have committed an act of abuse against the proposed insured.

SEC. 7. SUBROGATION WITHOUT CONSENT PROHIBITED.

Subrogation of claims resulting from abuse is prohibited without the informed consent of the subject of abuse.

SEC. 8. ENFORCEMENT.

(a) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall have the power to examine and investigate any insurer to determine whether such insurer has been or is engaged in any act or practice prohibited by this Act. If the Federal Trade Commission determines an insurer has been or is engaged in any act or practice prohibited by this Act, the Commission may take action against such insurer by the issuance of a cease and desist order as if the insurer was in violation of section 5 of the Federal Trade Commission Act. Such cease and desist order may include any individual relief warranted under the circumstances, including temporary, preliminary, and permanent injunctive and compensatory relief.

(b) PRIVATE CAUSE OF ACTION.—An applicant or insured who believes that the applicant or insured has been adversely affected by an act or practice of an insurer in violation of this Act may maintain an action against the insurer in a Federal or State court of original jurisdiction. Upon proof of such conduct by a preponderance of the evidence, the court may award appropriate relief, including temporary, preliminary, and permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for the aggrieved individual's attorneys and expert witnesses. With respect to compensatory damages, the aggrieved individual may elect, at any time prior to the rendering of final judgment, to recover in lieu of actual damages, an award of statutory damages in the amount of $5,000 for each violation.

SEC. 9. EFFECTIVE DATE.

This Act shall apply with respect to any action taken on or after the date of the enactment of this Act, except that section 4 shall only apply to actions taken after the expiration of 60 days after such date.

Mrs. MURRAY. Mr. President, I am pleased today to join with my colleague from Minnesota, Senator WELLSTONE, in introducing the Victims of Abuse Insurance Protection Act. I believe that every Senator in this Chamber should join in support of this important legislation.

The Victims of Abuse Insurance Protection Act will prohibit discrimination by insurance companies against victims of domestic violence. This prohibition will apply to all lines of insurance including health, life, and homeowners.

We are all proud of our efforts to increase our commitment to ending domestic violence. The Federal Government has dramatically increased resources to fighting this devastating public health threat. We have worked to strengthen enforcement of domestic violence laws and ensure that victims have access to the resources and assistance necessary to end the cycle of violence. However, the first step for most victims is reporting the violence and removing themselves from the violent situation. But, if a victim of domestic violence knows that by reporting and seeking help they have now accepted the fact that they will face discriminatory practices in when they try to secure any form of insurance, fewer victims will come forward. This is a chilling consequence that we cannot allow.

Make no mistake about it, this is a real threat. I have been approached by an insurance agent in Washington State who told me that she cannot sell life insurance to victims of domestic violence. I also know of women who are unable to afford adequate homeowners insurance because of past domestic violence. This is an outrage and runs counter to all that is fair and decent. This is a classic example of blaming the victim.

As a strong advocate of ending domestic violence, I cannot sit by and watch insurance companies deny victims insurance or impose such drastic cost barriers that few could overcome. I am appalled by this type of discrimination and extremely concerned about the impact it has on our efforts to combat domestic violence.

By Mr. CHAFEE (for himself and Mr. MOYNIHAN):

S. 468. A bill to continue the successful Federal role in developing a national intermodal surface transportation system, through programs that ensure the safe and efficient movement of people and goods, improve economic productivity, preserve the environment, and strengthen partnerships among all levels of the government and the private sector, and for other purposes; to the Committee on Finance.

THE NATIONAL ECONOMIC CROSSROAD TRANSPORTATION EFFICIENCY ACT OF 1997

Mr. CHAFEE. Mr. President, today, I am introducing, along with my colleague from New York, Senator MOYNIHAN, the National Economic Crossroad Transportation Efficiency Act of 1997, referred to as NEXTEA. NEXTEA is the Clinton administration's legislative proposal for the reauthorization of the Intermodal Surface Transportation Efficiency Act.

I am introducing NEXTEA because it builds upon the landmark ISTEA legislation. It emphasizes environmental protection, system preservation, safety, and intermodalism. I would like to encourage my colleagues to take a serious look at this proposal.

In addition, I will be a cosponsor of the ISTEA Reauthorization Act of 1997, a bill that has been written by Senators MOYNIHAN, LIEBERMAN, and LAUTENBERG which will be introduced in the near future. This proposal also builds upon the program structure and emphasis of the original ISTEA.

Today's introduction does not mean that I endorse all the ideas in the administration's proposal. I am still in the process of reviewing the bill's details and plan to ask the administration questions about their provisions and the thinking behind some of their proposals.

Of particular interest to my colleagues is whether my introduction of the administration's bill indicates my endorsement of the administration's formula for distributing funds among the States. It does not.

The administration's formula relies to a great extent on the contributions paid into the highway trust fund by the individual States. I have serious concerns about setting national policy on the basis of where gasoline is purchased. The Federal Highway Administration's estimate of the highway trust fund contributions is based upon where gasoline is purchased, not even where it is used. Let me give a couple of examples of the problems I see with this misplaced focus.

If you buy gas in Baltimore, MD, and drive to Woonsocket, RI, you will drive through the States of Delaware, New Jersey, New York, Connecticut, and Rhode Island. Maryland will be the only State that gets credit for this trip.

Even if we were better able to estimate where gasoline is used, rather than just where it is purchased, setting national transportation policy on gasoline usage provides incentives that contradict policies of ISTEA such as environmental protection, intermodalism, and efficiency. Under a gas tax-based formula, States and localities that use transit significantly or use less gasoline because of good planning are actually penalized for their good work.

For example, programs or policies that encourage any of the following would be penalized: Shifting highway usage to other modes such as transit, greater use of carpooling and High Occupancy Vehicle [HOV] lanes, progressive land use planning, and the use of alternative fuels, or electric vehicles. In other words, "no good deed, goes unpunished" under such a national policy.

Gasoline taxes are an efficient and low-cost way of raising revenue for transportation purposes. They should not, however, be attributed a policy importance that they do not deserve.

Let me conclude my statement by encouraging all of the Members of the Senate to work together as we craft an ISTEA reauthorization proposal. I know we have some substantial disagreements that need to be resolved.

As we move forward, we need to keep in mind the diversity and uniqueness of the country and all of its transportation needs. All of us must resist the temptation to set a national transportation policy based solely on our own region's particular demands. The demands of the Northeast are different from those of the South; the demands of the South are different from those of the West. And so on.

We need to be cognizant of the population growth that has taken place in the South and Southwest and the strains that such growth has put on areas within that region. Many of the Western States, by contrast, with their low-population density and the great distances involved in travel, rely on highways as the major mode of transportation. We also need to acknowledge the uniqueness of the Northeast United States; its older infrastructure and acute congestion make it more dependent on nonhighway modes such as transit and Amtrak. Attempts to pass a new bill by forming alliances along regional lines will fail unless the bill recognizes the needs of all regions.

I am hopeful that the ISTEA reauthorization will build upon the strong record of its predecessor. Admittedly, the transition from old policies and practices to those embodied in ISTEA has not always been easy, and more work needs to be done. However, we should not let these bumps in the road cause us to retreat from the progress we have made.

Mr. President, I ask unanimous consent that the text of the bill summary be printed in the RECORD.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title; Secretary Defined; Table of Contents

This section designates the title of this legislation as the "National Economic Crossroads Transportation Efficiency Act of 1997," defines "Secretary" as the Secretary of Transportation, and lists the table of contents for this legislation.

TITLE I—SURFACE TRANSPORTATION

Sec. 1001. Short Title; Authorization of Appropriations

This section designates title 1 of this bill as the "Surface Transportation Act of 1997." This section also authorizes sums out of the Highway Trust Fund (other than the Mass Transit Account) for the National Highway System, the Interstate maintenance program, the surface transportation program, the congestion mitigation and air quality improvement program, the highway bridge replacement and rehabilitation program, the Federal Lands Highways program, the infrastructure safety program, the integrated safety fund, the national recreational trails program, and university transportation centers.

Authorizations for other highway trust-funded programs not included in this section are included in the legislative provisions authorizing the programs themselves, such as Federal Highway Administration's research and technology, Intelligent Transportation Systems, and motor carrier safety programs.

Paragraph (5) establishes a $17 million annual take-down from HBRRP apportionments to fund the alteration of bridges determined to be unreasonable obstructions to navigation under the Truman Hobbs Bridge Act, 33 U.S.C. 511–524, and requires the Secretary to transfer such sums (contract authority), an amount of obligation authority equal to 100 percent of such contract authority, and the responsibility for administering such sums to the United States Coast Guard. These sums are to be administered in accordance with the Truman Hobbs Bridge Act, rather than the HBRRP.

Sec. 1002. Definitions

This section revises the current definition of "operational improvement" found in 23 U.S.C. 101(a) to expressly include the installation, operation, or maintenance of certain Intelligent Transportation Systems infrastructure projects, and the installation or operation of communications systems, roadway weather information and prediction systems, and other such improvements designated by the Secretary that enhance roadway safety during adverse weather. This language expands the definition of operational improvement to include operation and maintenance expenses for public ITS infrastructure projects, since these activities are integral to and inseparable from the installation of the associated infrastructure. Operational improvement projects continue to be eligible for National Highway System (NHS) and surface transportation program (STP) apportionments under the revised NHS and STP provisions of this Act.

Sec. 1003. National Highway System

Paragraphs (a)(1) and (2) amend 23 U.S.C. 103(i) to expand NHS eligibility to make publicly owned intercity passenger rail capital projects eligible for NHS funds under the same criteria that currently apply to transit and non-NHS highway projects under 23 U.S.C. 103(i)(3).

Paragraph (a)(3) amends paragraph 103(i)(13) to expand NHS funding eligibility to include natural habitat mitigation under the same circumstances in which wetlands mitigation is currently eligible for funding under this paragraph.

Paragraph (a)(4) amends section 103 by adding two new items to the list of projects generally eligible for NHS funding: publicly owned intracity or intercity passenger rail or bus terminals and publicly owned intermodal surface freight transfer facilities, other than seaports and airports, where such terminals and facilities are located at or adjacent to the NHS or connections to the NHS; and infrastructure-based Intelligent Transportation Systems capital improvements.

This paragraph also adds to the list of eligible NHS projects a paragraph applicable only to projects on the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The Federal-aid highway funds provided to these territories are NHS funds, and therefore, in amending the list of NHS-eligible projects under section 103, new paragraph 103(i)(16) permits these territories to use their entire Federal-aid highway apportionments for any STP-eligible project, any airport, and any seaport. This greatly increases the territories' ability to craft the most appropriate solution to their transportation needs, regardless of transportation mode.

Paragraph (a)(5) amends section 103 by adding a definition of "intermodal surface freight transfer facilities." Under this definition, this term would include: any access road, parking or staging area, ramp, loading or unloading area and equipment, rail yard, track, and interest in land, publicly-owned rail access line to a seaport, and publicly owned access road to a seaport, if they are used to effect the transfer of freight.

Because Congress has enacted legislation designating the National Highway System, subsection (b) amends section 103 to strike all out-of-date references to the States, local officials, and the Secretary working cooperatively to develop and submit to Congress a proposed National Highway System; the requirement that Congress must enact a law designating the National Highway System; the requirement for the equitable allocation of highway mileage on the National Highway System among the States; and the interim National Highway System. Subsection (b) also makes several conforming changes to section 103 to reflect the removal of these NHS designation provisions from this section. Subsection (b) also adds a new paragraph to subsection 103(b) to provide congressional approval of the Department's submission of NHS intermodal connectors.

Sec. 1004. Apportionments

Subsection (a) of this section revises 23 U.S.C. 104(a) to more accurately reflect the program authorizations from which the Secretary may deduct to fund the administration of the Federal-aid highway program and surface transportation research.

Subsection (b) of this section amends 23 U.S.C. 104(b) by revising the current formulas for the National Highway System, congestion mitigation and air quality improvement program (CMAQ), and surface transportation program (STP) apportionments.

NHS and STP Program Formulas

Revised paragraph 104(b)(1) provides that NHS funds shall be apportioned in each fiscal year, on or after October 1, according to the following factors:

75 percent according to each State's annual contributions to the Highway Trust Fund (excluding the Mass Transit Account) as a percent of the total annual contributions to the Highway Trust Fund (excluding Mass Transit) by all States (using the latest available data);

15 percent according to each State's annual commercial vehicle contributions to the Highway Trust Fund (excluding the Mass Transit Account) as a percent of the total annual commercial vehicle contributions to the Highway Trust Fund (excluding Mass Transit) by all States (using the latest available data). Commercial vehicle contributions to the Highway Trust Fund include Federal diesel fuel taxes, the Federal heavy vehicle use tax, the Federal truck and trailer excise tax, and the Federal truck tire tax (using the latest available data); and

10 percent according to each State's public road mileage as a percent of the total public road mileage for all States (using the latest available data);

With the guarantee that each State's annual apportionments will equal no less than one-half of one percent (0.5 percent) of the total annual apportioned NHS funds.

Revised paragraph 104(b)(3) provides that STP funds shall be apportioned according to the following factors:

70 percent according to each State's annual contributions to the Highway Trust Fund (excluding the Mass Transit Account) as a percent of the total annual contributions to the Highway Trust Fund (excluding Mass Transit) by all States (using the latest available data); and

30 percent according to each State's total population as a percent of the total population of the United States (using the latest available annual data);

With the guarantee that each State's annual apportionments will equal no less than one-half of one percent (0.5 percent) of the total annual apportioned STP funds.

CMAQ Formula

The existing CMAQ formula at 23 U.S.C. 104(b)(2) is based on two factors: the population living in ozone nonattainment areas within each State and the severity of that ozone pollution. For increasing levels of severity, an additional weighting factor is applied to the nonattainment area population, rising from 1.0 for the least severe to 1.5 for the most severe ozone air pollution. If an ozone nonattainment area is also nonattainment for carbon monoxide, it receives an additional weighting factor of 1.2. Under the NHS Designation Act of 1995, CMAQ apportionment factors (including the nonattainment area population and the severity level, or "classification") were frozen as they were in 1994 to hold CMAQ funding levels even for States whose nonattainment areas were redesignated to attainment and thus dropped out of the apportionment formula.

In subparagraphs 104(b)(2) (A) and (B), the basic formula would remain the same, however additional funding would be apportioned to States with particulate matter pollution and additional consideration would be given to carbon monoxide pollution. Also, a new weighting factor is employed for those areas that have redesignated to attainment, or "maintenance areas". They would be given a 1.0 weighting factor and all other ozone nonattainment areas would be bumped up, ranging from a factor of 1.1 to 1.5.

In subparagraph 104(b)(2)(D), any additional area newly designated as nonattainment as a result of a change in the national ambient air quality standards that has submitted to EPA a State implementation plan will have its population included in the CMAQ apportionment formula with a weighting factor of 1.0.

To ensure that no State will receive less in CMAQ funding as a result of a redistribution of funds caused by the new standards, new subparagraph 104(b)(2)(E) provides such sums as necessary from the surface transportation program before STP funds are apportioned, to hold States harmless.

National Recreational Trails Program

Subsection (c) of this section amends 23 U.S.C. 104(h) to establish the formula to be used in apportioning funds authorized to be appropriated for carrying out the National Recreational Trails Program. In paragraph 104(h)(1), the Secretary is directed to deduct, from the sums authorized to carry out this program, an amount to cover the cost of administering the Recreational Trails Program, the cost of research under that program, and the cost of administering the Federal Recreational Trails Advisory Committee. Paragraph 104(h)(1) also limits this amount to three percent or less of the sums authorized. Paragraph 104(h)(2) delineates the manner in which the Secretary is to apportion among the States the remainder of the sums authorized to be appropriated to carry out the Recreational Trails Program. Subparagraph 104(h)(2)(A) provides that the Secretary is to apportion fifty percent of the remainder of the authorized sums equally among the States eligible for funding under the Recreational Trails Program. Subparagraph 104(h)(2)(B) directs the Secretary to apportion the other fifty percent among the

eligible States in amounts proportionate to the degree to which non-highway recreational fuel was used in each such State during the preceding year.

Woodrow Wilson Memorial Bridge

Subsection (d) of this section amends 23 U.S.C. 104(i) to authorize funding for fiscal years 1998, 1999, and 2000, to remain available until expended, for the rehabilitation of the existing Woodrow Wilson Memorial Bridge and for the costs related to construction of a new bridge. The design of the new bridge will be based on the design selected by the Woodrow Wilson Memorial Bridge Coordination Committee, and no actual construction contracts can be let until ownership of the bridge is transferred to the Woodrow Wilson Memorial Bridge Authority. The requirements for design selection and transfer of ownership were established by the Woodrow Wilson Memorial Bridge Authority Act of 1995. Construction of the new bridge shall be administered in accordance with Federal Acquisition Regulations.

Subsection (e) of this section adds a new subsection, (k), to section 104, recodifying current subsection 134(k) with one significant revision. New subsection 104(k) establishes a process for transferring and administering transit funds made available for highway projects and highway funds made available for transit projects. This subsection has been revised to expressly provide for program-wide transfers of funds and a like amount of obligation authority, where the current subsection only provides for the project-by-projects transfer of funds. This subsection also provides for program-wide transfers of highway and transit funds to Amtrak and other eligible rail projects.

AUDITS OF HIGHWAY TRUST FUND

Subsection (f) permits the Secretary to reimburse the Department of Transportation's Inspector General for the cost of conducting annual financial statement audits of the Highway Trust Fund in accordance with the Chief Financial Officers Act of 1990.

EQUITY ADJUSTMENTS

Subsections (g) and (h) of this legislation revise and rename the current minimum allocation provision of title 23. As revised, 23 U.S.C. 157(a)(1) provides that each State shall receive at least 90 of its annual contributions to the Highway Trust Fund (excluding the Mass Transit Account) as a percent of total annual contributions to the Highway Trust Fund (excluding Mass Transit) by all States (using the latest available data.) Such adjustment shall only apply to funds apportioned under the following programs: Interstate maintenance, National Highway System, bridge, surface transportation program/enhancements, congestion mitigation and air quality improvement, metropolitan planning, and infrastructure safety.

Paragraph 157(a)(2) provides that for fiscal years 1998 through 2003, each State except Alaska shall receive at least 90 percent of the funds apportioned to that State in the preceding fiscal year, including equity adjustments, but excluding State percentage guarantee amounts. Alaska shall receive at least 90 percent of its previous year's apportionments in fiscal year 1998 and 100 percent of each preceding year's apportionments for each of fiscal years 1999 through 2003.

Sec. 1005. State Percentage Guarantee

Similar to the hold harmless provision (subsection 1015(a)) of ISTEA, this section establishes levels for annual apportionments such that each State is guaranteed to receive at least a certain percentage of total apportionments for each year for the NHS, CMAQ, STP, IM, bridge, infrastructure safety, both equity adjustments in section 157, and Interstate reimbursement programs. Each State's STP apportionment would be increased or decreased as necessary each year to ensure that the total amount of specified apportionments at least equals the percentage specified in this section for every State.

Sec. 1006. Project Approval and Oversight

This section revises 23 U.S.C. 106, concerning Federal and State responsibilities for projects funded under title 23.

Paragraph (a)(1) of this section retitles section 106 from "Plans, Specifications, and Estimates" to "Project Approval and Oversight" to reflect the greater scope of this section, as revised.

Paragraph (a)(2) of this section redesignates subsection 106(e) and (f) as 106(f) and (g), respectively.

Paragraph (a)(3) of this section strikes current subsections 106(a), (b), (c), and (d) and replaces them with five new subsections. While several of the provisions of these four subsections have been incorporated into this revised section, the 15 percent limit on estimates for construction engineering, found in current subsection 106(c), has not been included in this new section. Striking current subsection 106(c) eliminates this outdated provision that has been found to be flawed for several reasons. It is burdensome to both the States and the Secretary to collect and maintain the data necessary to monitor States' compliance with this provision. Also, because this is only a limit on aggregate (State-wide) construction engineering costs, it is ineffective at controlling such costs on any individual project. Also, this provision has been found to be unnecessary because the benefits of limiting construction engineering costs are uncertain, and an argument can be made that such a limit could potentially affect the quality of the project. Without this limit, States can be reimbursed for their actual costs of construction engineering for each project without having to compile the costs of construction engineering in an annual accounting to see if the costs are, on average, within the 15 percent limitation.

New subsection 106(a) combines the current two-step process for project approval and execution of a project agreement into a process where both actions are taken concurrently, by merging the provisions of current subsection 106(a) with current subsection 110(a). Current subsection 106(a) provides for the Secretary's approval of plans, specifications, and estimates that a State submits for approval. The Secretary's approval constitutes an obligation of the Federal government to pay the Federal share of the cost of the project. Current subsection 110(a) provides for the execution of a project agreement that formalizes the conditions of the project approval. Execution of the project agreement typically occurs at a time later than the time of project approval (usually after contract bids are received). In merging these current provisions for project approval, execution of the project agreement, and obligation of Federal funds into a single process, this subsection would greatly simplify these procedures.

New subsection 106(b) combines the project agreement provisions from current subsections 110(a) and (b) into one subsection. This new subsection states that the project agreement shall specify the State's pro rata share of project costs and provides that the Secretary may rely on the State's representations of arrangements or agreements made by the State with local officials, where projects are to be constructed at the expense of, or in cooperation with, local agencies.

New subsection 106(c) parallels current subsection 117(a) and covers the conditions governing the Secretary's responsibilities for oversight of projects funded under title 23, and how those responsibilities may be discharged. New paragraph 106(c)(1) permits the Secretary to discharge to the State the Secretary's responsibilities under title 23 for the design, plans, specifications, estimates, contract awards, and inspection of projects on the National Highway System (NHS). The intent of this paragraph is to provide significant flexibility to the States and the Secretary to discuss and mutually determine the appropriate balance between State and Federal (FHWA) oversight for Federal-aid highway projects, taking into account overall needs and resources. A threshold of responsibility for the States is ensured in that this paragraph provides that the Secretary's responsibilities under this provision shall be no greater than they are under current law, unless differently agreed upon by the Secretary and the State. The oversight agreement to be reached by the Secretary and the State could be based on the scope and complexity of NHS projects or other criteria determined significant by a State. The agreement could also take into account different levels of Federal oversight on NHS projects: from a detailed review of all project actions to a process review/product evaluation approach. Under new paragraph 106(c)(2), the State must assume the Secretary's responsibilities under title 23 for oversight of projects off of the National Highway System.

New subsection 106(d) is meant to be substantively the same as current subsection 117(e). This language clarifies that, in discharging responsibilities to the States under new section 106, the Secretary is discharging only those title 23 responsibilities listed in this section. The Secretary may not discharge any other Secretarial responsibilities under any other Federal law, including sections 113 and 114 of title 23, United States Code, the National Environmental Policy Act of 1969, title VI of the Civil Rights Act of 1964, the Uniform Relocation Assistance and Land Acquisitions Policies Act of 1970, and any Federal laws administered by the Department of Labor.

New subsection 106(e) is substantively identical to current subsection 106(d); only an out-of-date reference to "any Federal-aid system" has been updated. This subsection provides that the Secretary may require that plans, specifications, and estimates for proposed projects on any Federal-aid highway be accompanied by a value engineering or other cost reduction analysis.

New subsection 106(f) provides that the Secretary shall require a financial plan for any project with an estimated total cost of $1 billion or more.

Subsection (b) of this section amends title 23 by creating a new subsection 109(r). New subsection 109(r) parallels a provision in current paragraph 106(b)(3) governing safety considerations for projects for which the State has assumed the Secretary's responsibility for approving plans, specifications, and estimates. This new subsection provides that safety considerations for projects under this title may be met by phase construction. In placing this sentence in section 109, which sets forth Federal standards for all title 23-funded projects, this amendment permits States to use phase construction to meet safety considerations on any title 23-funded project.

Subsection (c) of this section revises the provision making Davis-Bacon Act wage protections applicable to highway construction projects so that the scope of this provision is commensurate with the scope of project eligibility under title 23. That is, where the current subsection 113(a) applies the Davis-Bacon Act's prevailing wage requirement to laborers and mechanics employed by contractors or subcontractors on the construction work performed on highway projects, this revised language would extend these wage protections to the same workers employed on any project eligible for funding under title 23—not simply highway construction projects. This subsection does not apply to projects on local roads and rural minor collectors and on transportation enhancement and recreational trails programs not within a Federal-aid highway right-of-way or otherwise linked based on proximity or impact to a Federal-aid highway.

Subsection (d) of this section strikes current sections 110 and 117 because these sections have been incorporated into the new section 106. Subsection also strikes section 105, because this section is out-of-date, having been superseded in by the State transportation improvement program requirements of section 135, which were added by ISTEA.

Subsection (e) of this section makes a conforming amendment to the analysis at the start of chapter 1 of title 23 to reflect the new title of section 106 and to remove the items relating to sections 110 and 117, which have been stricken.

Sec. 1007. Real Property Acquisition and Corridor Preservation

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) placed increased emphasis on sound transportation planning, including the preservation of transportation corridors for future use. Ongoing efforts by State and local officials to preserve such corridors can be hampered when development pressures create adverse impacts on affected property owners. Development, when not coordinated with transportation needs, can often foreclose options available to transportation officials to avoid environmentally sensitive sites. Often in such cases, early action and acquisition is the only way to assure that lands can be obtained and reserved for future use.

The changes made by this section expand or modify the flexibility provided to local and State governments to take prudent public action to compete for land resources and implement corridor preservation programs adopted through the public planning process.

Sections 108 and 323 of 23 U.S.C. are modified to remove restrictive language and outdated programs, revise language, and add opportunities for States and local governments to utilize early acquisition when necessary while retaining maximum flexibility to leverage the use of Federal funds.

Section 108 is retitled to reflect its applicability to general corridor preservation programs as well as to identified project right-of-way needs.

Subsection 108(a) is revised to conform with the new title for this section and to provide that property acquisition can be conducted in support of federally assisted transportation improvements and is not limited to Federal-aid highways. States can use any apportioned funds for land acquisition, but the action must be supported by their approved transportation program. The term "highway department" is removed from the section to reflect the changed organizational environment and the move to multi-modal planning processes.

Subsection 108(c) is revised to provide an expiration and close-out period for obligations already authorized from the right-of-way revolving fund. No allocations of funds have been made during the last two years, and the fund is no longer considered necessary to support State acquisition activities. Subsection 108(c), as revised, provides that credits based on conversion or reimbursements are to be applied to the Highway Trust Fund rather than the revolving fund.

Section 323 is amended to add flexibility and to provide an alternative means of leveraging Federal funds apportioned to each State by providing a credit based on the value of publicly owned lands incorporated within a federally funded project. This credit applies not only to property that has been donated to the State or local government, but also other property that is owned by the State or local government, so long as at the time such property was acquired there was no intent to avoid requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act or any other Federal law. This provision is consistent with the credits already permitted for donated real property and services. Along with other financing options provided under ISTEA (including provisions retained in 23 U.S.C. 108 regarding reimbursement for property acquired in advance of Federal authorizations and innovative options to establish State-based funds to support early acquisitions), the provisions added by this section expand the choices available to State and local governments in fashioning financial strategies to best serve their transportation objectives.

Sec. 1008. Proceeds from the Sale or Lease of Real Property

Current section 156 of title 23, United States Code, requires States to charge fair market value for the use of airspace acquired in connection with a federally funded project. This section also authorizes States to retain the Federal share of net income from the sale, use, or lease of this airspace as long as that same amount was used by the State for projects eligible for funding under title 23.

This section revises 23 U.S.C. 156 to expand these principles regarding airspace income to apply to the net income generated by a State's lease, sale, or other use of all real property acquired with Federal financial assistance. This reduces administrative overhead relating to property management practices and simplifies such practices by applying the same standard to all real property interests that are acquired with Federal-aid highway funds and requiring that the Federal share of any proceeds be reapplied within the State to other projects eligible for funding under title 23.

Sec. 1009. Interstate Maintenance Program

Subsection (a) strikes subsections 109(m) and 119(b) of title 23, United States Code, to eliminate both the requirement for the Secretary of Transportation to issue Interstate maintenance guidelines and the requirement for States to annually certify that they have a maintenance program in place that is in accordance with those guidelines. Subsection (a) also strikes subsection 119(e) of such title to eliminate the separate Interstate System preventive maintenance eligibility standard. Accordingly, Interstate System preventive maintenance eligibility would be determined in accordance with the general preventive maintenance provision of subsection 116(d).

Subsection (b) amends subsection 119(c), now 119(b), to expand IM eligibility to include the reconstruction of Interstate highways and infrastructure-based ITS capital improvements to the extent that they improve the performance of the Interstate.

Subsection (c) revises subsection 119(f), now 119(d), to require a State that seeks to transfer any of its IM funds to its NHS or STP apportionments to annually certify that it is adequately maintaining its Interstate pavement and bridges and that the IM funds it seeks to transfer are in excess of its needs for its Interstate pavement and bridges.

Subsection (d) technically amends subsection 119(a) to strike an out-of-date reference to subsection 119(e).

Sec. 1010. Maintenance

Subsection (a) amends subsection 116(a) of title 23, United States Code, to revise an out-of-date reference to a Federal-aid highway system and to clarify when a State's duty to maintain shall cease.

Subsection (b) adds a requirement to subsection 116(a) that each State annually certify that it is maintaining its Federal-aid highway projects.

Subsection (c) makes several technical amendments to subsections 116(b) and (c).

Sec. 1011. Interstate 4R Discretionary Program

This section amends 23 U.S.C. 118(c) to reauthorize the current Interstate 4R discretionary program at a level of $45 million per year for each of fiscal years 1998 through 2003. The eligibility, priority, and funds availability criteria for this program are unchanged from current law.

This section also strikes paragraph 118(c)(1) to eliminate an out-of-date provision. Paragraph 118(c)(1) authorized funding for a set aside from Interstate construction apportionments for construction projects, however, funds were not authorized for the Interstate construction program after fiscal year 1995.

Sec. 1012. Emergency Relief Program

Subsection (a) of this section amends 23 U.S.C. 120(e) to reduce the Federal share payable on emergency relief projects to 75 percent of the cost of each such project. This amendment brings the Federal share requirement of the FHWA's emergency relief program in line with the government-wide emergency relief proposal advanced by the President. Subsection (a) also amends 23 U.S.C. 120(e) to shorten the time period in which States receive a 100 percent Federal share of emergency relief funds to the first 30 days after a disaster occurrence. ER funds can be used for eligible emergency repairs done to restore essential highway traffic, minimize the extent of damage, or protect the remaining facility. The 100 percent Federal share requirement for emergency relief projects on Federal lands and U.S. territories is unchanged. Paragraph (a)(1) of this section technically amends 23 U.S.C. 120 to replace an outdated reference to Federal-aid highway systems.

Paragraphs (b)(1), (2), and (3) strike 23 U.S.C. 125(a), redesignate subsections 125(b), (c), and (d) as 125(d), (e), and (f), respectively, and reorganize subsection 125(a), dividing the subsection by subject matter, removing out-of-date language concerning emergency relief authorizations for prior years, and providing that emergency relief funds shall be available until expended.

Paragraph (b)(4) makes conforming amendments to 125(d), as so redesignated, to conform internal section references to the changes made by paragraph (b)(2).

Paragraph (b)(5) technically corrects 125(e), as so redesignated, to correct a reference to Federal-aid highways.

Sec. 1013. Toll Roads, Bridges, Tunnels, and Ferries

Subsection (a) of this section amends paragraph 129(a)(1) of title 23, United States Code, to remove the prohibitions against Federal participation in the initial construction of a toll highway, bridge, or tunnel on the Interstate System or in the reconstruction of a toll-free Interstate highway and its conversion to a toll facility. Such initial Interstate construction or Interstate reconstruction/conversion would be eligible for Federal-aid highway funds to the same extent and under the same terms (including limitations on the use of toll revenues) as such projects on non-Interstate highways, bridges, and tunnels currently are eligible under section 129 of such title. For those States that choose to toll Interstate routes under this provision, the Department encourages the use of electronic tolling. Electronic tolling shortens delays at toll facilities, thereby shortening trip times and reducing vehicle emissions.

Subsection (b) of this section eliminates an out-of-date subsection (129(d)) which established a tolling pilot program that has accomplished its intended purpose. However, pilot toll agreements that were executed under subsection 129(k) are still valid unless they were modified under 23 U.S.C. 129(a)(6).

Sec. 1014. Surface Transportation Program

Subsection (a) amends subsection 133(a) of title 23, United States Code, to reflect that the surface transportation program provided for under this section has already been established.

Subsection (b) of this section amends paragraph 133(b)(2) to clarify that the eligibility for privately owned vehicles and facilities used to provide intercity passenger service by bus or rail under the STP program parallels the eligibility of such vehicles and facilities under 49 U.S.C. 5302(a)(1), as revised by this Act. Subsection (b) also amends 133(b) to expand STP eligibility regarding safety projects to include publicly owned rail safety infrastructure improvements and programs and non-infrastructure highway safety improvements. Subsection (b) also amends paragraph 133(b)(3) to make clear that STP funds may be used to fund the modification of existing public sidewalks to comply with the requirements of the Americans with Disabilities Act. Subsection (b) also codifies a provision governing transportation enhancements eligibility that has been set forth in agency guidance: a transportation enhancements activity must have a direct link to surface transportation. Subsection (b) also expands STP funding eligibility to include natural habitat mitigation under the same circumstances in which wetlands mitigation is currently eligible for funding under 133(b). Subsection (b) also amends subsection 133(b) to expand STP eligibility to include two new categories of projects: publicly owned intercity passenger and freight rail infrastructure and rail passenger vehicles.

Subsection (c) amends section 133 to eliminate the safety set-aside from the STP program and makes conforming amendments to section 133. Highway safety programs will be funded by a direct authorization, rather than as a set-aside of the surface transportation program.

Subsection (d) amends paragraph 133(e)(2) to scale back the current quarterly, project-by-project State certification and notification requirements to annual, program-wide approval of each State's project agreement. Administrative procedures would be established to support the obligation by identifying the projects to be advanced during the period.

Subsection (e) strikes the second sentence in paragraph 133(e)(3) which required that payments made by the Secretary to the States under section 133 could not exceed the Federal share of costs incurred as of the date the State requested payments.

Subsection (f) revises subsection 133(f) regarding the allocation of obligation authority to urbanized areas to extend this provision through the life of the reauthorization. Current FHWA guidance provides that a State is deemed to have complied with this provision if the target amounts of obligation authority for individual areas have been obligated or if the State and MPO agree and document that the obligation authority was made available, but the area was unwilling or unable to use it. Revised subsection 133(f) also requires that each State and MPO ensure the fair and equitable treatment under 133(f)(1) of central cities of over 200,000 in population.

Sec. 1015. Metropolitan Planning

Subsection (a). General Requirements

Subsection 134(a) of title 23, United States Code, sets forth the general bases, goals, and functions of the metropolitan planning process established under this section. This subsection has been revised to emphasize system management and operation (excluding maintenance) to underscore the need to support existing transportation systems and implementation of Intelligent Transportation Systems. A reference to locally determined fair and equitable treatment of all parts of the metropolitan planning area within the planning process is added to emphasize regional problem solving and resource distribution.

Subsection (b). Metropolitan Planning Organizations (MPOs)

Paragraph (1) establishes the process for designation (creation) of metropolitan planning organizations. This paragraph retains the current method for designation of MPOs by agreement of the Governor and units of general purpose local government, but requires that such local governments represent 51 percent of the affected population (under current law, such governments must represent 75 percent of the affected population). This paragraph retains the provision of current law that an MPO can only be designated under this arrangement if the central city agrees to the proposal. As revised, this paragraph also permits designation, consistent with this provision, under procedures established by State law. Under current paragraph 134(b)(1), State or local law can govern.

Paragraph (2) replaces current paragraph 134(b)(5) and establishes the process for redesignation of existing metropolitan planning organizations. This paragraph retains the current method for redesignation of MPOs by agreement of the Governor and units of general purpose local government, but requires that such local governments represent 51 percent of the affected population (under current law, such governments must represent 75 percent of the affected population). This paragraph retains the provision of current law that an MPO can only be redesignated if the central city agrees to the proposal. This paragraph also permits redesignation, consistent with this provision, under procedures established by State law.

The special provisions for Los Angeles and Chicago to request redesignation have been removed because they have not been used by either area.

Paragraph (3) replaces current paragraph 134(b)(6) and establishes the process for designating multiple metropolitan planning organizations in a single metropolitan planning area. Under current law, the Governor alone is responsible for determining whether more than one MPO is needed. As revised, this paragraph includes local officials acting through the MPO and the Secretary of Transportation as key participants in determining whether to create multiple metropolitan planning organizations to serve a single metropolitan area.

Paragraph (4) replaces current paragraph 134(b)(2). This paragraph identifies the membership of the policy boards of metropolitan planning organizations serving areas designated as transportation management areas. In this paragraph, specific reference is made to the policy board of the MPO, rather than the more general reference to the MPO, as provided in current law, to make clear that these membership requirements are meant to apply to the policy boards only.

The current paragraph 134(b)(4) "grandfathering" all MPO structures existing and not redesignated after December 18, 1991, has been deleted to give State and local officials more flexibility in structuring their MPOs.

Paragraph (5) replaces current subparagraphs 134(b)(3)(A) and (B). This paragraph provides that nothing in subsection 134(b) shall interfere with a public agency's authority, under State law, to develop plans and programs for adoption by an MPO and to develop long range capital plans, coordinate transit services and projects, and carry out other activities under State law. No substantive revisions have been made to this language.

Subsection (c). Metropolitan Planning Area Boundaries

This subsection establishes the basis for designating metropolitan planning area boundaries. Such boundaries include the existing urbanized area, the contiguous area expected to become urbanized in the next 20 years, and any areas in nonattainment for ozone, carbon monoxide or particulate matter. This subsection differs from current subsection 134(c) in several ways. It freezes the connection between nonattainment areas and metropolitan planning areas to the metropolitan planning area boundaries in existence as of September 30, 1996, but allows the Governor and the MPO, upon agreement, to expand the boundaries of a metropolitan planning area. This paragraph also adds nonattainment areas for particulate matter to this list of nonattainment areas to be included in the boundaries of a metropolitan planning area. Finally, this paragraph is revised to provide that for urbanized areas designated after September 30, 1996, the Governor and units of general purpose government must establish metropolitan planning area boundaries that appropriately address current areas in nonattainment for ozone, carbon monoxide, or particulate matter.

Subsection (d). Coordination in Multi-State Areas

Paragraph (1) requires the Secretary to encourage the coordination of metropolitan planning activities in metropolitan planning areas divided by State boundaries and served by multiple MPOs. Clarifying editorial changes have been made.

Paragraph (2) authorizes two or more States to enter into a compact to cooperate in implementing the planning activities authorized under this section. This provision is unchanged from current law.

Subsection (e). Coordination of MPOs

This subsection requires coordination between two or more metropolitan planning organizations with authority within a metropolitan planning area or a nonattainment area. This subsection has been revised to include areas that are in nonattainment for particulate matter. In addition, it requires each MPO to coordinate their plans and programs under this section with each other, where the current provision requires that they consult with each other.

Subsection (f). Scope of the Planning Process

This subsection identifies the issues to be considered in the planning process when developing plans and programs. This subsection has been revised to create seven broad clusters of issues, where current subsection 134(f) includes 16 specific factors. These seven clusters encompass the 16 factors included in current law, but are meant to give planning officials greater flexibility, e.g., landside port access planning could be conducted within the metropolitan planning process under 134(f)(1)(E). The use of these clusters must be reflected in their application in transportation decisionmaking. These same clusters, with minor modifications, are used in the Statewide planning provision of 23 U.S.C. 135 for consistency and clarity.

Subsection (g). Development of Transportation Plan

This subsection has been renamed, from "Development of Long-Range Plan" to "Development of Transportation Plan" to emphasize the comprehensive, multi-modal transportation focus of the plan, rather than its time frame.

Paragraph (1) sets forth the requirement for a transportation plan in each metropolitan area.

Paragraph (2) lists the minimum contents of the plan. This paragraph eliminates the requirement that the plan be in a form determined by the Secretary. These subparagraphs also require consideration of strategies to address system preservation and efficiency of use. The focus of this plan has been broadened to emphasize all transportation investments, including system management and operation (excluding maintenance) and to eliminate the distinction between transit systems and highways. In addition, the reference to vehicular congestion has been modified.

Subparagraph (C) of this paragraph sets forth the requirement for a financial plan based on resources that are available or that can reasonably be made available. This financial planning language has been slightly revised for clarity. In addition, a new requirement for a cooperative process, involving the MPO, public transit agency, and the State, for estimating the resources available to support implementation of a plan has been included.

Current subparagraph (D) requiring the plan to list proposed transportation enhancement activities has been eliminated as unnecessary because all federally supported improvements are already required to be in a plan and program.

Paragraph (3) is retitled and modified to revise the coordination between transportation planning and air quality agencies and to add coordination with other planning processes. Subparagraph (A) requires that MPOs coordinate with State air quality agencies in metropolitan areas that are in nonattainment for ozone or carbon monoxide. Subparagraph (A) also is revised to include areas in nonattainment for particulate matter. Current paragraph (3) requires State air quality agencies and MPOs to coordinate the development of the long-range (now transportation) plan with the development of transportation control measures of the State implementation plan. The revised subparagraph requires State air quality agencies and MPOs to ensure cooperation in the development of air quality and transportation plans. This strengthens the reciprocal relationship between the planning processes beyond just the development of transportation control measures. Subparagraph (B) is added to support the relationship in metropolitan areas between related planning activities and processes. Development of transportation plans is expected to account for related investments and program strategies developed through other planning activities, e.g., economic development and revitalization. Such coordination would ensure that transportation projects and programs would consider, for example, the needs of low income communities so that they would be effectively integrated with transportation investments.

Paragraph (4) requires that each MPO provide an opportunity for public participation and involvement in the planning process. This paragraph is revised to add freight shippers to the list of interested parties to be provided a reasonable opportunity to comment on the transportation plan.

Paragraph (5) requires that each MPO publish or otherwise make readily available to the public its transportation plan. This provision is unchanged from current law.

Subsection (h). Metropolitan Transportation Improvement Program

Paragraph (1) of this subsection establishes the requirement for each MPO to develop, in cooperation with the State and affected public transit operators, a transportation improvement program for its metropolitan area. This program must be updated every two years, and interested parties must be provided with a reasonable opportunity to comment on the proposed program. This paragraph is revised to add freight shippers to the list of interested parties.

Paragraph (2), retitled content, requires the transportation improvement program to include a list of federally funded surface transportation projects and strategies to be carried out within the first 3 years of the program. This paragraph also requires the program to include a financial plan demonstrating how the program can be implemented, indicating the resources that are reasonably expected to be available to carry out the program and any innovative finance techniques needed. This paragraph has been revised to require the MPO, public transit agency, and State to cooperatively develop estimates of funds that will be available to support program implementation.

Paragraphs (3), (4), and (5) have been reordered from previous statutory language for clarity.

Paragraph (3), included projects, replaces paragraph (h)(5). [Current paragraph (h)(4), requiring the Secretary to initiate a rulemaking within 6 months of enactment of ISTEA on conforming NEPA review of transit projects with NEPA review of highway projects has been deleted because this requirement has already been met.] Paragraph (4) provides that only those projects or identified project phases that can be reasonably anticipated to be fully funded may be included in a transportation improvement program.

Paragraph (4), notice and comment, replaces current paragraph (h)(6). This paragraph requires MPOs to provide the public and interested parties with reasonable notice of and an opportunity to comment on a proposed transportation improvement program before approving the program.

This paragraph has been revised to require the MPO to cooperate with the State and public transit operators in implementing this requirement.

Paragraph (5), project selection, clarifies the distinction between project selection and TIP development as established in ISTEA. TIP development is a cooperative process involving the MPO, State and transit operators. Project selection, as referred to in ISTEA, is the process for advancing projects as scheduled in the TIP or moving projects between years within an approved TIP. This language clarifies that project selection is exercised once a TIP has been approved and does not apply to TIP development. It may lead in some cases to TIP amendments where significant changes have occurred after TIP approval.

Subsection (i). Transportation Management Areas (TMAs)

This subsection requires the Secretary to designate a special category of metropolitan planning areas—those urbanized areas over 200,000 in population—as transportation management areas and it sets forth a special MPO structure and procedures for the planning process serving those areas.

Paragraph (1) drops the current reference to inclusion of the Lake Tahoe Basin, upon request, as a transportation management area because it is ineffective. The area has not benefitted from this provision, which allowed the area to be designated as a transportation management area but did not give it MPO status or make it eligible for planning funds.

Paragraph (2) requires the planning process in TMAs to be based on continuous, cooperative, and comprehensive planning. This provision is unchanged from current law.

Paragraph (3) requires the creation of a congestion management system within a TMA. The language requiring the Secretary to establish a phase-in schedule for this requirement is deleted because this requirement has been implemented.

Paragraph (4) establishes the process for selecting projects for implementation to be carried out within the boundaries of a TMA and with Federal financial participation.

Paragraph (5) establishes a process for triennial Federal review of the metropolitan planning process in transportation management areas and includes sanctions for failure to meet Federal certification standards. The review process is in addition to approval of the STIP and Unified Planning Work program and Federal conformity determinations. FHWA and FTA actions, when coupled together, can be strategically used to induce improved planning by leveraging the consequences of each action.

Where current paragraph (5) provides for withholding 20 percent of only surface transportation program apportionments attributed to a metropolitan area if it remains uncertified, this revised paragraph provides that the Secretary may withhold all or any part of the apportioned funds attributed to the TMA under titles 23 and 49, United States Code, as the Secretary deems appropriate. Based on this authority, the Secretary has multiple options to apply sanctions to reflect the severity of deficiencies in the planning process under review. Further, this penalty can be applied to reinforce the other approval actions mentioned in the preceding paragraph. The withheld apportionments must be restored to the metropolitan

area once it is certified by the Secretary under this paragraph.

Subsection (j). Abbreviated Plans and Programs for Certain Areas

This subsection enables the Secretary to permit metropolitan areas (other than transportation management areas) to develop an abbreviated metropolitan transportation plan and program that the Secretary determines to be appropriate to achieve the purposes of this section. MPOs that contain nonattainment areas cannot utilize this provision. This subsection is substantially unchanged from current law.

Subsection (k). Additional Requirements for Certain Nonattainment Areas

Previous subsection (k) on transfer of funds has been moved to 23 U.S.C. 104. Previous subsection (l) is redesignated as (k).

This subsection requires single occupant vehicle (SOV) capacity-increasing projects in TMAs classified as nonattainment to be part of an approved congestion management system before they may be federally funded. In addition, this subsection has been revised to include areas that are in nonattainment for particulate matter.

Subsection (l). Limitation on Statutory Construction

Previous subsection (m) is redesignated as (l).

Subsection (l), as so redesignated, provides that nothing in 23 U.S.C. 134 shall be construed to confer on an MPO the authority to impose legal requirements on any transportation facility, provider, or project not eligible under title 23 or chapter 53 of title 49. This subsection would be amended to correct the reference to the restatement of the Federal Transit Act as positive law in chapter 53 of title 49, United States Code.

Subsection (m). Funding

Previous subsection (n) is redesignated as (m).

The source of federal funds to support metropolitan transportation planning is identified. Additionally, this section permits MPOs to make available to the State (for funding Statewide planning under 23 U.S.C. 135) any funds set aside under 23 U.S.C. 104(f) for metropolitan planning that are not used to carry out such planning.

Sec. 1016. Statewide Planning
Subsection (a). General Requirements

Subsection 135(a) of title 23, United States Code, sets forth the general bases, goals, and functions of the Statewide planning process established under this section. This subsection has been revised to emphasize system management and operation (excluding maintenance) to underscore the need to support existing transportation systems and implementation of Intelligent Transportation Systems. A reference to fair and equitable treatment within the planning process for all areas of the State has been added.

Subsection (b). Scope of the Planning Process

This subsection replaces current subsections 135(b), (c), and (d). This subsection identifies issues to be considered in the Statewide planning process. This subsection lists seven broad clusters of issues to be considered. These clusters encompass the 20 factors included in current subsection 135(c) but are meant to give planning officials greater flexibility, e.g., landside port access planning could be conducted within the metropolitan planning process under 135(b)(1)(E). The same clusters, with minor modifications, are used in the metropolitan planning provision. This subsection is also revised to require the State to cooperatively determine with its planning partners how these considerations are translated into State goals and objectives. Finally, this subsection retains, with clarifying edits, the requirements to coordinate Statewide planning with metropolitan planning and for Statewide planning to consider the concerns of Indian tribal governments and Federal lands agencies. An addition is made to address the concerns of elected local officials with jurisdiction over transportation in non-metropolitan areas. An addition also is made to add coordination with other planning processes. Development of transportation plans is expected to account for related investments and program strategies developed through other planning activities, e.g., economic development and revitalization. Such coordination would ensure that transportation projects and programs would consider, for example, the needs of low income communities so that they would be effectively integrated with transportation investments.

Subsection (c). Transportation Plan

This subsection replaces current subsection 135(e) and has been renamed, from "Long-Range Plan" to "Transportation Plan" to emphasize the comprehensive, multi-modal transportation focus of this plan, rather than its time frame. This subsection requires States to develop transportation plans for all areas of the State. This subsection has been revised to clarify that the Statewide plan should cover at least a 20-year forecast period and that it should provide for the development of operations and management strategies, in addition to capital. This subsection also is revised to call for consultation between the State and local transportation officials outside of metropolitan area boundaries when developing the Statewide plan for such non-metropolitan areas. This subsection also adds freight shippers to the list of interested parties to which the State must provide a reasonable opportunity to comment on the proposed plan.

Subsection (d). State Transportation Improvement Program

This subsection replaces current subsection 135(f) and has been renamed from "Transportation Improvement Program" to "Statewide Transportation Improvement Program."

Paragraph (1) of this subsection requires States to develop transportation improvement programs for all areas of the State. This subsection is also revised to call for consultation between the State and local transportation officials outside of metropolitan area boundaries when developing the program for such non-metropolitan areas. This section also adds freight shippers to the list of interested parties to which the State must provide a reasonable opportunity to comment on the proposed program.

Paragraph (2) requires the transportation improvement program to identify all federally funded surface transportation projects. This paragraph has also been revised to provide that the projects included in the Statewide program for metropolitan areas must be identical to the approved metropolitan transportation improvement program .

Paragraph (3) provides for the selection of projects for areas less than 50,000 in population. TIP development is a cooperative process involving the MPO, State and transit operators. Project selection, as referred to in ISTEA, is the process for advancing projects as scheduled in the TIP or moving projects between years within an approved TIP. The proposed language clarifies that project selection is exercised once a TIP has been approved and does not apply to TIP development. It may lead in some cases to TIP amendments where significant changes have occurred after TIP approval. In the case of areas under 50,000 population the State must consult with affected local officials.

Paragraph (4) requires the Secretary to biennially review and approve States' transportation improvement programs. This language is revised to direct the Secretary, before approving a STIP, to find that it is consistent or substantially consistent with this section and 23 U.S.C. 134.

Subsection (e). Funding

This subsection provides that funds made available under 23 U.S.C. 329(a) shall be available to carry out the requirements of this section. This subsection is revised to also make funds set aside under 49 U.S.C. 5313(b) available to carry out these requirements.

Current subsection 135(h), concerning treatment of State laws pertaining to congestion management systems, has been deleted because it is no longer applicable.

Sec. 1017. Research, Training, and Employment Opportunities
Subsection (a) Training

Paragraph (a)(1) The amendment made by this paragraph encourages a State to establish a certain number of training slots on its Federal-aid contracts for welfare recipients residing in the State to help meet its annual goal for placing recipients in work activities, as required by the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (the "Welfare Reform Act"). Under the Welfare Reform Act, a State must demonstrate annually that it has moved a certain percentage of families into "work activities." Work activities, with certain limitations, include participation in job training programs. Failure to meet these percentages will result in a reduction in the block grant that the State is entitled to receive. The Welfare Reform Act also imposes a maximum amount of time for which individuals can stay on public assistance.

Subsection 140(a) of title 23, United States Code, currently provides that the Secretary shall, where necessary to ensure equal employment opportunity, require certification by any State recipient that the state has in existence an apprenticeship or skill improvement program. Pursuant to this authority, FHWA issued regulations requiring States to set goals for a minimum number of training slots to be included on Federal-aid highway contracts (23 CFR Sec. 230.111). Annual training goals are submitted to FHWA Division Administrators for approval. The State selects the contracts on which these slots are to be included in order to achieve the goal. Contractors bidding on the contracts include the costs of the trainees (including salaries) as part of their bids.

Under paragraph (a)(1), the State could reserve some of its training slots for welfare recipients. The State could require contractors on Federal-aid projects to fill some of the training slots designated for the contract with welfare recipients. To minimize the burden on the contractor, DOT could require the State to identify eligible welfare recipients in the guidance implementing the program.

Subparagraph (a)(2)(A) Subsection 140(b) currently provides the authority for the FHWA's On-the-Job Training (OJT) Supportive Services Program. Funds are authorized to be used under this section to develop, conduct, and administer highway construction training, including skill improvement

programs. Subparagraph (a)(2)(A) expands the scope of the OJT program to include technology training. This change is proposed so as to capitalize on training opportunities in connection with Intelligent Transportation Systems and other transportation-related technology. This subparagraph also adds Summer Transportation Institutes to the types of programs that can be funded under subsection 140(b). Summer Transportation Institutes are programs that are sponsored by colleges (mostly Minority Institutions of Higher Education) to expose high school students to careers in transportation, to assist them in developing skills that they would need to pursue a career in transportation, and to familiarize them with a college environment. Expanding the program to include Summer Transportation Institutes allows States to provide education, guidance, and motivation for disadvantaged and at-risk youth and to develop a future pool of transportation professionals.

Subparagraph (a)(2)(B) Under the current law, the Secretary is authorized to reserve up to $10 million of the funds authorized under 23 U.S.C. 104(a) to fund the OJT Supportive Services Program. However, this provision was last funded by Congress in 1995, and only at a level of $2 million. FHWA used this funding to pay for ten pilot projects and initiatives focusing on skill improvement and outreach programs to minorities and women. The current legislation also authorizes States to draw down up to ½ of 1 percent of funds apportioned to it for the surface transportation program under subsection 104(b) and the bridge program under section 144. Although there is a significant amount of funding available to the States from this source, the use of these funds has been limited. For example, in 1996, a total of 12 states drew down only 12 percent (less than $4 million) of the $32 million available to develop OJT Supportive Services Programs.

Even though States are not extensively using these funds, a need for training in highway construction and related work continues to exist, especially for disadvantaged and traditionally under represented segments of the population. Women in particular are under-represented in highway construction work: employment of women in highway construction still has not even achieved the goal of 6.9 percent established by the Department of Labor. Further, with the enactment of the Welfare Reform Act, more unskilled workers will be seeking jobs as they are moved off of welfare assistance. Implementation of OJT Supportive Services Programs by the States can help prepare individuals in these groups to take advantage of job opportunities in highway construction and technology.

The statutory language authorizing the States to draw down these funds currently provides that the ½ percent drawdown "may be available" to States to implement OJT Supportive Services programs. This subparagraph proposes to change this language to provide that the ½ percent drawdown "should be utilized" by States to implement OJT Supportive Services Programs. Although the proposed change does not require that States use this draw down, it is intended to more strongly encourage States to use this funding to ensure that some measure of training is available to increase job opportunities on highway construction and related work.

Subsection (b) Employment

American Indians continue to experience unemployment at a disproportionately high rate. On Indian reservations and in Native communities, chronic unemployment ranges from 25 to 85 percent. Subsection 140(d) of title 23, United States Code, currently provides that States "may" implement a preference for employment. Paragraph (b)(1) would change this subsection to provide that States "should" implement a preference for employment. Although the proposed change does not constitute a mandate, it is intended to more strongly encourage States to implement employment preferences of Indians on projects carried out under title 23 near Indian reservations.

This subsection adds a new subsection to 23 U.S.C. 140 that would encourage States to require a contractor on Federal-aid highway projects to hire a certain number of qualified welfare recipients residing in the State, or to hire a certain number of residents of Empowerment Zones or Enterprise Communities (areas of pervasive poverty, unemployment, and general distress that have been designated in accordance with the Omnibus Budget Reconciliation Act of 1993). This new subsection (140(e)) would provide a way for the States to create job opportunities to move people from welfare to work in order to meet their obligations under the Welfare Reform bill. It would also allow States to create job opportunities for people living in Empowerment Zones and Enterprise Communities.

In the proposed program, protections for contractors, as well as protections (such as appeal rights) for potentially eligible welfare recipients, could be included in guidance implementing the program.

This subsection also adds a definition of "welfare assistance."

Also, this subsection adds a new subsection to 23 U.S.C. 140, concerning employment on Federal-aid highway projects in the Virgin Islands. High and chronic unemployment continues to depress the economy of the territory of the Virgin Islands. Recent natural disasters have had an additional negative impact on the economy. Job opportunities that typically accompany federally-funded projects are frequently taken by non-residents who are employed by companies that are based outside of the Virgin Islands.

This subsection (140(g)) would permit the territory of the Virgin Islands to require a contractor on a Federal-aid highway project to give preferences in hiring to qualified persons who regularly reside in the Virgin Islands. Allowing such a preference gives the Virgin Islands a means to help reduce unemployment and to recapture federal funds in its local economy. As in the welfare recipient program described in new subsection 140(e), implementing guidance could include protections for the contractors as well as for potentially eligible residents.

Subsection (c) Technical Corrections

This subsection makes several purely technical corrections to update and correct the language of section 140.

Subsection (d). Minority Institutions of Higher Education

This subsection is intended to carry out one of the objectives of Executive Orders 12982, "Promoting Procurement with Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions." This Executive Order requires Federal agencies to establish goals for participation in federal procurement by Historically Black Colleges and Universities (HBCUs) and other Minority Institutions of Higher Education (MIHEs) of not less than 5 percent.

In the past, FHWA established various initiatives to enhance the involvement of MIHEs in all aspects of its federal and federal-aid funded programs. Beginning in FY 95, FHWA set a goal of not less than 5 percent of its research and technology funds to be awarded annually to MIHEs. Although various grants and cooperative agreements have been awarded to MIHEs, the competition requirements for research and technology contracts are an obstacle in achieving the goal. In 1995, FHWA achieved only 3 percent of its 5 percent goal. MIHEs continue to face barriers to participation in the Federal and Federal-aid highway program, particularly when they are required to compete for grants and contracts with majority institutions which have well-established physical plants as well as advance technological expertise and equipment.

Under this subsection, the Secretary is directed to develop a program designed to remove barriers to participation by MIHEs and help them gain the experience and expertise necessary to be competitive with other educational institutions. The Secretary would be able to carry out this program through a variety of mechanisms, including expanded outreach and technical assistance. In addition, notwithstanding the competitive bidding requirements contained elsewhere in title 23, the Secretary would also be permitted limit competition to increase awards under this section. However, such methods may only be used consistent with any laws relating to affirmative action in Federal procurement that apply to this program.

Sec. 1018. Disadvantaged Business Enterprises (DBEs)

This section continues the provisions regarding affirmative action found in §1003(b)(1), (2), (3) and (4) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Paragraph 1003(b)(1), now subsection 162(a), requires that 10 percent of the funds authorized to be appropriated under four titles of the ISTEA be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals, except to the extent that the Secretary of Transportation determines otherwise. Paragraph 1003(b)(2), now subsection 162(b), defines the terms "small business concern" and "socially and economically disadvantaged individuals." Paragraph 1003(b)(3), now subsection 162(c), requires States to annually survey and compile a list of DBEs. Paragraph 1003(b)(4), now subsection 162(d), requires the Secretary to establish uniform criteria for State governments to use in certifying whether a concern qualifies as a DBE under this section.

This subsection has served the Department well in administering its contracting programs. In FHWA's program alone, the total dollar amount to DBEs in the form of prime contract awards and subcontract commitments is $10.4 billion. Significantly, prior to the enactment of the DBE program by Congress in 1982, minority and women-owned firms participated in approximately 3.5 percent of the Federal-aid highway program.

In 1995, the Supreme Court decided Adarand v Pena, and heightened the standard of judicial review applicable to Federal affirmative action programs, requiring that they meet a standard of "strict scrutiny." The Adarand decision involved the FHWA's Federal land highway program. The Federal land program is carried out directly by FHWA. At issue was a contract provision designed to encourage prime contractors to utilize the services of small and disadvantaged business enterprises through a compensatory incentive payment. The Federal

land highway program uses this provision as part of its effort to comply with both ISTEA and the Small Business Act.

Although deciding that strict scrutiny should henceforth apply to all Federal affirmative action programs, the Supreme Court did not strike down existing statutory requirements. Instead, it remanded the case to the lower courts to determine whether the program at issue meets the strict scrutiny standard of review. By this action, the Supreme Court implicitly recognized the continuing constitutionality of properly structured affirmative action programs.

Indeed, the majority opinion in Adarand recognized the "unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country." It emphasized that strict scrutiny was not to be "strict in theory, but fatal in fact." The President, in charging Federal agencies to review their programs after the Adarand decision, expressed his desire to "mend, not end" affirmative action.

In order to comply with the Supreme Court's "strict scrutiny" standard, there must be a "compelling governmental interest" to create an affirmative action program. The continued disparity, absent affirmative action measures, in the amount of business actually done by minority and women owned business in relation to the number of individuals ready, willing and able to work in various aspects of the construction and transportation industries has been well documented. A preliminary survey of evidence demonstrating a "compelling governmental interest" for affirmative action in Federal procurement was published on May 23, 1996, in the Federal Register by the Department of Justice as an appendix to its "Notice of Proposed Reforms to Affirmative Action in Federal Procurement." Information available to the Department of Transportation, some of it considered by the Congress in the past, attests to the continuing need of programs which provide enhanced opportunities for disadvantaged business enterprises.

Strict scrutiny requires more. In order to pass constitutional muster, an affirmative action program must be "narrowly tailored" to meet its objectives. The goals or levels of DBE participation should reflect the capacity that such businesses would have had to do the work, but for the continuing effects of discrimination. The 10 percent goal set forth in ISTEA has served the Department well, and has been readily attainable throughout the United States. However, the goal has never been more than a guidepost, even before the Adarand decision. Both the current and proposed regulations require each State and local recipient to establish an overall goal for its program, based on information from its particular jurisdiction. The goals may be higher or lower than 10 percent, based on State and local contracting conditions.

For all of these reasons, continuation of the existing law makes sense. The law sets forth a general goal for the country as a whole. It also gives broad discretion to the Secretary to develop a program which responds to the strict scrutiny standard, both in terms of specific program provisions and higher or lower State or local goals where appropriate. The Department has reviewed its program and is confident that it would survive the strict scrutiny standard required under Adarand. However, in order to improve the program based on the President's direction to "mend, not end" Federal affirmative action programs, and to further clarify how the program complies with the Adarand decision, the Department is proposing a number of changes to its regulations implementing the program.

To this end, the Department will publish its proposed revisions to its current DBE regulations shortly after submitting this bill. It is our belief that these proposed revisions illustrate the flexibility of the current law and the wisdom of allowing the Department to deal administratively with these exceedingly complex issues. First, the revised regulations will set forth a new method by which recipients will establish goals, consistent with the post-Adarand guidance issued by the Department of Justice. Secondly, the regulations will establish that race-neutral measures (such as outreach programs, technical assistance, and assistance in financing) should be used first by recipients to reach their overall goals. Race- and gender-conscious mechanisms, such as subcontracting goals, should only be used to the extent that race-neutral mechanisms fail. Finally, the regulations will propose alternatives to limit the duration of firms' participation in the program, and to reduce the concentration of DBE firms in certain types of work. It is the intent of the Department to finalize these regulations over the next few months after carefully evaluating the many comments we receive.

Sec. 1019. Highway Bridge Replacement and Rehabilitation Program

Subsection (a) of his section sets forth a new, revised section 144 of title 23, United States Code, which provides as follows.

Subsection 144(a) lists the purposes of the HBRRP, which have been revised to reflect the expanded funding eligibility under this revised section (see subsection 144(c) below).

Subsection 144(b) requires the Secretary, in consultation with the States, to annually inventory certain highway bridges on public roads. It also requires the Secretary to consult with the Secretary of the Interior when inventorying highway bridges on Indian reservation roads and park roads. This subsection also permits the Secretary to inventory highway bridges on public roads for historical significance.

Subsection 144(c) lists the types of projects that are eligible for HBRRP funds under this section. Eligibility is divided into two main categories: (1) replacement or rehabilitation of deficient highway bridges, and (2) preventive measures, i.e., seismic retrofitting, painting, calcium magnesium acetate application, and installation of scour countermeasures. This subsection expands current HBRRP eligibility, adding scour countermeasures.

Under subsection 144(d), the current apportionment formula for HBRRP funds is retained; these funds would be apportioned between the States based on the square footage of deficient bridges in each State. But the total cost of deficient bridges in a State would be reduced in fiscal year 2003 by the amount of HBRRP funds that the State transferred to its NHS or STP accounts in the previous four fiscal year and did not restore back to its HBRRP apportionment by the end of fiscal year 2002. Subsection 144(d) also includes provisions governing each State's annual share of the total apportionment and the percentage of HBRRP apportionments that each State must spend on projects on highway bridges on public roads classified as local roads or rural minor collectors.

Subsection 144(e) provides an exemption from the U.S. Coast Guard's bridge permitting requirement for the replacement of highway bridges.

The separate biennial reporting requirement on HBRRP projects, bridge inventories, and recommendations for improvements to the program has been deleted. Instead, this report will be merged with and submitted as a part of the FHWA's biennial conditions and performance report.

Subsection 144(f) provides that each State's apportionment shall be made available for obligation throughout the State on a fair and equitable basis.

Subsection 144(g) requires the Secretary to periodically review the procedure used in approving or disapproving States' applications for HBRRP funds and implement any changes that would expedite this procedure.

Subsection 144(h) requires each State to inventory its bridges to determine their historical significance. This subsection also makes certain historical bridge projects eligible for HBRRP funds and it establishes a process by which a State, locality, or responsible private entity may assume responsibility for a historic bridge that would otherwise be demolished.

Subsection 144(i) states that State laws and standards apply to any HBRRP-funded project not on the National Highway System.

Subsection 144(j) defines the term "rehabilitate" to mean major work necessary to restore the structural integrity of a bridge and work necessary to correct a major safety defect.

Subsection 144(k) reauthorizes the current bridge discretionary program at an annual funding level of $55 million.

Subsection (b) of this section amends the bridge funds transferability language in 23 U.S.C. 104(g) to enable a State to transfer 50 percent of its HBRRP apportionment to its NHS or STP apportionments only if none of the National Highway System bridges in the State require posting under National Bridge Inventory Item 70, bridge posting, which evaluates the load-carrying capacity of a bridge. If the maximum legal load produces a structural stress level above the bridge operating capacity, the bridge must be posted at a lower load level. Therefore, NHS bridges that must be posted are the structures that the States should be replacing or rehabilitating before any HBRRP funds may be transferred to their NHS or STP apportionments.

Sec. 1020. Congestion Mitigation and Air Quality Improvement (CMAQ) Program

Subsection (a) of this section amends subsection 149(a) of title 23, United States Code, to reflect that the congestion mitigation and air quality improvement program provided for under this section has already been established.

Subsection (b):

Areas in Nonattainment as of FY 1994: Subsection (b) strikes the provision in 149(b) that "froze" the nonattainment areas eligible for CMAQ funds as they were during any part of fiscal year 1994.

Expansion to PM–10 Areas: Subsection (b) amends subsection 149(b) to expand CMAQ eligibility to expressly include projects in nonattainment areas for particulate matter (PM–10). FHWA has administratively interpreted subsection 149(b) to include PM–10 projects; this language codifies this eligibility.

Exclusion of Transitional, Submarginal, Not Classified, and Unclassified Areas: Subsection (b) also limits CMAQ eligibility to nonattainment and maintenance areas that were classified as such under the Clean Air Act amendments of 1990, thereby excluding transitional, submarginal, not classified and

unclassified areas from CMAQ eligibility. This provision codifies NHS Act conference report language that accompanied amendments made by that act to the CMAQ program.

Expansion to Two Additional Transportation Control Measures: Subsection (b) also expands CMAQ eligibility to include two traffic control measures identified in the 1990 amendments to the Clean Air Act: vehicle scrappage of pre-1980 vehicles and extreme cold start programs.

Clarification of Nonattainment and Maintenance Area Eligibility/Emissions Reductions: Subsection (b) also revises subsection 149(b) to clarify that only projects that make further improvements to current air quality standards are eligible for CMAQ funding in both nonattainment and maintenance areas. In the case of maintenance areas, subsection (b) expressly provides that projects must reduce emissions to be eligible for CMAQ funds.

Traffic Management and Control Projects: Subsection (b) also consolidates current paragraphs 149(b)(3) and (4). In doing so, this subsection also removes current paragraph 149(b)(4)'s reference to operating assistance for traffic management and control projects. This would restore the general 3-year cap on funding operating assistance, which has been established administratively and which applies to all other CMAQ projects, to traffic management and control projects.

Subsection (c) simply designates the penultimate sentence of subsection 149(b) as new subsection 149(c), and it redesignates 149(c) and (d) as (d) and (e), respectively. The final sentence of subsection 149(b), which addressed the potential eligibility of PM–10 projects within certain nonattainment areas, is deleted as unnecessary, since PM–10 eligibility has been expressly included (see subsection (b) above).

Current section 149(c) allows States that have never had a nonattainment area for ozone, carbon monoxide, or PM–10 to use CMAQ funds for any project eligible under the surface transportation program. Such areas may also continue to fund CMAQ-eligible projects.

Subsection (d) of this section would require that States without nonattainment areas but with maintenance areas fund first CMAQ-eligible activities in such maintenance areas with their CMAQ funds, unless the State can show that its transportation-related maintenance plan activities are fully funded.

Subsection (e) of this section provides that, for purposes of CMAQ funding, the boundaries of nonattainment and maintenance areas will generally continue to be determined in accordance with the classification scheme in the 1990 amendments to the Clean Air Act. If the nonattainment boundaries change as a result of new national ambient air quality standards and any additional area newly designated as a result of such standards has submitted to EPA a State implementation plan, such boundaries would be used under this section.

Subsection (f) amends subsection 120(c) of title 23, United States Code, to exclude projects funded with CMAQ apportionments from the list of certain safety projects eligible for 100 percent Federal participation. As a result, the standard 80 percent Federal share provision of subsection 120(b) that applies to all other CMAQ projects would apply to these projects as well.

Sec. 1021. Interstate Reimbursement

Subsection (a) updates the general authority provision of 23 U.S.C. 160 which directs the Secretary to allocate to the States amounts determined under subsection 160(b) for reimbursement of their original contributions to construction of segments of the Interstate System which were constructed without Federal financial assistance, to reauthorize this provision for fiscal years 1998 through 2003.

Subsection (b) updates 23 U.S.C. 160(b) to render this provision applicable in fiscal years 1998 through 2003. Subsection 160(b) addresses the procedure for determining the amount each State will receive for reimbursement under this section.

Subsection (c) revises 23 U.S.C. 160(e), which directs that provisions in 23 U.S.C. 133 regarding the allocation of STP apportionments do not apply to half of the amount transferred under to this section to each State's STP apportionment. Subsection (c) makes a purely technical edit to subsection 160(e) to reflect the redesignation of 23 U.S.C. 133(d)(3) as 133(d)(2) in light of the elimination of the safety set-aside (previously in 133(d)(1)) from the surface transportation program. Safety programs will now be funded directly and not as a take-down from the surface transportation program.

Subsection (d) revises subsection 23 U.S.C. 160(f) to authorize the appropriation of $1 billion for each of fiscal years 1998 through 2003 in accordance with this section.

Sec. 1022. State Infrastructure Bank Program

Subsection (a) of this section codifies in title 23, United States Code, and thereby makes permanent the State Infrastructure Bank (SIB) Pilot Program authorized for fiscal years 1996 and 1997 in section 350 of the National Highway System Designation Act of 1995 (NHS Act). In codifying this language, references to ISTEA provisions and reporting requirements which will be out of date upon reauthorization of the surface transportation program were also removed. In all other respects, this section is identical to section 350 of the NHS Act, except where noted below.

Under subsection 162(a), States are permitted to enter into agreements with the Secretary to create both single-State and multi-State infrastructure banks. This provision eliminates the 10–State limit on the number of participants in the SIB program, which was included in section 350 of the NHS Act.

Under subsection 162(b), SIBs are required to maintain separate highway account for funds apportioned to the participating State or States under certain provisions of title 23, United States Code and a separate transit account for funds made available to the participating State or other Federal transit grant recipient under certain provisions of title 49, United States Code. A participating State may contribute to the highway account up to 10 percent of its annual apportionments of NHS, STP, Interstate Maintenance, HBRRP, Interstate reimbursement, and minimum allocation funds. A participating State may also contribute up to 10 percent of the funds annually apportioned to metropolitan regions if the metropolitan planning organization concurs with such action in writing. Federal grant recipients in a State may contribute up to 10 percent of their annual Section 3, Section 9, and Section 18 capital grants into the transit account of its SIB.

Subsection 162(c) permits SIBs to make loans or provide other assistance to a public or private entity and permits such loans or other assistance to be subordinated to any other debt financing for the project. This subsection prohibits the initial Federal assistance from a SIB to be made in the form of a grant.

Subsection 162(d) provides that any project eligible for funding under title 23, United States Code, may be funded from the highway account of a SIB, and that any capital transit project may be funded from the transit account of a SIB. This language expands highway account eligibility beyond what was included in section 350 of the NHS Act. Under section 350, funds in the highway account of a SIB could finance the construction of Federal-aid highways only.

Subsection 162(e) lists the requirements a State must meet to establish a SIB under this section. At a minimum, a State must match 25 percent of the Federal contribution with funds from non-Federal sources (except as provided by 23 U.S.C. 120(b)). This matching provision is the same as the traditional Federal-aid highway matching requirement (which is most often expressed as an 80/20 match). A State must also ensure that its SIB maintains an investment grade rating on a continuing basis or has a sufficient level of bond or debt financing instrument insurance to maintain the viability of the bank. Income generated by funds contributed to an account of the bank will be credited to the account, invested in U.S. Treasury Securities or other approved financing instruments, and be made available for use in providing loans and other assistance. Any loan from a SIB shall bear interest at or below market rates, and each participating State must ensure that repayment of any loan made by its SIB begins within 5 years after the project has been completed, or, in the case of a highway project, the facility has opened to traffic, whichever is later. The term for repaying any loan may not exceed 30 years after the date of the first payment. Finally, the State shall require its SIB to annually report to the Secretary.

Under subsection 162(f), the repayment of a loan or other assistance provided by a SIB may only be used to fund eligible projects under this section and may not be used to pay the non-Federal share of the cost of any project.

Subsection 162(g) requires the Secretary to ensure that Federal disbursements be made at an annual rate of 20 percent of the amount requested by the State for the SIB. This subsection differs from the disbursement provision in section 350 of the NHS Act, which required that Federal-aid highway and Federal transit funds be disbursed at rates consistent with their respective historical disbursement rates. Federal requirements would apply to all projects receiving assistance through the SIB. However, the Secretary may waive requirements in titles 23 and 49, United States Code, when the Secretary determines that such requirements are not consistent with the purposes of this section, e.g., provisions relating to project payments, except the Secretary may not waive 23 U.S.C. 113 and 114 and 49 U.S.C. 5333. This provision differs from the SIB pilot program in section 350 of the NHS Act, where Federal requirements only applied to the amount of Federal funds in the SIB. The Secretary shall revise cooperative agreements executed with the States under the pilot program to bring them into accord with the provisions of this section.

Some examples of provisions in title 23 which may be found by the Secretary to be inconsistent with the administration of SIBs are as follows. (1) Where SIBs require that obligation and payment of Federal funds occur at the time of capitalization (before a SIB has provided assistance to any approved project), 23 U.S.C. 106 requires that Federal-aid highway funds be obligated at the time a project is approved, and 23 U.S.C. 121 requires payment to be made as costs are incurred by the State. (2) Where SIBs require

non-Federal sources to match 25 percent of the total Federal capitalization grant contributed to the bank, 23 U.S.C. 120 establishes the Federal share on a project-by-project basis. (3) Where SIBs require capitalization funds to be used as the non-Federal match, 23 U.S.C. 323 allows donations to be applied to individual projects to meet this matching requirement. In the current SIB pilot program, the Secretary has determined that Federal-aid highway projects on a toll facility funded from a SIB are not required to comply with 23 U.S.C. 129(a)(3), which imposes restrictions on the use of toll revenues generated by the facility.

Subsection 162(h) clarifies that all requirements of Federal law that apply to projects receiving assistance under such titles shall apply to projects receiving assistance from a SIB, except to the extent the Secretary may waive a Federal law, other than sections 113 and 114 of title 23 and section 5333 of title 49, under paragraph (g)(2) of this section.

Subsection 162(i) provides that the contribution of Federal funds into a SIB under this section shall not be construed as a commitment, guarantee, or obligation on the part of the U.S. to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. This subsection also requires any security or debt financing instrument issued by a SIB under this section to include this same statement.

Subsection 162(j) exempts funds contributed to a SIB under this section from the requirements of 31 U.S.C. 3335 and 6503, which govern the manner in which funds are disbursed.

Subsection 162(k) permits a State to spend as much as 2 percent of the Federal contributions to its SIB to pay the reasonable costs of administering the SIB.

Subsection 162(l) defines, for purposes of this section, the terms "capital project," "other assistance," and "State."

Subsection (b) of this section authorizes annual appropriations from the Highway Trust Fund (other than the Mass Transit Account) for the SIB program at $150 million for each of fiscal years 1998 through 2003 and provides that such funds shall remain available until expended and shall have contract authority.

Subsection (c) makes a conforming amendment to the analysis for chapter 1 of title 23, adding a reference to this new section 162.

Sec. 1023. National Scenic Byways Program

Subsection (a) of this section amends chapter 1 of title 23, United States Code, to add a new section, §163, codifying the National Scenic Byways Program.

Subsection 163(a) directs the Secretary of Transportation to carry out the National Scenic Byways program and designate roads having outstanding scenic, historic, cultural, natural or archeological qualities as National Scenic Byways or All-American Roads. Criteria for designation have been defined in an FHWA interim policy notice, which was published in the Federal Register in May 1995.

Subsection 163(b) directs the Secretary to make grants and provide technical assistance to the States to implement National Scenic Byways, State scenic byways, and All-American Roads projects and to plan, design, and develop State scenic byways programs. A key aim of providing technical assistance is to educate and increase awareness about the development, management, and operation of scenic byways programs. Paragraph 163(b)(2) lists the priorities that must be given to eligible projects when making grants of scenic byways funds under this section. These are: projects on routes designated as either National Scenic Byways or All-American Roads, projects that would make routes eligible for designation as National Scenic Byways or All-American Roads, and projects that will assist States in developing their State scenic byways programs.

Subsection 163(c) lists the eight categories of projects eligible for scenic byways funding under this section.

Subsection 163(d) provides that the Federal share payable on account of any project under this section shall be determined in accordance with 23 U.S.C. 120(b), except that, for projects on Federal or Indian Lands, a Federal land management agency may contribute the non-Federal share payable on such projects.

Subsection 163(e) authorizes $15 million for each of fiscal years 1998 through 2003 for carrying out this scenic byways program.

Subsection 163(f) enables the Secretary to authorize scenic byways funds only for projects that protect the scenic, historic, recreational, cultural, natural, and archeological integrity of a highway and adjacent areas.

Subsection (b) of this section makes a conforming amendment to the analysis for chapter 1, adding a reference to this new section.

Sec. 1024. Infrastructure Safety Program

This section combines current sections 130 [Railway-highway crossings] and 152 [Hazard elimination program] of title 23, United States Code, into one section: 23 U.S.C. 164. Except where noted below, these provisions are unchanged from current law.

Paragraph 164(a)(1) sets forth the eligible railway-highway crossing uses of funds apportioned under 23 U.S.C. 104. These funds may be used to fund 90 percent of the cost of construction of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

Paragraph 164(a)(2) sets forth the eligible uses of railway-highway crossing funds apportioned under subsection 164(a). These uses include those listed in 164(a)(1) for section 104 funds and also include the following new uses: trespassing countermeasures, railway-highway crossing education, enforcement of traffic laws, and projects at privately owned railway-highway crossings if the project is publicly sponsored and the Secretary determines that such project would serve a public interest.

Paragraph 164(a)(3) authorizes the Secretary to classify various types of projects involved in the elimination of hazards of railway-highway crossings and to determine a railroad's share of the cost of such projects, based on the project's net benefit to the railroad.

Paragraph 164(a)(4) sets forth the payment and collection methods of amounts representing the net benefits to any railroad of a project for the elimination of hazards of railway-highway crossings funded under title 23, United States Code, or any prior Acts.

Paragraph 164(a)(5) requires each State to conduct and maintain a survey of all highways to identify those railroad crossings that may require separation, relocation, or protective devices, and to establish and implement a schedule to complete these projects. This paragraph also includes a new requirement that States report to the Department on completed railway-highway crossing projects funded under this subsection and section 165, for inclusion in the DOT/AAR National Grade Crossing Inventory.

Paragraph 164(a)(6) sets forth a new apportionment formula for railway-highway crossing funds. Under current law, funds are not apportioned in accordance with the apportionment formula in 23 U.S.C. 130(f), but are distributed in accordance with 23 U.S.C. 133(d)(1), which provides that each State shall receive an amount at least equal to the amount of funds made available to the State for carrying out railway-highway crossing projects under this provision in fiscal year 1991. Under paragraph 164(a)(6), railway-highway crossing funds would be apportioned as follows: 25 percent of the funds would be apportioned in the ratio that each State's most recent 3-year total of crashes at public railway-highway grade crossings bears to such total in all States, 25 percent are apportioned in the ratio that each State's most recent 3-year total of fatalities involving rail equipment at public railway-highway grade crossings bears to such total in all States, 25 percent of the funds would be apportioned in the ratio that each State's number of public railway-highway grade crossings bears to such number in all States, and 25 percent of the funds would be apportioned in the ratio that each State's number of public railway-highway grade crossings with passive warning devices bears to such number in all States.

Paragraph 164(a)(7) requires that at least one-half of the railway-highway crossing funds authorized under this subsection be made available for the installation of, and educational and enforcement efforts on, protective devices at railway-highway crossings. This paragraph expands this protective devices set-aside to include enforcement and education efforts; current law (23 U.S.C. 130(e)) makes these funds available only for the installation of protective devices.

Subparagraph 164(a)(8)(A) provides that the Federal share payable on any project financed with railway-highway crossing funds under this subsection shall be 90 percent of the cost thereof. Subparagraph 164(a)(8)(B) permits railway-highway crossing funds to be used as the local match on projects eligible under this section where State law conditions the use of State funds on such projects on the provision of local matching funds.

Paragraph 164(a)(9) authorizes each State to transfer funds from its railway-highway crossing apportionment to its hazard elimination apportionment in an amount equal to the percentage by which the number of crashes in the State has been reduced (in the most recent calendar year) below the average annual number of crashes that occurred in such State in calendar years 1994, 1995, and 1996.

Paragraph 164(a)(10) authorizes States to make incentive payments to local governments upon the permanent closure of railway-highway crossings under such local governments' jurisdiction. This paragraph also prohibits a State from making an incentive payment unless the railroad that owns the tracks on which crossing that is to be closed is located makes an incentive payment to the local government responsible for permanently closing such crossing. In addition, this paragraph limits the amount of the State payment to the lesser of the railroad's contribution or $7,500, and it requires local governments to use any State payment made under this section for transportation safety improvements.

Paragraph 164(b)(1) authorizes the use of hazard elimination funds on any highway safety improvement project.

Paragraph 164(b)(2) requires each State to conduct and maintain a survey of all public roads to identify hazardous locations, sections, and elements that may constitute a danger to motorists and pedestrians, assign priorities for the correction of such areas, and establish and implement a schedule to complete these projects.

Paragraph 164(b)(3) requires each State to establish an evaluation process to assess the results achieved by highway safety improvement projects carried out under this subsection.

Paragraph 164(b)(4) provides that hazard elimination funds shall be apportioned to the States in a manner similar to that provided in 23 U.S.C. 402(c): 75 percent based on each State's population and 25 percent based on each State's public road mileage. This provision is the same as the apportionment formula currently in subsection 152(e), however, under current law, funds are not apportioned in accordance with the apportionment formula in 23 U.S.C. 152(f), but are distributed in accordance with 23 U.S.C. 133(d)(1), which provides that each State shall receive an amount at least equal to the amount of funds made available to the State for carrying out hazard elimination projects under this provision in fiscal year 1991.

Subparagraph 164(b)(5)(A) provides that the Federal share payable on account of any hazard elimination project shall be 90 percent of the cost thereof. Subparagraph 164(b)(5)(B) authorizes the use of hazard elimination funds made available under this subsection on any public road other than a highway on the Interstate System.

Paragraph 164(b)(6) authorizes each State to transfer as much as 100 percent of its hazard elimination apportionment to either its highway safety apportionment under 23 U.S.C. 402 or its motor carrier safety allocation under 49 U.S.C. 31104 upon a determination by the Secretary that the State would be eligible to receive an integrated safety fund grant under 23 U.S.C. 165. This language is new. It replaces the transferability language currently found in the first two sentences of 23 U.S.C. 104(g), which permits States to transfer 40 percent of their railway-highway crossing, hazard elimination, and highway bridge replacement and rehabilitation program (HBRRP) apportionments among these three categories upon a finding by the Secretary that such transfer is in the public interest. Subsection 104(g) also permits the transfer of 100 percent of the apportionment under one such program to the apportionment under any other of such programs if the Secretary finds that such transfer is in the public interest and the State satisfactorily assures the Secretary that the purposes of the program from which such funds will be transferred have been met. Paragraph 164(b)(6) does not provide for the transfer of funds between the highway safety programs authorized under this section and the HBRRP under 144, as subsection 104(g) does, because this transfer authority has not been used by any State.

Paragraph 164(b)(7) provides that, for purposes of subsection 164(b), the term "State" shall have the meaning given this term in 23 U.S.C. 401.

Section 165 authorizes the Secretary to make grants of new integrated safety funds to any State that the Secretary finds has an integrated State highway safety planning process and has established integrated goals and benchmarks for safety improvements.

The amount of any grant made under this section in any fiscal year shall be an amount equal to the percentage that each eligible State's apportionment under 23 U.S.C. 402 for such fiscal year bears to the total apportionment under section 402 to all States for such fiscal year, but in no case could the grant amount exceed 50 percent of the amount apportioned to such State for fiscal year 1997 under section 402.

Any grant made under this section may be used by a State to implement any highway or motor carrier safety program or project eligible for funding under sections 23 U.S.C. 164 and 402 or chapter 311 of title 49, United States Code. Upon receipt of a grant allocation under this section, a State would transfer such allocation to the appropriate apportionment or allocation under 23 U.S.C. 164 or 402 or 49 U.S.C. 31104, and would administer such funds in accordance with the requirements of these programs.

Paragraph (a)(3) of this section amends 23 U.S.C. 104(g) to strike the current transferability language for railroad highway crossing and hazard elimination funds, because this language would be replaced by 23 U.S.C. 164(b)(6).

Subsection (b) of this section amends the analysis for chapter 1 of title 23 by striking the section names relating to sections 130 and 152 and by inserting the section names for new sections 164 and 165.

Sec. 1025. Fiscal and Administrative Amendments

Subsection (a) of this section removes three obsolete provisions from 23 U.S.C. 115 which are no longer applicable to the Federal-aid highway program. The eligibility of bond interest for Federal-aid reimbursement, currently in paragraphs 115(b)(2) and (3), has been superseded by section 122, which was added by section 311 of the National Highway System Designation Act of 1995. Subsection (c), concerning the treatment of a project built without Federal funds, has no current application.

Subsection (b) of this section removes an outdated provision from 23 U.S.C. 118 regarding total payments to a State in any fiscal year. In its place, this subsection reinstates a provision that was once in 23 U.S.C. 118 but which was inadvertently omitted when section 118 was amended by section 1020 of the ISTEA. This reinstated provision permits obligations incurred in prior fiscal years that are released in a current fiscal year to be made available for re-obligation in such current fiscal year.

Subsection (c) of this section technically amends 23 U.S.C. 120, concerning the Federal share payable on account of Interstate projects and other title 23 projects, to conform subsections 120(a) and (b) to subsection 120(i), which allows for an increased non-Federal share. The amendment to 120(b) also conforms this subsection to 23 U.S.C. 121, relating to payments made to States for the cost of construction. Subsection (c) also codifies as new subsection 120(j) the current ISTEA section 1044, which allows States to apply toll revenues used for specified capital improvements to their non-Federal share requirement for projects under title 23. This new subsection 120(j) also requires States taking advantage of this credit provision to maintain their current level of expenditures for matching the Federal share of title 23 projects.

Subsection (d) of this section amends 23 U.S.C. 121 to remove a restriction which applies the Federal/non-Federal matching rate to each payment that a State receives. The Federal share requirements for grant programs under the common rule implementing uniform administrative requirements for grants and cooperative agreements generally applies to the total cost of projects, rather than to individual voucher payments. This amendment will therefore make the Federal-aid highway program more compatible with other Federal programs, particularly the Federal mass transportation program, where projects are often administered jointly by the FHWA and the FTA. This subsection also amends 121 to provide more flexibility in administering the Federal share requirement by allowing for adjustments in the Federal share during the development of the project. The remaining changes made by this subsection remove outdated provisions from section 121.

Subsection (e) strikes 23 U.S.C. 124(b), concerning the construction of toll routes necessary to complete the Interstate System, thereby removing this out of date provision that is no longer necessary because the Interstate System has been completed.

Subsection (f) strikes 23 U.S.C. 126, thereby removing this outdated provision concerning the use of motor vehicle taxes to fund highway construction projects.

A long-standing interpretation of 23 U.S.C. 302 has prohibited the reimbursement of certain indirect costs to the States which are generally allowed for grant programs under the common rule establishing uniform requirements for grants and cooperative agreements. The Federal Highway Administration policy has been a contentious issue with State and local governments since other federal agencies permit States to charge indirect costs. Some States have developed a separate indirect costs rate for the highway program. This interpretation creates a particular burden when projects are administered jointly with other programs, such as the Transit Program. Subsection (g) of this section amends section 302 to clarify that section 302 does not limit reimbursement of eligible indirect costs to State and local governments. Subsection 302(b), concerning arrangements with county personnel to supervise the construction of projects on the Federal-aid secondary system, is stricken as obsolete.

Public Law 87-441 relates to bridge commissions and authorities created by Act of Congress. It provides for Federal approval of such commissions' memberships and requires annual audits. A commission ceases to exist by transferring ownership of the bridge to the States. Initially, five bridge commissions were subject to the act. Today, only one commission remains, the White County Bridge Commission, which operates the New Harmony Bridge across the Wabash River between Indiana and Illinois. While under this act, the FHWA has the authority to appoint commissioners and review the commission's financial operations, we believe that these actions could be administered more effectively and efficiently at the State or local level. Subsection (h), in repealing this 1962 bridge commission act, would remove this unnecessary Federal oversight of the White County Bridge Commission.

Sec. 1026. Federal Lands Highways Program
Subsection (a). Definitions

This subsection amends 23 U.S.C. 101(a) to include a new definition of public lands highways (which excludes forest roads) and it strikes the two definitions currently of public lands highways currently in subsection 101(a).

Subsection (b). Federal Share Payable

This section amends 23 U.S.C. 120 by adding a new subsection (j) to enable Federal land managing agencies (such as the National Park Service, the Bureau of Indian Affairs, and the U.S. Forest Service) to pay the

non-Federal share of any Federal-aid highway project where the Federal share of such project is funded under 23 U.S.C. 104 or 144, or under the Federal scenic byways program. This section also adds a new subsection 120(k) to allow Federal Lands Highways Program funds to be used as the non-Federal share of any Federal-aid project providing access to or within Federal or Indian lands and where the Federal share of such project is funded under 23 U.S.C. 104 or 144, or under the Federal scenic byways program.

Subsection (c). Allocations

Subsection (c) amends section 202 to direct the Secretary to allocate funds for two separate categories: the discretionary public lands program and the forest highway program. These two categories replace the current public lands category, which was comprised of discretionary and forest highways elements. The discretionary public lands highway allocation is contained in subsection 202(b), and a new subsection 202(e) is added for forest highways; this is consistent with the structure of the Federal Lands Highways program prior to the enactment of ISTEA.

Subsection (d). Availability of Funds

Subsection (d) makes conforming amendments to section 203 to reflect the separate forest highways program and revised public lands highways program. This subsection also provides that the point of obligation (at which the Federal Government is contractually obligated to pay its contribution to a project) for Federal Lands Highways Program projects shall be at the time the Secretary authorizes engineering and related work for any such project, or at the time the Secretary approves the plans, specifications, and estimates for any such project.

Subsection (e). Planning and Agency Coordination

Subsection (e) amends subsections 204(a) and (b) to reflect the separate forest highways program and revised public lands highways program and to more accurately reflect the roles of the various Federal agencies in Federal Lands Highways Program projects. It also streamlines the inclusion of Federal Lands Highways Program projects in Statewide and metropolitan transportation improvement programs, providing that the Secretary shall approve the transportation improvement programs. Only regionally significant Federal Lands Highways Program projects will be required to be developed in cooperation with States and metropolitan planning organizations. The Federal Highway Administration's Federal Lands Highways Office would then approve all Federal lands highway transportation improvement programs and submit these to the appropriate States and metropolitan planning organizations for inclusion in their transportation improvement programs without further action.

Subsection (e) also revises subsection 204(i) to reflect the current public lands program structure and to allow funds to be made available to Federal land managing agencies for transportation planning.

Subsection (e) also amends section 204 by adding a new subsection (k) to establish a national bridge program for replacing or rehabilitating deficient Indian reservation road bridges. A minimum of $5 million in funds is reserved from the Indian reservation roads program authorization for these bridges. This program has criteria very similar to those of the FHWA's current Indian reservation bridge program under 23 U.S.C. 144.

Sec. 1027. Bicycle Transportation and Pedestrian Walkways

Subsection 217(b) of title 23, United States Code, currently permits States to use their NHS apportionments on bicycle transportation facilities on land adjacent to highways on the National Highway System, other than Interstate routes. Subsection (a) of this section amends 23 U.S.C. 217(b) to include the construction of pedestrian walkways as an eligible use of States' National Highway System apportionments under the same criteria by which bicycle transportation facilities are eligible. Subsection (a) of this section also amends 217(b) to eliminate the restriction on the use of NHS funds apportioned under 104(b)(1) for the construction of bicycle transportation facilities on land adjacent to the Interstate System.

Subsection 217(e) currently provides for the safe accommodation of bicycles on highway bridges as part of the replacement or rehabilitation of highway bridge decks, except if the bridges are located on highways where access is fully controlled. Subsection (b) of this section amends subsection 217(e) to remove this restriction against safely accommodating bicycles on highway bridges located on fully access-controlled highways.

Subsection (c) of this section revises subsection 217(g) to provide that bicyclists and pedestrians be given due consideration in the comprehensive Statewide and metropolitan planning processes, and that the inclusion of bicycle and pedestrian facilities be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted. Subsection (c) also retains, with minor modification, the requirement currently in subsection 217(g) that transportation plans and projects give due consideration to the safety and continuity of bicycle and pedestrian facilities.

Subsection 217(h) currently provides that motorized wheelchairs are permitted on trails and pedestrian walkways when both State and local regulations permit them. Subsections (d), (e), and (g) of this section amend subsections 217(h) and (i) to specifically define the type of motorized wheelchairs permitted on trails and pedestrian walkways.

Subsection (f) redesignates subsection 217(j) as 217(i).

In addition to adding a definition of "wheelchair" to section 217, subsection (g) of this section also retains the current definition of "bicycle transportation facility" and adds a definition of "pedestrian." The definitions of "pedestrian" and "wheelchair" are consistent with the definitions of those terms in the Uniform Vehicle Code (a model uniform law on traffic ordinances that has been adopted in many States) and, in defining a pedestrian to include a mobility impaired person using a manual or motorized wheelchair, they help ensure that both manual and powered wheelchair users have the same mobility rights as pedestrians.

Sec. 1028. Recreational Trails Program

This section amends title 23 of the United States Code to add a new section to chapter two. Most of the provisions in this new section, 206, were originally enacted into law as part of the National Recreational Trails Fund Act (NRTFA) which is Part B of Title I of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and were codified in title 16, United States Code. By moving these provisions from title 16 to title 23, this section incorporates the Recreational Trails Program into the Federal-aid Highway Program which is administered by the Department of Transportation (DOT) and the Federal Highway Administration (FHWA) under title 23, U.S.C. This section also removes the Recreational Trails Program from title 16 which addresses programs that are usually administered by the Department of the Interior. The provisions in Part B of title I of the ISTEA establishing the National Recreational Trails Advisory Committee are not among the provisions being added to title 23. These provisions are simply being removed and the National Advisory Committee is thereby abolished.

Subsection (a) amends title 23, U.S.C., to add this new section 206 which is entitled "Recreational Trails Program" instead of "National Recreational Trails Program", its former name.

The new subsection 206(a) amends the preexisting subsection (a) of the NRTFA by adding the provision that the Secretary of Transportation will also consult with the Secretary of Agriculture, in addition to the Secretary of the Interior, in administering this program because the U.S. Forest Service is a major partner in the Recreational Trails Program.

The new subsection 206(b) substantially revises the preexisting subsection (c). The original paragraph (c)(1), the transitional provision, expired December 18, 1994, and is eliminated. The former paragraph (c)(2), the permanent provision, is amended to reflect that it is currently in effect, and is redesignated as subsection (b). The preexisting paragraph (c)(3), establishing the Federal share of the cost of Trails Program projects, which was added to the NRTFA by the National Highway System Designation Act of 1995 (NHS Act) is moved to subsection 206 (e).

The new paragraph 206(b)(1) requires a State to designate the State agency or agencies which will be responsible for administering apportionments received under this section. This requirement was previously found in subparagraph (c)(2)(B).

The new paragraph 206(b)(2) requires a State to establish a State trail advisory committee. This requirement was previously found in the original subparagraph (c)(2)(A), but in the new paragraph 206(b)(2), the term "board" is changed to "committee" to reflect the name used in most States and to eliminate any confusion as to whether a "board" is different than a "committee."

The new subsection 206(c) limits the types of trails and trail-related projects on which funds made available through this program may be obligated. To be eligible for funding, trail projects must be planned and developed in accordance with the laws, policies, and administrative procedures of the State. Subsection (c) also requires States to include trail plans or trail plan elements in metropolitan and/or statewide transportation plans in addition to requiring that these trail plans be consistent with their Statewide Comprehensive Outdoor Recreation Plan required by the Land and Water Conservation Fund Act. These provisions emphasize that trails may form part of the metropolitan and State transportation infrastructure. In addition, subsection (c) provides an illustrative list of permissible activities on which funds made available through this program may be obligated. Subsection (c) also includes a provision requiring that at least 50 percent of the funds received annually by a State be used to facilitate the use of trails for diverse recreational purposes, and one activity specifically encouraged is the renovation of trails to accommodate both motorized and nonmotorized trail use.

The new subsection 206(d) was formerly located in paragraph (e)(5). This new subsection 206(d) requires States to give priority to project proposals that provide for the redesign, reconstruction, non-routine maintenance, or relocation of existing trails in order to benefit the natural environment or to mitigate the impact on the natural environment. Paragraph (1) amends the preexisting provision to extend this requirement to all trail projects. This change strengthens the environmental aspects of this program and ensures that project proposals for existing trails are given priority over new trail projects. Paragraph (2), formerly at (e)(5)(B), directs the State advisory committees to issue guidance to the States for the purpose of implementing paragraph (1).

The new subsection 206(e) addresses the Federal share payable for projects under the Recreational Trails Program. This subject was previously addressed in paragraph (c)(3). This new subsection 206(e) first provides generally that the Federal share payable on these projects is not to exceed 50 percent. Paragraph 206(e)(1) addresses the fact that the prohibition on matching Federal funds with other Federal funds presents a problem for States where much of the recreational activity, especially motorized use, takes place on Federal lands. Consequently, paragraph (e)(1) allows a Federal agency sponsoring a project to provide funding for that project without those funds being credited as part of the Federal share to be covered by the Secretary of Transportation. However, this provision still requires State, local, or private sponsors to provide some matching funds. The new paragraph (e)(2) allows seven specific Federal grant programs to be used by project sponsors to meet non-Federal matching fund requirements. Trails projects are excellent training and work opportunities for participants in youth corp programs and work training programs. This provision will allow States to meet training and employment goals and the goals of the Trails Program simultaneously.

The new paragraph 206(e)(3) establishes a new programmatic non-Federal share that allows States to satisfy non-Federal share matching requirements on a programmatic level rather than on a project-by-project basis. The former subparagraph (c)(3)(B) would have established a programmatic non-Federal share beginning in fiscal year 2001 and would have resulted in a Federal share of approximately 83 percent for Recreational Trails projects. Under the new paragraph (e)(3), the programmatic non-Federal share goes into effect immediately and the Federal share is set at 50 percent. The programmatic non-Federal share provision gives the States flexibility to receive credit for the non-Federal matching funds which they are able to raise in excess of the required non-Federal matching share on some projects. This credit may be used by the States to cover part of the non-Federal matching share on other projects for which they have difficulty raising enough matching funds.

The new paragraph 206(e)(4) establishes a Federal share payable for State administrative costs which conforms with the Federal share payable for State costs incurred in administering projects under other Federal-aid highway programs. This paragraph clarifies that the 50 percent limitation on the Federal share payable for projects under the Trails Program does not apply to State administrative costs. This new paragraph establishes the Federal share payable for State administrative costs at 80 percent or higher in accordance with 23 U.S.C. 120(b). The Federal share is set higher than the Federal share payable for project costs in order to lessen the burden of the Federal mandates associated with this program. However, this paragraph does require the States to cover some of the cost because this program is voluntary. In addition, this provision reflects the intent of the Federal government not to cover 100 percent of the cost of statewide trail planning efforts because non-Federal funding sources are available for many trails.

The new subsection 206(f) lists different activities for which a State may not use funds apportioned to it under section 206. These provisions were, for the most part, formerly found in paragraph (e)(2). However, the new subsection (f) does include one new item. The new paragraph (f)(5) adds to the list of uses not permitted, funding of railroad right-of-way development that would encourage users to engage in any form of recreational activity on or between railroad tracks. The term "railroad tracks" is intended to include active and inactive lines and snow-covered tracks. The addition of this item to the list is intended to discourage use of railroad tracks to engage in recreational activity including walking, hiking, horseback riding, cross country skiing, snowshoeing, snowmobiling, rail biking, and use of a motor car.

The new subsection 206(g) is a new provision which incorporates some of the program management elements of the former subsection (e) and adds some other paragraphs to clarify these provisions and facilitate program management. Paragraph (g)(1) provides that a project sponsor may donate, either from a private or public source, funds, materials, services, or right-of-way for the purposes of a project eligible for assistance under this section. Private donations are allowed under 49 CFR 18.24 and 23 U.S.C. 323, as amended by the NHS Act, but this new paragraph clarifies the legislative authority regarding private donations to the Trails Program and establishes authority regarding donations from Federal project sponsors, as well.

New paragraph (g)(2) provides that a project funded under this section is intended to enhance recreational opportunity and, as such, is not subject to the provisions of 49 U.S.C. 303, establishing a U.S. policy on lands, wildlife, and waterfowl refuges and historic sites, or 23 U.S.C. 138, which addresses the preservation of parklands, because implementation of a Recreational Trails project would not qualify as "using" a public park, recreation area, wildlife and waterfowl refuge, or historic site for purposes of those laws. As a result, Recreational Trails Program projects are exempt from the "Section 4(f)" requirements calling for analyses as to whether a reasonable and feasible alternative to a project exists.

New paragraph (g)(3) provides that a State may treat funds apportioned to it under this section as Land and Water Conservation Fund apportionments for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act. This provision was formerly located at paragraph (e)(8). Section 6(f)(3) requires that projects funded under the Land and Water Conservation Fund Act remain in use as public outdoor recreational facilities in perpetuity. Any conversion would require approval of the Secretary of the Interior.

The new paragraph (g)(4) requires that, before making apportionments available for work on recreational trails, a State obtain written assurances, from the owner of any land that would be affected by the work, that the land owner will cooperate with the State. In addition, new paragraph (g)(4) requires that any use of a State's apportionments on private lands must be accompanied by an easement or other legally binding agreement that ensures public access to those recreational trail improvements. This provision was previously located in paragraph (f)(2).

The new subsection 206(h) provides definitions for terms used in the new section 206. Formerly, the definition section was located in subsection (g). The definition of "Fund" as referring to the National Recreational Trails Trust Fund is removed because the Recreational Trails Program is no longer funded through this trust fund which is also being abolished. The Recreational Trails Program will now be funded through a direct authorization of funds from the Highway Trust Fund. Subsection (h) also deletes the definition for "Nonhighway recreational fuel" because it is no longer needed. The definition of "Recreational trail" from the former definitions section is included in the new subsection 206(h), but is revised to reorganize the uses into a logical order and to add several new uses. In addition, this revision of the recreational trail definition removes a reference to the National Recreation Trails designated under the National Trails System Act because that reference is unnecessary. The definition of "Motorized recreation" used in the former subsection (g) is revised to clarify that motorized wheelchair use is not motorized recreational vehicles use. This new definition is consistent with the Uniform Vehicle Code. The new subsection 206(h) also includes a definition for the term "eligible State" for purposes of subsection 104(h) of 23 U.S.C. which establishes the formula to be used in apportioning funds authorized to be appropriated for the Recreational Trails Program. The definition for "eligible State" is the same as was previously used except that subsection (h) incorporates the title 23 definition of State.

Subsection (b) contains several conforming amendments. First, this subsection strikes part B of title I of ISTEA, since this part is replaced by new sections 206 and 207 of title 23, United States code. In addition, subsection (b) revises the analysis for Chapter 2 of 23 U.S.C. to reflect the addition of new sections 206 and 207.

Sec. 1029. International Highway Transportation Outreach Program

Subsection (a) amends section 325 of title 23, U.S.C., to clarify that the Secretary is authorized to conduct activities aimed at improving United States' firms access to foreign markets. Examples of these activities include gathering and disseminating information about foreign market opportunities and foreign industries, and encouraging the adoption abroad of U.S. technical standards.

Subsection (b) revises subsection 325(c) of such title to specify that funds deposited in the current special account with the Secretary of the Treasury and funds available to carry out this section can be used to reimburse the FHWA for the salaries of its employees and the costs incurred by them in assisting U.S. firms, with technical services unavailable in the U.S. private sector, to develop and carry out proposal for foreign transportation projects. These funding sources may also be used to cover other necessary promotional, travel, reception, and representation expenses.

Subsection (c) adds a new subsection to 23 U.S.C. 325 to enable States to use their State Planning and Research Program funds for

international highway transportation outreach activities under section 325.

Sec. 1030. Trade Corridor and Border Crossing Incentive Grants; Border Gateway Pilot Program

This section directs the Secretary to provide grants for planning and project implementation to improve transportation at international border crossings and along major trade transportation corridors. The section authorizes $45,000,000 annually from the Highway Trust Fund to support the activities directed. With the exception of specific sums authorized for planning and coordination purposes under subsections (a) and (b) of this section, all remaining funds authorized under this section shall be used for project implementation.

Paragraph (a)(1) of this section directs the Secretary to make annual incentive grants to States and MPOs that share a common border with Canada or Mexico for the purpose of performing planning for efficient movement of people and goods at and through international border gateways.

Paragraph (a)(2) requires the recipient, as a condition of receiving the grant, to assure the Secretary that it is or will commit to be engaged in joint planning with its counterpart agency in Canada or Mexico.

Paragraph (b)(1) directs the Secretary to make grants to States for the purpose of performing planning for the efficient movement of goods along and within international and interstate trade corridors.

Paragraph (b)(2) requires grant recipients to submit to the Secretary plans for corridor improvements. Corridor planning must be coordinated with transportation planning being done by the States and MPOs along the corridor and, where appropriate, with transportation planning being done in Mexico and Canada.

Paragraph (b)(3) authorizes 2 or more States to enter into agreements for purposes of coordinated trade transportation corridor planning and administration.

Subsection (c) establishes a new border gateway pilot program by authorizing the Secretary to make grants to States and others to fund the development and implementation of coordinated and comprehensive border crossing plans and programs. The intent of this subsection is to promote the efficient and safe use of existing border crossings within defined international gateways, prior to major new infrastructure investment, and to focus all available resources on implementation of a fully integrated and cooperatively developed plan, with special emphasis on full coordination with border inspection agencies, including those in Canada and Mexico.

Gateways are defined in "Assessment of Border Crossings and Transportation Corridors for North American Trade, Report to Congress pursuant to Intermodal Surface Transportation Efficiency Act of 1991 Public Law 102–240, Sections 1089 and 6015" as "groupings of border crossings defined by proximity and similarity of trade." The gateways identified in this report are: Maine; Montreal South; Eastern New York; Niagara; Michigan; Upper Plains; Central Plains; Eastern Washington/Rocky Mountains; Pacific Coast; South Texas; West Texas; Arizona; and California. Other defined gateways may be included at the discretion of the Secretary.

Paragraph (c)(1) authorizes the Secretary to make grants to States and others sharing a common border with Canada or Mexico for any project to improve the movement of people and goods at and across such border.

Paragraph (c)(2) limits the maximum number of total grants under this pilot program at eight (including at least two on the U.S./Mexico border and two at the U.S./Canada border) and limits the maximum dollar total of any single grant to $40 million. Projects may vary in scope, with varying degrees of Federal participation. Approval should not be given to fund any one project which will exhaust the entire annual authorization for this pilot program.

Paragraph (c)(3) lists the grant eligibility criteria for this pilot program. In recognition of the potential delays associated with border clearance and vehicle/driver review processes, each project proposal shall reflect cooperation and coordination with the U.S. Federal Inspection Services and their counterparts across the Mexican or Canadian border, as appropriate. Grants shall be made on the basis of the expected reduction in commercial and other travel time through a major international gateway as a result of the project; improvements in vehicle safety at and approaching the crossings within the gateway; the degree of funding leveraging anticipated through this program, including the use of innovative financing, and funding provided under other sections of this Act (which shall not be subject to the limits of this section); the degree of binational involvement in the project; the degree of applicability of innovative and problem solving techniques which might be applicable to other border crossings; and a demonstrated local commitment to implement and sustain continuing comprehensive border improvement programs. Project proposals must be limited, to the greatest extent possible, to improvements to existing border crossings within defined gateways. Construction of new facilities, including bridges, shall not be considered unless and until all options for efficient use of existing facilities has been demonstrated.

Subsection (d) authorizes $45 million in Highway Trust Fund monies for this border crossing pilot program in each of fiscal years 1998 through 2003. This subsection also sets the annual amount of the grants for the purposes of performing border gateway planning at $1,400,000 for each of fiscal years 1998 through 2003. The maximum amount any State or MPO may receive in grants under this section shall not exceed $100,000. These planning grants should be used to supplement State planning and research, planning, and other funds that are used to support long-range planning and programming which are to be implemented using the border gateway pilot program funds and other funds such as State and local funds, NHS, and STP. Subsection (d) also makes $3,000,000 available in each of fiscal years 1998 through 2003 for trade corridor planning incentive grants under this section.

Subsection (e) provides that border gateway funds authorized under this section may be used as the non-Federal match for any border gateway project funded with other Federal-aid highway funds, provided that the amount of border gateway funds cannot exceed 50 percent of project costs. Subsection (e) also provides that the Federal share payable on account of any border crossing or trade corridor planning incentive grant shall be determined in accordance with section 120 of title 23, United States Code.

Sec. 1031. Appalachian Development Highway System

This section amends 40 U.S.C. App. 201, the Appalachian Regional Development Act of 1965, to authorize $2.19 billion for fiscal years 1998 through 2003 to fund the continued construction of the Appalachian development highway system in the 13 States that comprise the Appalachian region.

Subsection (a) of this section amends subsection 201(a), which currently provides that all provisions of title 23 apply to the development highways funded under this provision, to include an exemption from the title 23 provision (23 U.S.C. 118) that all apportioned or allocated funds that have not been obligated by the end of four years shall lapse. As revised, subsection 201(a) provides that funds not expended by a State within four years shall be released to the Appalachian Regional Commission for reallocation to States within the Appalachian region, rather than lapsing.

Subsection (b) of this section amends subsection 201(g) to authorize appropriations from the Highway Trust Fund for fiscal years 1998 through 2003 (and also provides contract authority), and an equivalent amount of obligation authority, to fund the continued construction of the Appalachian development highway system in accordance with section 201. This subsection also limits eligibility for these funds to the development highway system authorized as of September 30, 1996. However, the States of the Appalachian region, the Secretary, and the Appalachian Regional Commission may agree to make alterations to the September 30, 1996, approved system, and such altered routes shall be eligible for funding under this section.

Subsection (c) of this section amends paragraph 201(h)(1) to raise the Federal share payable on account of any pre-financed (i.e., advance construction) development highway project to 80 percent of the cost of such project, which is the same Federal share payable for conventionally funded development highway projects under subsection 201(f). This amendment enables States to use the advance construction financing method of paragraph 201(h)(1) under the same Federal matching ratio as for all other development highway projects.

Subsection (d) of this section authorizes the deduction of up to 3.75 percent of the funds authorized under new paragraph 201(g)(2) for the expenses of the Appalachian Regional Commission in administering such funds.

Sec. 1032. Value Pricing Pilot Program

Subsection (a) of this section amends subsection 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 to reflect the change in the name of the congestion pricing pilot program to the value pricing pilot program.

Subsection (b) increases the number of pilot programs eligible for funding under subsection 1012(b) from 5 to 15.

Subsection (c) of this section amends paragraph 1012(b)(2) to increase the Federal share payable on any project funded under this provision from 80 percent to 100 percent.

Subsection (d) of this section further amends paragraph 1012(b)(2) to reflect administrative interpretations of this paragraph that have made by the Federal Highway Administration, shared with the appropriate congressional committees, and published in the Federal Register. Specifically, paragraph 1012(b)(2) is amended to provide that the Secretary shall fund pre-implementation costs of value pricing programs and that the 3-year funding limitation included in this paragraph commences once the project is implemented, and therefore does not apply to the pre-implementation stage of a project (which could stretch out for several years).

Subsection (e) makes necessary conforming amendments to subsection 1012(b) to

reflect that each cooperative agreement entered into by the Secretary under paragraph 1012(b)(1) would cover a specific value pricing program for the area encompassed by the cooperative agreement. Each program could, in turn, cover one or more specific value pricing projects within that area. This subsection also makes a purely technical correction to the list of items to be examined and reported on to the Congress by the Secretary.

Subsection (f) amends paragraph 1012(b)(3) to expand the eligible use of toll revenues generated by any pilot project under this subsection from any eligible use under title 23, United States Code, to any surface transportation purpose.

Subsection (g) removes the 3-program cap on the number of value pricing programs on which the Secretary shall allow the use of tolls on the Interstate System, thereby enabling State and local governments and public authorities to collect tolls on any value pricing pilot program funded under this section.

Subsection (h) adds one item, the effects of value pricing projects on low income drivers, to the list of items on which the Secretary is to report to the Congress under paragraph 1012(b)(5). This subsection also adds a new paragraph to section 1012(b) to provide that any value pricing pilot program funded under this subsection shall give full consideration to the potential effects of value pricing projects on drivers of all income levels and shall develop mitigation measures to deal with potential adverse effects on low income drivers, thereby making income equity a key consideration in the development of pilot projects.

Subsection (i) revises paragraph 1012(b)(6) to reauthorize Federal-aid highway funding for this program at a level of $14 million for each of fiscal years 1998 through 2003 out of the Highway Trust Fund, and provides that, in the event such funds remain unallocated or allocated and unobligated after four years, a State's unallocated or unobligated amounts shall be transferred to the State's STP apportionment. This subsection also eliminates the current funding cap on individual projects.

Subsection (j) provides an exemption from the HOV-2 requirement of subsection 102(b) of title 23, United States Code, by permitting single occupancy vehicles to operate in high occupancy vehicle lanes if such vehicles are part of a value pricing program funded under subsection 1012(b).

Subsection (k) ensures that this program will continue to have contract authority.

Sec. 1033. Highway Use Tax Evasion Projects

Subsection (a) of this section technically amends subsection 1040(a) of the Intermodal Surface Transportation Efficiency Act of 1991 to correct the reference to the funding provision of section 1040.

Subsection (b) strikes subsection 1040(d) to eliminate the requirements for the Secretary of Transportation to annually report to Congress on motor fuel tax enforcement activities under this section and the expenditure of funds made available to carry out this section, and for the Secretary of the Treasury to annually report to Congress on the increased enforcement activities to be financed with the funds allocated by the Secretary of Transportation to the Internal Revenue Service under subsection 1040(a). The Department has found that other available avenues for reporting on program successes, such as congressional hearings held on this program, have been very effective. Subsection (b) also strikes subsection 1040(e), which requires that the Secretary of Transportation, in consultation with the Internal Revenue Service, study the feasibility and desirability of using dye and markers to aid in motor fuel tax enforcement activities and report to Congress on this study by December 18, 1992. This study has been completed and its results submitted to Congress, so this subsection is no longer necessary. Subsection (b) also deletes the out-of-date funding authorization language for fiscal years 1992 through 1997, which has been replaced by subsection (d) of this section.

Subsection (c) redesignates subsection 1040(g) as subsection 1040(e).

Subsection (d) of this section amends section 1040 to authorize $5 million annually in Highway Trust Fund monies for each of fiscal years 1998 through 2003 to continue joint Federal Highway Administration/Internal Revenue Service/State motor fuel tax compliance projects across the country. The multi-State nature of the enforcement and uniformity efforts developed under this pilot project in ISTEA has been important to its effectiveness. Continued Federal funding at the same level authorized in ISTEA will help ensure that this very successful, coordinated regional and national approach to combating fuel tax fraud can continue.

Sec. 1034. Public Notice of Railbanking

This section would require that public notice be given once an application for interim trail use of a railroad right-of-way has been filed. Currently, a notice must be published in local newspapers announcing a rail abandonment. However, there is no notice requirement when a railroad right-of-way is proposed to be converted to a trail. This provision would allow all members of the community to work together as equal partners in establishing such trails.

TITLE II—HIGHWAY SAFETY

Sec. 2001. Short Title

Sec. 2001 provides that title II may be cited as the "Highway Safety Act of 1997".

Sec. 2002. Highway Safety Programs

Sec. 2002 continues the existing State and community highway safety program, established under Section 402 of title 23, United States Code, and amends the program as follows:

Subsection (a), "Uniform Guidelines," and Subsection (b), "Administrative Requirements," make several technical and conforming amendments to Sections 402(a) and (b).

Subsection (c), "Apportionment of Funds," makes one technical correction to Section 402(c) and one substantive amendment. To increase the effective delivery of the Section 402 program to the more than 500 Federally recognized Indian tribes, an amendment is provided to raise the minimum annual apportionment to the Indians (through the Secretary of Interior) from one-half of one percent to three-fourths of one percent of the total apportionment under the section.

Subsection (d), "Application in Indian Country," amends Section 402 to allow Section 402 grants to be made to Indian tribes in "Indian Country."

Subsection (e), "Rulemaking Process," amends Section 402(j), which requires the periodic identification, by rulemaking, of highway safety programs that are most effective in reducing traffic crashes, injuries, and deaths. Instead of requiring the States to direct the resources of the national program to the fixed areas identified by this rulemaking process, the amendment directs that the States to consider these highly effective programs when developing their highway safety programs.

Subsection (f), "Safety Incentive Grants," proposes to add four new safety incentive programs concerning alcohol-impaired driving countermeasures, occupant protection, highway safety data, and drugged driving countermeasures (described below) to Section 402, together with a new provision making various procedures applicable to each of those programs.

Section 402(k), "Safety Incentive Grants," replaces an obsolete subsection (k) and makes the following applicable to each of the four incentive programs: (1) the grants for the incentive programs may only be used by the States to implement and enforce, as appropriate, the programs for which the grants are made; (2) no grant may be made to a State in any fiscal year unless the State enters into an agreement with the Secretary to ensure that the State will maintain its aggregate expenditures from all other sources for the actions for which a grant is provided at or above the level of such expenditures in its two fiscal years prior to the date of enactment of the subsection; and (3) basic or supplemental grants applicable under the programs, in any one of these two grant categories, would be available to the States for a maximum of six years, beginning after September 30, 1997. States that meet certain criteria would receive grants that would be funded through a declining Federal share—75 percent for the first and second years, 50 percent for the third and fourth years, and 25 percent for the fifth and sixth years.

Section 402(l), "Alcohol-Impaired Driving Countermeasures," amends Section 402 to establish a comprehensive drunk and impaired driving incentive program to encourage States to increase their level of effort and implement effective programs aimed at deterring the drunk driver. The new program, which continues the Department's strong emphasis on deterring drinking and driving, is similar in structure to that of the existing Section 410 drunk driving prevention incentive program, established under Section 410 of Title 23, United States Code, and would replace the Section 410 program when its terms expire at the end of fiscal year 1997.

A State may establish its eligibility for one or more of three basic alcohol- impaired-driving countermeasure grants—A, B, and C—in the fiscal year in which the grant is received, by adopting or demonstrating certain criteria, as appropriate, to the satisfaction of the Secretary.

To establish eligibility for the first basic grant A under paragraph (1), a State must adopt or demonstrate at least 4 of 5 of the following: (1) an administrative driver's license suspension or revocation system for drunk drivers; (2) an effective system for preventing drivers under age 21 from obtaining alcoholic beverages; (3)(A) a statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis to determine whether the operators are driving while under the influence of alcohol, or (B) a statewide impaired driving Special Traffic Enforcement Program (STEP) that includes heavy emphasis on publicity for the program; (4) effective sanctions for repeat offenders convicted of driving while intoxicated or driving under the influence of alcohol; and (5) a three-tiered graduated licensing system for young drivers that includes nighttime driving restrictions, requiring that all vehicle occupants to be properly restrained, and providing that all drivers under age 21 are subject to zero tolerance at .02 percent BAC or greater while operating a motor vehicle.

To establish eligibility for the second basic grant B under paragraph (2), a State must adopt both an administrative driver's license suspension or revocation system for drunk drivers, and a law that provides for a per se law setting .08 BAC level as intoxicated.

To establish eligibility for the third basic grant C under paragraph (3), a State must demonstrate that its percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration has both: (1) decreased in each of the 3 most recent calendar years for which statistics for determining such percentages are available; and (2) been lower than the average percentage for all States in each of such calendar years.

States that meet the criteria for a basic grant under paragraphs (1), (2) or (3) would receive, for each grant, up to 15 percent (up to 30 percent if they qualify for two, and up to 45 percent if they qualify for all three) of their fiscal year 1997 apportionment under Section 402 of Title 23, United States Code.

States that meet the criteria for any one or more of the three basic grants also would be eligible to receive supplemental grants for one or more of the following: (1) making it unlawful to possess open containers of alcohol in the passenger area of motor vehicles (excepting charter buses) while on the road; (2) adopting a mandatory BAC testing program for drivers in crashes involving fatalities or serious injuries; (3) videotaping of drunk drivers by police; (4) adopting and enforcing a "zero tolerance" law providing that any person under age 21 with a BAC of .02 or greater when driving a motor vehicle shall be deemed driving while intoxicated or driving under the influence of alcohol, and further providing for a minimum suspension of the person's driver's license of not less than 30 days; (5) requiring a self-sustaining impaired driving program; (6) enacting and enforcing a law to reduce incidents of driving with suspended licenses; (7) demonstrating an effective tracking system for alcohol-impaired drivers; (8) requiring an assessment of persons convicted of abuse of controlled substances, and the assignment of treatment for all DWI and DUI offenders; (9) implementing a program to acquire passive alcohol sensors to be used by police in detecting drunk drivers; and (10) enacting and enforcing a law that provides for effective penalties or other consequences for the sale or provision of alcoholic beverages to a person under 21. For each supplemental grant criterion that is met, a State would receive, in no more than two fiscal years, an amount up to 5 percent of its Section 402 apportionment for fiscal year 1997. Definitions are provided for "alcoholic beverage," "controlled substances," "motor vehicle," and "open alcoholic beverage container."

Section 402(m), "Occupant Protection Program," amends Section 402 to establish a new occupant protection incentive program to encourage States to increase their level of effort and implement effective laws and programs aimed at increasing safety belt and child safety seat use.

A State may establish its eligibility for one or both of two basic occupant protection grants—A and B—in the fiscal year in which the grant is received, by adopting or demonstrating certain criteria, as appropriate, to the satisfaction of the Secretary.

To establish eligibility for the first basic grant A under paragraph (1), a State must adopt or demonstrate at least 4 of the following: (1) a law that makes unlawful throughout the State the operation of a passenger motor vehicle whenever a person in the front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly secured about the person's body; (2) a provision in its safety belt use law that provides for its primary enforcement or provides for the imposition of penalty points against a person's diver's license for its violation; (3) a law requiring children up to 4 years of age to be properly secured in a child safety seat in all appropriate seating positions in all passenger motor vehicles; (4) a minimum fine of at least $25 for violations of its safety belt use law and a minimum fine of at least $25 for violations of its child passenger protection law; and (5) a statewide occupant protection Special Traffic Enforcement Program (STEP) that includes heavy emphasis on publicity for the program.

To establish eligibility for the second basic grant B under paragraph (2), a State must: (1) demonstrate a statewide safety belt use rate in both front outboard seating positions in all vehicle types covered by the State's safety belt use law, of 80 percent or higher in each of the first three years a grant is received, and of 85 percent or higher in each of the fourth, fifth, and sixth years a grant is received; and; (2) follow safety belt use survey methods which conform to guidelines issued by the Secretary ensuring that such measurements are accurate and representative.

States that meet the criteria for a basic grant under paragraphs (1) or (2) would receive, for each grant, up to 20 percent (up to 40 percent if they qualify for both) of their fiscal year 1997 apportionment under Section 402 of Title 23, United States Code.

States that meet the criteria for one or both of the two basic grants also would be eligible to receive supplemental grants for one or more of the following: (1) requiring the imposition of penalty points against a driver's license for violations of child passenger protection requirements; (2) having no nonmedical exemptions in effect in their safety belt and child passenger protection laws; (3) demonstrating implementation of a statewide comprehensive child occupant protection education program that includes education about proper seating positions for children in air bag equipped motor vehicles and how to reduce the improper use of child restraint systems; (4) having in effect a law that prohibits persons from riding in the open bed of a pickup truck; and (5) having in effect a law that requires safety belt use by all rear-seat passengers in all passenger motor vehicles with a rear seat. For each supplemental grant criterion that is met, a State would receive an amount up to 5 percent of its Section 402 apportionment for fiscal year 1997. Definitions are provided for "child safety seat," "motor vehicle," "multipurpose passenger vehicle," "passenger car," "passenger motor vehicle," and "safety belt."

Section 402(n), "State Highway Safety Data Improvements," amends Section 402 to establish a new incentive program to encourage States to take effective actions to improve the timeliness, accuracy, completeness, uniformity, and accessibility of the data they need to identify the priorities for State and local highway and traffic safety programs, to evaluate the effectiveness of such efforts, and to link these data, including traffic records, together and with other data systems within the State, such as medical and economic data. Currently, much of the State data in these areas are inadequate or unavailable. The Department believes that the new incentive program under this subsection is vital to the ability of the States to determine and achieve their highway safety performance goals.

A State would be eligible for a first-year grant in a fiscal year under paragraph (1)(A) of subsection (n) if it demonstrates, to the satisfaction of the Secretary, that it has (1) established a Highway Safety Data and Traffic Records Coordinating Committee with a multi-disciplinary membership including the administrators, collectors, and users of such data (including the public health, injury control, and motor carrier communities) of highway safety and traffic records databases; (2) completed a recent (within the last five years) highway safety data and traffic records assessment or audit of its highway safety data and traffic records system; and (3) initiated the development of a multi-year highway safety data and traffic records strategic plan to be approved by the Highway Safety Data and Traffic Records Coordinating Committee that identifies and prioritizes the State's highway safety data and traffic records needs and goals, and that identifies performance-based measures by which progress toward those goals will be determined.

A State also would be eligible for a first-year grant in a fiscal year under paragraph (1)(B) of subsection (n) if it provides, to the satisfaction of the Secretary, (1) certification that it has established a Highway Safety Data and Traffic Records Coordinating Committee with a multi-disciplinary membership including the administrators or managers of highway safety and traffic records databases and representatives of the collectors and users of these data; (2) certification that it has completed a recent (within the last five years) highway safety data and traffic records assessment or audit of their highway safety data and traffic records system; (3) a multi-year plan that identifies and prioritizes the State's highway safety data and traffic records needs and goals, that specifies how its incentive funds for the fiscal year will be used to address those needs and the goals of the plan, and that identifies performance-based measures by which progress toward those goals will be determined; and (4) certification that the Highway Safety Data and Traffic Records Coordinating Committee continues to operate and support the multi-year plan described under paragraph (1)(B).

A State that meets the criteria for a first-year grant under paragraph (1)(A) would receive an amount equal to $125,000, based on available appropriations. A State that meets the criteria for a first-year grant under paragraph (1)(B) would receive an amount equal to a proportional amount of the amount apportioned to the State for fiscal year 1997 under Section 402 of title 23, U.S. Code, except that no State would receive less than $225,000, based on available appropriations.

A State would be eligible for a grant in any fiscal year succeeding the first fiscal year in which they receive a State highway safety data and traffic records grant if the State, to the Secretary's satisfaction: (1) submits or updates a multi-year plan that identifies and prioritizes the State's highway safety data and traffic records needs and goals, that specifies how its incentive funds for the fiscal year will be used to address those needs and the goals of the plan, and that identifies performance-based measures by which progress toward those goals will be determined; (2) certifies that its Highway Safety Data and Traffic Records Coordinating Committee continues to support the multi-year plan; and (3) reports annually on its progress in implementing the multi-year plan.

A State that meets the criteria for a succeeding-year grant in any fiscal year would receive an amount equal to a proportional amount of the amount apportioned to the State for fiscal year 1997 under Section 402 of title 23, U.S. Code, except that no State shall receive less than $225,000, based on available appropriations.

Section 402(o), "Drugged Driving Countermeasures," amends Section 402 to establish a new incentive program to encourage States to take effective actions to improve State drugged driving laws and related programs. State drugged driving laws are inconsistent and frequently difficult to enforce. They often seriously hamper attempts by law enforcement and courts to deter drugged driving. The Department believes that the new incentive grant program under this subsection, modeled after the Department of Transportation's successful Section 410 alcohol-impaired driving incentive grant program under title 23 U.S. Code, is essential to improve State drugged driving laws and related activities. This incentive program is separate from subsection (l)'s incentive program for alcohol-impaired driving, which revises and replaces Section 410, so that drugged driving laws and activities receive the more focused attention they deserve.

A State would be eligible for a grant in a fiscal year under subsection (o) if it demonstrates, to the satisfaction of the Secretary, 5 or more of the following 9 criteria: (1) enact zero tolerance laws that make it illegal to drive with any amount of an illicit drug in the driver's body; (2) establish that it is illegal to drive while impaired by any drug (licit or illicit); (3) allow drivers to be tested for drugs if there is probable cause to suspect impairment; (4) suspend the driver's license administratively (without criminal proceedings) for persons driving under the influence of drugs; (5) suspend the driver's license for persons convicted of other drug offenses, even if not related to driving; (6) incorporate drug use and drugged driving provisions into a graduated licensing system for beginning drivers; (7) actively enforce and publicize drugged driving laws; (8) provide an intervention program for drugged drivers that incorporates assessment and drug education, counseling, or other treatment as needed; and (9) provide drug education information to persons applying for or renewing drivers' licenses and include drug-related questions on drivers' license examinations.

A State that meets the criteria for a grant under subsection (o) would receive an amount up to 20 percent of its Section 402 apportionment for fiscal year 1997. Definitions are provided for "alcoholic beverage," "controlled substances," and "motor vehicle."

Subsection (g), "Conforming Amendment," repeals Section 410 of title 23, U.S. Code ("Alcohol-impaired driving countermeasures"), and the analysis pertaining to Section 410 under chapter 4 of this title.

Sec. 2003. National Driver Register

Sec. 2003 would add several provisions to the National Driver Register (NDR) statute (chapter 303 of title 49, U.S. Code) to make the program more effective and efficient. The National Highway Traffic Safety Administration (NHTSA) manages the NDR, which was established by Congress in July 1960 as a central index of State reports on individuals whose driving privileges have been suspended or revoked. Applications for driver licenses are checked routinely by States against the NDR to identify ineligible license applicants, problem drivers, drivers in need of improvement, and drivers under suspension or revocation.

Subsection (a), "Transfer of Selected National Driver Register Functions to Non-Federal Management," amends Section 30302 of title 49, U.S. Code ("National Driver Register"), by adding a new subsection (e). Under subsection (e), the Secretary would be authorized to decide whether to enter into an agreement with an organization that represents the interests of the States to manage, administer, and operate the National Driver Register's (NDR) computer timeshare and user assistance functions.

NDR operations are divided into five main functions: (1) data processing, accomplished by computer timeshare; (2) external support services, accomplished by staff assistance to NDR users; (3) development and maintenance of software for data processing, accomplished by staff responsible for system and applications support; (4) Federal Privacy Act requirements support, accomplished by Federal staff; and (5) overall management and supervision (including assistance to non-State NDR users, manual preparation of needed data, public information, and media relations), accomplished by Federal staff. Legislation is required to permanently transfer one or more of these functions, since existing statutory provisions and government contracting regulations do not permit one or more of these NDR functions to be assigned to a designated non-Federal organization.

If the Secretary decides to enter into an agreement with an organization that represents the interests of the States to manage, administer, and operate the NDR's computer timeshare and user assistance functions, subsection (e) directs that: (1) the Secretary ensure any management of these functions is compatible with chapter 303 of title 49, U.S. Code, and the regulations issued to implement that chapter; (2) any transfer of these functions begin only after the Secretary makes a determination that all States are participating in the NDR's "Problem Driver Pointer System," the system used by the NDR to effect the exchange of motor vehicle driving records, and that this system is functioning properly; (3) the agreement to transfer these functions include a provision for a transition period to allow the States time to make any budgetary and legislative changes needed in order to pay fees for using these functions; (4) the total of the fees charged by the organization representing the interests of the States in any fiscal year for the use of these functions not exceed the organization's total cost for performing these functions in that fiscal year; and (5) nothing in subsection (e) be interpreted to diminish, limit, or in any way affect the Secretary's authority to carry out chapter 303 of title 49, U.S. Code. The last provision affirms the Secretary's overall responsibility for the NDR (which includes Privacy Act and data security requirements), regardless of any transfer of these functions.

Subsection (b), Access to Register Information, amends Section 30305 ("Access to Register information") of title 49, U.S. Code. Subsection (b)(1) amends Section 30305(b)(2) to make two technical conforming amendments.

Subsection (b)(2) amends Section 30305(b) to add two substantive provisions. The first would eliminate a deficiency in the NDR by extending participation to Federal departments or agencies, like the State Department, that both issue motor vehicle operator's licenses and transmit reports on individuals to the NDR about whom the department or agency has such licensing authority and has (1) denied a motor vehicle operator's license for cause; (2) revoked, suspended or canceled a motor vehicle operator's license for cause; or (3) about whom the department or agency has been notified of a conviction of any of the motor vehicle-related offenses or comparable offenses listed in subsection 30304(a)(3). The reports on these individuals transmitted by the Federal department or agency must contain the identifying information specified in subsection 30304(b).

Subsection (b) also would reduce a burden on the States and strengthen the NDR's efficiency by allowing Federal agencies authorized to receive NDR information to make their requests and receive the information directly from the NDR, instead of through a State. The NDR statute currently requires authorized NDR users, other than chief driver licensing officials and the individuals to whom the information pertains, to submit all NDR inquiries through a State.

Sec. 2004. Authorizations of Appropriations

Sec. 2004 contains provisions that would authorize appropriations out of the Highway Account of the Highway Trust Fund for National Highway Traffic Safety Administration programs.

Paragraph (a)(1)(A), "Consolidated State Highway Safety Programs," would authorize appropriations to carry out the State and Community Highway Safety Program under Section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, except for the Section 402 incentive programs under subsections (l), (m), (n), and (o), of $166,700,000 for each of fiscal years 1998, 1999, 2000, 2001, and 2002, and $171,034,000 for fiscal year 2003. This paragraph consolidates the previously separate NHTSA and FHWA authorizations for appropriations for the Section 402 program under NHTSA, continuing a process begun by Congress in fiscal year 1997 to facilitate administrative efficiencies in the program.

Paragraph (1)(B), "Consolidated State Highway Safety Programs," would authorize appropriations to carry out the alcohol-impaired driving countermeasures incentive grant provisions of subsection (l) of Section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, of $44,000,000 for fiscal year 1998, $39,000,000 for each of fiscal years 1999, 2000, and 2001, $49,000,000 for fiscal year 2002, and $50,170,000 for fiscal year 2003. Amounts made available to carry out subsection (l) are authorized to remain available until expended, provided that, in each fiscal year the Secretary may reallocate any amounts remaining available under subsection (l) to subsections (m), (n), and (o) of Section 402 of title 23, United States Code, as necessary to ensure, to the maximum extent possible, that States may receive the maximum incentive funding for which they are eligible under these programs.

Paragraph (1)(C), "Consolidated State Highway Safety Programs," would authorize appropriations to carry out the occupant protection program incentive grant provisions of subsection (m) of Section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, of $20,000,000 for each of fiscal years 1998, 1999, 2000, and 2001, $22,000,000 for fiscal year 2002, and $22,312,000 for fiscal year 2003. Amounts made available to carry out subsection (m) are authorized to remain available until expended, provided that, in each fiscal year the Secretary may reallocate any amounts remaining available under subsection (m) to subsections (l), (n), and (o) of Section 402 of title 23, United States Code, as necessary to ensure, to the maximum extent possible,

that States may receive the maximum incentive funding for which they are eligible under these programs.

Paragraph (1)(D), "Consolidated State Highway Safety Programs," would authorize appropriations to carry out the State highway safety data improvements incentive grant provisions of subsection (n) of title 23, United States Code, by the National Highway Traffic Safety Administration, of $12,000,000 for each of fiscal years 1998, 1999, 2000, and 2001. Amounts made available to carry out subsection (n) are authorized to remain available until expended.

Paragraph (1)(E), "Consolidated State Highway Safety Programs," would authorize appropriations to carry out To carry out the drugged driving countermeasures incentive grant provisions of subsection (o) of title 23, United States Code, by the National Highway Traffic Safety Administration, paragraph (l) also would authorize $5,000,000 for each of fiscal years 1999, 2000, 2001, and 2002, and $5,130,000 for fiscal year 2003. Amounts made available to carry out subsection (o) are authorized to remain available until expended, *provided* that, in each fiscal year the Secretary may reallocate any amounts remaining available under subsection (o) to subsections (l), (m), and (n) of Section 402 of title 23, United States Code, as necessary to ensure, to the maximum extent possible, that States may receive the maximum incentive funding for which they are eligible under these programs.

Paragraph (2), "NHTSA Operations and Research," would authorize appropriations for the National Highway Traffic Safety Administration to carry out programs and activities with respect to traffic and highway safety under (A) Section 403 of title 23, U.S. Code (Highway Safety Research and Development), (B) Chapter 301 of title 49, U.S. Code (Motor Vehicle Safety), and (C) Part C of Subtitle VI of title 49, U.S. Code (Information, Standards, and Requirements), of $147,500,000 for each of fiscal years 1998, 1999, 2000, 2001, and 2002, and $151,335,000 for fiscal year 2003.

The authorizations under paragraph (2) would provide the necessary funds for the agency to carry out essential traffic and highway safety functions. Section 403 of title 23, U.S. Code, provides for highway safety research and development activities, including programs to improve highway safety through human factors research, evolving initiatives such as intelligent transportation systems, a comprehensive assessment of the agency's data needs and the data priorities of the highway safety community, public information programs, and university research and training. Chapter 301 of title 49, U.S. Code, provides for the establishment and enforcement of safety standards for new motor vehicles and motor vehicle equipment, together with supporting research. In keeping with the Department's policy that programs with identifiable users be funded as much as possible through user fees, support of the motor vehicle safety program, which clearly benefits highway users, is shifted to the Highway Account of the Highway Trust Fund. Part C of Subtitle VI of title 49, U.S. Code, provides for the establishment of low-speed collision bumper standards, consumer information activities, odometer regulations, automobile fuel economy standards, and motor vehicle theft prevention standards. In keeping with the Department's policy that programs with identifiable users be funded as much as possible through user fees, support of the motor vehicle information and cost savings programs, which clearly benefit highway users, is shifted to the Highway Trust Fund's Highway Account.

Paragraph (3), "National Driver Register," would authorize appropriations for the National Highway Traffic Safety Administration to carry out chapter 303 of title 49, U.S. Code (National Driver Register), appropriated under section 30308(a) of chapter 303, of $2,300,000 for each of fiscal years 1998, 1999, 2000, 2001, and 2002, and $2,360,000 for fiscal year 2003. The National Driver Register (NDR) provides information needed by the States to identify ineligible applicants for motor vehicle driver licenses, problem drivers, drivers in need of improvement, and drivers under license suspension or revocation.

TITLE III—MASS TRANSPORTATION AMENDMENTS OF 1997

Sec. 3003. Definitions

Section 3003 would amend section 5302, "Definitions."

Section 5302(a)(1), "capital project," would be amended by combining from other parts of the chapter all definitions covering capital programs in this provision. This consolidation would make the substantive change of applying the broader definition to all capital grants made under this chapter. Further, by amending existing subparagraph (A), it would add as an eligible cost three new cost categories: associated pre-revenue startup costs, environmental mitigation, and Intelligent Transportation Systems (as defined in section 6052 of the National Economic Crossroads Transportation Efficiency Act). The phrase "capital portions of rail trackage rights agreements" would be amended to "payments for rail trackage rights" as a clarification. (For the Government's share of the costs for the various categories of capital projects, see section 3028 of this Act, "Government's Share of Costs.")

A new subparagraph (E) would be added to the existing "capital project" definition, to permit preventive maintenance as an eligible capital cost to ensure proper preservation of the Federal capital investment. This will make eligibility of preventive maintenance for capital program funds the same as in the Title 23 highway program.

New subparagraph (F) would add leasing to the definition. This provision would be moved from section 5307(b)(3).

New subparagraph (K), a combination of provisions moved from sections 5309(f)(2), 5309(a)(1)(E), 5307(b)(1), would make joint development costs eligible for all capital programs. Transit operators would be permitted to participate more fully in joint development opportunities created by mass transit projects. The change would provide additional local revenue sources to meet transit capital and operating needs without Federal subsidy. Participation in commercial development would continue to be prohibited except where a fair share of the proceeds were returned for use in meeting mass transit needs.

Subparagraph (L) (moved from section 5309(a)(1)(F)) would add to the definition mass transportation projects that meet the special needs of the elderly and disabled individuals.

A new subparagraph (M) regarding the development of corridors to support fixed guideway systems was moved from section 5309(a)(1)(G).

A new subparagraph (N) would add to the definition, vehicles and facilities, publicly or privately owned, that are used to provide intercity passenger service by bus or rail. This change would enhance intermodalism and facilitate modal choices by local decision makers.

A new subparagraph (O) regarding access for bicycles to mass transportation facilities was moved from section 5319.

A new subparagraph (P) would add to the definition the repayment of the principal and interest of revenue bonds used for capital projects. This change would increase the financing options and sources of funds for recipients.

A new subparagraph (Q) regarding crime prevention and security was moved from section 5321.

A new subparagraph (R) would allow the acquisition of non-fixed route paratransit transportation service to comply with the Americans with Disabilities Act of 1990.

Subsections (a)(10) and (13) would be added to clarify that both "public transportation" and "transit" mean "mass transportation."

Section 3004. Metropolitan Planning

Section 3004 and section 1015 of this Act are intended to make identical changes to 49 U.S.C. section 5303, "Metropolitan Planning" and 23 U.S.C. section 134, "Metropolitan Planning," respectively.

Subsection (a), "Development Requirements," would be amended to require that transportation plans and programs for State urbanized areas be developed in a "fair and equitable" manner. It would also require that plans and programs provide for the development and integrated management and operation of transportation systems and facilities that will function as an intermodal transportation system for the metropolitan area, the State, and the United States.

Subsections (b), "Plan and Program Factors," paragraphs (1) through (15) containing the existing 16 factors would be deleted. New subsection (b)(1) would require that Metropolitan Planning Organizations (MPO) comply with seven new goals, found in subparagraphs (A) through (G), in developing plans and programs. These are: economic vitality; safety and security; accessibility and mobility; environment, energy conservation, and quality of life; integration and connectivity; efficient management and operation; and preservation of existing transportation system.

New subsection (b)(2) would require MPOs to cooperate with States and transit operators in incorporating these goals into the transportation plan.

Subsection (c), "Designating Metropolitan Planning Organizations." Paragraph (1)(A) would be amended to reduce the threshold required for designating or redesignating an MPO for an urbanized area with a population of more than 50,000. Representatives of local governments with 51 percent of the affected population must support the designation of the MPO, rather than 75 percent, as in current law. This change would make it easier to redesignate an MPO and recognizes the importance the MPO plays in local transportation planning. Also permitted would be designation under procedures established by State law.

Under subsection (c)(2), specific reference would be made to the policy board of the MPO, rather than the more general reference to the MPO for the purpose of specifying MPO composition.

Subsection (c)(3) would be amended to add the MPO and the Secretary of DOT as key participants, along with the chief executive officer (existing law) in determining the need to create multiple MPO's to serve a single metropolitan planning area. It also would create balance with the lowered threshold for local officials (51 percent) to request redesignation, allowing the Secretary to temper local actions under subsection (c)(4)(B)(i) and (c)(5).

Subsections (c)(5) (B) and (C) would be deleted because MPO redesignated would be covered in subsection (c)(3) and (4). Subsection (c)(5)(A) would be redesignated subsection (c)(5).

Subsection (d), "Metropolitan Area Boundaries," would be amended to freeze the connection to nonattainment boundaries to those existing at the end of FY 1996 and would prevent an automatic increase in the metropolitan planning area with changes in nonattainment boundaries. Subsection (d) would also allow the Governor and the MPO (including the central city) to affirmatively increase the boundary to the nonattainment limit rather than retroactively reduce it after being forced to increase the boundaries. New urbanized areas after FY 1996 would have their metropolitan planning boundaries agreed to by the Governor and local officials and particulate matter would be added as a consideration in the designation of metropolitan planning area boundaries. Regulations, guidance, or both will address the operational issues. The practical effect will not materialize until after the 2000 census.

Subsection (e), "Coordination." Paragraph (3) would be amended by substituting "coordinate" for "consult" between MPO's where more than one MPO has authority within an existing metropolitan planning area. It would also add particulate matter to non-attainment areas.

The catchline of subsection (f) would be changed from "Developing Long-Range Plans" to "Development of Transportation Plan" to emphasize the transportation focus rather than the time frame. In subsection (f)(1), "long-range plan" would be changed to "transportation plan." Subsection (f)(1)(A) would be amended so that the plan identifies transportation facilities that function as a "future" integrated transportation system rather than as "an integrated metropolitan transportation system." New subsection (f)(1)(B) would be added to require that the planning process address the same seven planning goals in subsection (b) of section 5303. Subsection (f)(1)(B) would be redesignated (f)(1)(C), current (f)(1)(C) would be redesignated as (f)(1)(D), and current (f)(1)(D) would be deleted. Redesignated subsection (f)(1)(C)(iii) would be amended to change financial techniques of value capture, tolls, and congestion pricing to simply "any additional financing strategies," thus enhancing flexibility. Redesignated subsection (f)(1)(D)(ii) would be amended by deleting reference to "vehicle" congestion. New subsection (f)(1)(D)(iii) would be added to enhance transportation access for individuals without private automobiles.

Subsection (f)(2) would be amended to require MPOs, transit operators, and States to cooperate in developing estimates of funds that could become available to implement the plan.

Subsection (f)(3) would be amended to require air and transportation agencies to cooperate on both the State Implementation Plan (SIP) development and transportation plan development processes. Development of transportation plans is expected to account for related investments and program strategies developed through other planning activities, e.g., economic development and revitalization. Such coordination would ensure that transportation projects and programs would consider, for example, the needs of low income communities so that they would be effectively integrated with transportation investments.

Subsection (f)(4) would be amended to add freight shippers to the list of stakeholders that can comment on the transportation plan.

The catchline of subsection (h) would be changed from "Balanced and Comprehensive Planning" to "Metropolitan Planning Grants."

Sec. 3005. Metropolitan Transportation Improvement Program

Section 3005 and section 1015 of this Act are intended to make identical changes to 49 U.S.C. section 5304, "Metropolitan Transportation Improvement Program" and 23 U.S.C. section 134, "Metropolitan Planning," respectively.

The title of section 5304 would be changed from "Transportation Improvement Program" to "Metropolitan Transportation Improvement Program" to clarify the focus on the metropolitan program.

Subsection (a), "Development and Update," would be amended to add freight shippers to the list of stakeholders that could comment on the program Transportation Improvement Program (TIP) and to require the MPO, in cooperation with the State and transit operators, to provide opportunities for public comment on the proposed program.

Subsection (b), "Contents." Paragraph (1) would change the listing of projects included in the TIP to be more inclusive. Paragraph (2) would be changed to require that financial plans identify "innovative financing techniques" rather than "innovative financing, including value capture, tolls, and congestion pricing," to give local authorities greater flexibility. Paragraph (2) would also require a cooperative process for developing financial estimates on which to base TIP development.

Subsection (c), "Project Selection" would clarify that States and recipients select projects from the TIP developed by the MPO, rather than select projects to be included in the TIP. The development of the TIP is the responsibility of the MPO.

Subsection (d), "Notice and Comment," would require the MPO, "in cooperation with the State and transit operators," to provide opportunity for public comment prior to approving the TIP.

Subsection (e), "Regulatory Proceeding," requiring FTA to adopt the FHWA environmental analysis process under the National Environmental Policy Act (NEPA) of 1969 would be deleted because it has already been accomplished.

Sec. 3006. Transportation Management Areas

Section 3006 and section 1015 of this Act are intended to make identical changes to 49 U.S.C. section 5305, "Transportation Management Areas" and 23 U.S.C. section 134, "Metropolitan Planning."

Section 5305 (a), "Designation." Paragraph (2) would be amended to delete the reference to Lake Tahoe because the area has not benefited from the existing provision, which allowed the area to be designated as a Transportation Management Area (TMA) but did not give them MPO status and eligibility for planning funds.

Subsection (c), "Congestion Management System," would be amended to delete the requirement for a phase-in schedule for congestion management systems because this has already been accomplished.

Subsection (d), "Project Selection," would be clarified to provide that States and transit operators select projects from the TIP developed by the MPO, rather than select projects for inclusion in the TIP. Development of the TIP is the responsibility of the MPO. Paragraphs (2)(A) and (B) would be deleted as extraneous.

Subsection (e), "Certification." Paragraph (1) would be amended to clarify that the Secretary certifies the planning process rather than the planning organization. Paragraph (2) would be amended to eliminate date references that were originally included to implement the new certification requirements of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) (ISTEA) and to eliminate the mandatory penalty of 20 percent of Surface Transportation Program (STP) attributable funds if an area is not certified after September 30, 1996. The penalty for lack of certification would no longer be limited to 20 percent of STP attributable funds. It would be whatever portion of those funds the Secretary determines to be appropriate.

Subsection (f), "Additional Requirements for Certain Nonattainment Areas," would be amended to add particulate matter to ozone and carbon monoxide nonattainment classifications in TMAs for purpose of funding certain projects.

Subsection (g), "Areas Not Designated Transportation Management Areas." Paragraph (2) would be amended to prohibit the Secretary from allowing abbreviated transportation plans and programs for metropolitan areas in nonattainment status for particulate matter in addition to ozone and carbon monoxide.

A new subsection (h), "Transfer of Funds," would allow the transfer of funds on the transfer of funds for highway projects under FTA and for transit projects under FHWA. This provision would be moved here from 23 U.S.C. section 104.

A new subsection (i), "Limitation on Statutory Authority," would be added to clarify that this section does not give an MPO authority to impose legal requirements on any transportation provider, facility, or project that is not eligible for Federal transit assistance.

Sec. 3007. Statewide Planning

Section 3007 would amend section 5306 by moving the entire section, "Private enterprise participation in metropolitan planning and transportation improvement programs and relationship to other limitations," to subparagraph (K) of section 5323, "General Provisions on Assistance." This change makes room for the new section 5306, "Statewide Planning."

It is intended that new section 5306 parallel the current requirement for "Statewide Planning" in title 23 (23 U.S.C. section 135). This is not a substantive change because 23 U.S.C. section 135 already applies to grants under chapter 53 of title 49 by reference. The language included in chapter 53 of title 49 would be identical to that contained in 23 U.S.C. section 135, after the following substantive changes are made.

Subsection (a) "General Requirements." New subsection (a) would add emphasis on operations and management to underscore the need to maintain the existing transportation system and to support implementation of Intelligent Transportation Systems (ITS). The need for "fair and equitable" treatment within the planning process for all areas of the State would also be emphasized.

Subsection (b), "Scope of the Planning Process," would be amended to include seven broad clusters of goals found in paragraphs (1)(A) through (G) which would encompass the 20 planning factors in ISTEA. These include the broad categories of the economic vitality; safety and security; accessibility and mobility; environment, energy conservation, and the quality of life; integration and connectivity; management and operation;

and preservation of the existing transportation system. These are the same planning factors as in amended section 5303(b).

Paragraph (2) would require the application of goals in each State to be made through cooperative arrangements between the State and those involved in the statewide planning process. This would be demonstrated through application in transportation decision making and is meant to give planning officials greater flexibility.

New paragraph (3)(A) would incorporate existing language on coordination.

Subsection (c), "Transportation Plan" would include reordered and clarified language from that presently in 23 U.S.C. section 135 concerning coordination of statewide planning with metropolitan planning and the concerns of Indian tribal governments. Subsection (c) would also clarify that the statewide plan would cover a 20-year time frame. Freight shippers would be added to the list of interested parties to which the State must provide a reasonable opportunity to comment on the proposed plan. Also added would be new language calling for consultation between the State and local elected officials outside the metropolitan planning area boundaries when developing the Statewide plan for such non-metropolitan areas. Development of transportation plans is expected to account for related investments and program strategies developed through other planning activities, e.g., economic development and revitalization. Such coordination would ensure that transportation projects and programs would consider, for example, the needs of low income communities so that they would be effectively integrated with transportation investments.

Subsection (d), "State Transportation Improvement Program," would reflect the focus on the statewide program. Freight stakeholders would be added to the list of parties that the State must provide reasonable opportunity to comment on the proposed State Transportation Improvement Program (STIP). Paragraph (1) would require consultation between State and local transportation officials outside the metropolitan area when developing the program for such non-metropolitan areas. Paragraph (2) would emphasize that projects included in the STIP for metropolitan areas must be identical to the approved metropolitan TIP for each area. Paragraph (3) would clarify that for areas under 50,000 in population the projects would be selected from the approved STIP and the State must consult with affected local officials. Paragraph (4) would direct the Secretary, before approving the STIP, to find that the STIP was developed through a planning process that was consistent with Federal transportation planning requirements. Such approval would be required at least every two years.

Subsection (e), "Statewide Planning Grants," describes the formula grant program for Statewide transit planning. This provision would be moved from section 5313(b).

Subsection (f), "Other Eligible Activities," would permit States to use funds under this section to supplement metropolitan planning grants under section 5303(h)(2)(A) and grants under the Transit Cooperative Research Program under section 5313(a).

Subsection (g), "Period of Availability," would make funds available for 3 years after the fiscal year of apportionment, after which remaining funds would be reapportioned among the States.

Subsection (h), Exclusion of Certain United States Territories," would clarify that section 5306 would not apply to the Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands.

SEC. 3008. URBANIZED AREA FORMULA GRANTS

Section 3008 would change the title of section 5307 from "Block grants" to "Urbanized area formula grants" to better reflect the contents of this section.

Subsection (a), "Definitions." Paragraph (1) would be amended to delete the definition of "associated capital maintenance items" because of the changes that would be made to section 5302, "Definitions;"; the expanded definition for preventive maintenance would includes costs for associated capital maintenance items, thus making this definition extraneous.

Subsection (b), "General Authority." Paragraph (1) would allow the following eligible grant activities: capital projects, under subparagraph (A); planning, under a new subparagraph (B); financing the operating costs of equipment used in mass transportation in urbanized areas with a population of less than 200,000, under subparagraph (C); the transportation cooperative research program, under a new subparagraph (D); the university transportation centers, under a new subparagraph (E); training, under a new subparagraph (F); research, under a new subparagraph (G); and technology transfer, under a new subparagraph (H). Subparagraphs (A) through (C) are in existing subsection (b)(1). Subparagraph (C) would be amended to limit operating assistance to only areas under 200,000; new section 5302(a)(1)(E) allowing preventive maintenance is intended to provide areas of over 200,000 with funds to maintain their assets, thus offsetting the loss of operating assistance.

Subsection (b)(2) would be amended by adding subparagraph (C), which was moved from current subsection (b)(5). This subparagraph permits funds to be used for a highway project only if local funds are eligible to finance either highway or transit projects, i.e., are flexible.

Subsection (b)(3) would be deleted because leasing would now be eligible under the consolidated section 5302(a)(1)(F), "Definitions."

Subsection (b)(4) would be deleted because the new definition of preventive maintenance in section 5302(a)(1)(E) would include costs for associated capital maintenance items.

Subsection (c), "Public Participation Requirements," would be deleted because the public participation requirements are included in the planning process under sections 5303 through 5306 and are not needed as a separate requirement under the urbanized area formula grant program.

Subsection (d) "Grant Recipient Requirements" would be redesignated subsection (c). Redesignated subsection (c), would eliminate the requirement for a separate program of projects as a streamlining effort because one is already required in the planning process. It would also require that projects be selected only from those included in the STIP.

Redesignated (c)(1)(A) through (C) regarding the certification of legal, financial, technical capacity, continuing control over the use of equipment and facilities, and maintenance of equipment and facilities would be moved from section 5307 to section 5323(i) and (j) as general conditions of assistance and would now apply program wide. Redesignated subsection (c)(1)(E) would be deleted and moved into a consolidated section 5325 "Contract Requirements." Redesignated subsection (c)(1)(F) would be deleted as extraneous.

Subsection (e), "Government's Share of Costs," would be deleted because this requirement would be consolidated in a new section 5328 and applied program-wide.

Subsection (g), "Undertaking Projects in Advance," would be deleted because advance construction requirements would be consolidated for program-wide application in a new section 5319 "Advance Construction Authority."

Subsection (h), "Streamlined Administrative Procedures," would be deleted as extraneous.

Subsection (j), "Reports," would be deleted as not necessary.

Subsection (k), "Submission of Certifications," would be deleted because submissions of certifications would be moved to and consolidated in section 5323(j) for program-wide application as a streamlining effort.

Subsection (n), "Relationship to Other Laws." Paragraph (1) would be deleted and consolidated into section 5323(i). Subsection (n)(2) would be redesignated subsection (h).

Sec. 3009. Mass Transit Account Block Grants

Section 3009 would delete current section 5308, "Mass Transit Account Block Grants" because this section applied to a one year capital program in Fiscal Year 1981 and has been executed.

Sec. 3010. Major Capital Investments

Section 3010 would change the title of section 5309 from "Discretionary Grants and Loans" to "Major Capital Investments" because the fixed guideway modernization program would be merged with the urbanized area formula grants program (see section 3034 of this Act) and the bus discretionary program would be eliminated.

Subsection (a), "General Authority." All capital project definitions contained in subparagraphs (1) (A) through (G) would be moved to section 5302, "Definitions."

Paragraph (2) would be amended to remove the Secretary's authority to make loans. Paragraph (2) concerning the Secretary's authority to apply all appropriate terms, conditions, requirements, and provisions to grants under section 5309 does not provide the Secretary with authority to waive statutory requirements, such as the application of Federal labor standards, civil rights requirements, or employee protective arrangements.

A new paragraph (3) would be added so that funds made available under section 5309 may be transferred to section 5311 (Formula Program for Other than Urbanized Areas recipient) and would be administered under the requirements of section 5311.

Subsection (b), "Loans for Real Property Interests" would be deleted.

Subsection (c), "Consideration of Decreased Commuter Rail Transportation" would be deleted because this provision applied to the establishment of Conrail as a private corporation in 1986 and is obsolete.

Subsection (d), "Project as Part of Approved State Program of Projects" would be redesignated subsection (b) and retitled "Project as Part of Approved State Improvement Program," to be consistent with changes made to redesignated 5307(c)(1) (existing section 5307(d)(1)). Subsections (d)(1) and (2) concerning the requirements for legal, financial, and technical capacity and maintenance of equipment or facilities that applied to section 5309 would be moved to section 5323(i) and (j) and would apply program-wide.

Subsection (e), "Criteria for Grants and Loans for Fixed Guideway Systems" would be redesignated subsection (c) and renamed

"Criteria for Grants for Fixed Guideway Systems." Paragraph (1)(A) would be amended by deleting "contract" and substituting "grant agreement" to reflect current practice. Paragraphs (3)(A) and (B) would be deleted as extraneous since these project approval requirements of mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies would be covered in paragraph (2)(B). Paragraph (6)(B) would be amended to clarify which determinations made by the Secretary would be expedited if the project was contained in a State Improvement Program in a nonattainment area. Paragraph (6)(C) would be amended by removing "completely" and substituting "substantially" to provide greater flexibility in application of this subsection to a part of a project financed with flexible highway funds.

Subsection (f) "Required Payments and Eligible Costs of Projects that Enhance Urban Economic Development or Incorporate Private Investment" would be redesignated subsection (d). Paragraphs (2)(A) and (B) would be moved and consolidated into the definition of eligible capital project costs contained in section 5302(a)(1)(K).

Subsection (h), "Government's Share of Net Project Costs" would be moved and consolidated into the new section 5328 of the same name.

Subsections (i)-(k) on loan term requirements would be eliminated.

Subsection (m), "Allocating Amounts." Paragraphs (1) and (2) regarding allocations for FY 1993 through FY 1997 would be deleted because section 5309 would now cover major capital investments, rather than fixed guideway modernization and bus discretionary funds. Paragraph (4) would be deleted as extraneous because the amended section would no longer include three different allocations. Paragraph (3) would be redesignated subsection (g) and entitled "Report to Congress."

Subsection (n), "Undertaking Projects in Advance," would be deleted because advance construction authority would apply program wide under section 5319.

Subsection (o), "Use of Deobligated Amounts," which allowed deobligated funds to be used for any purpose under this section would be deleted because the section would now apply only to major capital investments.

Sec. 3011. Formula Grants for Special Needs of Elderly Individuals and individuals with Disabilities

Section 3011 would change the title of section 5310 from "Grants and loans for special needs of elderly individuals and individuals with disabilities" to "Formula grants for special needs of elderly individuals and individuals with disabilities."

Subsection (a), "General Authority," would be amended to remove loan authority. Paragraph (1) would be deleted as a streamlining effort because funds to local public transit operators for service for elderly and disabled persons are made available through the urbanized and nonurbanized area formula programs. Paragraph (2) would be redesignated paragraph (1). Redesignated paragraph (1) would be amended to simplify the conditions of assistance made to private nonprofit corporations and associations.

Subsection (b), "Apportioning and Transferring Amounts," would be amended to remove the 90-day limitation on the transfer of funds from section 5310 to either section 5311, "Formula Program for Other than Urbanized Areas" or section 5307, "Urbanized Area Formula Grants." This change would permit such transfers at anytime during the fiscal year, providing enhanced flexibility and improved program management.

Subsection (e) "Application of section 5309." The catchline and paragraph (1) would be deleted; thus no longer requiring that a grant made under this section follow the requirements of section 5309, "Major Capital Investments." It would require that grants be subject to requirements the Secretary deems appropriate. Paragraph (2) would be redesignated subsection (e) and entitled "Grant requirements."

Subsection (f) "Minimum Requirements and Procedures for Recipients" would be deleted as extraneous because both the Americans with Disabilities Act and the planning process already provide these minimum requirements and procedures for grant recipients.

The remaining sections would be redesignated and would remain unchanged.

Sec. 3012. Formula Program for Other than Urbanized Areas

Section 3012 would change the title of section 5311 from "Financial assistance for other than urbanized areas" to "Formula program for other than urbanized areas" for clarification.

Subsection (b), "General Authority." Paragraph (2) would be amended to provide that four percent of the rural formula program funds shall be available for the Rural Transportation Assistance Program (RTAP). This streamlining change moves RTAP from the Transit Planning and Research Program to the formula program for other than urbanized areas.

Subsection (c) "Apportioning Amounts" would be amended to remove the extraneous apportionment calculation based on nonexistent Census estimates of nonurbanized population. The number of years for obligation after the fiscal year in which the amount is apportioned would be increased from two, to three, to conform the nonurbanized area program with the urbanized formula program under section 5307.

Subsection (e), "Use for Administration and Technical Assistance." Paragraph (1) would be amended to broaden the availability and use of funds by allowing States to use the rural formula funds now available to them for program administration to be used, as well, to support the Transit Cooperative Research Program (TCRP) and for training.

The catchline of subsection (f) would be changed from "Intercity Bus Transportation" to "Intercity Bus or Rail Transportation" to reflect the inclusion of rail as an eligible activity. The first sentence of paragraph (1) would be deleted to drop the requirement for intercity bus set-asides; the remaining phrase of paragraph (1) would be redesignated subsection (f). Subparagraph (A) would be redesignated paragraph (1). Planning and marketing expenses for intercity buses would still be eligible, and would be expanded to include intercity rail.

Paragraphs (1)(B) and (1)(C) would be deleted as extraneous because intercity bus shelters and joint use stops and depots would be generally eligible under this section. Paragraph (1)(D) would expand operating grants to include either bus or rail and would be redesignated as paragraph (2). Paragraph (1)(E) would be amended so that rural connections between small mass transportation operators and intercity bus would now include connections to rail or air carriers to enhance intermodalism in nonurbanized areas and would be redesignated as paragraph (3).

Subsection (f)(2) would be deleted because there would no longer be a requirement for a specific amount to be spent on intercity bus projects. The deletion of the requirement for a specific set-aside for intercity bus services obviates the need for a certification from the State that intercity bus needs are met before the funds could be used for other eligible purposes.

Subsection (g), "Government's Share of Costs," would be moved to and consolidated into section 5328. Subsections (h) and (i) would be redesignated as subsections (g) and (h), respectively.

A new subsection (i), "Apportioning and Transferring Amounts" would be added to allow the transfer of funds from section 5311 to section 5310 for use in the elderly and disabled programs. This provision would be moved from existing section 5336(g).

Sec. 3013. National Research Programs

Section 5312 would be renamed the "National Research Programs" which would be moved from section 5314. Section 5312 on "Research, Development, Demonstration, and Training Projects" would be moved to section 5314.

Subsection (a), "Program." Paragraph (1) would provide that funds made available to this section can be used for the Transit Cooperative Research Program under section 5313; for research, development, demonstration, and training projects under section 5314; for the national transit institute under section 5315; for bus testing under section 5318; and for the human resource program under section 5322. Paragraph (2) sets aside a minimum of $2 million to help transportation providers comply with the Americans with Disabilities (ADA) and would be moved without change from section 5314, "National Planning and Research Program."

The only substantive change to section 5312 would be the deletion of subsection (a)(4)(B) regarding the establishment of an Industry Technical Panel. This provision is extraneous because several other avenues exist to acquire advice from the transit industry.

Subsection (b), "Government's Share," provides that the Secretary establish the government's share consistent with the benefit provided.

Sec. 3014. Transit Cooperative Research Programs

Section 3014 would amend section 5313 by changing the title from "State Planning and Research Programs" to "Transit Cooperative Research Program".

Subsection (a), "Cooperative Research Program" would be amended to include the Federal Transit Administration (FTA) as a member of the governing board of the program.

Subsection (b), "State Planning and Research," would be deleted because the State planning requirements would be consolidated under section 5306, "Statewide Planning." Because the funds would no longer be divided and allocated directly, the fifty percent limit of section 5312, National Planning and Research Programs, would be deleted.

Subsection (c), "Government's Share," would be deleted and would be moved to section 5306 "Statewide Planning."

Sec. 3015. Research, Development, Demonstration, and Training Projects

The language of section 5314 would be replaced by and moved to section 5312. Section 5314 would be renamed "Research, development, demonstration, and training projects."

Subsection (a), "Research, Development, Demonstration, and Technical Assistance

Projects." In paragraph (1), eligible projects would be expanded to include those that improve service, enhance safety or security, increase capacity, reduce costs of services, equipment, or infrastructure, improve intermodal connections, reduce the need for transportation, overcome institutional barriers, disseminate technical information, promote applications of innovative technology, or advance the knowledge of mass transportation.

A new subsection (d), "Joint Partnership Program for Deployment of Innovation," would be added governing a joint partnership program for transit innovation deployment. Under paragraph (1), consortia would consist of public or private organizations which provide mass transportation service to the public, and businesses offering goods or services to mass transportation providers. It may also include public or private research organizations or state or local governmental authorities. The program would, under paragraph (2), permit entering into cooperative agreements, grants, contracts, or other agreements with consortiums to promote the deployment of innovation in mass transportation technology, services, management, or operational practices. In paragraph (3), the government's share of the cost would be limited to a maximum of 50 percent of the net project cost. Paragraph (4) gives the Secretary the authority to establish the solicitation and award process. Paragraph (5) states that net revenues would be credited to the future joint partnerships under this subsection.

Subsection (e), "International Mass Transportation Program," authorizes an international mass transportation program whereby the Secretary may develop and disseminate information on international transportation marketing opportunities to domestic operators; cooperate with foreign public sector entities on research; advocate U.S. mass transportation products and services in international markets; participate in seminars to inform international markets of the technical quality of mass transportation products and services; and offer FTA technical services to foreign public authorities on a cost reimbursement basis. The Secretary would be authorized to cooperate with Federal agencies, State and local agencies, public and private nonprofit institutions, government laboratories, foreign governments, or any organization deemed appropriate to carry out this section. A special account would be established for funds from any cooperating organization or person to pay for promotional materials, travel, reception, and representation expenses.

Sec. 3016. National Transit Institute

Section 3016 would amend section 5315 by changing the title from "National Mass Transportation Institute" to the "National Transit Institute" to reflect current practice. It would also change the subsection (a), "Establishment and Duties," list of courses to include architectural design in paragraph (5), construction management, insurance, and risk management in paragraph (11), and innovative finance in a new paragraph (15). Paragraph (7) would be amended to clarify that turnkey approaches "deliver" mass transportation system rather than "carry-out."

Sec. 3017. University Research Institutes

Section 5316 would be repealed. The program would be combined with the Transportation Centers program, section 5317, into an Intermodal Transportation Centers program administered by the Research and Special Programs Administration in a new chapter 52 of title 49.

Sec. 3018. Transportation Centers

Section 3018 would repeal section 5317. This program would be combined with the University Research Institutes, section 5316, program into an Intermodal Transportation Centers program administered by the Research and Special Programs Administration in a new chapter 52 of title 49.

Sec. 3019. Bus Testing Facility

Section 3019 would amend section 5318 (b), "Operation and Maintenance," and (d), "Availability of Amounts to Pay for Testing," to permit, in addition to a contract, the use of a grant or cooperative agreement to operate and maintain the bus testing facility. This would enhance flexibility in choosing and managing facility operators by FTA. Other mass transportation vehicles such as paratransit vans would be permitted to be tested at the facility in subsection (a), "Establishment."

Sec. 3020. Advance Construction Authority

Section 3020 would delete section 5319, "Bicycle Facilities" in its entirety. Eligibility for bicycle facilities would be moved to, "Definitions," section 5302(a)(1)(O), and its special 90 percent matching share would be moved to section 5328, "Government's Share of Costs." A new section 5319, "Advance Construction Authority," consolidating the advance construction authority in sections 5307(g) and 5309(n) would be substituted in its place. The requirements of advance construction authority would remain unchanged from their previous application to sections 5307 and 5309, and would be expanded to apply to section 5311.

The new section incorporates the requirement that the interest eligible for reimbursement be based on the most favorable interest terms available, as is now included in section 5309(n), rather than the inflation-based approach under section 5307(g), which proved to be unworkable in practice. Preaward authorization to incur project costs would be allowed. This would permit commencement of work at the time funds are apportioned, rather than after grant award. This change would incorporate in law a current practice.

Sec. 3021. Suspended Light Rail System Technology Pilot Project

Section 3021 would delete section 5320, "Suspended Light Rail System Technology Pilot Project," in its entirety. This section is unnecessary because the project is already eligible under section 5312, "National Planning and Research Programs." A new 5320, "Access to Jobs and Training" would be added.

Under subsection (a), "General Authority," the Secretary would make grants to assist States, local governments, and private nonprofit organizations to transport economically disadvantaged persons to jobs and employment-related activities.

Under subsection (b), "Grant Criteria," the Secretary would make discretionary grants to recipients based on statutory criteria including severity of the welfare transportation problem, existence of or willingness to create a mechanism to coordinate transportation and human resource services planning, the applicant's qualifications and performance under other welfare reform activities, the extent to which a partnership with human resource agencies exists, and the applicant's application. The application would be required to address the access to work transportation needs and possible new service strategies, the coordinating of existing service providers and possible new service strategies, the promotion of employer-provided transportation services, and long-term financing strategies to support the program.

Under subsection (c), "Eligible Projects," eligible grant activities would include integrating transportation and welfare planning, coordinating transit providers with human resource service providers, operating and capital costs of service start-up, promoting employer-provided transportation, developing financing strategies, and related administrative expenses.

Under subsection (d), "Technical Assistance," the Secretary may make grants, cooperative agreements, or contracts for technical assistance and the evaluation of projects funded under this section.

Under subsection (e), "Government's Share of Costs," the DOT share of costs would be 50 percent of the net cost and the remainder will be cash from sources other than revenues from providing transit service. Subsection (e) would allow a recipient to use other Federal human services funds to fund the non-governmental share. This subsection would not apply to the grants, cooperative agreements, and contracts for the provision of technical assistance; thus they could be funded completely by the Government.

Under subsection (f), "Planning Requirements," grants would be required to be included in Metropolitan and Statewide plans and Transportation Improvement Programs.

Under subsection (g), "Grant Requirements," grants would be subject to terms and conditions as determined by the Secretary.

Under subsection (h), "Availability of Amounts," funds are available for three years after the fiscal year they are made available.

Sec. 3022. Crime Prevention and Security

Section 3022 would amend section 5321, "Crime Prevention and Security," by moving its provisions to section 5302(a)(1)(Q), "Definitions," thereby making crime prevention and security eligible as a capital project.

Sec. 3023. General Provisions on Assistance

Section 3023 would amend section 5323, "General Provisions on Assistance."

Subsection (a), "Interests in Property." Paragraph (1)(A) would be amended to clarify that a project must be contained in a TIP rather than in a program of projects before a recipient can acquire property with FTA funds.

Paragraph (1)(D) would be amended to clarify that an employee protective arrangement certification under section 5333(b) applies only to projects under sections 5307 (except planning), 5309, 5311, 5313 (for operational activities only), redesignated 5314, and 5320 (except planning) and not to all projects in the transit program.

Subsection (b), would be amended to change the catchline from "Notice and public hearing" to "Social, economic, and environmental interests" to clarify the nature and purpose of the environmental public hearing. Paragraph (2), which describes how the notice of hearing must be published, would be removed due to its unnecessary prescriptive requirements. New paragraphs (2)(A) and (B) would be added here to reflect only those environmental requirements that are unique to FTA, by moving them from section 5324(b); National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.) (NEPA) provides the overall environmental review requirements.

Subsection (d) would be renamed from "Buying and Operating Buses" to "Charter Bus Limitation" to more accurately reflect the meaning of the subsection. It would now only apply to sections 5307, 5309, and 5311. The reference to existing section 5308, which would be repealed, would be deleted.

Subsection (e) "Bus Passenger Seat Specifications" would be deleted. This "housekeeping" effort removes unnecessarily prescriptive requirements and recognizes the fact that specifications were never issued by the Secretary.

Subsection (i), "Government's Share of Costs for Certain Projects" would be deleted and moved to section 5328 where these requirements would be consolidated.

Subsection (j), "Buy America," would be redesignated subsection (h). Paragraph (7) would be deleted as extraneous since the "foreign entity purchases" report to Congress has been submitted.

Subsection (k) "Application of Section 135 of Title 23," would be deleted and moved to section 5303 where planning requirements would be consolidated.

A new subsection (i), "Submission of Certification" moved from section 5307(k), would be added to provide for a single certification for all programs under this chapter.

A new subsection (j), "Legal Financial, and Technical Capacity," would be added which would consolidate all requirements for legal, financial, and technical capacity for all programs under this chapter.

A new subsection (k), "Private Enterprise Participation" would be moved here from section 5606(a).

Subsection (l), "Preaward and Postdelivery Review of Rolling Stock Purchase" would be deleted because this requirement is costly and unnecessary.

Sec. 3024. Acquisition of Real Property Owned By The Government

Section 3024 would delete as extraneous section 5324, "Limitations on discretionary and special needs grants and loans," in its entirety. Subsection (a), "Relocation Program Requirements," are contained in the Surface Transportation and Uniform Relocation Assistance of 1987 and would be redundant if retained. The environmental requirements contained in subsection (b), "Economic, Social, and Environmental Interests," are now included in NEPA with the exception of the unique environmental requirements that apply to FTA, which would be placed in section 5323(b), "General Provisions on Assistance." Subsection (c), "Prohibitions Against Regulating Operations and Charges," would be moved to section 5334, "Administrative," and would now apply program wide, rather than only to section 5309 recipients.

A new section 5324 would be named "Acquisition of Real Property Owned by the Government." This new section would make surplus real property owned by the Government available for a transit purpose or as a source of materials for the construction and maintenance of a transit facility adjacent to Government land. This section is patterned on 23 USC section 317.

Sec. 3025. Contract Requirements

Section 3025 would amend section 5325, "Contract Requirements."

Subsection (b), "Acquiring Rolling Stock," would be moved to section 5326, "Special Procurements." New subsection (b), "Competitive Negotiation," would authorize the use of a competitive negotiation procurement process when the sealed bid procurement process is not suitable. Subsection (c), "Procuring Associated Capital Maintenance Items," would be deleted because they would now be included as preventive maintenance in section 5302(a)(1)(E), "Definitions."

Subsection (d), "Architectural, Engineering, and Design Contracts," would be moved to new subsection (b)(2).

Sec. 3026. Special Procurements

Section 3026 would amend section 5326, "Special Procurements."

Subsection (a), "Turnkey System Projects," would be amended to expand the definition of turnkey system projects to include an operable segment of a transportation system and to expand from seller operation to seller financing, designing, building, and system operation, or any combination thereof. It would allow the contractor to acquire, rather than construct, a mass transportation system or segment. Paragraph (2) would require a turnkey solicitation to be based on a two-phased competitive procurement process where participation of small and medium sized businesses would be encouraged in joint ventures with large firms. Paragraph (3) would be deleted because it is completed.

Subsection (c), "Efficient Procurement" would be amended to remove references to dates and guidance requirements and moved to subsection (e). New subsection (c), "Acquiring Rolling Stock" would be moved here from section 5325(b) as a "housekeeping" effort.

Subsection (d), "Procuring Spare Parts" would be amended to permit a recipient to purchase spare parts directly from the original manufacturer or supplier without prior FTA approval if the manufacturer is the only source for the item and the price reflects market conditions.

Sec. 3027. Oversight

Section 3027 would change the name of section 5327 from "Project Management Oversight" to "Oversight" to reflect the expansion of this section to include other oversight such as financial oversight.

Subsection (c), "Limitations on Use of Available Amounts," would be amended to increase the percentage takedown from .5 percent to .75 percent of section 5307. A takedown would no longer be taken from section 5311. Taken together, these changes would result in an increase in the total funds available for oversight activities and focus the source of funds to the programs with the most need for oversight. Paragraph (2) would be amended to permit funds under this section to be used to provide technical assistance to correct deficiencies identified by compliance reviews and audits. This change would facilitate implementation of needed changes to recipient procedures and practices.

Sec. 3028. Government Share of Costs

Section 3028 would delete section 5328, "Project review," in its entirety. This section required specific timelines and milestones for the various stages of fixed guideway projects.

Compliance with the section's requirements was problematic; projects proceed at a pace determined primarily by local actions, not by those of the FTA. Also, commitments have already been made to the projects contained in subsection (c) which would therefore no longer be needed.

This section would be renamed "Government share of costs" and would contain a consolidation of most of the government's share of costs requirements in this single section. Subsection (a), "Capital Projects," would establish the Government's share of the costs for all capital projects funded under chapter 53 of title 49. The Governments' share for most capital projects would remain at 80 percent. Paragraphs (1) (A) and (B) contain special Government share ratios for certain kinds of projects.

Under paragraph (1)(A), the Government's share of a bicycle facility, as defined in section 5302(a)(1)(O), would remain 90 percent of the cost of the project.

Under paragraph (1)(B), the Government's share of the costs for a capital project that involves acquiring vehicle-related equipment required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.), would remain at 90 percent of the net project cost of the equipment that is attributable to complying with those Acts. The Secretary of Transportation, through practicable administrative procedures, would still be able determine the costs attributable to that equipment .

Under subsection (b), "Operating Expenses," the government's share of operating costs may not exceed 50 percent and would be limited to projects under sections 5302(a)(1)(R), 5307, or 5311. In section 3008 of this Act, operating assistance would be limited to only those areas under 200,000 in population.

Sec. 3029. Investigation of Safety Hazards

Section 3029 would amend section 5329, "Investigation of Safety Hazards," by deleting the extraneous subsection (b), "Report." This report to Congress on safety has been submitted.

Sec. 3030. Nondiscrimination

Section 3030 would amend section 5332, "Nondiscrimination."

Subsection (b), "Prohibitions," would be amended by adding disability to the list of nondiscrimination factors, and to replace "creed" with "religion", that now includes race, color, creed, national origin, sex, or age. This addition makes this section consistent with the requirements of the Americans with Disabilities Act.

Sec. 3031. Labor Standards

Section 3031 would amend section 5333, "Labor Standards."

Subsection (b), "Employee Protective Arrangements," would be amended to conform it to current practice and to apply it to the section 5320 "Access to Jobs and Training" (except planning). Section 5333(b) would apply to sections 5307 (except planning), 5309, 5311, 5313 (operational activities only), redesignated 5314, and 5320 (except planning). It removes its incorrect application to bus testing, administrative requirements, oversight, rail modernization formula, and the authorization section caused by codification.

Sec. 3032. Administrative

Section 3032 would amend section 5334, "Administrative."

Subsection (a), "General Authority." Paragraph (10) would be amended to permit FTA to charge fees to cover the costs of training or conferences that promote mass transportation. This change would increase FTA's flexibility in offering courses, help defray the costs of such courses, and provide additional revenues to expand course offerings.

A new paragraph (11) would be added that would clarify FTA's participation with cooperating foreign countries on various activities, such as research and technology. This wording would be consistent with Federal highway law.

Subsection (g), "Transfer of Assets No Longer Needed," would be simplified to

allow assets that are acquired by FTA assistance and that are no longer needed for public transportation purposes may be sold or transferred under conditions determined by the Secretary. This change removes unnecessary regulatory burdens, enhances flexibility in making decisions regarding asset disposition, and facilitates the undertaking of joint development projects.

Subsection (i), "Authority of Secretary of Housing and Urban Development," would be deleted as a "housekeeping" change; it references pre-1967 authority of the Secretary of Housing and Urban Development (HUD) over the Federal transit assistance program.

Subsection (j), "Relationship to Other Laws," would be redesignated subsection (i).

New subsection (j), "Prohibitions Against Regulating Operations and Charges," which prohibits FTA from regulating transit operations and charges would be moved here from section 5324 (c) and would remain unchanged, except that it would now apply to all programs, rather than to only section 5309. This would incorporate in law a current practice.

New Subsection (k), "Test and Evaluation," would be added to allow the waiver of all requirements except for labor certification and environmental review under NEPA for grants to test or develop any material, invention, patented article, or process. This authority would be similar to that contained in Federal highway law.

Sec. 3033. Reports and Audits

Section 3033 amends section 5335, "Reports and Audits."

Subsection (a) would be amended to change the catchline from "Reporting system and uniform system of accounts and records" to "National transit database" to more accurately reflect the contents of this subsection.

Subsection (a)(2) would be redesignated subsection (b) and entitled "Inclusion of Grant Recipients in Database."

Subsection (b), "Quarterly Reports," would be deleted, removing the requirement for quarterly reports to Congress on State obligations and grants executed. This information is readily available elsewhere through normal distribution so that a Congressional report is extraneous and not cost effective.

Subsection (c), "Biennial Needs Report," would also be deleted, removing the requirement for a biennial needs report to be submitted by the Comptroller General. The General Accounting Office (GAO) concurs that this report is redundant because a comparable report to Congress is required by 49 U.S.C section 308.

Subsection (d), "Biennial Transferability Report" would also be deleted. The GAO agrees that this report is not needed, since the information on the amount of mass transportation money transferred for non-mass transportation purposes is readily available elsewhere.

Sec. 3034. Apportionment of Appropriations for Formula Grants

Section 3034 would amend section 5336 by changing the name from "Apportionment of Appropriations for Block Grants" to "Apportionment of Appropriations for Formula Grants" to more accurately reflect the purpose of this section.

Subsection (a), "Access to Jobs and Training," would provide $100 million annually until 2003 for the "Access to Jobs and Training Program" under section 5320.

Subsection (b), "Allocation For Urbanized Area, Other Than Urbanized Area, Special Needs of Elderly Individuals and Individuals With Disabilities Formula Programs," would provide for distribution of funds among the formula programs as follows: 94.5 percent of the funds for "Urbanized Area Formula Grants" (section 5307); 1.75 percent of the funds for "Formula Grants for Special Needs of Elderly Individuals and Individuals with Disabilities" (section 5310); and 3.75 percent of the funds for the "Formula Program for Other than Urbanized Areas" (section 5311). In the urbanized area formula grants program, the changes to this section would merge the formula fixed guideway program into the program without change in the formula. The amount apportioned by the current fixed guideway formula would be equal to the amount available for major capital investments. The remainder would be apportioned by the current urbanized area formula.

Subsection (c), "Fixed Guideway Tier," would provide funds to the fixed guideway systems listed in existing section 5337.

Subsection (d), "Operating Assistance," would be redesignated subsection (f) and would provide that urbanized areas under 200,000 in population could use their entire apportionment for operating assistance, eliminating the former statutory cap (areas over 200,000 would not be able to use funds for operating assistance).

Subsections (e) through (i) would be redesignated (g) through (k), respectively. Redesignated subsection (i), "Transfers of Apportionments" would be amended to permit transfers of apportionments from the urbanized area formula program to either the "Formula Grants for Special Needs of Elderly Individuals and Individuals with Disabilities program" (section 5310) or the "Formula Program for Other than Urbanized Areas" (section 5311).

Former subsection (j), "Application of Other Sections," would be deleted as extraneous. Application of other sections is not relevant since this section covers only urbanized area formula grants (section 5307).

Former subsection (k), "Certain Urbanized Areas Grandfathered," would be deleted. Grandfathering urbanized areas designated under the 1980 census and not designated under the 1990 census for FY 1993 is obsolete.

Sec. 3035. Apportionment of Appropriations for Fixed Guideway Modernization

Section 3035 would delete section 5337 in its entirety because the current formula would be merged into section 5336(c).

Sec. 3036. Authorizations

Section 3036 would amend and completely rewrite section 5338 by providing new authorization levels for fiscal years 1998 to 2003.

Formula programs under subsection (a) would be funded from the Mass Transit Account for "Urbanized Area Formula Grants" (section 5307) (including Access to Jobs and Training (section 5320)), "Formula Grants for Special Needs of Elderly Individuals and Individuals with Disabilities" (section 5310), and "Formula Program for Other than Urbanized Areas" (section 5311) at $3,970.5 million for fiscal years 1998–2002 and $4,077,704,000 for fiscal year 2003. No General Funds would be provided.

Under subsection (b), "Major Capital Investments," the following levels would be authorized:

FY 1998—$800 million.

FY 1999—$950 million.

FY 2000–2002—$1,000 million per year for each fiscal year.

FY 2003—$1,026 million.

Subsection (c), "Metropolitan Planning," would authorize appropriations of not more than $39.5 million per year for FY 1998–2002 and $40.527 million for FY 2003 for metropolitan planning grants under sections 5303–5305.

Subsection (d), "Statewide Planning," would authorize appropriations of not more than $8.25 million per year for FY 1998–2002 and $8.465 million for FY 2003 for statewide planning grants under section 5306.

Subsection (e), "National Transit Research," would authorize appropriations of not more than $38.050 million in FY 1998–2002 and $39,039,000 for FY 2003 for national transit research under section 5312 (including the Transit Cooperative Research Program, the National Transit Institute, and the Bus Testing Facility).

Subsection (f), "University Transportation Centers," would authorize not more than $6 million for FY 1998–2002 and $6.156 million for FY 2003 for the University Transportation Centers under chapter 52 of title 49.

Subsection (g), "Administrative Expenses," would authorize appropriations of such sums as necessary for administrative expenses.

Subsection (h), "Grants as Contractual Obligations," would provide that grants under subsections (a) and (b) of section 5338 constitute contract authority.

Subsection (i), "Availability," would provide that funds made available under subsections (a) through (f) of section 5338 are available until expended.

Subsection (j), "Transfer of Prior Year Funds Remaining Available," would provide a "housekeeping" change by allowing the transfer of any appropriated funds to the most recent appropriations heading for the same purpose; these funds would be administered in accordance with the provisions of the heading into which they were transferred. This will allow for the elimination of the need to account for expired programs separately.

Sec. 3037. Washington Metropolitan Area Transit Authority

Section 3037 would amend the National Capital Transportation Act of 1969 to change the source of funding for the final two years. Section 17(c) would be amended to repeal the authorization for general fund appropriations for fiscal years 1998 and 1999, and would reduce the total amount authorized to be appropriated by $250,000,000. In its place, a new subsection (d) would be added authorizing a like amount to be appropriated from the Mass Transit Account, $200,000,000 in fiscal year 1998 and $50,300,000 in fiscal year 1999.

TITLE IV—MOTOR CARRIER SAFETY

Sec. 4001. State Grants and Other Commercial Motor Vehicle Programs

Subsection (a) amends 49 U.S.C. 31101 by adding a new subsection (a) to provide a detailed description of the objectives of subchapter I, State Grants. This new subsection (a) emphasizes that the grants authorized under section 31102 are to be used by the Secretary, States, and other political jurisdictions working in partnership to improve commercial motor vehicle and driver safety. This new subsection (a) also provides some detail on the new performance-based approach grant recipients are to take by explaining that the funds authorized by this section are to be used to establish program baselines and benchmarks to evaluate overall motor carrier safety program effectiveness. The new subsection 31101 (a) further clarifies the performance-based grant concept by describing some of the other activities eligible for funding under this section and the safety goals these activities will provide the means to achieve.

Paragraphs (b) (1) and (2) and (c)(9) amend 49 U.S.C. 31102 to authorize the Secretary to

encourage State implementation of performance-based activities to improve motor carrier safety. Section 31102 had already authorized grants to support State enforcement of Federal regulations, standards, and orders and compatible State regulations, standards, and orders. As a result of this amendment, section 31102 authorizes grants to fund traditional Motor Carrier Safety Assistance Program (MCSAP) activities, including uniform roadside driver and vehicle safety inspections, traffic enforcement, compliance reviews, safety data collection, and also new performance-based activities and analyses to identify Statewide safety problems, establish benchmarks, implement activities to address unique problems, and measure program effectiveness. States are still required to submit a State Motor Carrier Safety Plan to qualify for the MCSAP grants and the performance-based incentives. It is envisioned that all States will implement performance-based activities by the end of fiscal year 2003.

Subsection (c) amends section 31102 by adding references to hazardous materials transportation safety to perpetuate the long-standing policy that motor vehicle safety encompasses hazardous materials transportation safety as well.

Subsection (d) amends various provisions in section 31102(b), 49 U.S.C., which describe required components of the plan each State must develop and submit to the Secretary in order to qualify for funding under section 49 U.S.C. 31102.

Paragraph (d)(1) amends 49 U.S.C. 31102(b)(1)(J) to clarify that the activities referred to in that subparagraph are those activities described in paragraph (1) of subsection (c) of section 31102, 49 U.S.C. This amendment thus explains that a State plan must ensure that State "enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States" (49 U.S.C. 31102(c)(1)) will not diminish the effectiveness of the State commercial motor vehicle safety programs funded through subsection (a) of 49 U.S.C. 31102.

Paragraph (d)(2) revises 49 U.S.C. 31102(b)(1)(K) to provide States with more flexibility in establishing consistent and effective sanctions for violations of commercial motor vehicle safety regulations. The maximum fine schedule published by the Commercial Vehicle Safety Alliance is too prescriptive. As a result of this change, States will no longer be limited in their ability to use a range of fines to ensure compliance and address their unique safety problems.

Paragraph (d)(3) revises 49 U.S.C. 31102(b)(1)(L) to expand the preexisting requirement that each State coordinate the development and implementation of its Motor Carrier Safety Plan with the development and implementation of its Section 402 highway safety plan. This revision directs the States to also coordinate their Motor Carrier Safety Plans with other agencies responsible for highway safety in the State including FHWA and NHTSA highway grant recipients. This change also requires the State to provide for coordination of data collection and information systems with these other agencies.

Paragraph (d)(4) revises 49 U.S.C. 31102(b)(1)(M) to require that State plans ensure that all jurisdictions receiving funding participate in SAFETYNET, not just the 48 contiguous States. This revision also deletes the January 1, 1994, deadline for meeting this requirement.

Paragraph (d)(5) strikes 49 U.S.C. 31102(b)(1)(N), and thereby deletes the requirement that a State's plan emphasize and improve enforcement of traffic safety laws regarding commercial vehicle safety. This requirement is being removed because it is overly prescriptive and unnecessary; if a State's unique problems can best be addressed by other actions, such as public education, this requirement would cause the State to spend grant receipts on activities not best designed to solve that State's problems.

Paragraph (d)(6) revises 49 U.S.C. 31102(b)(1)(O) to remove the requirement that a State plan promote enforcement of requirements related to the licensing of commercial motor vehicle (CMV) drivers and the requirement that a State plan promote enforcement of hazardous material transportation regulations by encouraging more inspections of shipper facilities affecting highway transportation and more comprehensive inspections of the loads of CMVs transporting hazardous materials. Removal of these State plan requirements does not in any way diminish the obligation of the States participating in this program to enforce commercial driver's licensing requirements and hazardous materials transportation regulations. Paragraph (d)(6) retains the requirement that a State plan promote activities to remove impaired CMV drivers from the highways through adequate enforcement of regulations on the use of alcohol and controlled substances and the requirement that a State plan provide an appropriate level of training to State motor carrier safety assistance program officers and employees on recognizing drivers impaired by alcohol or controlled substances. Paragraph (d)(6) moves from subparagraph 31102(b)(1)(P) to 49 U.S.C. 31102(b)(1)(O) the requirement that a State plan promote interdiction activities affecting the transportation of controlled substances by CMV drivers and provide training on appropriate strategies for carrying out those interdiction activities. In addition, paragraph (d)(6) amends subparagraph (O) to specify that a State plan must promote activities that further national safety priorities and performance goals.

Paragraph (d)(7) strikes 49 U.S.C. 31102(b)(1)(P), thereby deleting the requirement that a State plan ensure that the State will use trained and qualified officers and employees of political subdivisions and local governments to enforce commercial motor vehicle and hazardous material transportation safety regulations. This requirement is being removed because it duplicates language in the subsection 31104(f) as revised by this section. Clause (i) of 49 U.S.C. 31102(b)(1)(P) requiring that a State plan promote interdiction activities affecting the transportation of controlled substances by CMV drivers is retained, but is moved to clause (iii) of 49 U.S.C. 31102(b)(1)(O). Paragraph (d)(7) also redesignates subparagraph 31102(b)(1)(Q) as subparagraph 31102(b)(1)(P).

Paragraph (d)(8) redesignates subparagraphs (A) through (M) of 49 U.S.C. 31102(b)(1) as subparagraphs (B) through (N). This redesignation is necessary because of the addition of a new element at the beginning of the list of required State motor carrier safety plan components.

Paragraph (d)(9) amends 49 U.S.C. 31102(b)(1) to add a new required element of the State Motor Carrier Safety Plan to the beginning of the list of requirements. This new criterion requires the State to propose in its plan to implement performance-based programs by the year 2003. The requirement that performance-based programs be in place by a certain date ensures that State safety activities which were formerly based on inputs are replaced by activities focused on attaining solutions to existing problems.

Subsection (e) amends section 31103 of 49 U.S.C. by adding a new subsection to authorize the Secretary to reimburse State agencies, local governments, or other persons for up to 100 percent of the cost of the activities specified in 49 U.S.C. 31104(f)(2). The activities referred to in that paragraph are border enforcement and other high priority activities. The preexisting language of 49 U.S.C. 31103 is also redesignated as subsection (a).

Paragraphs (f)(1) through (6) revise section 31104 of 49 U.S.C. to authorize that $83,000,000 be appropriated from the Highway Trust Fund in each of fiscal years 1998 through 2003 to carry out section 31102 of 49 U.S.C., i.e., to provide States with grants to develop or implement programs for improving motor carrier safety and the enforcement of Federal and State regulations, standards, and orders regarding commercial motor vehicle safety.

Paragraph (f)(7) revises 49 U.S.C. 31104(b)(2) by replacing the reference to section 404(a)(2) of the Surface Transportation Assistance Act of 1982 with a reference to paragraphs 4002(e)(1) and (2) of the Intermodal Surface Transportation Efficiency Act of 1991, to change an October 1, 1991, deadline to October 1, 1996, and to change an October 1, 1992, deadline to October 1, 1997. These changes remove out of date references and revise this paragraph to provide that amounts made available under paragraphs 4002(e)(1) and (2) of the ISTEA prior to October 1996 that are not obligated on October 1, 1997, are available for reallocation and obligation.

Paragraph (f)(8) revises 49 U.S.C. 31104(f) by deleting the language authorizing the Secretary to designate specific eligible States for an allocation of funds to be used for research, development, and demonstration of technologies, methodologies, analyses, or information systems designed to implement programs for the enforcement of Federal and State regulations, standards, and orders. The removal of this specific allocation of funds will increase flexibility and enable States to design programs to target their unique problems. In addition, the language in subsection 31104(f) authorizing the Secretary to allocate funds for education of the motoring public on how to share the road safely with commercial motor vehicles is also deleted by the revision in paragraph (f)(8). Instead of the provisions described above, paragraph (f)(8) substitutes a provision authorizing the Secretary to designate up to 12 percent of the funds available to improve motor carrier safety under section 31102, to reimburse States for border enforcement and other high priority activities and projects. This new provision specifies that the Secretary may allocate this 12 percent, in coordination with State motor vehicle safety agencies, to State agencies and local governments, that use trained and qualified officers and employees, and also to other persons for use in improving commercial motor vehicle safety.

Paragraph (f)(9) revises 49 U.S.C. 31104 by deleting subsection (g). Subsection (g) required the Secretary to allocate funding authorized under section 31104(a) for very specific State activities. Eliminating these specific allocations provides State grantees with more flexibility to develop the best

combination of activities to address their unique safety concerns.

Paragraph (f)(10) makes a technical amendment to 49 U.S.C. 31104(j) to remove the word "tolerance" as a descriptive term to qualify the kinds of guidelines and standards which the Secretary was directed by subsection (j) to prescribe.

Paragraph (f)(11) revises 49 U.S.C. 31104 to strike subsection (i) and thereby eliminate the requirement that the Secretary prescribe regulations to develop an improved formula and process for allocating amounts made available for grants under section 31102(a) because the Secretary has promulgated these regulations. A formula will be maintained in these regulations.

Subsection (g) revises 49 U.S.C. 31106 to include more comprehensive provisions regarding motor carrier information systems including the Commercial Vehicle Information System (CVIS) and other motor carrier information systems and data analysis programs which the Secretary is directed, in the revised section 31106, to establish to facilitate the motor carrier safety, regulatory, and enforcement activities required under this title. Implementation of these information systems and programs will provide the Secretary and the States with the data and tools necessary to develop a more analytical approach to motor carrier safety: these systems and programs will enhance the focus on problem companies, drivers, and employers by identifying safety problems and potential countermeasures, determining the cost effectiveness of State and Federal compliance, enforcement programs, and other countermeasures, and providing the tools and data necessary for evaluating the safety fitness of motor carriers and drivers. The CVIS is to serve as a clearinghouse and repository of information related to State registration and licensing of commercial motor vehicles and the safety system of the commercial motor vehicle registrants or the motor carriers operating the vehicles. Under subparagraph 31106(a)(2)(C), the CVIS will link the Federal motor carrier safety systems with State driver and commercial vehicle registration and licensing systems. Paragraph 31106(a)(2) also provides that the CVIS will be designed to enable States to ascertain the safety fitness of a registrant or motor carrier when issuing license plates, to allow States to decide the types of sanctions, conditions, or limitations that may be imposed on a registrant or motor carrier, to monitor the safety fitness of a registrant or motor carrier, and to require States, as a condition of participation in the system, to possess or seek authority to impose commercial motor vehicle registration sanctions on the basis of a Federal safety fitness determination. Subparagraph 31106(a)(2)(D) provides that no more than $6,000,000 of the funds authorized to carry out this section may be used in each fiscal year to carry out paragraph 31106(a)(2). This subparagraph also provides that the Secretary may authorize the operation of the information system by contract, through an agreement with one or more States, or by designating, after consultation with the States, a third party, representing the interests of the States.

The new subsection 31106(b) of 49 U.S.C. authorizes the Secretary to establish a program focusing on ways to improve commercial motor vehicle driver safety. Approaches to be taken in achieving this objective include enhancing the exchange of licensing information among States, the Federal government, and foreign countries, providing information to the judicial system on the licensing program, and evaluating any aspect of driver performance and safety as deemed appropriate by the Secretary. The funds authorized to carry out this section may be used to initiate pilot programs and to support research studies. These funds will be made available through grants, cooperative agreements, contracts, or direct purchase.

Subsection (c) of 49 U.S.C. 31106 authorizes the Secretary to develop these information systems and carry out these initiatives either independently or in cooperation with other Federal departments, agencies, and instrumentalities or by making grants to and entering into contracts and cooperative agreements with States, localities, associations, institutions, or corporations. To the maximum extent practicable, the information systems and data collection efforts conducted under 49 U.S.C. 31106 should be coordinated with similar activities of other highway safety programs authorized under title 23, U.S.C.

Subsection (h) revises title 49, U.S.C., to remove a preexisting section 31107, which authorized the Secretary to make grants to States which agree to adopt or have adopted the recommendations of the National Governors' Association related to police accident reports regarding truck and bus accidents. Subsection (h) replaces this provision with a new section 31107 which authorizes that $17 million be appropriated annually from the Highway Trust Fund to carry out section 31106 for fiscal years 1998 through 2003.

Subsection (i) amends the heading for Subchapter I of Chapter 311 of 49 U.S.C. The heading as amended reads as follows: "STATE GRANTS AND OTHER COMMERCIAL MOTOR VEHICLE PROGRAMS".

Subsection (j) revises the analysis for Chapter 311 of 49 U.S.C. to reflect the new headings for sections 31106 and 31107.

TITLE V—INFRASTRUCTURE CREDIT ENHANCEMENT

Sec. 5001. Short Title

This section identifies a new Federal surface transportation program as the Transportation Infrastructure Credit Enhancement Act of 1997.

Sec. 5002. Findings

This section recites Congressional findings that current public sector resources are insufficient to meet the Nation's transportation infrastructure investment needs in both urban and rural areas. These include building new facilities as well as renovating or expanding existing facilities. The funding gap is particularly acute for large projects of National significance, due to their scale and complexity. A new Federal credit enhancement program for transportation infrastructure will help address these projects' special needs by supplementing existing Federal programs and leveraging private capital investment.

This title is designed to encourage the development of large, capital-intensive infrastructure facilities through public-private partnerships consisting of a State or local governmental project sponsor and one or more private sector firms involved in the design, construction or operation of the facility. The Federal credit enhancement program is targeted to those projects whose financings are payable in whole or in part by user charges, such as tolls, or other dedicated funding sources. By taking advantage of the public's willingness to pay user fees to receive the benefits and services of transportation infrastructure sooner than would be possible under traditional grant-based financing, the program will result in a more efficient and equitable allocation of the Nation's resources.

The program should result in additional surface transportation facilities being developed more quickly and at a lower cost than would be the case under conventional public procurement, funding and operation. In addition to the benefits of enhanced accessibility in moving goods and people, such transportation facilities should provide benefits to the Nation in terms of stimulating job creation and enhancing the Nation's economic competitiveness overseas.

Sec. 5003. Definitions

This section sets forth the definitions for terms used in this title. Key terms are listed below: A "Project" is defined as any publicly-owned surface transportation facility eligible under the expanded provisions of title 23 as well as chapter 53 of title 49, United States Code. Permitted Projects would include free or tolled highways, bridges and tunnels; mass transportation facilities and vehicles; inter-city passenger rail facilities and vehicles (including Amtrak); publicly owned freight rail facilities; and various intermodal facilities.

The term "Eligible Project Costs" is defined to include those costs of a capital nature incurred by a Project Sponsor in connection with developing an infrastructure Project. These costs fall into three categories: (i) pre-construction costs relating to planning, design, and securing governmental permits and approvals; (ii) hard costs relating to the design and construction (or rehabilitation) of a Project; and (iii) related soft costs associated with the financing of the Project, such as interest during construction, reserve accounts, and issuance expenses. It would not include operation or maintenance costs.

The term "Project Obligation" means any debt instrument issued by a Project Sponsor in connection with the financing of a Project.

A "Project Sponsor" is defined as any entity (whether a State or local governmental unit, a private entity authorized by such governmental unit to develop a Project, or a public-private partnership) that is an issuer or obligor of debt obligations used to finance a Project.

A "Revenue Stabilization Fund" is defined as a reserve account capitalized with Federal grants pursuant to this title or contributions from other entities, which may be used for the payment of principal of and interest on Project Obligations.

Sec. 5004. Determination of Eligibility and Project Selection

This section defines the threshold eligibility criteria for a Project to receive Federal credit enhancement and outlines the basis upon which the Secretary will select among potential candidates. The Secretary's determination of a Project's eligibility will be based on both quantitative and qualitative factors, and the Secretary should consult with the Secretary of the Treasury in making this determination.

Of prime importance, the Project must be deemed by the Secretary to be "nationally significant" in terms of facilitating the movement of people and goods in a more efficient and cost-effective manner, resulting in major economic benefits.

Also, the Project sponsor must demonstrate that it cannot obtain adequate financing on reasonable terms and conditions from other sources in order to be eligible for Federal credit enhancement. The Federal

government's assistance is designed to assist Projects which otherwise would have difficulty in accessing the private capital markets to obtain the required financing.

To ensure that the Project enjoys both State and local support, it must be included in the State's transportation plan and program and, if the Project is in a metropolitan area, it must satisfy all metropolitan planning requirements of 23 U.S.C. 134. The State or a State-designated entity will be responsible for forwarding the Project application to the Secretary.

In terms of size, the Project must cost at least $100,000,000 or an amount equal to 50 percent of the State's annual Federal-aid highway apportionments, whichever is less. This two-fold test is designed to allow small and rural States to accommodate Projects otherwise too large for their transportation programs. Based on fiscal year 1997 apportionments, 18 States could qualify Projects costing less than $100 million, with the minimum amount equaling approximately $40 million.

In addition, a Project must be supported at least in part by user charges, such as tolls, or other dedicated revenue sources to encourage the development of new revenue streams and the participation of the private sector.

Project applicants meeting the threshold eligibility criteria then will be evaluated by the Secretary based on a number of other factors. Among them are: the likelihood that the Federal assistance will enable the Project to proceed at an earlier date; the degree to which the Project leverages non-Federal resources, including private sector capital; the degree to which public benefits exceed public costs; and the Project's overall creditworthiness.

This section also provides that all requirements of titles 23 and 49, United States Code, shall apply to funds made available under this title and Projects assisted with such funds unless the Secretary determines that any such requirement is inconsistent with any provision of this title. This section provides, however, that the Secretary cannot waive 23 U.S.C. 113, the provision that applies Davis Bacon Act wage requirements to title 23 projects, 23 U.S.C. 114, concerning convict labor, and the labor protection provisions which are found in 49 U.S.C. 5333. This section does not affect the Secretary's responsibilities under any other Federal law.

Sec. 5005. Revenue Stabilization Funds

This section authorizes the Secretary to make grants to Project Sponsors to capitalize Revenue Stabilization Funds. A Project's Revenue Stabilization Fund could be drawn upon if needed to pay debt service on the Project's debt obligations in the event of revenue shortfalls. The Revenue Stabilization Fund may be used to secure junior lien debt or other obligations requiring credit enhancement, as determined by the Secretary. Limiting the Revenue Stabilization Funds to these types of obligations is designed to maximize the Project's ability to leverage private capital, and assist it in obtaining investment grade ratings on its senior debt.

The principal amount of the deposit could not exceed 20 percent of Eligible Project Costs. Moneys in the Fund are to be invested in U.S. Treasury securities or other prudent investments approved by the Secretary, with interest earnings credited to the Revenue Stabilization Fund. Beginning five years after the Project is completed, amounts in the Fund in excess of the level needed to secure the Project Obligations may be applied to pay other Eligible Project Costs, with the approval of the Secretary.

This section also provides that Project Obligations secured by the Revenue Stabilization Fund are not considered federally guaranteed under the tax code, enabling the Fund to back both taxable and tax-exempt debt.

The Secretary shall consult with the Secretary of the Treasury in devising rules for the implementation of this section.

Sec. 5006. Rules and Regulations

Program guidelines will be established by the Secretary in order to ensure the program operates prudently and efficiently, including requiring Project Sponsors to provide annual audits.

Sec. 5007. Funding

The sum of $100 million per year between FY 1998 and FY 2003 is authorized to fund the Transportation Infrastructure Credit Enhancement Program.

TITLE VI—RESEARCH

PART A—PROGRAMS AND ACTIVITIES

Sec. 6001. Research, Development, and Technology

This section adds a new chapter 52 to subtitle III of title 49, United States Code. Among the critical challenges the Department faces is the need for strategic investment in the Nation's surface transportation infrastructure. Chapter 52 addresses this challenge by strengthening the Department's efforts in intermodal and multimodal research and development. It recognizes that improvements in the surface transportation infrastructure require attention to cross-cutting research in areas such as nondestructive testing, information technologies, urban transportation, the future transportation workforce, and the environment.

New chapter 52 is divided into subchapters. Subchapter I supplements existing administrative authorities. New section 5201 provides the Secretary general authority to enter into grants, cooperative agreements, and other transactions with states, industry, educational or other non-profit institutions, and other entities to further the objectives of the chapter. The Department strives to leverage its research dollars through cost-sharing with the private sector. Major disincentives to cost-sharing in the research area have been the allocation of data rights and the limitations of standard financial management and intellectual property provisions. Cooperative agreements and other transactions provide needed flexibility to achieve cost-sharing in the Department's research programs. This provision would fill gaps in existing Departmental authority.

New section 5202 streamlines the procurement process for transportation research and development to be conducted by institutions of higher education that have already competed for transportation grants under this chapter. This approach follows the example of the successful pilot developed by the Federal Aviation Administration under the National Performance Review Laboratory, whereby universities which had prevailed in full and open competition for award of grants as Aviation Centers of Excellence were eligible to receive sole source contracts for related activities. This provided additional incentive to prospective proposers in the competition and facilitated the Department's ability to take advantage of its investment in the national centers of excellence. Additional grants and contracts authorized by section 5202 will be limited to work that is consistent with the original grant. These additional awards would not require specific justification under the Competition in Contracting Act.

New subchapter II provides for the planning necessary for the success of long-term research and development. New section 5221 requires the Secretary to establish a strategic planning process to determine national priorities for transportation research and development, coordinate Federal activities in the area, and evaluate the impact of the Federal investment. In planning, the Secretary must consider the concept of seamless transportation, innovation, and the need to compete globally. The Secretary has broad discretion in implementation and may, if appropriate, use an interagency executive council or a board of science advisors.

New subchapter III establishes a research and technology program within the Department to concentrate on intermodal and multimodal issues. The program recognizes that much of the research sponsored by the Department focuses on individual modes of transportation and that there is a need for research and technology development that is truly intermodal or multimodal in nature.

New subchapter IV addresses both current research needs and the need for a transportation workforce capable of meeting the challenges of transportation in the future. New section 5241 consolidates and modifies the two programs currently authorized by sections 5316 and 5317 of title 49: the University Research Institutes and the University Transportation Centers. It would continue the ten regional university transportation centers. The current array of national centers and institutes, each of which concentrates on a particular transportation issue specified in statute, would be consolidated into a single system. This system authorizes the Secretary to fund up to ten national centers whose themes are designated by the Secretary to meet national transportation needs. Selection of all centers would be by open competition. The centers conduct transportation research that is widely disseminated. The centers also conduct education and training, not only to attract highly qualified graduate and undergraduate students into transportation-related fields, but also to expose current transportation practitioners to developments in transportation theory and practice. The new authorizing language incorporates existing practice and provides needed flexibility for the program. For example, centers which perform transit-related research would now be allowed to meet requirements for the "match" of grant funds provided under this section with operating funds provided by mass transit authorities whose potential for sponsoring such research might otherwise be limited.

Sec. 6002. Bureau of Transportation Statistics

Subsection (a)(a1). The provision relating to the term of the first Director of the Bureau of Transportation Statistics is stricken as being obsolete.

Subsection (a)(2). The list of topics to be covered by statistics compiled by the Bureau is expanded to include transportation-related variables influencing global competitiveness, recognizing the growing importance of international trade to the nation's economy, the impact of international trade on domestic transportation facilities and services, and the impact of transportation on the ability of domestic U.S. businesses to reach foreign markets.

Subsection (a)(3). The Director's responsibilities for long term data collection are to be coordinated with other efforts in support of the Government Performance and Results Act (GPRA), which was passed subsequent to ISTEA and extends beyond the efforts to develop surface transportation system performance indicators under 23 USC 307(b)(3).

The Director is to ensure that the long term data collection is made relevant to States and metropolitan planning organizations in recognition of their increased role in transportation decision making.

Subsection (a)(4). Also in support of the GPRA, BTS will report to the Secretary on the sources and reliability of statistics from DOT modal Administrations required by the Act and for other purposes.

Subsection (a)(5). This amendment provides that the Director's responsibilities for providing statistics is specifically tied to the support of transportation decision making. This assures that the Bureau's activities are relevant and provides a basis for evaluating the Bureau under the Government Performance and Results Act.

Subsection (a)(6). This paragraph would amend section 111 by deleting an obsolete subsection relating to functions performed by the first Director of BTS and by adding four new subsections. New subsection (d) would clarify the content of the Intermodal Transportation Data Base, originally specified in section 5002 of ISTEA (now codified at 49 U.S.C. 5503(d)). That provision will be repealed by a conforming amendment (see below). In response to a General Accounting Office concern with a lack of universally accepted definitions of intermodal transportation, the data base is made inclusive of movements by competing and complementary modes of transportation as well as by intermodal combinations. The original requirements for data on patterns of passenger and commodity movements are clarified to include international and local movement as well as intercity movements, since all levels of movement affect transportation facilities of national significance. The original requirement for information on public and private investments in intermodal transportation facilities and services was open to many interpretations, particularly with respect to the level of geographic specificity. Initial experience with developing the data base demonstrated that facility-level data was obtainable and useful for locational characteristics, but that investment-related data was cost-effective to develop only for national and industry aggregates. The requirement is clarified to include locational and connectivity data for facilities and services, and national data on expenditures and capital stocks.

New subsection (e) codifies in law the goals and purpose of the Bureau's existing National Transportation Library, as referenced in the Senate Report of the FY 1997 DOT appropriations bill. The goals and purpose are consistent with other national libraries, such as the Library of Medicine.

New subsection (f) codifies the general content of the Bureau's National Transportation Atlas Data Base (NTAD), developed in response to needs of the transportation community and to the National Spatial Data Infrastructure (NSDI) under Executive Order 12906. The NTAD is to be capable of integration with other government maintained transportation databases, such as the Census TIGER files and the U.S. Geological Survey DLG files. BTS also will assume leadership for the development of a national ground transportation data base as an Executive Order 12906 framework data layer for the NSDI and will coordinate with the Census Bureau, the Geological Survey, and other appropriate Federal agencies.

New subsection (g) would authorize the Bureau to establish grants and cooperative agreements with public and not-for-profit private organizations to conduct research and development in support of the Bureau's major activities, including the Transportation Statistics Annual Report, data collection, the National Transportation Library, and the National Transportation Atlas Data Base.

Subsection (a)(7). This subsection would enhance the current provision governing the protection of confidentiality of data provided to the Bureau. General protections provided by the ISTEA were not specific to statistical agencies, and are not adequate to protect the privacy of respondents. Stronger protections are necessary to enhance the respondent's confidence that sensitive information will not be compromised, thus ensuring respondent cooperation with the Bureau's data collection efforts. The confidentiality provisions are based on those applicable to the Bureau of the Census.

Subsection (a)(8). The January 1, 1994 due date for the initial Transportation Statistics Annual Report is removed as obsolete and the requirement that BTS file its report by January 1 of each year is deleted. The Bureau obtains most data for its report each year by December, and prepares most analyses of the data by January. However, because editing and production of the report require additional time, the January 1 deadline is impractical.

Subsection (a)(9). This paragraph add two new subsections to section 111. New subsection (k) is based on the provisions in the FY1996 and FY1997 DOT Appropriations Acts that allow the Bureau to retain funds from the sale of products. New subsection (l) provides for funding of the Bureau's activities in the amount of $31 million from the Highway Trust Fund per fiscal year for fiscal years 1998 through 2003, with a limitation of $500,000 per year for grant activities under new subsection (g). As under ISTEA, it also provides contract authority for such funds.

Subsection (b). This paragraph makes a conforming amendment to 49 U.S.C. 5503 regarding the responsibility of the Bureau to establish an intermodal transportation data base. This requirement is clarified and incorporated into section 111 by the amendment contained in subsection (a)(5).

Sec. 6003. Research and Technology Program

This section revises 23 U.S.C. 307 as indicated below.

Preamble: Subsection (a)(1) is a new preamble defining the Secretary's general authority under the section to develop and administer programs for research, technology, and education.

Authority of the Secretary; In General: Subsection (a)(2)(A) grants authority to the Secretary to engage in research, development, and technology transfer activities with respect to motor carrier transportation and all phases of highway planning and development. This is the same as current law at 23 U.S.C. §307(a)(1)(A), but renumbered.

Cooperation, Grants, and Contracts: Subsection (a)(2)(B) authorizes the Secretary to carry out the research and technology program independently or through cooperative agreements, grants, contracts, and other transactions. This is similar to current 23 U.S.C. §307(a)(1)(B).

Technical Innovation: Subsection (a)(2)(C) requires the Secretary to develop and administer programs to facilitate the application of the products of research and technical innovations to improve the safety, efficiency, and effectiveness of the highway system. This program may encompass products from all available sources, including the private sector and both the domestic and international communities.

Funds: Subsection (a)(2)(D) replaces the provision currently at 23 U.S.C. §307(a)(3)(A), expands it to include a "use of funds" clause that opens up use of funds for activities necessary to interact with, or deliver technology to, DOT customers and partners, and drops 23 U.S.C. §307(a)(3)(B), Minimum Expenditures on Long-Term Research Projects, which is covered under a separate section.

Collaborative Research and Development: Subsection (a)(3), currently 23 U.S.C. §307(a)(2), authorizes the Secretary to undertake and continue, on a cost-shared basis, collaborative research and development with non-Federal entities for the purposes of encouraging innovative solutions to highway problems and stimulating the marketing of new technology by private industry.

Mandatory Contents of Program: Proposed subsection (b) consolidates current law at 23 U.S.C. §307(b), dropping subsection (b)(2), SHRP Results, which is recaptured in a new section; dropping subsection (b)(4), Short Haul Passenger Transportation Systems, which required a report to Congress by January 15, 1993; and dropping (b)(5)(C) which required submission to Congress by July 1, 1992, a report with recommendations regarding the need for a construction equipment research and development program.

Sec. 6004. National Technology Deployment Initiatives

This new section establishes a National Technology Deployment Initiatives Program to significantly expand the adoption of innovative technologies by the surface transportation community in seven goal areas. Progress reports to the Congress are required at 18 and 48 months. More specifically:

Establishment: Subsection (a) directs the Secretary to develop and administer a National Technology Deployment Initiatives program to significantly expand the adoption of innovative technologies by the surface transportation community. Deployment Goals: Subsection (b) outlines the deployment goals of the program to be carried out under this subsection. For each of these goals, described in (1) through (7), the Secretary will work with representatives of the transportation community to develop strategies and initiatives to achieve the goal.

Reporting: Subsection (c) mandates reports to the House of Representatives and Senate on progress and results or activities carried out under this section not later than 18 months after enactment and then another at 48 months.

Funding: Subsection (d) directs the Secretary to expend from the Highway Trust Fund (other than the mass transit account) $56,000,000 per fiscal year for each of the fiscal years 1998, 1999, and 2000, and $84,000,000 for years 2001, 2002, and 2003. The Secretary is authorized to allocate the funds to States for their use.

Leveraging of Resources: Under subsection (e), the Secretary is directed to give preference to projects that leverage Federal funds against resources from other sources.

Contract Authority: Subsection (f) makes funds authorized by this subsection applicable for obligation in the same manner as if apportioned under chapter 1 of title 23, U.S.C.; except that the Federal share of the cost of any activity shall be determined in accordance with this section and such funds shall be available for obligation for a period of three years after the last day of the fiscal year for which such funds are authorized. Furthermore, the Secretary may waive application of any provision of title 23 that is a barrier to the use of new technology if he determines such waiver is not contrary to

the public interest and will advance technical innovation. Any waiver shall be published in the Federal Register with reasons for such waiver.

Sec. 6005. Professional Capacity-Building and Technology Partnerships

This new section brings together technology transfer programs and activities, including education and training efforts, that focus on equipping people to use new technologies. Private agencies, international and foreign entities, and individuals shall pay the full cost of any such training, education, technical assistance, or other support provided through these programs and activities in accordance with this section.

Local Technical Assistance Program: Subsection (a) provides significant changes to this program. First, contractors working for local and tribal governments are specifically called out as customers of the program. Then the number of tribal centers is changed from 2 to 4 to better reflect the number of centers able to benefit from this program. The major change is in funding. The new proposed amount is $12,000,000 for each of fiscal years 1998 through 2003 from the Highway Trust Fund.

Local Technical Assistance Program: This section authorizes the Secretary to carry out a transportation assistance program to provide modern highway technology to highway and transportation agencies in urbanized areas with populations between 50,000 and 1,000,000 and in rural areas, and to the contractors doing work for them. This is similar to current law at 23 U.S.C. §326(a), but adds contractors.

Grants, Cooperative Agreements, and Contracts: Subsection (a)(2) allows the Secretary to make grants and enter into cooperative agreements and contracts for education and training. This is similar to current law at 23 U.S.C. §326(b), and provides the option for cooperative agreements.

Subsection (a)(2)(A) defines the training grants, cooperative agreements, and contracts allowed as those that assist rural local transportation agencies and tribal governments, and the consultants and construction personnel working for them, to develop and expand their expertise in specific areas. This is similar to current law at 23 U.S.C. §326(b)(1), but adds an option for training in intergovernmental transportation planning and project selection, in place of development of a tourism or recreational travel program, which has been completed. This provision also adds reference to the consultants and construction personnel employed by local agencies.

Subsection (a)(2)(C) allows grants, cooperative agreements, and contracts that will operate, in cooperation with State transportation agencies and universities (i) technical assistance program centers to provide technology transfer to rural areas and urban areas of more than 50,000 people, and (ii) not fewer than four centers designated to provide transportation technology assistance to American Indian tribal governments. This is similar to current law at 23 U.S.C. §326, but specifies grants, agreements, and contracts that will operate, rather than establish, the centers that are described in (i) and (ii).

Subsection (a)(2)(D) allows grants, cooperative agreements, and contracts with local transportation agencies and tribal governments and the private sector to enhance new technology implementation.

Funding: Under subsection (a)(3), the sum of $12,000,000 per fiscal year is authorized from the Highway Trust Fund to provide funding for the program and for technical and financial support to the technology transfer centers. This is similar to current law at 23 U.S.C. §326(c), but raises the funding level to $12,000,000 per fiscal year of the period of authorization and directs the funds to be deducted from the Highway Trust Fund.

Contract Authority: Subsection (a)(4) is new and defines the applicability of title 23 to these funds, thereby providing contract authority.

National Highway Institute: Section (b) codifies current 23 U.S.C. §321 as a separate section, with several changes. The basic change raises the set-aside for State training programs from 1/16 to¼ of 1 percent. Fees may still be collected from States, but are not required.

Subsection (b)(1)(A) and (B) describe the establishment, duties, and programs of the NHI. This is the same as current law, except that subsection (b)(1)(B) expands current law to acknowledge that the Institute's programs with industry are growing, and that the Institute administers education, as well as training programs.

Set-Aside; Federal Share: Subsection (b)(2) directs that not more than¼ of 1 percent of all funds apportioned to a State under 104(b)(3) for the surface transportation program shall be available for the State transportation agencies' payment for up to 80 percent of the cost of their employees' educational expenses. This is similar to current law at 23 U.S.C. §321(b), but raises the percentage of set-aside funds from 1/16 of 1 percent.

Federal Responsibility: Subsection (b)(3) permits education and training of Federal, State, and local highway employees be provided (A) by the Secretary at no cost; or (B) by the State through grants, cooperative agreements, and contracts; except that private agencies, international entities, and individuals shall pay the full cost of education and training unless the Secretary determines a lower cost to be in the best interest of the United States. This is similar to current law, but subsection (b)(3)(A) is expanded to apply to all training the current provision that training in "those subject areas which are a Federal Programs Responsibility" may be provided without charge to States and local government. Subsection (b)(3)(B) allows education and training to be paid by the State through cooperative agreements, in addition to grants and contracts, and adds international entities to those that must pay the full cost of education and training. An added clause allows the Secretary to reduce charges to private agencies, international entities, or individuals when in the U.S. interest to do so. The Secretary shall use this authority very sparingly, and any reduction in costs should be done only upon strong justification that such reduction is in the national interest, such as in conjunction with NAFTA.

Training Fellowships; Cooperation: Subsection (b)(4) authorizes the Institute to engage in all phases of contract authority, including the granting of training fellowships, independently or in cooperation with other entities. This is the same as current law at 23 U.S.C. §321(d).

Collection of Fees: Subsection (b)(5)(A) through (C) describes the Institutes collection of fees, including limitations, persons subject to fees, and the amount of fees allowed. This is the same as current law at 23 U.S.C. §321(e).

Funds: Subsection (b)(6) authorizes funds to support the NHI from the Highway Trust Fund in the amount of $8,000,000 for each of fiscal years 1998 through 2000, and $14,000,000 for each of fiscal years 2001, 2002, and 2003.

Contract Authority: Subsection (b)(7) defines the applicability of title 23 to funds, providing contract authority for this program. This is a revision of current law.

Contracts: Under subsection (b)(8), the provision of section 3709 of the Revised Statutes shall not be applicable to contracts or agreements made under this section. This is similar to current law at 23 U.S.C. §321(g).

DWIGHT DAVID EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM

Subsection (c) law is currently at 23 U.S.C. §307(a)(1)(C)(ii).

General Authority: Subsection (c)(1) allows the Secretary to make grants for research fellowships for any purpose for which research, technology, or capacity building is authorized by this section. This is the same as current law, but adds references to technology and capacity building.

Subsection (c)(2) provides for the implementation of the Eisenhower Transportation fellowship for the purpose of attracting qualified students to the field of transportation. Further, fellowships are to be offered at the junior through postdoctoral levels of college education, and recipients must be U.S. citizens. This is similar to current law, but provides for the implementation of the fellowship, rather than establishment and implementation. The program's purpose is to attract students to the general field of transportation, rather than specifically attracting transportation engineering and research students. Reference to proposed funding level has been cut, and students eligible for the fellowships have been defined as those U.S. citizens in their junior through postdoctoral levels of college.

Funding: Subsection (c) also authorizes $2,000,000 from the Highway Trust Fund for each of fiscal years 1998 through 2003, and provides contract authority for such program.

TECHNOLOGY IMPLEMENTATION PARTNERSHIPS

This provision sets forth, as a separate subsection, language that is similar to 23 U.S.C. §307(b)(2) that essentially provides for continued support of efforts to implement the products of the Strategic Highway Research Program and to begin to address the new technical innovations coming out of the Long-Term Pavement Performance program.

Authority: Subsection (d)(1) directs the Secretary to continue close partnerships established through the Strategic Highway Research Program and administer a program to move technology and innovation into common practice.

Subsection (d)(2)(A) through (D) authorizes the Secretary to make grants and enter into cooperative agreements and contracts to foster alliances and support efforts to bring about technical change in high-payoff areas through defined approaches.

Funding: Subsection (d) also authorizes $11,000,000 per fiscal year out of the Highway Trust Fund for each of fiscal years 1998 through 2003 to carry out this section.

Sec. 6006. Long-Term Pavement Performance and Advanced Research

This section sets forth a new, revised section continuing and revising the Long Term Pavement Performance (LTPP) program currently codified at 23 U.S.C. §307(b)(3), and establishes a new Advanced Research program.

Authority: Subsection (a)(1) directs the Secretary to continue the LTPP, now at the mid-point of its 20-year schedule, to completion.

Grants, Cooperative Agreements, and Contracts: Subsection (a)(2) identifies elements

of the program for which procurement arrangements may be initiated.

Funding: Subsection (a)(3) and (4) provide for funding the program from the Highway Trust Fund at $15,000,000 each of fiscal years 1998 through 2003.

Advanced Research; Authority: Subsection (b)(1) requires the Secretary to establish a program to address longer-term, higher-risk research.

Subsection (b)(2) identifies, but does not limit, areas for advanced research.

Funding: Subsection (b)(3) funds the program at $10,000,000 for each of fiscal years 1998 through 2000, and $20,000,000 for each of fiscal years 2001 through 2003, from the Highway Trust Fund.

Sec. 6007. State Planning and Research Program (SP&R)

This section sets forth a new section in title 23, which incorporates, with revisions, subsection 307(c) of title 23, United States Code.

Subsection (a)(1) defines the general rule, which directs that 2 percent of the funds apportioned for the National Highway System, congestion management and air quality improvement program, surface transportation program, Interstate reimbursement, Interstate maintenance, and highway bridge replacement and rehabilitation programs for each fiscal year of the period of authorization be available for expenditure by the State transportation agency for specified purposes. Language has been added to correct an oversight in ISTEA that resulted in SP&R funds not being set aside from the Interstate reimbursement program which replaced the Interstate construction program from which SPR funds were previously set aside.

Subsection (a)(1) of this section makes SP&R funding available for engineering and economic surveys, same as current law.

Subsection (a)(2) makes SP&R funding available for metropolitan, statewide and non-metropolitan planning, including planning for highway, public transportation, and intermodal transportation systems. It revises current law by adding metropolitan and non-metropolitan planning, which is a technical change because these funds are currently eligible for planning and research for these areas.

Subsection (a)(3) makes SP&R funding available for development and implementation of management systems, similar to current law, with added reference to section 303 of title 23 where the management systems are described.

Subsection (a)(4) makes SP&R funding available for studies of the economy, safety, and convenience of highway, public transportation, and intermodal transportation usage, same as current law.

Subsection (a)(5) makes SP&R funding available for necessary studies, research, development, and technology transfer activities. It is similar to existing law, with revisions to clarify that States may use SP&R funds to support training on engineering standards and construction materials, including evaluation and accreditation of inspection and testing of engineering standards and construction materials.

Subsection (b) requires minimum expenditures on research, development, and technology transfer activities of not less than 25 percent of the apportioned funds, unless the State certifies otherwise to the Secretary and the Secretary accepts such certification. It also includes an exemption for SP&R research funds from the assessment under the Small Business Research and Development Act (Public Law 102–564).

Subsection (c) requires that the Federal share shall be 80 percent with discretion for the Secretary to adjust the non-Federal share if it is in the interests of the Federal-aid highway program, same as existing law.

Subsection (d) requires that, while the SP&R funds are derived from those program apportionments to each State specified in subsection (a)(1), the Secretary shall combine and administer the funds as single fund.

Sec. 6008. Use of BIA Administrative Funds

This section corrects a section reference.

PART B—INTELLIGENT TRANSPORTATION SYSTEMS ACT OF 1997

Sections 6051–6058 replace the sections 6051–6059 of Title VI, Part B of the Intermodal Surface Transportation Efficiency Act of 1991 ("ITS Act of 1991"), Public Law 102–240. Reference is made to provisions of these sections which are being retained, modified, or deleted.

Section 6051. Short title and Preamble

Subsection 6051(b) designates the name of title VI as the Intelligent Transportation systems Act of 1997 (ITS Act).

Subsection 6051(b) sets forth the purpose of the ITS Act of 1997: to provide for accelerated deployment of proven technologies and concepts and increased Federal commitment to improving surface transportation safety.

Section 6052. Definitions: Conforming Amendment

Consistent with new program directions, the definitions in section 6058 of the ITS Act of 1991 are continued and expanded to add the following newly-defined terms: Intelligent Transportation Infrastructure, National Architecture, NHS (National Highway System), National Program Plan, CVO (Commercial Vehicle Operations), CVISN (Commercial Vehicle Information Systems and Networks), ARTS (Advanced Rural Transportation Systems), and ITS Collision Avoidance Systems. This section also amends ISTEA to strike part B of title VI.

Section 6053. Scope of Program

Subsection 6053(a) in part extends the expiring provisions of the ITS Act of 1991 with respect to research, development and operational testing of intelligent transportation systems (ITS), and in part adds a new focus on deployment.

Subsection 6053(b) restates and updates the goals and related authorities of the ITS Act of 1991. The changes make explicit the existing authorities in titles 23 and 49 of the United States Code under which broad ITS program goals, including research and provision of technical and financial assistance, may be undertaken as part of the general programs. The subsection restates program goals to reflect current priorities, including optimizing existing facilities to meet future transportation needs, emphasizing safety, improving the economic efficiency of surface transportation systems, improving public accessibility to goods and services, and developing standards and protocols.

Section 6054. General Authorities and Requirements

Subsection 6054(a) modifies the provisions of the ITS Act of 1991 which seeks to foster cooperation between State and local governments and the private sector by increasing the emphasis on the widespread deployment of intelligent transportation systems (ITS), while continuing Federal leadership in research and technical assistance. A reference to involving Historically Black Colleges and Universities and other Minority Institutions of Higher Education in work undertaken by the program is added.

Subsection 6054(b) restates and extends the ITS Act of 1991 by directing the Secretary not only to continue to develop and implement national standards and protocols but also to act to secure permanent spectrum allocation for Dedicated Short Range Communications, recognizing the importance of ensuring availability of a common vehicle-to-wayside wireless communications capability for ITS applications.

Subsection 6054(c) directs the Secretary to provide independent and objective evaluation of field and related operational tests in order to ensure credible results and avoid actual or apparent conflicts-of-interest.

Subsections 6054(d) and 6054(e) continue the provisions of the ITS Act of 1991 as they relate to the Information Clearinghouse and Advisory Committees.

Subsection 6054(f) is added to make explicit the authority of States and eligible local entities to utilize funds authorized under certain existing sections of titles 23 and 49 of the United States Code to carry out implementation, modernization and operational activities involving intelligent transportation infrastructure and systems as mainstream program activities.

Subsection 6054(g) is added to require conformity with the National Architecture and ITS-related standards and protocols. It is envisioned that the Secretary will establish on an annual basis which standards and protocols are required to be used. This subsection also provides an exception from this requirement for DOT-sponsored research project, to enable the Department to explore and test a wide range of activities, including non-conforming approaches.

Subsection 6054(h) seeks to assure that flexibility provided under NEXTEA to allow Federal-aid funding of operations and maintenance costs for ITS projects is effectively used by requiring life-cycle cost analyses when Federal funds are to be used to reimburse operations and maintenance costs and the estimated initial cost of the project to public authorities exceeds $3,000,000.

Subsection 6054(i) directs the Secretary to develop guidance and technical assistance on appropriate procurement methods for ITS projects, including innovative and non-traditional methods.

Section 6055. ITS National Program Plan, Implementation and Report to Congress

Subsection 6055(a) mandates the updating of the ITS National Program Plan on an as-needed basis, and details the scope of the Plan, which reflects a new focus on deployment and monitoring, development of standards, and achieving desired surface transportation system performance levels.

Subsection 6055(b) provides for accelerated development and operational testing, in cooperation with industry, of demonstration advanced vehicle control systems and, in particular, for equipping one or more fleets for field evaluations of safety benefits and user acceptance by 2002.

Subsection 6055(c) requires an implementation report on the National Program Plan no later than one year after the date of the enactment of the ITS Act of 1997 and biennially thereafter. Two reports on the Nontechnical Constraints to the deployment of intelligent transportation systems called for by the ITS Act of 1991 have been completed and future updates can be incorporated as part of the National Program Plan Report, therefore separate reports on these issues are discontinued.

Section 6056. Technical, Training, Planning, Research and Operational Testing Project Assistance

Subsection 6056(a) permits the Secretary to provide technical assistance, including training, to state and local government agencies interested in effectively considering, planning, implementing, operating, and maintaining ITS technologies and services. Technical assistance may include guidance on incorporating ITS into Statewide and metropolitan area transportation plans, revising State and local laws and ordinances to enable ITS services, use of innovative financing and acquisition strategies, and a wide range of other activities designed to assist State and local government agencies to effectively deploy ITS in an integrated, interoperable fashion.

Subsection 6056(b) authorizes the Secretary to provide financial assistance and technical support for planning and consideration of metropolitan and statewide ITS operations and management issues.

Subsection 6056(c) continues eligibility of commercial vehicle regulatory agencies, traffic management entities, independent authorities, and other entities contracted by a State or local agency for ITS project work, to receive Federal assistance under this part.

Subsection 6056(d) ties operational testing to specific national research objectives and authorizes the Secretary to provide funding to Federal agencies as well as to non-Federal entities, including HBCU's and other Minority Institutions of Higher Education. The Secretary is to provide highest priority to projects that (A) contribute to the goals of the National Program Plan under Sec. 6055, (B) will minimize the relative percentage and total amount of Federal contributions, (C) conform to the National Architecture and ITS standards and protocols, (D) emphasize collision avoidance products, (E) demonstrate innovative public-private partnering arrangements, and (F) validate the effectiveness of ITS in enhancing the safety and efficiency of surface transportation in both rural and metropolitan areas.

Section 6057. Applications of Technology

Subsection 6057(a) discontinues the designated IVHS Corridors Program and replaces it with one-time, limited-term ITI Deployment Incentives to promote deployment of integrated, multi-modal transportation systems throughout the Nation. Currently designated Priority Corridors are eligible for the Deployment Incentives Program. In metropolitan areas, the funding provided under this section would be used primarily to fund activities designed to integrate existing intelligent transportation infrastructure elements or those installed with other sources of funds, including Federal-aid funds. For commercial vehicle projects and projects outside metropolitan areas, funding provided under this section could be used to also install, as well as integrate, intelligent transportation infrastructure elements.

Subsection 6057(b) establishes priorities for funding projects under this section. At least 25 percent of the funds made available are to be allocated for implementation of border crossing applications and commercial vehicle information systems; and at least 10% is to be made available for ITI deployment outside metropolitan areas. Projects are to accelerate deployment and commercialization of ITS, realize the benefits of regionally integrated, intermodal applications, including commercial vehicle operations and electronic border crossing applications, and demonstrate innovative approaches to overcoming nontechnical constraints.

Subsection 6057(c) mandates that projects designated for funding under this section shall (1) contribute to national goals outlined in the ITS National Program Plan, (2) demonstrate through written agreements a commitment to cooperation among public agencies, multiple jurisdictions and the private sector, (3) demonstrate commitment to a comprehensive plan of fully integrated ITS deployment in accordance with the national ITS architecture and established ITS standards and protocols, (4) be part of approved State and metropolitan plans for transportation and air quality implementation, (5) catalyze private investment and minimize Federal contributions under this section, (6) include a sound financial plan for continued long-term operations and maintenance, without continued reliance on Federal ITS funds, and (7) demonstrate the capability or planned acquisition of capability to effectively operate and maintain the systems implemented.

Subsection 6057(d) establishes annual award funding limitations as follows: $15 million per metropolitan area; $2 million per rural project; $5 million per CVISN project; and no more than $35 million within any State.

Section 6058. Funding

The requirement for reports in section 6058 of the ITS Act of 1991 has been fulfilled and is not extended.

Section 6058 authorizes funding and provides under contract authority for fiscal years 1998 through 2003:

(1) subsection 6058(a), for the ITI Deployment Incentives Program, $100 million per year from the Highway Trust Fund for fiscal years 1998–2003;

(2) subsection 6058(b) for ITS Research and Program Support Activities - $96 million per year from the Highway Trust Fund for fiscal years 1998–2000, $130 million per year thereafter.

Of the funds made available for Research and Program Support Activities, the Secretary should use $25 million for purposes of 6055(b) (demonstration and evaluation of intelligent vehicle systems).

These replace the requirements of the ITS Act of 1991 under which 5 percent of the funds were to be available only for high-risk innovative tests with significant potential to accomplished long-term goals, which did not attract substantial non-Federal commitments.

Subsection 6058(c) continues the limitation in the ITS Act of 1991 that the Federal share on account of activities carried out under this part shall not exceed 80 percent of the cost of the activities, except that the Secretary may waive this limit for innovative activities under subsection 6058(b). In addition, the Federal share payable under the new Deployment Incentives Program in subsection 6058(a) is limited to 50 percent of the project cost, although the matching funds can include funds from other Federal sources. Subsection 6058(c) also provides that, for long range research activities with private entities concerning the demonstration of integrated intelligent vehicle systems under subsection 6055(b) of this part, the Federal share is limited to 50 percent of project costs.

Subsection 6058(d) extends an expiring provision of the ITS Act of 1991 confirming applicability of title 23 to funds authorized under this part, and providing that the funds authorized under this part shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which such funds were authorized.

TITLE VII—REVENUE

Sec. 7001. Short Title: Amendment of 1986 Code

This section designates this title as the Surface Transportation Revenue Act of 1997 and provides that references in this title to a section or other provision are references to the Internal Revenue Code of 1986 (title 26, United States Code).

Sec. 7002. Extension of Highway Related Use Taxes, Exemptions, and Trust Fund

This section provides a 6-year extension, through September 30, 2005, of Highway Trust Fund fuel taxes at their current rates: 18.3 cents per gallon for gasoline and special fuel and 24.3 cents per gallon for diesel fuel. Truck related taxes—heavy vehicle use tax, truck tire tax, and retail tax on heavy trucks and trailers are also extended at their current rates.

All existing refunds and exemption provisions are extended through September 30, 2005. These include reduced rates for intercity bus fuel, gasohol, and other alcohol fuels. The exemption provision for gasohol and other alcohol fuels were extended so that their expiration dates would conform with all other fuel tax provisions. Note that most refund or exemption provisions such as farm gasoline, off-road business gasoline, nonhighway diesel fuel, transit use, and State and local government use have no expiration dates and do not require extension.

Authority for the transfer from the general fund to the Highway Trust Fund of amounts equivalent to the Highway Trust Fund share of the highway fuel and truck taxes is extended through September 30, 2005. Amounts equivalent to tax liabilities incurred before October 1, 2005, may be transferred into the Trust Fund through June 30, 2006.

Authorization to expend funds from the Highway Trust Fund for to meet obligations incurred authorized in National Economic Crossroads Transportation Efficiency Act of 1997 or earlier highway authorization acts is extended through September 30, 2003.

The provision for charging the Highway Trust Fund for its share of fuel tax refunds and credits and for all truck tax refunds and credits is extended through June 30, 2006.

Transfers of receipts from motorboat fuel taxes to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund are extended through September 30, 2003.

Subsection (c) of this section amends the Internal Revenue Code to eliminate section 9511, which establishes the National Recreational Trails Trust Fund. While section 9511 was enacted in 1991, no funds have ever been credited to this fund. Therefore this legislation has been stricken as unnecessary.

Subsection (d) addresses the use of motorboat fuel taxes transferred from the Highway Trust Fund to the Boat Safety Account (BSA) in the Aquatic Resources Trust Fund, which provides funds for the State Recreational Boating Safety grant program administered by the Coast Guard. The statutory authority for making expenditures from the BSA, which expires March 31, 1998, is extended to October 1, 2004.

For fiscal year 1998, the amount that would be transferred into the BSA is $35,000,000. This assumes that $20,000,000 will be furnished under the Clean Vessel Act for Fiscal Year 1998, for a total of $55,000,000. Thereafter, the amount of motorboat fuel taxes transferred to the BSA would be $55,000,000, annually.

Under the legislation, the entire amount transferred would be available for expenditure to carry out the State Recreational Boating Safety grant program. Permanent

budget authority is provided, so that the amounts transferred each year are available without further appropriation.

Currently, one-half of the amount transferred each year to the Boat Safety Account is available for expenditures of the Coast Guard for recreational boating safety services. The conforming amendment would strike this distribution formula.

Subsection (e) makes a necessary technical amendment of section 4041(a)(1)(D)(i) to preserve the existing 1999 expiration date for motorboat diesel fuel taxes. Without this amendment, the changes made to extend highway taxes in section 4081 of the Code would, due to a cross-reference, inadvertently extend the motorboat diesel fuel tax as well.

Sec. 7003. Commuter Benefit

26 U.S.C. section 132(f) exempts up to $165 per month for parking and up to $65 per month for transit benefits or commercial vanpool services from Federal and most State income and payroll taxes, provided the employer offers only these benefits and nothing else, such as taxable cash salary, in lieu of the benefit. To qualify for the exemption, parking must be provided by the employer, either accepted or not by the employee, with no other options, including any taxable options. This amendment would limit the choice to parking or other taxable compensation.

Sec. 7004. Mass Transit Account

Section 7004 would amend 26 U.S.C. section 9503(e) to extend the Mass Transit Account through September 30, 2003, and to permit funding of all eligible purposes under the Federal Transit assistance program, not just capital projects, to receive funding from the Mass Transit Account. In addition, it would change the test of Mass Transit Account liquidity to the same test as is applied to the Highway Account. At present the Mass Transit Account must meet a more stringent test.

Sec. 7005. Motor Vehicle Safety and Cost Savings Programs

This section provides for Highway Trust Fund expenditures for qualified projects and for motor vehicle safety and cost savings programs.

Sec. 7006. General Fund Transfers for Transportation-Related Programs in Fiscal Years 1998–2003

This section sets forth directions to the Secretary of the Treasury to transfer amounts from the Highway Trust Fund (other than the Mass Transit Account) to the general fund as reimbursement for annual appropriations made for selected transportation-related programs. The amount transfered each year would equal the amount that Congress appropriates for the listed accounts (transportation-related portion only). The programs involved are: Department of Energy, "Energy Conservation" account; Department of the Interior, U.S. Park Service, "Construction" account; Department of the Interior, Bureau of Indian Affairs, "Construction" account; Department of Agriculture, U.S. Forest Service, "Reconstruction and Construction" account, Department of Agriculture, U.S. Forest Service, "National Forest System" account; Department of Housing and Urban Development, "Community Development Block Grant"; Environmental Protection Agency, "Environmental Programs and Management" account; Appalachian Regional Commission, "Appalachian Regional Commission" account; and costs associated with the procurement of Federal Alternative Fuels Acquisition.

The consolidated annual amounts sought by the President's FY 1998 Budget Request for transportation-related portions of these programs are: FY98—$646 million; FY99—$583 million; FY00—$583 million; FY01—$467 million; FY02—$467 million; FY03—$467 million.

TITLE VIII—RAIL PASSENGER PROGRAMS

Sec. 8001. Authorization of Appropriations

This section revises section 24104 of the title 49, United States Code, which authorizes appropriations to support the various activities undertaken by Amtrak. Subsection (a) authorizes appropriations for Amtrak's operating grants for fiscal years 1998 through 2003 which will be derived from the Highway Trust Fund (other than from the Mass Transit Account). These authorizations reflect decreasing Federal financial support for Amtrak's operating expenses. After 2001, the operating grant would no longer be available to offset Amtrak's operating losses other than for certain payments into the railroad retirement and railroad unemployment trust fund.

Subsection (b) authorizes appropriations for Amtrak's capital programs (including the Northeast Corridor Improvement Project) in the amount of $423,450,000 for each of the fiscal years 1998 through 2003. Capital grant funds would also be derived from the Highway Trust Fund (other than the Mass Transit Account). Sufficient capital funding is a key component of Amtrak's program to eliminate its dependence on Federal operating subsidies after fiscal year 2001.

Subsection (c) contains a new authorization for supplemental capital funding which represents additional capital funding that would be made available to Amtrak through the Secretary if the Secretary determines that Amtrak is managing the corporation so as to operate within available resources, including revenues, state, local and private sector contributions, and Federal operating subsidies (in the years for which a Federal operating subsidy is authorized). The purpose of this program is to provide a strong incentive for Amtrak to take the necessary actions to reduce spending, increase revenues and operate in the most efficient and effective manner. Amtrak could use the supplemental capital funding to continue to make improvements in the capital plant. The availability of the supplemental capital funding would be tied to two specific tests. For the first year of the program, fiscal year 1999, the funding would become available only if the Secretary determined that Amtrak has taken specific and measurable actions to reduce expenses and increase revenues consistent with a plan to achieve the operating subsidy reductions contemplated by the authorizations for operating expenses included in subsection (a) above. For fiscal years 2000–2003, the test would involve a determination, based upon a report from Amtrak's independent auditor, that during the penultimate fiscal year, Amtrak's revenues plus the amount of operating assistance authorized for that year equals or exceeds Amtrak's operating expenses for that year. Therefore, the test of whether Amtrak receives the funds in fiscal year 2000 would be based upon its performance in fiscal year 1998. This two year lag is made necessary because of the cycle of the appropriations process. Fiscal year 1998 would be the last year for which complete financial records are available during the consideration of the fiscal year 2000 budget request by the President and the Congress.

Subsection (d) provides an avenue for determining the appropriate expenditures that are included within the definition of capital investment. With the exception of the inclusion of specific statutory authority to use capital funds to cover debt service associated with long-term capital investments, the terms "operating expenses" and "capital investments" are to be defined and applied by Amtrak and the Secretary in a manner consistent with the traditional practices of the railroad industry as provided for in the findings of the Financial Accounting Standards Board.

Subsection (e) provides contract authority for the Amtrak operating, railroad retirement/unemployment payments, capital investment, and supplemental capital investment accounts by specifically providing that the approval by the Secretary of a grant or contract with funds made available for Amtrak is to be deemed a contractual obligation of the United States.

Subsection (f) provides that appropriated amounts remain available until expended.

Subsection (g) states that funds provided to Amtrak for intercity rail passenger service may not be used to fund operating losses for rail freight services or commuter rail services.

Mr. MOYNIHAN. Mr. President, I rise with my colleague from Rhode Island, Mr. CHAFEE, to introduce the Clinton administration's legislation to re-authorize the Intermodal Surface Transportation Efficiency Act of 1991, or ISTEA.

I applaud the administration's proposal as a sincere effort to reauthorize ISTEA under the principles of intermodalism, environmental protection, sound community planning, and safety, that have made this innovative transportation act work so well these past 6 years. I do not agree with all of the details of administration plan—the formulas used to distribute funds to each State based on the Federal fuel taxes collected in that State are an unfortunate departure from the need-based formulas in all other Federal programs. The President's proposal, however, preserves the basic ISTEA framework and represents a good starting point as we begin considering the reauthorization of ISTEA.

I also intend to join with a bipartisan group of colleagues later this month to introduce our own proposal to re-authorize ISTEA. This proposal would reauthorize the key provisions of ISTEA—which was crafted to promote intermodal, economically efficient, and environmentally sound incentives in Federal transportation policy—through more fully needs-based formulas.

ISTEA has worked, and its reauthorization will be more important for the economy than any other transportation bill since the Federal-Aid Highway Act of 1956. Our goal should be now to make a good law better.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 469. A bill to designate a portion of the Sudbury, Assabet, and Concord Rivers as a component of the National Wild and Scenic River System; to the Committee on Energy and Natural Resources.

SUDBURY, ASSABET, AND CONCORD WILD AND SCENIC RIVERS ACT

Mr. KERRY. Mr. President, I am pleased to join with the senior Senator from Massachusetts, Senator KENNEDY, in introducing the Sudbury, Assabet and Concord [SuAsCo] Wild and Scenic Rivers Act. Congressman MARTY MEEHAN will introduce the companion bill today in the House. His bill will be cosponsored by the entire Massachusetts delegation as well as colleagues from New Hampshire and Connecticut.

The Sudbury, Assabet, and Concord Rivers area is rich in history and literary significance. It has been the location of many historical events, most notably the Battle of Concord in the Revolutionary War, that gave our great Nation its independence. The Concord River flows under the North Bridge in Concord, MA where, on April 18, 1775, colonial farmers fired the legendary "shot heard around the world" which signaled the start of the Revolutionary War.

In later years, this scenic area was also home to many of our literary heroes including Ralph Waldo Emerson, Henry David Thoreau, and Louisa May Alcott; their writing often focused on these bucolic rivers. Thoreau spent most of his life in Concord, MA where he passed his days immersed in his writing and enjoying the natural surroundings. He spoke of the Concord River when he wrote "the wild river valley and the woods were bathed in so pure and bright a light as would have waked the dead, if they had been slumbering in their graves, as some suppose. There needs no strong proof of immortality." This area was held close to many an author's heart. It was a place of relaxation and inspiration for many.

The SuAsCo bill would amend the Wild and Scenic Rivers Act to include a 29-mile segment of the Assabet, Concord, and Sudbury Rivers. Based on a report authorized by Congress in 1990 and issued by the National Park Service in 1995, these river segments were determined worthy of inclusion in the Wild and Scenic Rivers Program. In its report, the SuAsCo Wild and Scenic Study Committee showed that this area has not only the necessary scenic, recreational and ecological value, but also the historical and literary value to merit the wild and scenic river designation. All eight communities in the area traversed by these river segments are supporting this important legislation.

Our legislation is of minimal cost to the Federal Government, but by using limited Federal resources we can leverage significant local and State effort. Provisions in the bill limit the Federal Government's contribution to just $100,000 annually, with no more than a 50 percent share of any given activity. This is a concept that merits the support of Congress. Should our bill become law, the SuAsCo River Stewardship Council, in cooperation with Federal, State, and local governments would manage the land.

We now have the opportunity to protect the precious 29-mile section of the Assabet, Sudbury, and Concord Rivers. This area is not only rich in ecological value but also in historical and literary value. I urge my colleagues to support this bill and through it to preserve this wild river valley for the enjoyment and instruction of all who live and work there, for visitors from throughout the Nation and, perhaps most importantly, for generations yet to come.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator KERRY today in sponsoring legislation to designate a 29-mile segment of the Sudbury, Assabet, and Concord Rivers in Massachusetts as a component of the National Wild and Scenic Rivers System. This proposal has the bipartisan support of the full Massachusetts congressional delegation—Congressmen MARTIN T. MEEHAN, JOHN F. TIERNEY, EDWARD J. MARKEY, J. JOSEPH MOAKLEY, JOSEPH P. KENNEDY II, WILLIAM D. DELAHUNT, RICHARD E. NEAL, JAMES P. MCGOVERN, BARNEY FRANK, and JOHN W. OLVER—as well as Representatives CHRISTOPHER SHAYS and NANCY L. JOHNSON of Connecticut and CHARLES F. BASS and JOHN E. SUNUNU of New Hampshire, who are introducing an identical bill in the House of Representatives today.

The Sudbury, Assabet, and Concord Rivers have witnessed many important events in the Nation's history. Stone's Bridge and Four Arched Bridge over the Sudbury River date from pre-Revolutionary War days. On Old North Bridge over the Concord River, the "shot heard 'round the world" was fired on April 19, 1775, to begin the Revolutionary War. At Lexington and Concord, the colonists began their armed resistance against British rule, and the first American Revolutionary War soldiers fell in battle.

In the nineteenth century, the Sudbury, Assabet, and Concord Rivers earned their lasting fame in the works of Ralph Waldo Emerson, Nathaniel Hawthorne, and Henry David Thoreau, all of whom lived in this area and spent a great deal of time on the rivers. Emerson cherished the Concord River as a place to leave "the world of villages and personalities behind, and pass into a delicate realm of sunset and moonlight."

Hawthorne wrote "The Scarlet Letter" and "Mosses from an Old Manse" in an upstairs study overlooking the Concord River. He also enjoyed boating on the Assabet River, of which he said that "a more lovely stream than this, for a mile above its junction with the Concord, has never flowed on Earth."

Thoreau delighted in long, solitary walks along the banks of the rivers amidst the "straggling pines, shrub oaks, grape vines, ivy, bats, fireflies, and alders," contemplating humanity's relationship to nature. His journals describing his detailed observations of the flora and fauna in the area have inspired poets and naturalists to the present day, and helped to give birth to the modern environmental movement. By protecting the rivers, a future Thoreau, Emerson, or Hawthorne may one day walk along their shores and gain new inspiration from these priceless natural resources.

In 1990, Congress authorized the National Park Service to issue a report to determine whether the three rivers are eligible for designation as wild and scenic rivers. Under the National Park Service's guidelines, a river is considered eligible for the designation if it possesses at least one "outstanding remarkable resource value." In fact, the three rivers were found to possess five outstanding resource values—scenic, recreational, ecological, historical, and literary. The report also concluded that the rivers are suitable for designation based upon the existing local protection of their resources and the strong local support for their preservation.

Our bill will protect a 29-mile segment of the Sudbury, Assabet, and Concord Rivers that runs through or along the borders of eight Massachusetts towns—Framingham, Sudbury, Wayland, Concord, Lincoln, Bedford, Carlisle, and Billerica. A River Stewardship Council will be established to coordinate the effort of all levels of government to strengthen protections for the river and address future threats to the environment. The legislation also requires at least a one-to-one non-Federal match for any Federal expenditures, and contains provisions which preclude Federal takings of private lands. It is designed not to result in any additional Federal regulatory burden to private property owners along the protected river segments.

Thoreau wrote in 1847 that rivers "are the constant lure, when they flow by our doors, to distant enterprise and adventure* * * . They are the natural highways of all nations, not only levelling the ground and removing obstacles from the path of the traveller, but conducting him through the most interesting scenery." Standing on the banks of the Sudbury, Assabet, and Concord Rivers, as Thoreau often did, citizens today gain a greater sense of the ebb and flow of the Nation's history and enjoy the benefit of some of the most beautiful scenery in all of America. I urge my colleagues to support this legislation, so that these three proud rivers will be protected for the enjoyment and contemplation of future generations.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 470. A bill to amend the Internal Revenue Code of 1986 to make a technical correction relating to the depreciation on property used within an Indian reservation; to the Committee on Finance.

TECHNICAL CORRECTION LEGISLATION

Mr. ROTH. Mr. President, today I rise on behalf of Senator MOYNIHAN and myself to introduce a bill that would correct a technical error originally contained in the Omnibus Budget Reconciliation Act of 1993. Specifically, the bill would correct the definition of the term "Indian reservation" under section 168(j)(6) of the Internal Revenue Code. This definition of the term "Indian reservation" applies for purposes of determining the geographic areas within which businesses are eligible for special accelerated depreciation (sec. 168(j)) and the so-called Indian employment tax credit (sec. 45A) enacted in 1993. As I explain in further detail below, the bill corrects the definition of "Indian reservation" for purposes of these special tax incentives so that, as Congress originally intended, the incentives are available only to businesses that operate on Indian reservations and similar lands that continue to be held in trust for Indian tribes and their members. It is my intent to incorporate the provisions of this bill into a larger bill, which I plan to introduce later this session, containing technical corrections to other recently enacted tax legislation.

Section 168(j)(6) of the Internal Revenue Code provides that the term "Indian reservation" means a reservation as defined in either (a) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or (b) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)). The cross-reference to section 3(d) of the Indian Financing Act of 1974 includes not only officially designated Indian reservations and public domain Indian allotments, but also all "former Indian reservations in Oklahoma" and all land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act. Thus, contrary to Congress' intent in enacting the special tax incentives for Indian lands in 1993, the reference to "former Indian reservations in Oklahoma" in the Indian Financing Act of 1974 results in most of the State of Oklahoma being eligible for the special tax incentives, even though parts of such "former Indian reservations" no longer have a significant nexus to any Indian tribe. For instance, it is my understanding that the entire city of Tulsa may be located within a "former Indian reservation," such that any business operating in Tulsa qualifies for accelerated depreciation under present-law section 168(j). Providing such a tax benefit to commercial activities with no nexus to a tribal community would frustrate Congress' intent to target special tax incentives to official reservations and similar lands that continue to be held in trust for Indians. Businesses located on official reservations and similar lands held in trust for Indians were provided special business tax incentives in order to counter the disadvantages historically associated with conducting commercial operations in such areas, which were expressly excluded from eligibility as empowerment zones or enterprise communities under the 1993 act legislation (see Internal Revenue Code sec. 1393(a)(4)).

The bill I am introducing today would modify the definition of "Indian reservation" under section 168(j)(6) of the Internal Revenue Code by deleting the reference to section 3(d) of the Indian Financing Act of 1974. Consequently, the term "Indian reservation" would be defined under section 168(j)(6) solely by reference to section 4(10) of the Indian Child Welfare Act of 1978, which provides that the term "reservation" means "Indian country as defined in section 1151 of Title 18 and any lands, not covered under [section 1151], title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation" (25 U.S.C. 1903(10)). Section 1151 of Title 18, in turn, defines the term "Indian country" as meaning "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same" (18 U.S.C. 1151).

Accordingly, amending section 168(j)(6) of the Internal Revenue Code to define the term "Indian reservation" solely by reference to the Indian Child Welfare Act of 1978 would carry out Congress' original intent in enacting the special Indian tax incentives in 1993 by eliminating from eligibility those areas in Oklahoma which formerly were reservations but no longer satisfy the definition of a "reservation" under the Indian Child Welfare Act of 1978. It is my understanding that, even after amending section 168(j)(6) in this manner, numerous areas within Oklahoma will remain eligible for the special tax incentives because, even though such areas are not officially designated reservations, such areas nonetheless qualify as "Indian country" under section 1151 of Title 18. Similarly, it is my understanding that lands held by Native groups under the provisions of the Alaska Native Claims Settlement Act also would qualify as "Indian country" under section 1151 of Title 18. Thus, if section 168(j)(6) were amended to define "Indian reservation" solely by reference to the Indian Child Welfare Act of 1978, lands held under the Alaska Native Claims Settlement Act would continue to be eligible for the special Indian tax incentives. In this regard, it is my intent that, if it is brought to the attention of the tax-writing committees that there are any Indian lands that technically do not fall within the definition of "Indian reservation" under the Indian Child Welfare Act of 1978 but which could be made eligible for the special Indian tax incentives consistent with Congress' intent in 1993, then consideration will be given to further modifying the bill I am introducing today when it is incorporated into a larger technical corrections bill.

The technical correction made by the bill would be effective as if it had been included in the Omnibus Budget Reconciliation Act of 1993 (that is, the technical correction would apply to property placed in service and wages paid on or after January 1, 1994). As a general matter, I oppose retroactive changes to the Internal Revenue Code. However, technical corrections to fix drafting errors in previously enacted tax legislation traditionally refer back to the original effective date to prevent taxpayers from receiving an unintended windfall. This bill corrects such a drafting error.

Mr. MOYNIHAN. Mr. President, I am pleased today to be introducing legislation with the chairman of the Committee on Finance, Senator ROTH, to correct an unintended item contained in the Omnibus Budget Reconciliation Act of 1993. I want to thank the chairman for his leadership on this issue and associate myself with his statement.

Mr. President, it recently came to our attention that Internal Revenue Code section 168(j), a provision intended to help attract private industry investment to Indian reservations and similar lands that continue to be held in trust for Indian tribes and their members is benefitting private investment on "former Indian reservations" having no current connection to any Indian tribe. As a result, we are introducing legislation today that would correct the definition of "Indian reservation," under Internal Revenue Code section 168(j)(6), so that these tax incentives are available only for businesses operating on Indian reservations and similar lands.

Mr. President, it is important to note, as Chairman ROTH did, that we wish to take into consideration any Indian lands that may technically not fall within the definition of "Indian reservation," under the Indian Child

Welfare Act of 1978, but which should be made eligible for these special investment incentives. Such situations should be brought to the attention of the tax-writing committees, and we will then consider further modifications as the bill moves through the legislative process.

ADDITIONAL COSPONSORS

S. 61

At the request of Mr. LOTT, the names of the Senator from Virginia [Mr. WARNER], the Senator from Utah [Mr. BENNETT], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 70

At the request of Mrs. BOXER, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 70, a bill to apply the same quality and safety standards to domestically manufactured handguns that are currently applied to imported handguns.

S. 102

At the request of Mr. BREAUX, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 102, a bill to amend title XVIII of the Social Security Act to improve medicare treatment and education for beneficiaries with diabetes by providing coverage of diabetes outpatient self-management training services and uniform coverage of blood-testing strips for individuals with diabetes.

S. 153

At the request of Mr. MOYNIHAN, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 153, a bill to amend the Age Discrimination in Employment Act of 1967 to allow institutions of higher education to offer faculty members who are serving under an arrangement providing for unlimited tenure, benefits on voluntary retirement that are reduced or eliminated on the basis of age, and for other purposes.

S. 202

At the request of Mr. LOTT, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 202, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 293

At the request of Mr. HATCH, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 293, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for clinical testing expenses for certain drugs for rare diseases or conditions.

S. 321

At the request of Mr. GREGG, the name of the Senator from Wyoming [Mr. ENZI] was added as a cosponsor of S. 321, a bill to amend the Internal Revenue Code of 1986 and the Social Security Act to provide for personal investment plans funded by employee Social Security payroll deductions, to extend the solvency of the Old-Age, Survivors, and Disability Insurance Program, and for other purposes.

S. 325

At the request of Mr. BUMPERS, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 325, a bill to repeal the percentage depletion allowance for certain hardrock mines.

S. 413

At the request of Mrs. HUTCHISON, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 413, a bill to amend the Food Stamp Act of 1977 to require States to verify that prisoners are not receiving food stamps.

S. 433

At the request of Mr. BROWNBACK, the names of the Senator from Alabama [Mr. SHELBY] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 433, a bill to require Congress and the President to fulfill their Constitutional duty to take personal responsibility for Federal laws.

SENATE JOINT RESOLUTION 18

At the request of Mr. HOLLINGS, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Joint Resolution 18, a joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

SENATE RESOLUTION 57

At the request of Mr. DORGAN, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of Senate Resolution 57, a resolution to support the commemoration of the bicentennial of the Lewis and Clark Expedition.

SENATE RESOLUTION 64—TO DESIGNATE NATIONAL CORRECTIONAL OFFICERS AND EMPLOYEES WEEK

Mr. ROBB submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 64

Whereas the operation of correctional facilities represents a crucial component of our criminal justice system;

Whereas correctional personnel play a vital role in protecting the rights of the public to be safeguarded from criminal activity;

Whereas correctional personnel are responsible for the care, custody and dignity of the human beings charged to their care; and

Whereas correctional personnel work under demanding circumstances and face danger in their daily work lives: Now, therefore, be it

Resolved, That the Senate designates the week of May 4, 1997 as "National Correctional Officers and Employees Week." The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

Mr. ROBB. Mr. President, I submit a resolution to designate the week of May 4, 1997 as "National Correctional Officers and Employees Week."

Mr. President, this resolution gives needed recognition to the vital role that correctional personnel play in our communities.

Correctional officers and employees put their lives on the line every day to protect the public from dangerous criminals. These brave men and women also protect incarcerated individuals from the violence of their circumstance, and they help prisoners work toward returning to lawful society.

I urge my colleagues to join with me to recognize the work and contributions of our Nation's correctional officers and employees.

SENATE RESOLUTION 65—RELATIVE TO COMPREHENSIVE CAMPAIGN FINANCE REFORM

Mr. DURBIN (for himself and Mr. DORGAN) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 65

SEC. . SENSE OF THE SENATE ON CAMPAIGN FINANCE REFORM.

(A) FINDINGS.—The Senate finds that—

Whereas spending on federal election campaigns has increased to an estimated $2.65 billion in the most recent election cycle, a three-fold increase over campaign spending just 20 years ago, even after adjusting for inflation;

Whereas in the 1995-1996 election cycle, the Democratic party committees raised $332 million, a 73% increase over the $192 million raised four years earlier and the Republican party committees raised $549 million, a 74% increase over the $316 million they raised four years earlier;

(3) overall campaign spending for congressional races has risen from $99 million in 1976 to $626 million in 1996, a more than six-fold increase;

(4) since 1992, when political parties were first required to report soft money contributions to the Federal Election Commission, these contributions, which are raised outside federal election law, have tripled, from $86 million in 1992 to over $263 million in the last election cycle;

(5) there has been a proliferation of negative "issue" ads paid for by political parties and interest groups to influence federal elections, further increasing the cost of campaigns;

(6) as political campaigns have become longer, costlier and more negative, voter apathy has increased and voter participation in presidential elections has declined from 60% in 1948-1968, to 53% from 1972-92, to all-time low of 49% in 1996;

(7) these trends will continue if Congress fails to enact comprehensive campaign finance reform;

(8) the more than 6,700 pages of hearing records, 49 days of testimony before 8 different congressional committees, 15 committee reports from 6 different committees and 113 Senate floor votes, constitute a sufficient Senate record on campaign finance reform; and

(9) campaign finance reform has been filibustered in the Senate 17 times in the last ten years.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Senate should proceed to the consideration of comprehensive campaign finance reform that reduces spending on political campaigns and curtails the influence of special interest money in federal elections by no later than May 31, 1997 and adopt as a goal the final enactment of such legislation by no later than July 4, 1997.

Mr. DURBIN. Mr. President, in the 1996 election cycle, unprecedented amounts of money freely flowed into and out of the campaign coffers of candidates for Federal public office. The time required to raise funds is excessive, and increasingly more expensive election campaigns have fostered the view that spending is out of control.

Campaign finance reform is long overdue. The fact that we are embarking upon an intensive scrutiny of past campaign practices should not impede our effort to move swiftly and concurrently to correct deficiencies in the present system.

We must do more than just point out the errors of the past. We must make changes for the future.

Today, Senator BYRON DORGAN and I submitted a resolution stating that it is the sense of the Senate that the Senate should proceed to consideration, by no later than May 31, 1997, of comprehensive campaign finance reform that reduces spending on political campaigns and curtails the influence of special interest money in Federal elections, and that the Senate should adopt as a goal the final enactment of such legislation by no later than July 4, 1997.

NOTICES OF HEARINGS

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a hearing of the Senate Committee on Labor and Human Resources will be held on Thursday, March 19, 1997, 9:30 a.m., in SD-430 of the Senate Dirksen Building. The subject of the hearing is on Food and Drug Administration reform. For further information, please call the committee, 202/224-5375.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a hearing of the Senate Committee on Labor and Human Resources will be held on Thursday, March 20, 1997, 10 a.m., in SD-430 of the Senate Dirksen Building. The subject of the hearing is Higher Education Act reauthorization. For further information, please call the committee, 202/224-5375.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Tuesday, March 18, 1997, at 9 a.m. in SR-328A to receive testimony regarding agriculture research reauthorization.

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

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, March 18, 1997, at 10 a.m. in open session, to receive testimony from the unified commanders on their military strategies and operational requirements in review of the defense authorization request for fiscal year 1998 and the future years defense program.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, March 18, 1997, to conduct a markup on S. 318, the "Homeowners Protection Act of 1997," and of certain pending nominations.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. HATCH. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be granted permission to conduct a hearing Tuesday, March 18, at 9:30 a.m., Hearing Room (SD-406) on proposals to authorize State and local governments to enact flow control laws and to regulate the interstate transportation of solid waste.

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

COMMITTEE ON THE JUDICIARY

Mr. HATCH. Mr. President, the Senate Committee on the Judiciary would ask unanimous consent to hold a nominations hearing on Tuesday, March 18, at 2:30 p.m., in Room 226, of the Senate Dirksen Office Building.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet in executive session during the session of the Senate on Tuesday, March 18, 1997, at 9 a.m.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on the presidential nomination of Alexis M. Herman to be Secretary of Labor, during the session of the Senate on Tuesday, March 18, 1997, at 2 p.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, March 18, 1997 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 18, 1997, at 10 a.m. to hold a hearing.

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

SUBCOMMITTEE ON THE OCEANS AND FISHERIES

Mr. HATCH. Mr. President, I ask unanimous consent that the Oceans and Fisheries Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, March 18, 1997, at 2:30 p.m. on review of U.S. Coast Guard fiscal year 1998 budget and reauthorization.

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

ADDITIONAL STATEMENTS

GREEK INDEPENDENCE DAY

• Mr. ROTH. Mr. President, it is a personal honor for me to once again cosponsor Senate Resolution 56 designating March 25, 1997, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".

This resolution honors the anniversary of a single, victorious revolution that occurred 176 years ago. This solitary battle returned to the citizens of Greece their freedom and democracy, rights that had been seized from them centuries before by the Ottoman Empire. Greece is a country possessing an immensely rich heritage, and one from which our own Nation has drawn generously and with great benefit. In times

of peace and in times of conflict, Greece has steered a strong and steady course with the United States as a loyal friend and trusted ally.

This resolution provides me with the opportunity to express our deep gratitude to the nation of Greece, as well as our own Greek American community, for the significant contributions they have both made on behalf of our Nation—and to the inexorable ties which bind our two peoples together.•

REMARKS OF SENATOR GEORGE MITCHELL ON THE NORTHERN IRELAND PEACE PROCESS

• Mr. MOYNIHAN. Mr. President, I rise today to bring to the attention of my colleagues the moving remarks of our former Majority Leader, the Honorable George J. Mitchell, which he delivered at the American-Ireland Fund Dinner on March 13, 1997. Senator Mitchell spoke about the peace process in Northern Ireland and his own efforts to facilitate reconciliation in that troubled land.

I commend Senator Mitchell's remarks to all Senators, and I ask that the text be printed in the RECORD.

The text follows:

EXCERPTS FROM REMARKS BY SENATOR GEORGE J. MITCHELL, AMERICAN-IRELAND FUND DINNER, WASHINGTON, DC, MARCH 13, 1997

I'm grateful for this award. The American-Ireland Fund is an important force for good in Ireland. I commend you for your efforts and I encourage you to continue them.

As you know, I've spent most of the past two years in Northern Ireland. On my trips back to the U.S., I've been asked two questions, over and over again, by Americans who care about Ireland: Why are you doing this? And, What can I do to help?

Tonight, I'll try to answer both of those questions.

Why am I doing this?

I've asked myself that question many times. To answer it, I must go back nearly 20 years, before I'd ever been to Ireland, before I'd ever thought seriously about Northern Ireland.

Before I entered the United States Senate I had the privilege of serving as a Federal Judge. In that position I had great power. The power I most enjoyed exercising was when I presided over what are called naturalization ceremonies. They're citizenship ceremonies. A group of people who'd come from every part of the world, who'd gone through all the required procedures, gathered before me in a federal courtroom. There I administered to them the oath of allegiance to the United States and, by the power vested in me under our constitution and laws I made them Americans.

It was always emotional for me, because my mother was an immigrant from Lebanon, my father the orphan son of immigrants from Ireland. They had no education and they worked hard all their lives at difficult and low-paying jobs. But because of their efforts, and, more importantly, because of the openness of American society, I, their son, was able to become the majority leader of the United States Senate.

After every naturalization ceremony, I spoke personally with each new American, individually or in family groups. I asked them where they came from, how they came, why they came. Their stories were as different as their countries of origin. But they were all inspiring, and through them ran a common theme, best expressed by a young Asian. When I asked why he had come, he replied, in slow and halting English, "I came because here in America everybody has a chance".

A young man who'd been an American for just a few minutes summed up the meaning of our country in a single sentence. Here, everybody has a chance.

I was one of those who had a chance, and I thank God for my good fortune. Now, by an accident of fate, in a way that I did not seek or expect, I have been given the opportunity to help others to have a chance. That they are in Ireland, the land of my father's heritage, is just a fortuitous coincidence. That I am able to help, even if in just a small way, is what matters.

No one can really have a chance in a society dominated by fear and violence. And so I, who have been helped by so many, now must do what I can to help others to try to end the violence, to banish the fear, to hasten the day when all the people of Northern Ireland can lead lives of peace, reconciliation and opportunity.

Let me say, as clearly and as emphatically as I can: There will be peace and reconciliation in Northern Ireland. I don't know exactly when it will come. But I am convinced that it is inevitable, for one over-riding reason: It is the will of the overwhelming majority of the people of Northern Ireland.

They remain divided along sectarian lines, and they mistrust each other. But they share a fervent desire not to return to the violence which for so long has filled their lives with fear and anxiety.

It will take a very long time for the mistrust to end. But it need not take a long time for the violence to end. Once it does, once people can live free of fear, then gradually the walls of division will come down. Walls that exist on the ground, and in people's minds, will come down, brick by brick, person by person, slowly but inevitably.

Over the past two years I've come to know the people of Northern Ireland. They're energetic, Intelligent and productive. I admire and like them. They deserve better than the troubles they have. But there is only one way to achieve that better life.

There is no alternative to democratic, meaningful, inclusive dialogue. For that to come about, there must be an end to violence and to intransigence. They are the twin demons of Northern Ireland—violence and intransigence. They feed off each other in a deadly ritual in which most of the victims are innocent.

There are those who don't want anything to change, ever. They want to recreate a past that can never be recreated. But their way will only guarantee never-ending conflict. It will insure that the next half century is as full of death and fear as was the past half century.

The people of Northern Ireland must make it clear to their leaders that they oppose intransigence, that they want meaningful negotiation. Not capitulation; not the surrender of conviction. But good-faith negotiation that places the interest of the people, the interest of peace, above personal or political considerations. Good faith negotiation can produce an agreed settlement that will command the support of the majority in Northern Ireland, including the majority in each community. I know in my heart that it can be done.

With an end to intransigence must come a total and final repudiation of violence. There is no justification for violence, or the threat of violence. To those of you who ask; what can I do? Here is my answer: You, the leaders of the Irish-American community, must say that you condemn violence, that you demand its end, that you will not support those who engage in or support or condone violence. You must say it publicly, you must say it loudly, you must say it forcefully. And you must say it over and over again.

Violence is wrong. It is counter productive. It deepens divisions. It increases hatred. It hurts innocent people. It makes peace and reconciliation more difficult to attain. It must end.

Let me be clear on one more point. They may be twin demons but there is no moral equivalence between intransigence and violence. They are both wrong. But as bad as intransigence is, violence is worse. Intransigence takes away people's hopes. Violence takes away their lives.

There exists an historic opportunity to end centuries of conflict in Northern Ireland. If it is not seized now, it may be years before it returns, and the failure could cost many their lives.

Peace and reconciliation in Northern Ireland is a worthy cause. It deserves your attention and support. You can make a difference. What you say is heard, what you do matters.

As you leave tonight, ask yourself this question: Wouldn't it be a wonderful thing if, on St. Patrick's day next year, rather than praying for peace and reconciliation in Northern Ireland, we were celebrating its existence?

If you agree, then beginning tomorrow, do all you can to make it happen. When you do, you will reap the greatest of all rewards: You will have earned the title of peacemaker.•

TRIBUTE TO CHARLES H. WEBB, DEAN, INDIANA UNIVERSITY, SCHOOL OF MUSIC

• Mr. LUGAR. Mr. President, it is with great privilege that I rise today to honor Charles H. Webb, an outstanding administrator and musician who is retiring after 24 years of service as Dean of the Indiana University School of Music in Bloomington, IN.

Since his appointment in 1973, the Indian University School of Music has enjoyed a world-wide reputation for excellence. The Indiana University School of Music has been ranked No. 1 among schools of music in the country, and is the first and only school to bring an opera performance to the stage of the Metropolitan Opera in New York.

Dean Webb's accomplishments have been hailed by Indiana University and the State of Indiana. He received the Thomas Hart Benton Medal from Indiana University in 1987 and the Governor's Award for the Arts in 1989. He is also a two-time recipient of the Sagamore of the Wabash award, which is the highest award given by the State of Indiana for meritorious service.

In addition to his responsibilities at Indiana University, Charles Webb has maintained an active performance schedule as a conductor, pianist, and organist. Hailed as one of today's finest

accompanists, he has appeared with some of the world's best musicians. He currently serves as the organist for the First United Methodist Church in Bloomington, IN.

Charles Webb's contributions to the art of music and his support for education will continue long after his retirement, as his students enrich our lives with performances in orchestras, bands, opera, and theater companies, and schools around the world. I hope my colleagues will join me in congratulating him for his years of tireless service, and in wishing him and family all the best in the future.•

NATIONAL AGRICULTURE WEEK

• Mr. SARBANES. Mr. President, I rise today in recognition of National Agriculture Week and to pay tribute to the farmers of this nation whose dedication and diligence throughout our history have not only served to feed our families, but have also provided a strong framework for the economic prosperity of this country.

At the 1896 Democratic National Convention, it was William Jennings Bryan who recognized the importance of farmers, not only as the individuals who provide our sustenance, but as integral parts of the American business community. He said, "The farmer who goes forth in the morning and toils all day, who begins in spring and toils all summer, and who by the application of brain and muscle to the natural resources of the country creates wealth, is as much a business man as the man who goes upon the Board of Trade and bets upon the price of grain." Today, when technology like weather trackers and cellular phones plays as important a role on the fields as it does on Wall Street, Bryan's words ring true.

Bryan's other comment about farmers reminds us of a fact too often forgotten: "The great cities," he said, "rest upon our broad and fertile prairies." Indeed, the productivity of America's farmers not only keeps Americans fed, it also enables the rest of our citizens to embark upon their daily tasks and diverse careers without concern that the grocery's shelves will be empty.

Our farmers are so productive that they sustain the lives of more than 250 million Americans every day and still have enough left over to make agriculture our nation's leading export. In 1930, 1 American farmer produced enough food to feed 24 people. Today, that same 1 farmer is feeding 129 people. In fact, our farmers are so efficient that Americans spend approximately 9 percent of their income on food, compared with much higher figures in other countries, such as 17 percent in Japan and 27 percent in South Africa.

Yet the agricultural industry's contributions to our economy often go unrecognized. I grew up on the Eastern Shore of Maryland, where my parents owned and operated a local restaurant. I spent much of my childhood working in that restaurant, and one of my clearest memories is of Saturday evenings, when the farmers would come to town to stock up on supplies after a hard week's work. Every Saturday, my parents would keep the restaurant open late, waiting for the farmers to arrive. Over the years, I gained a good understanding of the successes and hardships related to agriculture. In my house, we knew that if the farmers were successful, our own business would prosper.

Since then, and the beginning of my career in public service, my contact with farmers from across the State of Maryland has confirmed my strong view that we cannot have real prosperity in this country if the farm sector itself is not sharing in and laying the foundation for that prosperity.

Farmers bear a weighty burden. At the same time that their work feeds millions and includes efforts to cleanse a polluted environment, that work is also part of a very modern industry, which generates billions of dollars in revenue and employs more than 15 percent of our citizens. Yet unlike many other billion-dollar businesses, almost 90 percent of American farms are owned by individuals or families. Family farmers are the backbone of America's agricultural industry and we must ensure that they remain a vital part of American society.

All of this is relevant, I believe, to this year's National Agriculture Week theme, "Growing Better Every Day—Together." Indeed, we all must remain committed to working on behalf of our farmers at all levels of government. Only through such cooperation can we look forward to a future in agriculture which is even more successful than our present.

In the State of Maryland, our attempts at such cooperation are indeed paying off. Recently, I have worked closely with State and local officials to support the efforts of farmers seeking to increase production by bolstering their existing export capabilities and identifying ways in which additional Maryland agribusinesses can enter foreign markets. Maryland is the eastern seaboard's fastest growing exporter. And with a strong and growing trade infrastructure—which includes the port of Baltimore, the World Trade Center, Baltimore-Washington International Airport and other aggressive export-enhancing initiatives—we are hopeful that agriculture, as Maryland's number-one industry, will be able to further tap into the State's increasing number of international opportunities. New forums across Maryland—which we have initiated together with the Maryland Department of Agriculture and our terrific Maryland Secretary of Agriculture Lewis Riley—are helping farmers take full advantage of our expanding capabilities and possibilities in this regard.

We in Maryland take much pleasure in the achievements of our farmers. Generating more than $1.6 billion a year, agriculture employs about 14 percent, or 350,000 of Maryland's workers. Maryland's agricultural industry truly helps the State live up to its often used nickname, "America in miniature." From vegetable production and horticulture in southern Maryland, to the dairy operations and horse farms of central Maryland, to the beef cattle, forestry products and tree fruit in western Maryland, to poultry growing on the eastern shore, Maryland agriculture is indeed diverse and provides a showcase for the nation's agricultural capabilities.

Mr. President, we in Maryland and our nation are very proud of our agricultural industry. There is still much work to be done to ensure a bright future for America's farmers, but as this week's theme suggests, through a strong commitment at all levels of government—together—we can help continue to build such a future.•

TRIBUTE TO CAPITOL LIONS CLUB

• Mr. SMITH of Oregon. Mr. President, ever since the pioneer days, when entire communities would gather to help in the building of a barn, Oregon has had a rich tradition of neighbor helping neighbor. This heritage of neighbor helping neighbor is alive and well in countless Oregon cities and towns.

I rise today to pay tribute to an outstanding example of the difference that can be made through volunteerism. The Capitol Lions Club, along with other Lions Clubs in the Salem-Keizer area, are helping our young people learn about patriotism through a project where small flags are presented to first-grade students.

Capitol Club members buy lumber, cut it into small blocks, drill holes in the blocks, put Lions' decals on them, and place small 4- by 6-inch flags in them. Lions members then go in to classrooms, to present the flag to students, along with a presentation on the importance of a flag, and a brochure on flag history and etiquette.

This year, 2,575 first-graders and their teachers in Oregon public and private schools will benefit from this outstanding program. As one Salem first grade teacher said, "The children are very excited to have their own little flags to take home. They have their special little places for them, I know that it is still real important to them."

Mr. President, I'm proud to be one of those Americans who feel something stir in my heart everytime I see our flag flying in the wind. What better way to ensure a bright future for our country than by ensuring that the timeless value of patriotism is alive and well in our young people.

Mr. President, I am proud to salute the Capitol Lions Club of Salem, OR, for a job well done. I ask that an article from the Salem Statesman-Journal detailing this project be printed in the RECORD, in the hopes that other organizations around the country might undertake a similar project.

The article follows:

LIONS CLUB OFFERS LESSON ON FLAGS

(By Hank Arends)

The members of area Lions clubs have a community project that they believe is worth saluting.

For more years than anyone can remember, club members annually have presented a program on the U.S. flag to first-graders. They give the students their own flag on a wooden base with the Lion's insignia and a brochure on flag history and etiquette.

This year, 2,575 first-graders and their teachers in area public and private schools received the 4-by-6-inch flags, said Ralph Jackson, community coordinator. And the kids loved them.

"They were very excited to have their own little flags to take home," said Katie Keisey, a first-grade teacher at Lake Labish Elementary School.

"They have their special little places at home for them. I know that it is still real important to them."

Those who do the distribution love it, too.

"It makes me feel so good that those little kids were so receptive," said Viola Laudon of the Keizer club.

"They give us such comments as, 'Oh, I love you. Thank you for the flag. I'm taking good care of my flag.'" Laudon said of a large card she received from students at the Keizer Christian School.

"This is an idea that started in Arizona, and somehow we heard about it and thought it might be OK," Jackson said.

The club members try to make their school visits in February, around the birthdays of presidents Washington and Lincoln.

The local clubs and a lot of others get their flag sets from the Capitol Lions Club. Joe Carson is chairman of the production and marketing of 26,000 to 27,000 flags a year in Oregon and as far away as Pennsylvania.

"It is kind of an Americanization project. We came up with the idea 15 to 17 years ago as a fund-raising project," Carson said.

The Capitol members sell the sets at 65 cents each to other clubs and make $6,000 to $7,000 annually for such Lion's projects as assistance to the hearing impaired and blind, Carson said.

Capitol Club members buy the lumber, cut it into small blocks, drill the holes, put Lion's decals on them and finish them. They also reproduce the brochure that goes with each set.

The participating clubs are Capitol, Keizer, Salem Downtown, Northeast, South Salem and West Salem. Frank VonBorstel was area chairman of the flag distribution for at least 10 years.

"We want to interest the young people and provide the chance for them to learn something about patriotism and the flag," VonBorstel said.

Lion Kelly Freels tells of Lions members who served in the Korean War and try to tell the first-graders what the flag means to them.

"They tell them how when they came back to base and saw the U.S. flag flying, they knew they were safe. It also gives us an opportunity to get out in the schools and see what is going on," Freels said.•

KOREAN WAR VETERANS MEMORIAL

• Mr. TORRICELLI. Mr. President, From 1950 to 1953, the United States was in the midst of a bitter war on the Korean peninsula. As the inscription at the base of the Korean War Memorial says, our Nation's sons and daughters answered the call "to defend a country they never knew and a people they never met." And they did so honorably. Today, though, the memory of those who made the ultimate sacrifice is honored once again.

Earlier today, the Korean War Veterans Memorial Honor Roll Kiosk was officially unveiled in a ceremony by representatives of the American Battle Monuments Commission, the National Parks Service, the Samsung Group, and IBM. The Honor Roll Kiosk houses a high technology interactive computer base which contains all the verifiable names from the Korean war theater of those killed in action, still listed as missing in action, and those captured as prisoners of war. Touch screens allow visitors, friends, and family to research the service record of their loved one, and obtain a certificate of honor in the name of that soldier. This was made possible in large part through the generous donation from the Samsung group of companies.

As part of the July 1995 Korean War Veterans Memorial dedication ceremonies, Samsung made a significant contribution to the memorial fund. It was with great honor and appreciation that Samsung recognized the sacrifice and commitment of the United States to the security of the Korean peninsula. It is a commitment America maintains today. We have worked together to establish close relations in defense of common principles and it is because of these shared beliefs that the United States and South Korea remain partners in peace today.

In addition to contributing to the memorial, Samsung also created an educational endowment with the American Legion. Their gift of $5 million to the American Legion will be used to fund collegiate scholarships for the descendants of America's veterans. I commend and congratulate Samsung on their generosity and willingness to recognize the origin in which their success today is rooted. I am proud to have their North American headquarters located in Ridgefield Park, NJ. Lastly, I recognize the honor and dignity with which America's service men and women fought on the harsh Korean field of combat. As the dedication ceremonies remind us, your service—andyoursacrifice—wasnot forgotten.•

PATIENT RIGHT TO KNOW

• Mr. WYDEN. Mr. President, this week my colleagues, Senators KYL, KENNEDY and HUTCHINSON, and I have introduced S. 449, the Patient Right to Know Act of 1997. This legislation outlaws so-called gags in contracts between managed care companies and their licensed practitioners which have limited what doctors can tell patients about their medical condition and all treatment appropriate to their care.

Plain and simple, such gags have been used to limit appropriate medical care. While this is a dollars-and-cents issue for health care organizations and insurers, for patients and their doctors such restrictions on the usual free flow of communication—held sacred since ancient times—literally may be a matter of life or death.

I was pleased to join Mr. KENNEDY in offering legislation on the floor last session which would have ended such restrictions. I also wish to thank Mr. KYL for his support of our legislation last year, and for his diligent efforts in the intervening months to prepare this bill for re-introduction.

I also wish to acknowledge support for this legislation from organizations including the Consumer's Union and the American Medical Association.

We have this broad range of support because the need for this legislation is clear and documented. Three in four Americans now covered by private health insurance receive their care from managed care organizations. Increasingly, Medicaid enrollees and seniors in Medicare are covered by managed care plans through their respective Federal health insurance programs.

Residents of my home State of Oregon boast the highest penetration of managed care in the Nation. The State's Medicaid Program for the most part is organized through private managed care companies. And in Portland, managed care plans service almost 60 percent of the Medicare population.

In Oregon and elsewhere, the managed care presence has grown for reasons that are quite wholesome. Managed care helps enrollees stay healthy through illness prevention programs. They assure coordination of services for persons with multiple ailments. And through systematic, quality-conscious gate-keeping, they work to reduce unnecessary treatments which drive up health care costs.

At the same time, however, some managed care providers have tried to enhance their profit margins by limiting what doctors may tell patients regarding all appropriate treatments, thereby reducing services patients may actually receive. These gags in my view are outrageous. The President through administrative order during the last few months has made such gags illegal in managed care plans operating under Medicare and Medicaid. He has pledged his support for legislation eliminating these restrictions in private health plans as well.

Mr. President, while I am convinced that we need a single Federal standard

on this matter to protect patients in managed care plans I am much encouraged by the voluntary efforts to end such gags recently announced by the managed care insurance industry. My long association with these companies has convinced me that coordinated care providers as a group often are on the cutting edge of developing both efficient and high-quality care for their enrollees. It is entirely appropriate for this provider group to try to police their members on the issue of gag provisions and the protection of doctor-patient communications.

I ask that the text of the bill be printed in today's RECORD.

The bill follows:

S. 449

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 "Patient Right to Know Act".

(b) FINDINGS.—Congress finds the following:

(1) Patients need access to all relevant information to make appropriate decisions about their health care.

(2) Open medical communications between health care providers and their patients is a key to prevention and early diagnosis and treatment, as well as to informed consent and quality, cost-effective care.

(3) Open medical communications are in the best interests of patients.

(4) Open medical communications must meet applicable legal and ethical standards of care.

(5) It is critical that health care providers continue to exercise their best medical, ethical, and moral judgment in advising patients without interference from health plans.

(6) The offering and operation of health plans affect commerce among the States.

(c) PURPOSE.—It is the purpose of this Act to establish a Federal standard that protects medical communications between health care providers and patients.

SEC. 2. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

(a) PROHIBITION.—

(1) GENERAL RULE.—The provisions of any contract or agreement, or the operation of any contract or agreement, between an entity operating a health plan (including any partnership, association, or other organization that enters into or administers such a contract or agreement) and a health care provider (or group of health care providers) shall not prohibit or restrict the provider from engaging in medical communications with his or her patient.

(2) NULLIFICATION.—Any contract provision or agreement described in paragraph (1) shall be null and void.

(3) PROHIBITION ON PROVISIONS.—Effective on the date described in section 5, a contract or agreement described in paragraph (1) shall not include a provision that violates paragraph (1).

(b) RULES OF CONSTRUCTION.—Nothing in this Act shall be construed—

(1) to prohibit the enforcement, as part of a contract or agreement to which a health care provider is a party, of any mutually agreed upon terms and conditions, including terms and conditions requiring a health care provider to participate in, and cooperate with, all programs, policies, and procedures developed or operated by a health plan to assure, review, or improve the quality and effective utilization of health care services (if such utilization is according to guidelines or protocols that are based on clinical or scientific evidence and the professional judgment of the provider) but only if the guidelines or protocols under such utilization do not prohibit or restrict medical communications between providers and their patients; or

(2) to permit a health care provider to misrepresent the scope of benefits covered under a health plan or to otherwise require the plan to reimburse providers for benefits not covered under the plan.

(c) ENFORCEMENT.—

(1) STATE AUTHORITY.—Except as otherwise provided in this subsection, each State shall enforce the provisions of this Act with respect to health insurance issuers that issue, sell, renew, or offer health plans in the State.

(2) ENFORCEMENT BY SECRETARY.—

(A) IN GENERAL.—Effective on January 1, 1998, if the Secretary, after consultation with the chief executive officer of a State and the insurance commissioner or chief insurance regulatory official of the State, determines that the State has failed to substantially enforce the requirements of this Act with respect to health insurance issuers in the State, the Secretary shall enforce the requirements of this Act with respect to such State.

(B) ENFORCEMENT THROUGH IMPOSITION OF CIVIL MONEY PENALTY.—

(i) IN GENERAL.—With respect to a State in which the Secretary is enforcing the requirements of this Act, an entity operating a health plan in that State that violates subsection (a) shall be subject to a civil money penalty of up to $25,000 for each such violation.

(ii) PROCEDURES.—For purposes of imposing a civil money penalty under clause (i), the provisions of subparagraphs (C) through (G) of section 2722(b)(2) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 300gg–22(b)(2)) shall apply except that the provisions of clause (i) of subparagraph (C) of such section shall not apply.

(3) SELF-INSURED PLANS.—Effective on January 1, 1998, the Secretary of Labor shall enforce the requirements of this section in the case of a health plan not subject to State regulation by reason of section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)).

(4) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

(d) NO PREEMPTION OF MORE PROTECTIVE LAWS.—A State may establish or enforce requirements with respect to the protection of medical communications, but only if such requirements are equal to or more protective of such communications than the requirements established under this section.

SEC. 3. DEFINITIONS.

In this Act:

(1) HEALTH CARE PROVIDER.—The term "health care provider" means anyone licensed or certified under State law to provide health care services who is operating within the scope of such license.

(2) HEALTH INSURANCE ISSUER.—The term "health insurance issuer" has the meaning given such term in section 2791(b)(2) of the Public Health Service Act (as added by the Health Insurance Portability and Accountability Act of 1996).

(3) HEALTH PLAN.—The term "health plan" means a group health plan (as defined in section 2791(a) of the Public Health Service Act (as added by the Health Insurance Portability and Accountability Act of 1996)) and any individual health insurance (as defined in section 2791(b)(5)) operated by a health insurance issuer and includes any other health care coverage provided through a private or public entity. In the case of a health plan that is an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974), any third party administrator or other person with responsibility for contracts with health care providers under the plan shall be considered, for purposes of enforcement under this section, to be a health insurance issuer operating such health plan.

(4) MEDICAL COMMUNICATION.—

(A) IN GENERAL.—The term "medical communication" means any communication made by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) with respect to—

(i) the patient's health status, medical care, or legal treatment options;

(ii) any utilization review requirements that may affect treatment options for the patient; or

(iii) any financial incentives that may affect the treatment of the patient.

(B) MISREPRESENTATION.—The term "medical communication" does not include a communication by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) if the communication involves a knowing or willful misrepresentation by such provider.

(5) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act, except that section 2(a)(3) shall take effect 180 days after such date of enactment.

Mr. KENNEDY. Mr. President, I am pleased to join Senator WYDEN in introducing this gag rule legislation and I commend him for his leadership. Last year, a majority of the Senate voted for similar legislation but it was defeated on a procedural technicality.

Gag rules have no place in American medicine. Americans deserve straight talk from their physicians. Physicians deserve protection against insurance companies that abuse their economic power and compel doctors to pay more attention to the health of the company's bottom line than to the health of their patients.

I am pleased that this legislation has strong support from both the American Medical Association and Consumer's Union—because it is a cause that unites the interests of patients and doctors.

One of the most dramatic changes in the American health care system in recent years has been the growth of health maintenance organizations, preferred provider organizations, point of

service plans, and other types of managed care. Today, 75 percent of all privately insured Americans are in managed care. Even conventional fee-for-service plans have increasingly adopted features of managed care, such as ongoing medical review and case management.

In many ways, this is a positive development. Managed care offers the opportunity to extend the best medical practice to all medical practice. It emphasizes helping people to stay healthy, rather than simply caring for them when they become sick. It helps provide more coordinated care and more effective care for people with multiple medical needs. It offers a needed antidote to incentives to provide unnecessary care—incentives that have contributed a great deal to the high cost of care in recent years.

At its best, managed care fulfills these goals and improves the quality of care. Numerous studies have found that managed care compares favorably to fee for-service medicine on a variety of quality measures, including use of preventive care, early diagnosis of some conditions, and patient satisfaction. Many HMOs have made vigorous efforts to improve the quality of care, gather and use systematic data to improve clinical decision-making, and assure an appropriate mix of primary and specialty care.

But the same financial incentives that enable HMOs and other managed care providers to practice more cost-effective medicine also can lead to under treatment or inappropriate restrictions on care, especially when expensive treatments or new treatments are involved.

Too often, insurance companies have placed their bottom line ahead of their patient's well-being and have pressured physicians in their plans to do the same. These abuses include failure to inform patients of particular treatment options; barriers to reduce referrals to specialists for evaluation and treatment; unwillingness to order appropriate diagnostic tests; and reluctance to pay for potentially life-saving treatment. It is hard to talk to a physician these days without hearing a story about insurance company behavior that raises questions about quality of care. In some cases, insurance company behavior has had tragic consequences.

In the long run, the most effective means of assuring quality care in HMOs is for the industry itself to make sure that quality is always a top priority. I am encouraged by the industry's development of ethical principles for its members, by the growing trend toward accreditation, and by the increasingly widespread use of standardized quality assessment measures. But I also believe that basic Federal regulations are necessary to assure that every plan meets at least minimum standards.

Medicare has already implemented such a prohibition. All Americans are entitled to this same protection.

A gag rule provision is also included in a more comprehensive managed care bill that I introduced earlier this session. That bill addresses a number of other issues as well. This prohibition of gag rules is such a simple need and cries out for immediate relief.

This legislation targets the most abusive type of gag rule—the type that forbids physicians from discussing all treatment options with patients and makes the best possible professional recommendation, even if the recommendation is for a non-covered service or could be construed to disparage the plan for not covering it.

This bill specifically forbids plans from prohibiting or restricting a provider from any medical communication with his or her patient.

This is a basic rule which everyone endorses in theory, even though it has been violated in practice. The standards of the Joint Commission on Accreditation of Health Care Organizations require that "Physicians cannot be restricted from sharing treatment options with their patients, whether or not the options are covered by the plan."

We need to act on this legislation promptly. The Senate has the opportunity to protect patients across the country from these abusive gag rules. Action on this legislation is truly a test of the Senate's commitment to the rights of patients and physicians across the country.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on the Executive Calendar:

Calendar No. 42, the nomination of Keith Hall, to be Assistant Secretary of the Air Force.

I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, that any statements relating to the nomination appear at this point in the RECORD, that the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF DEFENSE

Keith R. Hall, of Maryland, to be an Assistant Secretary of the Air Force, vice Jeffrey K. Harris, resigned.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDERS FOR WEDNESDAY, MARCH 19, 1997

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10:30 a.m. on Wednesday, March 19. I further ask unanimous consent that on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then resume consideration of Senate Joint Resolution 22, the independent counsel resolution. I further ask consent that the time from 10:30 a.m. until 11:30 a.m. be equally divided between Senators BENNETT and LEAHY, with Senator BYRD in control of 10 minutes of the Leahy time. I finally ask consent that at 11:30, Senate Joint Resolution 22 be read a third time and the Senate proceed to a vote on passage of that resolution and immediately following that vote the Leahy resolution be read a third time, and the Senate then proceed to a vote on or in relation to Senate Joint Resolution 23, the Leahy resolution. I also ask unanimous consent that there be 2 minutes of debate equally divided in the usual form between those two votes.

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

PROGRAM

Mr. LOTT. For the information of all Senators, on Wednesday, following the hour of closing remarks, the Senate will vote on Senate Joint Resolution 22, the independent counsel resolution. Following that vote the Senate will vote on or in relation to Senate Joint Resolution 23, Senator LEAHY's resolution. Therefore, Senators can expect two consecutive rollcall votes beginning at 11:30 a.m. tomorrow. It is also possible that on Wednesday the Senate will consider a resolution relating to disapproving the decertification, or certification, of Mexico. Additional votes are, therefore, possible following the stacked votes that occur at 11:30. We are also still working to get a time agreement with regard to the nomination of Merrick Garland for the District Court of Appeals. That could

come on Wednesday or Thursday of this week. And, of course, the Senate may also consider any other legislative or executive items that can be cleared.

ORDER FOR ADJOURNMENT

Mr. LOTT. If there is no further business to come before the Senate, I now ask the Senate stand in adjournment under the previous order, following the remarks of the distinguished Democratic leader, Senator DASCHLE.

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

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

THE NOMINATION OF ANTHONY LAKE

Mr. DASCHLE. Mr. President, I ask unanimous consent that the letter submitted by Anthony Lake to the President involving his nomination to be Director of Central Intelligence be printed in the CONGRESSIONAL RECORD at this time.

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

THE WHITE HOUSE,
Washington, March 17, 1997.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I am writing to ask that you withdraw my nomination to be Director of Central Intelligence.

I do so not because of concern that the nomination would be defeated if it ever came to a vote. In fact, there are sufficient votes for confirmation—in both the Select Committee and the Senate.

And not because of concern about further personal attacks. That gauntlet has been run. Every question has been answered.

I do so because I have regretfully concluded that it is the right thing to do.

While we have made great progress in the nomination process over the past month and during last week's hearings. I have learned over the weekend that the process is once again faced by endless delay. It is a political football in a game with constantly moving goal posts.

After more than three months, I have finally lost patience, and the endless delays are hurting the CIA and NSC staff in ways I can no longer tolerate.

I am told that the Chairman of the committee, having now reviewed the positive FBI materials underlying the report on my background investigation, may want other members of the committee to read them. I had doubts about the precedent we have already set in allowing him and the Vice Chairman such access. To bend principle further would even more discourage future nominees to this or other senior positions from entering public service.

I am also told that his committee staff will again insist that NSC staff meet with the committee on terms that White House Counsel will find unacceptable, leading to a further stalemate on that issue as well.

In addition, the story today about the activities of Mr. Roger Tamraz is likely to lead to further delay as an investigation proceeds.

All of this means a nomination process that has no end in sight. We have been proceeding on the assumption that there would be a vote this week. It now seems certain the committee deliberations will extend past the recess until after Easter, and probably longer. In addition, even after the nomination receives a vote in committee, whenever that might be, there is no prospect for a near-term vote on the floor and every chance it will be extended as long as your political opponents can do so.

I have gone through the past three months and more with patience and, I hope, dignity. But I have lost the former and could lose the latter as this political circus continues indefinitely. As Senator Richard Lugar, perhaps the most respected member of the Senate, has said with regard to my nomination and its treatment, "The whole confirmation process has become more and more outrageous." It is nasty and brutish without being short.

If this were a game, I would persist until we won. My colleagues tell me to stay the course, lest I be perceived the loser or scared of a further fight. I'm not.

But this is not a game. And this process is not primarily about me. It is about the future of the Central Intelligence Agency. The Agency, once again, is becoming politicized. The longer this goes on, the worse the damage. The controversy and its effects could linger on after my confirmation. The men and women of the CIA deserve better than this.

The process is also impugning, through a new form of guilt by association, the names of NSC staff members who have done nothing wrong. So long as my nomination is mired in partisan politics their reputations will be, as well. It is ironic that the staff, which in every case took the right positions in keeping national security decisions and domestic politics separate, as I had encouraged them to do, is now the staff bearing the brunt of criticism because it didn't go beyond its own responsibilities to manage others' business as well. This is a staff that was doing its job properly. There was never any disguise of wrong-doing; they were consistently doing right in the advice they offered, while concentrating on the large daily agenda of important national security issues before us. I am very proud of our work on these issues and very proud of our staff members.

In unprecedented fashion the nomination is also politicizing the Senate committee.

And I have noticed that, in numerous ways, it is poisoning the attitude of members of the Agency towards the committee.

Most of all, the way this process has been conducted would make it difficult for me to work with the committee in the ways that a Director of Central Intelligence must do—and as I had hoped to do.

I am deeply grateful to you for your strong support, for your encouragement over these difficult months, and—most of all—for the opportunity to serve over the past four years. I am very proud of your foreign policy record and of whatever contributions I made to it.

I have greatly appreciated the support of Senators McCain, Lugar, Lieberman, Kerrey, Kerry, Kennedy and many others, like John Deutch. I have been moved by the principled position of a large number of Republicans like John McCain, Warren Rudman, Richard Lugar, Robert Gates and Peter King. And I am especially grateful to the volunteers from the NSC who have put so much into this, as well as officials of the CIA. I am sorry that their efforts were not better rewarded.

I have believed all my life in public service. I still do. But Washington has gone haywire.

I hope that, sooner rather than later, people of all political views beyond our city limits will demand that Washington give priority to policy over partisanship, to governing over "gotcha." It is time that senior officials have more time to concentrate on dealing with very real foreign challenges rather than with the domestic wounds that Washington is inflicting on itself.

This is a very difficult decision. I was excited about this new opportunity to serve. I had developed firm ideas on how to bring further reform to the Agency and had no doubt about my capacity to implement them. I was ready to devote four years to a tough new challenge. I truly regret that I will not have the opportunity to seize it.

Sincerely,

ANTHONY LAKE.

Mr. DASCHLE. Mr. President, I do so simply to comment on the very unfortunate set of circumstances that led to the decision by Mr. Lake to submit this letter.

I have had the opportunity to work with Tony Lake now for some time; first, as a Senator; and, second, as leader. I must say that I do not know that I have ever met anybody more decent, more committed, more dedicated to public service than is Tony Lake. Our Nation owes him a big debt of gratitude for his contributions, and a great level of appreciation for the many ways in which he has already served his country. I only hope that he will continue to choose to do so in spite of these extraordinary circumstances.

Mr. Lake was asked to be the Director of Central Intelligence by the President of the United States. It has been the prerogative of the President to name people within his administration, going all the way back to George Washington. Of course, there are times when the Senate in its role as a body to serve with advise and consent that it has disagreed with the President about a particular nomination, or about a particular member of a given administration. But I must say in all of history I challenge somebody to come up with more flimsy evidence with which to destroy the character of a candidate for public office appointed by the President as grievously as what I see has happened to Tony Lake in the last several months.

Mr. Lake was not even given the opportunity to be voted on, never presented an opportunity for a vote in the committee, never presented with an opportunity to be voted on on the floor.

I was asked this morning if this is some retribution for John Tower, or Robert Bork. My answer was that I hope our Republican colleagues are not that cynical. I hope there is some other motivation for doing to Tony Lake what they did over the last couple of months. It is very unfortunate. And it is sad, Mr. President. A man of his integrity, his character, was treated so shabbily by the committee that is supposed to be as devoid of politics as any

in this institution. I think they owe him an apology. At least they owed him a vote.

Under these circumstances, I think he made the right decision. But I am deeply troubled. I am troubled by the way it was handled. I am troubled by the insinuations and allegations all printed on the front page of every newspaper as fact. I am troubled by his inability to be given the opportunity to defend himself adequately against this never-ending list of additional allegations and questions going over old material time and time again almost as if it was an inquisition.

So, Mr. President, it is a sad day for this body. It is a sad day for the Intelligence Committee. And it certainly is a sad occasion for those seeking to serve our country in the capacity and the level as Director of Central Intelligence.

I don't know what recommendation I would give to some other candidate who now may consider this particular position. What advice do you give someone who puts himself forward knowing full well that there will be raw FBI data available to Members, and, if the chairman of the committee had his way, to all Members? What do you tell someone who has laid himself out? What do you tell the next person who is expected not to subject himself or herself to the same set of circumstances?

Mr. President, this institution needs to restore civility, needs to come up with a way with which to take the meanness out of our process, whether it is a legislative issue or a nomination. Civility has to be brought back into this process. I hope we will start soon.

INDEPENDENT COUNSEL

Mr. DASCHLE. Mr. President, I don't know that I will have an opportunity tomorrow morning to discuss another matter, and I want to do so just briefly.

We will have the opportunity to vote, as the distinguished majority leader has indicated, on two resolutions tomorrow. My colleagues have done a good job of explaining what the circumstances are. But I hope everyone who will watch the debate tomorrow will try to understand the circumstances involving the two resolutions and what this issue is all about.

There are four factors here that I want to briefly mention.

The first factor is the timeliness of this resolution. I am deeply disturbed that on the very day that the President found himself on the operating table, our colleagues chose to file a resolution demanding that there be an independent counsel investigating the President. Moreover, on the very day the President leaves for Helsinki to begin negotiating extraordinarily important matters with heads of state, this body has chosen to vote on the independent counsel resolution. Taste and timeliness were certainly not factors in making the decision to bring about the resolutions under these circumstances.

The second issue involves necessity. Certainly necessity wasn't a matter of concern here either. In accordance with the law, the Judiciary Committee may send a letter to the Attorney General. In good faith I think both sides worked to try to find a mutually acceptable letter, and that was impossible. So, as I understand it, three letters were actually sent. But that started the process under law. That is what is required. But that wasn't good enough for some of our colleagues. For whatever reason, our colleagues then chose to say, "Well, in addition to the legal requirements, we are now going to do something extralegal. We are going to do something that was actually criticized on this floor when the independent counsel legislation was debated."

We considered whether we ought to have a debate on the floor about requiring or asking for an independent counsel. And the decision was made on a bipartisan basis. In fact, Senator Dole was very involved at that point in this debate, and the agreement was that having Congress vote on the need for an independent counsel for a particular investigation would politicize the process.

So, for that reason, we agreed that it should not be a function of the Senate floor, but that it ought to be a legal process confined to the Judiciary Committee. That is the way the law was passed.

Yet, what do we do now? What do we find ourselves faced with? Not just a resolution calling for the Attorney General to consider under the law the available evidence; the Republican resolution goes even beyond that. It says, first of all, that the Judiciary Committee letter is not adequate, and, second, that we are going to use a resolution to dictate to the Attorney General that she ought to appoint an independent counsel—in total violation of the intent and the spirit of the law we passed just a few years ago. So the intent, Mr. President, is questionable to say the least.

The third issue is scope. We had a good debate about scope last week, and it became clear that a significant majority of the Members on both sides of the aisle said if anything is going to be investigated, then we better investigate everything. And that, indeed, is what is called for in the independent counsel law, which includes the alleged misdeeds of senior executive branch officials and Members of Congress.

Curiously, once more, the Republican resolution, just as it did last week initially, specifically limits the scope of the requested investigation to the President. Our resolution calls for a review of all of the reported improprieties to determine the severity of the problem. Our resolution calls for the scope to be as broad as the one that was set out in the Governmental Affairs resolution last week and adopted in the Senate by a vote of 99 to 0.

So we will have an opportunity tomorrow to vote on scope, to vote on whether or not we limit the independent counsel's investigation just to Presidential activity or whether—in the name of fairness, balance, and the real intent of the law—everything is on the table. To vote no on the Democratic resolution is to say, "No, we do not want an independent counsel to look at Congress." So scope is a very critical issue, and that will be the subject of a good deal of debate and scrutiny as we go forth in the coming weeks.

Finally, there is the question of whether or not it ought to be our purpose to dictate at all what direction the Attorney General should take. How is it that we put ourselves in a position to say we know better than she does the circumstances that might dictate the appointment of yet another special prosecutor? She has 25 FBI agents and a grand jury investigating all of this. She is reviewing the matters, I am sure, on a daily basis. What do we have? So far, we only have newspaper reports and the reports on all of the nightly networks. It is on that basis that some of our colleagues have already concluded an independent counsel is warranted.

It is arrogant in the least to say we know better than the Attorney General on this issue and to dictate to her that she should appoint a special prosecutor in spite of whatever facts she may have available to her today.

So, Mr. President, with regard to all four of these questions, I hope our colleagues will take great care as they vote tomorrow morning.

There is one other procedural matter unrelated to substance that I think is also curious. The resolution offered by our colleagues on the Republican side is a congressional resolution requiring a vote in the House and a signature by the President of the United States. That is curious. Why is it that this body would offer a resolution asking for an independent counsel and then put it in a form which requires a Presidential signature? I am skeptical about the motivation in that regard as well.

For all these reasons—taste, timeliness, scope, attitude, not to mention the resolution itself in the form that it takes—I certainly hope my colleagues will vote against the very maligned, poorly worded, extraordinarily ill-timed, narrowly drawn resolution offered by our colleagues and simply join us in restating what current law already requires. It is for the Attorney General to make that determination

and, if she makes it, to recognize that scope ought to be as broad as she needs to make it, even including Congress, if that may be required.

I yield the floor and I, given the resolution already adopted, call upon the Chair for the final issuance of the day.

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10:30 a.m. Wednesday, March 19, 1997.

Thereupon, at 7:05 p.m., the Senate adjourned until Wednesday, March 19, 1997, at 10:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate March 18, 1997:

DEPARTMENT OF DEFENSE

KEITH R. HALL, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE AIR FORCE.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.