SENATE—*Thursday, April 10, 1997*

The Senate met at 9:31 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:

Here is some really good news to start our day. From Deuteronomy 31:6: *Be strong and of good courage, do not fear nor be afraid . . .; for the Lord Your God He is the one who goes with You. He will never leave or forsake you.*

Almighty God, Sovereign of our Nation and Lord of our lives, Moses' words to Joshua ring in our hearts. We claim their fear-dispelling power. You have promised to be with us today. Help us make this day one constant conversation with You. Whisper Your instructions for each challenge. We commit ourselves to be attentive. Show us Your will and way. We gratefully remember the times You helped us in the past and our hope for today and the future is renewed.

O God of courage, put steel in our spines, vision in our minds, and hope in our hearts. There are things we cannot do today without Your power and there are other things we would not even think of doing because You are present. So give us the will to say "yes" to what You clearly guide and "no" to what we know You would not bless. In the name of the Way, the Truth, and the Life. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT, is recognized.

SCHEDULE

Mr. LOTT. Mr. President, I am sorry I am a minute late. I will not make a practice of that, Mr. President. We like to start right on time.

Today the Senate will resume consideration of Senator THURMOND's amendment to the substitute amendment to S. 104, the Nuclear Waste Policy Act. We are still hopeful that an agreement can be reached to enable us to complete action on this important bill in a reasonable timeframe. At any rate, we will continue to go forward on it, and we are making progress. I appreciate the cooperation of Senators on both sides of this issue for their cooperation.

A cloture motion was filed last night on the committee substitute; however, if an agreement is reached, that cloture vote will, hopefully, not be necessary, and I assume it will not be. If an agreement is not reached, the cloture vote will occur on tomorrow morning.

As a reminder, under rule XXII, Senators have until 1 p.m. today in order to file first-degree amendments to the substitute amendment. Rollcall votes are possible throughout today's session of the Senate, and into the evening if necessary. I do expect some votes today, but the most important thing is to find a way to come to an amicable agreement on how to conclude this legislation. That is our focus, and, again, we are making progress in that effort. As always, Senators will be notified as to when any votes are scheduled.

MEASURE PLACED ON THE CALENDAR—S. 543

Mr. LOTT. Mr. President, I understand there is a bill at the desk due for its second reading.

The PRESIDING OFFICER (Mr. INHOFE). The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 543) to provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

Mr. LOTT. Mr. President, I object to further consideration of this matter at this time.

The PRESIDING OFFICER. The bill will be placed on the calendar.

Mr. LOTT. I yield the floor.

Mr. REID. Mr. President, before the able majority leader leaves the floor, would you go over once again—you said who has until 1 o'clock to file amendments?

Mr. LOTT. All Senators, under rule XXII, have until 1 o'clock to file first-degree amendments.

Mr. REID. Fine. I misunderstood.

NUCLEAR WASTE POLICY ACT AMENDMENTS

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 104, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 104) to amend the Nuclear Waste Policy Act of 1982.

The Senate resumed consideration of the bill.

Pending:

Murkowski amendment No. 26, in the nature of a substitute.

Thurmond-Hollings amendment No. 27 (to amendment No. 26) to provide that the Savannah River site and Barnwell County, SC shall not be available for construction for an interim storage facility.

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, on behalf of Senator WELLSTONE, I ask unanimous consent that Brian Symms, a congressional fellow on his staff, be permitted the privilege of the floor during consideration of S. 104.

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

Mr. LOTT. 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. MURKOWSKI. 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. MURKOWSKI. Mr. President, it is my understanding that Senator THURMOND has an amendment that is pending at this time, and that he would like to dispose of that amendment?

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 28 TO AMENDMENT NO. 27

Mr. REID. Mr. President, I send an amendment to the desk. This amendment is being offered on behalf of Senators REID and BRYAN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for himself and Mr. BRYAN, proposes an amendment numbered 28 to amendment No. 27.

At the end of the matter proposed to be inserted, add:

"Notwithstanding any other provision of this bill, transportation of spent nuclear fuel or high-level radioactive waste under the provisions of this bill to a centralized interim storage site or to a permanent repository shall not cross any state line without the express written consent of the governor of the state of entry."

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, during the last several years, in fact, during the entire time I have been in Congress, there has been an explosion of comment about returning matters to the States. This has been evidenced in a number of pieces of legislation we passed, including those in the last Congress dealing with immigration reform and especially that dealing with welfare reform.

Matters have been returned to the States. Why? Because there have been feelings of many that there was an accumulation of power here in Washington that had taken away from the basic foundation of our constitutional

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

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form of Government. Too much power was being developed and too much power actually existed in Washington, DC, in the Federal level of Government.

Mr. President, as a result of that, we, most everybody in Congress, have felt that we needed to return things to the States and have the chief executive of that State have the say of what goes on within the confines of that State.

That is what this amendment deals with. If you are going to ship the most poisonous substance known to man across State lines, then, of course, you should get permission of the Governor.

Many also in the majority have proclaimed that the 105th Congress, above all other Congresses, be a States rights Congress, the mantra of those avowed supporters of States rights, grounded in the notion that Congress has no right to impose costly and burdensome laws, rules and regulations on the States. In fact, I joined with the assistant leader of the majority, Don NICKLES, in sponsoring an amendment to the regulation reform bill that came from the House last Congress, the Nickles-Reid amendment. That passed. In effect, what that amendment said is that Federal agencies are promulgating too many regulations without Congress having any authority or say as to what regulations they have promulgated.

What the Nickles-Reid amendment said is that if there is a regulation promulgated that has a certain financial impact, then it does not go into effect for 60 days. If it has less than a $100 million economic impact, it goes into effect immediately, but we have 60 days to review it. That was only one example of how we felt that Congress should have more say in returning power to the people.

Mr. President, the mantra of the States rights Congress is grounded in the notion that Congress has no right to impose these costly rules, laws and regulations on States. I respect this point of view, and that is the reason I joined with my friend, the senior Senator from Oklahoma, in sponsoring this legislation that passed without a single dissenting vote. It did not have a dissenting vote when we offered the amendment here; there was not a single dissenting vote when it came back from the House in conference.

That said, it is ironic that some who consider themselves stalwart supporters of States rights are going to support this underlying legislation. If there is ever a bill that abrogated abuse of States rights in a more terrible manner than the underlying legislation, I do not know what that would be. It seems that when it comes to issues involving the most basic of States rights, the right to be free of living with deadly nuclear waste, this Congress does not care. We, Mr. President, are directing this amendment not to the States that have to live with nuclear waste, we are directing it to the States that are concerned about their highways and railways transporting this poison.

It seems that we should care. How can anyone who considers themselves to be a supporter of States rights vote against this amendment? It is clear that States rights then, if, in fact, they do not vote for this amendment, is as hollow as the arguments that they could make on any specious legislation. The next time we hear moving oratory about the sanctity of the tenth amendment and the need to protect States rights, I will simply refer to this second-degree amendment and ask where those strong voices were on this issue involving the most fundamental of States rights.

This amendment offered by this Senator and my colleague from the State of Nevada is something that every Senate office should listen to and listen to very closely. Remember what we are saying is that if you are going to transport nuclear waste through a State, the Governor should give the signoff. Why do I say that? What we are doing is saving this country a lot of problems by saying, "Let the Governors sign off." Nuclear waste will not be transported in the United States. It does not matter how many bills we pass, it will not happen.

I was in the House of Representatives this morning talking to one of the Presiding Officer's and this Senator's former colleague when we served in the other body, and he said to me, "You know, I voted with Congress on Vucanovich," who supported this Senator's position on nuclear waste. He said, "I did it for a simple reason. If everyone says that nuclear waste can be transported safely, then, obviously, it is going to be safe where it is to begin with. Why not leave it where it is?"

The reason I say we are doing this country a favor with this amendment is that nuclear waste is not going to be transported. Look at the experiences they had in Germany recently with the transfer of almost 500 canisters of high-level nuclear waste. They wanted to haul this 300 miles to a remote place in Germany. We are talking about hauling it more than 3,000 miles.

What did it take in Germany to haul this nuclear waste 300 miles? It took 30,000 police and military personnel. The average speed was 2 miles an hour. It cost the German Government over $150 million. The German Parliament has said, "We're not going to do this anymore. We are going to review what we are doing."

As we speak, Germany's Parliament is reevaluating the entire program. They shipped 8 of 420 casks of high-level nuclear waste, and they have given up; 30,000 military and police personnel, 107 injuries, demonstrations everyplace, people dug holes in the road and put barriers over them so the trucks would fall in them when they came back. It was absolute civil disobedience at its worst. Why? Because the people of Germany are human beings, and they do not want this stuff hauled unnecessarily. That is what this amendment is all about.

The two people representing the very fine State of South Carolina were Governors of that State. Two of the most—I am trying to find the word. When the history books are written about the U.S. Senate, the two Senators from South Carolina will be talked about, the senior Senator and the junior Senator. They have made history in this institution. But they also, before they came here, were Governors. They know what the power of the Governor should be.

Shouldn't the Governor of a State, a sovereign State under our Federal system of Government, have the right and the opportunity to say, "We will let this stuff travel through, but I'm going to have to sign off on it first"? If the Governor of the State does not have that right to make sure that his citizens are safe and free of harm and that they can have enough personnel—in the instance of Germany, it took 30,000—shouldn't they have that right? That is what this amendment is all about.

I do believe, without any question, we are doing a service with this amendment. We are doing a service because if you are going to believe in this form of Government that we have, we have a central whole divided amongst self-governing parts—that is the definition of our Government under the Constitution, a central whole divided amongst self-governing parts—those self-governing parts are States, and shouldn't they have the right to determine whether or not we are going to haul this stuff willy-nilly through the States? That is what this amendment is about. It is simple and direct. It says, if you are going to haul nuclear waste, let the Governor of the State through which you are going to haul it sign off on it.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The junior Senator from Nevada.

Mr. BRYAN. I thank the Chair. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BRYAN. I thank the Chair. Mr. President, let me add, if I may, the significance I find in this piece of legislation that we are offering today. This has for too long a time been characterized strictly as a Nevada issue, and many of my colleagues have, obviously, focused less time on this than my senior colleague and I, because Nevada is targeted as the interim storage facility in this piece of legislation. But the

point that we have sought to make is that there is a national impact in the transportation of 85,000 metric tons—that is the emphasis, 85,000 metric tons—of nuclear waste in an order of magnitude never before seen. There have been over the years 2,500 shipments, but we are talking about 17,000, and as the Presiding Officer may recall from our debate earlier on this, those earlier 2,500 shipments involved a relatively short distance of about 900 miles or less.

By reason of the proximity of the Nevada test site, as contrasted from the origin of the nuclear waste itself at the reactors, we are talking about thousands of miles. I think my colleagues will recall that we are talking about rail and highway corridors that go through 43 States. Forty-three States are involved. So it is not just Nevada. Forty-three States.

To give you some idea of the size of each cask, although they have not yet been designed, what is contemplated is that a rail cask would weigh 125 tons and a truck cask would weigh 25 tons. You will recall that, in terms of the level of potential radioactivity, that is the equivalent of 200 bombs the size of Hiroshima. So many may wonder why we are suggesting that we do this with respect to high-level nuclear waste shipments. It is because the order of risk is so much greater and the consequences of failing to provide for it is much, much greater.

The Presiding Officer represents the great State of Oklahoma. You will note that in Oklahoma, we have at least three different corridors that would be used. These are all rail corridors that would come through the State of the distinguished Presiding Officer. What we are simply saying is, "Look, can a Governor have a greater responsibility and obligation to the citizens of the State that he or she represents than to make sure that adequate measures are taken to protect the health and safety of the citizens of that State?"

Mr. President, as you know, I was honored by the citizens of my own State to have been elected Governor twice. I have some idea of the responsibilities that a Governor undertakes, and there can be no greater responsibility than a Governor advocating on behalf of the people he represents to make sure that any actions that are within his or her power are done for the purpose of protecting the health and safety of the citizens.

So that is what we are doing. Not only is the Presiding Officer's State involved, we have Arizona, New Mexico, Texas, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Tennessee, Missouri, Kansas, Colorado, Utah, California, Washington, Oregon, Idaho, Wyoming, Nebraska, Iowa, Minnesota, Illinois, Wisconsin, Michigan, Indiana, Ohio, West Virginia—we can go on and on and on—Pennsylvania, New York, Massachusetts, Connecticut, to go on and on. My point is that each of these Governors should have the ability to make sure adequate safeguards are taken.

Let me just say, because this is an issue that has occurred out in the West and may not be widely publicized and it came to a boiling point during the recess, there is a series of shipments which are being received on the west coast from overseas nuclear reactors. They would come in through the Port of Oakland in California, ultimately to be located at the facility in Idaho. California's Governor complained vociferously that there had not been adequate notice, not adequate safeguards taken, and so he has filed, on behalf of the people of California, a lawsuit, or has directed the attorney general to do so, to challenge the adequacy of some of those provisions. My senior colleague, Senator REID, pointed out the problems that have occurred in Europe. So these are not theoretical or hypothetical, these are real-life circumstances, and Governors ought to have the ability to do that.

All we are saying is, look, each Governor must be satisfied that before a shipment goes through his or her State that safeguards are needed to protect the citizens of that State in literally hundreds of thousands of cities that this nuclear waste would go through. That strikes me as not being unreasonable.

We talk a lot in this Congress of returning power to the States, not assuming all wisdom resides on the banks of the Potomac. Indeed, those who work in the Federal bureaucracy are vested with no greater wisdom than those who toil on behalf of a State government at the State level. I hear that time after time in many different contexts as we debate legislation on the floor.

There is no greater opportunity that a Member can have than to say, in effect, "I am implementing a policy that provides to each of the States that which I have philosophically espoused, namely, giving the Governor, as the chief executive officer of that State, the ability to undertake the necessary protections." I think that is a reasonable approach. I think it is something that every Governor would want. It is not partisan. Democratic Governors and Republican Governors alike would certainly want to be protected in terms of the 17,000 shipments that would pass through their States, through thousands of cities in America, small communities, and that is not unreasonable. And because these routes are identified here, as we are pointing them out—there is no great mystery—so that the State Governors could be contacted long in advance of any proposed shipment to work out the necessary health and safety precautions.

I say to my colleagues that, however they come down on S. 104, this certainly is a measure that everybody ought to embrace because this is health and safety and it provides the ultimate protection for a Governor to take care of those persons in his or her State to the best of that Governor's ability.

I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Nevada.

Mr. REID. Mr. President, we need to make it very clear that this amendment, this second-degree amendment, is not directed toward Nevada. It is directed toward this sovereign Nation made up of 50 separate States.

For example, Governor Beasley of South Carolina, before nuclear waste moves through that State, would have to sign off saying, yes, it should travel through the State of South Carolina. Governor Hunt of North Carolina would have to sign off saying, yes, it can travel through the State. Governor O'Bannon of Indiana, Governor Romer of Colorado, Governor Voinovich of Ohio—and we would go through the list—allowing nuclear waste to travel.

I would say to people who espouse some degree of returning matters to the States, there is no better and more direct example than this. What we are saying is that the Governor of the State, the Governor of a sovereign State, one of the 50 sovereign States in this Nation, should have the right to determine if they want this stuff carried through their State. It is as simple as that.

If it is in the best public interest of that State, the Governor will allow it. It would be better, I think, that Governor Beasley, Governor Hunt, Governor Romer, Governor O'Bannon, Governor Voinovich, Governor Wilson, Governor Miller would sign off rather than some nameless, faceless bureaucrat making the decision.

So I think Members of this U.S. Senate are going to be put to a test today, a very simple test. Do they really believe in States rights or do they not?

There will, of course, be one of the very clever things that has developed, with precedent, over here—a motion to table. The managers of this bill will move to table our second-degree amendment. And they will say to their friends, "Well, you're not really voting against States rights. This is a procedural matter. You'll never be bothered at home." Well, there is no doubt in my mind that this will be something that constitutional bodies—those who believe in the constitutional form of Government, I should say, will target this as a very important States rights vote. This is it. You cannot run and hide from this. The motion to table will not do it.

So I hope that everyone will understand that this is a basic States rights

issue. If you want to carry, transport or haul nuclear waste through a State, all you have to do is go to the Governor and say, "Governor, it's in the public interest to do this. It's very important that you allow nuclear waste to travel through your State. And you can weigh the good and the bad." Let the Governor decide, not somebody who works in the bowels of the Department of Energy down here on Independence Avenue.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 28, AS MODIFIED

Mr. REID. Mr. President, I ask unanimous consent that there be a substitute allowed for the second-degree amendment.

The PRESIDING OFFICER. Is there objection to modifying the second-degree amendment?

Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 28), as modified, is as follows:

At the end of the matter proposed to be inserted, add:

"Notwithstanding any other provision of this Act, no transportation of high level waste or spent nuclear fuel to a facility authorized under Section 205 of this Act shall take place through a State without the prior written consent of that State's Governor."

Mr. MURKOWSKI. 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. MURKOWSKI. 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. MURKOWSKI. Mr. President, I wonder if the clerk would read the amendment, the substitution, to clarify where we are here.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk read as follows:

AMENDMENT NO. 28, AS MODIFIED

At the end of the matter proposed to be inserted, add:

"Notwithstanding any other provision of this Act, no transportation of high level waste or spent nuclear fuel to a facility authorized under Section 205 of this Act shall take place through a State without the prior written consent of that State's Governor."

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

Let me refer to a reality, and that reality is behind me in the chart, because all of us should recognize what is happening in the United States now.

This is where nuclear fuel is moving. It is moving through all of the 48 States with the exception of Florida and South Dakota. Now, that is just a harsh reality. In this timeframe from 1979 to 1995, there have been 2,400 movements of nuclear material. They moved safely; they moved over the transportation system of our highways, as well as our railroads, as indicated in the red.

This is a very dangerous amendment that would basically ensure that potentially no nuclear waste anywhere would move to any storage or disposal.

Let me highlight what it does in the next chart, because in the next chart we have the locations of spent nuclear fuel and radioactive waste in the United States. And in it is, Mr. President, 81 sites in 40 States. Is it safer to leave that waste in 80 sites in 40 States or move it?

This is what this amendment is all about. This is a desperate tactic on the part of my good friends from Nevada who simply do not want the waste put in their State. That is the bottom line, make no mistake about it.

But we have an obligation here. We have a problem here. We are either going to solve it by defeating the second-degree or we are going to be left with this situation that has been created over the last couple of decades.

That is the harsh reality of where we are. This amendment grants to the Governor of a State the power to preclude any specific shipments of spent fuel or nuclear waste through that State to the temporary proposed shipment site in Nevada out in the desert.

Let me show you where we propose to put this. We propose to put the temporary repository out in Nevada where we have had a series of tests for some two decades. I have the chart coming in. It is important that we grasp the significance of just what this amendment would do if they are successful in passing it. On the face of it, it may have some appeal, particularly to Senators like myself who have always been staunch supporters of States' authority to determine matters which are within their State borders.

Now here, Mr. President, is where we propose to put the temporary repository. This is an area in Nevada used previously for more than 800 nuclear weapon tests over an extended period of time. The other option, Mr. President, again, if you look at the other chart, is leave it where it is. If we take action today to support the second degree amendment, we are killing any effort to address a problem that we have put off far too long. When I say "far too long," Mr. President, we have contracted to move this waste next year from the reactors where it has been stored as it is exhausted from the nuclear powerplants, and the liability associated with this is going to be substantial. It is estimated to be somewhere between $40 and $80 billion.

The appeal, as I said, that is perhaps of some significance, regulation of transportation of any type of hazardous materials across State lines, has long been one of the primary examples of appropriate exercise of Federal jurisdiction. I question the constitutionality of prohibiting the movement on highways, but that is neither here nor there. The principles of federalism on which this country was founded recognize that the States' authority to govern matters within their borders, must give way to Federal authority when an issue is one of national scope reaching beyond any particular State borders. Interstate shipments of hazardous waste such as spent fuel and other forms of nuclear waste clearly require a uniform framework of requirements that ensure safety but also insure that the shipments can reach their destination.

Transportation of these materials is currently regulated under the Hazardous Materials Transportation Act, known as HAZ-MAT. That law is an intricate system for controlling hazardous materials and shipments across the United States. The HAZ-MAT system was adopted to uniformly regulate all materials regardless of type, and in each case regulation of these materials allows the States limited authority to conduct certain inspections and other activities related to the shipment.

Never do the HAZ-MAT regulations, however, allow a Governor to veto the shipments altogether. That is what this second-degree amendment would propose to do. If each State were allowed to impose its own set of safety requirements, it would very likely prove impossible to move any hazardous material from one place to another. So the alternative is to leave it where it is.

This amendment is even more restrictive than that. It would allow virtually a veto over any Federal shipments of nuclear spent fuel or other nuclear waste through any State whose Governor chooses to exercise the authority, even if all safety requirements are met. Again, Mr. President, I implore those that have questions about this to recognize that these Governors want to get this waste out of their State. That is what Senate bill 104 is all about, providing a place to put the waste.

Now, my friends from Nevada, if they were able to prevail, we simply could not move the waste. Is that what the States want? Is that what the Governors of these States want? No, they do not want it left in their State. They want it to be moved to a safe place that has been proposed, which is, obviously, the desert out in Nevada.

Now, this amendment would allow any single State to thwart a solution to a national problem, the very situation that was intended to be precluded by the Framers of the Constitution.

Even though the original Senate bill 104 included adequate measures to guarantee safe transportation of nuclear spent fuel, we have accepted additional provisions in the substitution regarding safety and training, to assure safe shipments.

It seems obvious that safety is not the real issue here. The real interest here and the real issue here is simply Nevadans, the Nevada Senators, do not want it in their State. I am sympathetic to that. But it has to go somewhere. This is the best place, out here in the desert, where, again, we have had more than 800 nuclear weapon tests over the last 50 years. That is the best place we have found in the United States. If we want to move it outside the United States, that is another matter. But who will take it? We do not have a place in the Atlantic to put it. People in the Pacific certainly do not want it. Scientists have said you can put it in the sea bed, perhaps, but that is not going to be a possibility. This is the possibility. This is all we are talking about. This is the crux of it. We either put it there or we leave it where it is.

That is something in this debate that my friends from Nevada have really not addressed. We have a permanent repository out here under construction. That repository is not going to be ready until the year 2015. Our pools are filling up. We face a crisis relative to the ability of our nuclear industry to continue to generate the 21 to 22 percent of power that is generated by nuclear energy in this country, when their pools are filling up with the high level of waste that the Government committed 15 years ago to take and has to start taking next year. The reality is that some of those reactors probably will have to shut down because they are out of space. Somebody says, "Well, make more space." The States have control of the licensing, and rightly so. Those pools where the high-level waste is stored were not designed for permanent storage. They were designed for temporary storage, until such time as the Federal Government would take the waste.

You might say, why is the Federal Government so generous in just taking the waste? I remind the President that $13 billion has been paid to the Federal Government by the ratepayer, collected by the nuclear power companies, paid to the Federal Government by the ratepayers, and now the Federal Government is in breach of its contract. Some people around here say, "Well, that is no big deal. If you are going to contract with the Government, that is just an incidental." I think that is a terrible precedent to take.

The Government is in breach of the contract beginning next year. There are going to be damages. The taxpayer will pick it up. How big? I do not know. Mr. President, $59 billion was the last estimate for damages. We have to get on with this. The national interest of providing safe central storage of disposal of nuclear spent fuel could never, ever, be achieved if this amendment is adopted. I submit that this is the only purpose for which its proponents have offered it.

Again, I refer to the chart. If you look where it is, it is all over. There are 80 sites in 41 States. If you don't want to leave it there, you have to move it. This second-degree amendment would prohibit you from moving it. It would keep it where it is.

So, I implore all Senators representing the States that are affected here to recognize what this amendment would mean. This amendment really does not pass the straight-face test, if we are serious about resolving the nuclear waste issue. As a consequence, I think it speaks for itself.

I am going to read for the RECORD an editorial that appeared April 8 in the Chicago Tribune. The headline is, "Honoring a Pledge on Nuclear Waste."

From the start of commercial nuclear power, Washington decided to make the storage of high-level radioactive waste a Federal responsibility.

They are right. We did. We made it a Federal responsibility. We voted on it. We passed it.

Fourteen years ago, Congress ordered the Federal Government to begin taking control of nuclear waste in 1998 and storing it at a permanent storage site in Nevada.

Where? In Nevada, right there, out in the desert.

Despite spending billions and extending deadlines, Washington won't be ready to accept any waste for another 10 years or so.

As a matter of fact, it is the year 2015, according to the previous Secretary of Energy, Hazel O'Leary.

Meantime, the stuff keeps piling up at nuclear power plants in Illinois and around the Nation.

The Senate this week can begin to correct this unconscionable malfeasance. It will consider a bill to build a temporary waste storage facility in the Nevada desert, about 100 miles from Las Vegas. It passed similar legislation last year, but not by enough votes to override a threatened veto by President Clinton, who agreed to oppose it if Nevada's Democratic Governor and two Senators supported his reelection.

This is a quote from the Chicago Tribune, Mr. President.

Well, it further states:

The election is over, but Clinton again is promising a veto. Nuclear waste, he argues, shouldn't be shipped to a temporary facility until it's known for certain whether a permanent site can be built at nearby Yucca Mountain. Temporary storage, he contends, will drain funds from Yucca and make it likely the underground facility will never be completed.

The Senate should end this political gamesmanship by passing the bill by a veto-proof margin. For national security and environmental safety, it makes more sense to have the waste stored in a well-protected central location than at scattered sites near major cities or bodies of water like Lake Michigan, which are filling up rapidly. It will also keep electricity users from shelling out twice for the waste storage.

If Washington continues to slough off its obligation, it will be forced to build additional above-ground storage facilities at their nuclear plants and try to pass the cost on to the consumers. For more than a decade, ratepayers have chipped in billions to a private fund created by Congress to help pay for permanent storage facility, some of which has already been spent on research and study at Yucca.

"A Federal appeals court"—this is important, Mr. President, because it is right on—"A Federal appeals court has ruled the Energy Department is contractually obligated to begin accepting the spent fuel next year. That deadline is unrealistic, but a temporary storage site should be designated so that the Government can begin receiving waste expeditiously. Someone in Washington must honor past promises and quit putting different decisions off on future generations, and the Senate can begin this week."

I think that is right on target.

Now, I understand that there are those who have concerns about transportation of spent fuel to a central facility. That is why this bill has 12 pages of language providing transportation, training, and notification provisions.

Let me read from selected portions of the bill, section (2):

. . . not later than 24 months after the Secretary submits a licensed application under section 205 for an interim storage facility shall, in consultation with the Secretary of Transportation and affected States and tribes, and after an opportunity for public comment, develop and implement a comprehensive management plan that ensures safe transportation of spent nuclear fuel and high-level radioactive waste from the sites designated by the contract holders to the interim storage facility site.

Further, requirements:

A shipping campaign transportation plan shall—

(A) be fully integrated with State and tribal government notification, inspection, and emergency response plans along the preferred shipping route or State-designated alternative route identified under subsection (d) . . .

Further, under "Transportation requirements."

(b) STATE NOTIFICATION.—The Secretary shall abide by regulations of the Commission regarding advance notification of State and tribal governments prior to transportation of spent nuclear fuel or high-level radioactive waste under this Act.

(2) NO SHIPMENTS IF NO TRAINING.—(A) There will be no shipments of spent nuclear fuel and high-level radioactive waste through the jurisdiction of any State or the reservation lands of any Indian Tribe eligible for grants under paragraph (3)(B) unless technical assistance and funds to implement procedures for the safe routine transportation and for dealing with emergency response situations under paragraph (1)(A) have been available to a State or Indian Tribe for at least 3 years prior to any shipment.

In conclusion, Mr. President, this is a dangerous amendment. This is an amendment that freezes nuclear waste where it currently is, in those 41 States, 80 sites. Some of them are near neighborhoods, some are near schools. Just reflect on the significance if this second-degree passes—this stuff won't move. Of course, as I said before, my friends from Nevada simply don't want it to move to their State. That is really what this debate is all about. Nobody wants the stuff. You have to put it somewhere. Every State should accept the responsibility. In Connecticut, we build nuclear submarines, and that, I am sure, from the standpoint of the delegation from Connecticut, is very attractive from the economics associated with shipbuilding. But do they have a responsibility as a State? They generate the prosperity, but they don't have to put up with the actual disposal of the submarines when they are cut up and the reactors that are sent to Hanford in the State of Washington and go up the Columbia River.

I think every State has an interest in this. Colorado has waste out in their State. Do they want to keep that military waste there, or do they want to move it out? This second-degree amendment will ensure that it will stay in Colorado. I don't think the Governor or the Colorado delegation want that to happen. They want to move it out. The reality is, Mr. President, that nobody wants it. I don't know whether the Nevada delegation would consider some kind of a creation of this area out there in Nevada, dispense it from the State and put it under some kind of an original Federal enclave that is no longer part of the State. For all practical purposes, its structure is it's Federal land out in a State. But, clearly, the Federal Government does not have the disposition because it is still in a State. But the reality is, rather than go down that rabbit trail too long, no one of the 50 States wants to be named as either a permanent or temporary repository for the waste.

In conclusion, Mr. President, at an appropriate time, I will move to table this amendment. It is my understanding that there are other Members who intend to speak in opposition of the amendment.

I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada [Mr. BRYAN].

Mr. BRYAN. Let me respond to a couple of things that the chairman of the Energy Committee has said that I think bears correction. First of all, the amendment, as cast—

Mr. MURKOWSKI. Will my friend yield for a unanimous-consent request from the leadership?

Mr. BRYAN. Yes.

UNANIMOUS-CONSENT REQUEST

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the vote occur on or in relation to the pending Reid-Bryan second-degree amendment, No. 28, at 11 o'clock today.

Mr. BRYAN. This is the first I have heard of this.

Mr. MURKOWSKI. I thought it had been cleared.

Mr. BRYAN. It has not been. I want to assure the chairman that it is not our intent to be dilatory, but this is the first I have been made aware of that proposal.

Mr. MURKOWSKI. I certainly apologize, because I checked and asked, and they said it was. I withdraw the unanimous-consent request at this time and yield back to the Senator from Nevada.

Mr. BRYAN. I appreciate that. The Senator has been very fair, in terms of affording us the opportunity to do what is permitted under the rules. Perhaps what may have occurred is that we were asked by our staff to be given adequate time before a vote was taken, and someone said 11 o'clock would be that adequate time. That may have been misconstrued, I say to my friend. As to an agreement for a time certain for the vote, that was not my intention, and I accept what the chairman said.

Let me make a couple of points, if I may. One is that this amendment applies only to the shipment of waste to the interim facility. So we are not talking about the ultimate shipment that may go to a permanent repository if indeed that repository would be found acceptable. I know the distinguished occupant of the chair, in his own legal background, would appreciate that what we are trying to say to his State and to every other State—Alabama has a great many routes that are going to be major corridors for the transshipment of nuclear waste. Most of those appear on this map to be hideaway corridors. I confess not knowing the State as he does, but there are at least four different corridors that would be involved, as I see it, by rail. That is the blue line. Much of that would come from Florida and Georgia, it would appear. Some would come from Tennessee, perhaps, I don't know. Then there is a major highway that appears to come across the top of his State. So what it would simply say is that the Governor of Alabama, before shipments would cross his State, would say, "Look, I want to have the opportunity to review and look and see if indeed all of the safety precautions are there." Then if the Alabama Governor said he was satisfied, no problem, that's fine. We are trying to provide States with the opportunity to defend and protect themselves.

The basic premise, Mr. President, is that we ought not to be moving this stuff all over the country, back and forth. Somehow there has been this fallacious assumption that there has been a determination that the Nevada test site is preeminently qualified to serve as an interim storage facility. That simply is not true. There has never been a study that reaches such a conclusion. There are probably a thousand places in the country that would be acceptable for interim storage. The only reason the Nevada test site has been chosen is the premise that the permanent repository at Yucca Mountain will meet the test. That is what this debate is about. We will talk much more about that in a different context.

I want to, also, if I may, set the record straight. The Chicago editorial that the distinguished chairman read is absolutely replete with misinformation and errors. As the chairman read the article and indicated that 14 years ago it was determined that Nevada was the site, Mr. President, that is simply not true. Fourteen years ago, I believe the Congress attempted to pass a reasonable and balanced piece of legislation—the Nuclear Waste Policy Act of 1982—which was signed into law by then President Reagan in the early part of 1983. What it said was that we will look across the country and try to find the best sites. We will look at formations that consist of granite; we will look at the salt domes; we will look at welded tuft, which is what we have in Nevada. No region in the country will have to bear it all. There will be a balance. And, indeed, three sites would ultimately be submitted to the President of the United States after the study—three sites—and the President would select among those three sites.

Now, that made some sense, in terms of the scientific approach and, indeed, I think that most people in my own State, as well as across the country, to the extent that they followed this, said that was balanced.

Here is what happened. No sooner was the ink dry than the Presidential campaign of 1984 began to heat up and the President was telling people in the Southeast, "Don't worry, it is not going to be salt domes." Then the Department of Energy said, "Well, my gosh, locating something in the East is going to create a lot of political pressure for us, so we will abandon that site." Then, in 1987 came the ultimate rejection and repudiation of anything that purported to have any kind of scientific basis at all; it is a bill that is known in infamy in Nevada as the "screw Nevada" bill. It said, without so much as a scintilla of science, that we will only look at Nevada. That wasn't what the law said in 1984. It said we would look at three, we would look all over the country. Maybe Nevada would be the short straw. We would not like that. I am sure the occupant of the chair would not like it if it were Alabama. I understand that.

Now, somehow the editorial suggested that the President entered into a crass political quid pro quo with my distinguished colleague, the senior Senator from Nevada, with me and the

Governor, and said, "Look, if you support my reelection that had absolutely nothing to do with it." We made our argument based on merit—that is, that there should not be a shipment of interim waste to an interim storage facility until such determination of a permanent facility could actually be characterized. That was the whole scientific predicate. The President of the United States, in reaching his conclusion, followed the recommendations and conclusion of the Nuclear Waste Technical Review Board, a body constituted by this Congress, which said there is absolutely no need to have an interim storage facility at this point.

Mr. REID. Will my friend yield for a question?

Mr. BRYAN. I would be happy to yield to the Senator from Nevada.

Mr. REID. Would the Senator agree that President Clinton would be better off politically if he had gone along with the majority?

Mr. BRYAN. Absolutely. If you are looking at this in terms of the political consequences, there are four electoral votes in Nevada. Many States have many more. So if it was a political calculus made, the President's math was poor indeed. He supported the position argued by not only those of us in Nevada, but those who were following the premise of the act, the Nuclear Waste Technical Review Board, and the point made by the Senator from Arkansas the other day that we ought not to be transporting this across the country until we have the permanent site. Does it make any sense at all? I believe that was the basis.

Mr. REID. Will the Senator yield further?

Mr. BRYAN. Yes.

Mr. REID. As to the present state of the law, I ask the Senator, what does it say about whether or not you can locate a permanent repository and a temporary repository in the same State?

Mr. BRYAN. The present state of the law, enacted by the Congress, prohibits a State that is being considered for a permanent facility to be the site of an interim or temporary facility. Moreover, at the request, as I recall it, of the Tennessee delegation some years ago, it prohibits the location of an interim facility until an application for licensure is made for the permanent facility. Now, that was sound policy. No. 1, no State, frankly, should have to bear the burden of both. That was the philosophy and the remnant of what was a fair act in the beginning—to look all over the country. The interim ought not to be located before the permanent, because we know that kind of tends to be de facto permanent. That was good policy, I say in answer to my friend.

Mr. REID. Will the Senator allow me to ask another question?

Mr. BRYAN. I will.

Mr. REID. It is my understanding, belief, and knowledge that you, like the two Senators from South Carolina, have been the chief executive of the State of Nevada, the Governor.

Mr. BRYAN. Yes, we share that history together. I was elected twice as Governor of my State.

Mr. REID. Is it true that one of the philosophies that you had while you were Governor was to protect the rights of the State of Nevada?

Mr. BRYAN. It was indeed. Every Governor takes an oath of office in which he or she indicates they will indeed uphold those rights and responsibilities, and I did so, as each and every Governor has done not only in Nevada but throughout the country, I am sure.

Mr. REID. Will the Senator further respond? It is my understanding that the Senator has a law degree from the University of California Hastings College of Law, was Nevada's first public defender, and was a prosecutor and in the district attorney's office. He was also in private practice. How many times was the Senator elected attorney general of the State?

Mr. BRYAN. I was elected attorney general once.

Mr. REID. During that period of time, the Senator was the chief political officer of the State of Nevada. Is that true?

Mr. BRYAN. That is true.

Mr. REID. And the chief function was to handle the legal questions that came to the State of Nevada.

Mr. BRYAN. That is, to advise all of the State agencies that were constituted by the State legislature or established in our Constitution, and to represent, protect, and defend the people of the State. That was my obligation.

Mr. REID. Based upon the Senator's experience as Governor of the State of Nevada and as its chief legal officer, the Attorney General of the State of Nevada, and based upon other legal experiences, does the Senator from Nevada think it is an appropriate function of this Congress to adopt this amendment protecting the States rights in all 50 States?

Mr. BRYAN. It is indeed. This I would say to my friend from Nevada is a litmus test of whether we just talk the talk or walk the walk. This is all about States rights. I cannot conceive of any attorney general or any Governor in America who would not want the ability to provide for the protection of his or her State by simply saying, "Look, before we ship this 25-ton cask that someday will be provided by rail"—the 25-ton casks that are going to be mounted on some type of highway transport with the equivalency of 200 Hiroshimas in terms of its radioactive potential—I would think that any Governor, or any attorney general who has taken the same kind of oath of office that I and others have taken, would say, "Look. I would like the ability to provide that protection. I would like to see what it is that is coming."

I say in response to my friend's question about the protections that are purportedly built into this S. 104 that deals with transportation issues that it seems to me this is a logical extension of that.

Mr. REID. I say in further questioning of my friend, if in fact this substitute, this bill that we are working under now, has all of the protections that we have heard about here for the last several days—that they are going to train people and have all of these protections—based upon the Senator's experience as attorney general and Governor of the State, and as a U.S. Senator, doesn't it seem to make sense that if all of those protections are built in you could go to a Governor and reasonably explain that this is such a great piece of legislation, and say "You are protected, sign on, Governor"? Could the Senator see that happen?

Mr. BRYAN. Absolutely. Indeed, I would go further. It seems to me that it would be incumbent upon the department that wants to shift this, talking about 835,000 metric tons—we are talking about 17,000 shipments over a period of a number of decades—it would seem to me that the department would have the burden of going to Governors who have concerns, talk with them, and to say, "Look. This is what we are doing. This is how we propose to protect the shipment route to go through your State." That seems to me to be a reasonable basis.

I know that there are others who want to take the floor and will have a chance to discuss this some more. But I would like to conclude by saying that this is something that gives every Governor an opportunity to protect his or her citizens. And I say with some measure of envy that the Senator from Alaska can speak with a far greater degree I suppose of comfort level because whatever occurs or does not occur in this body, his State is thousands of miles from the field of action. I wish I were so fortunate. But it becomes my responsibility representing the people of Nevada who I represent, and who are my primary responsibility, to make sure that we provide all of the protections that can possibly be secured for their health and safety. And I will continue to do so.

This is an offer by my colleague from Nevada and I to try to provide a safe piece of legislation, if indeed this is to be enacted into law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I stand on the floor today to speak against the Reid-Bryan amendment as it relates to Governors' authority on transportation of materials through their States.

My colleague from Nevada, who is not only a U.S. Senator but a former

Governor of that State, just said something that I found fascinating in the context of this legislation or this amendment. In a dialog with his colleague, the other Senator from Nevada, he suggested that with all of the safeguards and the protections put in, couldn't you go to a Governor and logically argue with him and, therefore, convince him to just sign off, Governor?

My guess is that as a former Governor of the State of Nevada or a Governor today in Nevada, with all these safeguards, he wouldn't sign off—not because of the science, not because of the engineering, but because of the politics. Plain and simple politics is what is dictating the argument on the floor today—not science, not engineering, not the facts. So, sign off, Governor. Just sign off, and everything will be fine. And the Governor looks over his back shoulder, he looks at the polls, and he sees that the citizens of his State do not want nuclear waste stored in their State no matter how good the science, no matter how good the engineering, no matter how good the record, no matter how good the history of that record. What does he do? Is he the statesman that he should be? Not at all. He is the politician that he is. He says, "My reelection is in trouble if I do thus and so."

Why do I speak in this manner? Because Idaho went through that very experience. Idaho has a large amount of interim storage of high-level nuclear material. And a former Governor of our State got a Federal court order to stop the shipment of that waste coming into the State. But could he get the Federal court to ultimately say no waste movement to Idaho? No; what he could get, what any Governor can get, what our S. 104 provides, and what current law provides is that he could assure that the condition in which that waste would be stored both long-term or short-term would be safe, would be environmentally sound, and would not put at risk or put in danger the citizens of that State.

Why could the Governor not absolutely say, "It cannot cross my borders"? Because we are no longer a confederation of States. We almost fell apart as a nation when we were a confederation. We are now a union bound together by a Constitution that speaks very specifically to interstate commerce, and the ability of a Governor or a State to block the movement of materials or commerce across its border. But what we do say—and what we defend and what S. 104 clearly spells out—is that the Governor of the State and the State itself can condition the movement of materials across its border.

That is exactly what the State of Idaho did. My Governor over the last several years has signed agreements with the Department of Energy under a Federal court order that conditions the waste that still comes to Idaho across many borders up the rails from Norfolk, VA, to Idaho—2,500-plus miles, 600 shipments over 30 years, and never an accident—with never a human put at risk by the spill of radioactive activity.

I am not suggesting nor am I attempting to impugn the integrity of the Senators from Nevada. They will do what they must do because they have the right to do it. But let me suggest they do not have the science, and they do not have the engineering. They only have the politics.

When you look at the amendment that they proposed and at the legislation that the Senator from Alaska, I, and the committee crafted, when you talk about the intricacies of laws, when you look at the legislation that is now law, the Hazardous Materials Transportation Act, known as HAZMAT which involves the States, which assures that States and Federal transportation of hazardous materials is in concert, that humans are safe and humans are protected, but the reality is that to provide greater protection for the broader good and for the national interests sometimes State borders must be crossed. The HAZMAT system has adopted a uniform, regulated approach toward handling materials regardless of their type. Regulations of these materials allow States authority to conduct certain inspections, and we have even extended that. We have created greater authority in this legislation because several of our Senators—and rightfully so—are concerned about the movement of radioactive materials across their States. And I am concerned when States are not generators of it. My State is a partial generator but a much larger store in a temporary way of waste.

This second-degree amendment is not just some conditioning amendment. This kills S. 104. This changes the whole character and the context of what the bill itself would do. The Senator from Alaska, the chairman of the committee, has so clearly said that this gives every Governor in every State absolute authority to cancel, stop, or otherwise terminate movement across State borders. We have really never given States that authority. And we should not here. But we have continually done it. And I have argued for it on many occasions under many different examples and legislation that is now law. States have very clear rights. They have 10th amendment rights. And those rights are very strong as it relates to the ability of States to govern themselves and control themselves, and not have the Federal Government impugn that authority, or dictate that authority, or change the character of that authority. But one thing that a State cannot do is lock and block its borders.

That is, of course, the reason that 208 years ago many of what we now call our Founding Fathers joined in Philadelphia to try to figure out how to get our States back together because we were falling apart largely because States had that kind of absolute authority. The States of Maryland and Virginia were shooting at each other across the Potomac River, or at least some of their interests were. And the Confederation was falling apart. That was one of the early parts of a Constitution, to make sure that commerce could flow.

I think all of the Senators on the floor would argue that this isn't the best form of commerce, and this isn't like what we would like to think of as commerce. But we clearly recognize that in the national interest, when it comes to the rights of States, that the principles of federalism on which our country was founded recognize States' authority to govern matters within their borders but must give way to Federal authority when an issue is one of national scope reaching beyond the particular boundaries of a given State. This is an interesting combination.

This is not only an issue of national scope. This is a Federal material going to a Federal property—not a private property, not a State-owned property, but Federal land in the State of Nevada. The Senators from Nevada and I are oftentimes very perplexed because we are representatives of States that have very large Federal domains. Sometimes we wish a great amount of that land could either be public-State land, and in some instances private land, but that is not the way it is, and that is not the way our States came into the Union. As a result, we are talking about building an interim storage facility, after viability determination, facilitating a deep geologic repository, long term. And it is not true that this is just going to happen and the Nevada test site was just chosen. Certainly this argument deserves merit. I know it can have the emotion, and I certainly know it has its politics because I live with nuclear radioactive politics in my State every day because we are a repository temporarily of large volumes of high-level waste from our nuclear Navy. I also know that it has been handled safely for decades, and it is a sound place to store it on a temporary basis until such time as a permanent repository is developed.

As I have mentioned, over 600 shipments have moved across numerous State borders from as far away as from Norfolk, VA, to the deserts of Idaho. And it has been done safely, soundly, and responsibly because of our country's recognition of the risk and the liability to human safety. And we have never compromised a human, and we never will.

We cannot kill S. 104. I hope that when the Senator from Alaska places

the tabling motion that our colleagues will join with us to table the second-degree amendment because there is no question about its intent. I believe it is not a constitutional amendment. But then again we don't judge the Constitution here on the floor. We only try to live with it and live under it. That is not ours to make that judgment. But I do not believe the courts of our country would allow the Governor of the State of Nevada or Idaho the privilege of absolute cancellation, or absolute border blockage. And that is, of course, in my opinion, what this amendment ultimately does. So I would ask my colleagues to join with us, those who support S. 104, in the need to recognize the importance of the building of a national deep geological repository for high-level materials and high-level nuclear spent fuel and that they would vote down the second-degree amendment and vote for the tabling motion.

I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER (Ms. SNOWE). The Senator from Nevada.

Mr. REID. Madam President, the senior Senator from Idaho articulated the position that we have felt for several years. He did it clearly and concisely and directly when he said nuclear waste is safe. If that is the case, leave it where it is. That is what we say. If it is so safe, leave it where it is. There is no reason to change the law, to go around, to short-circuit, to sidestep the present law. Last year, $200-plus million were spent characterizing the site at Yucca Mountain. What this underlying bill does is just throw all that money away and goes and pours a cement pad on top of the ground and dumps all the spent fuel rods on the cement pad.

The amendment that is now before this body says that if you are going to transport nuclear waste through a State, the Governor must allow that to happen. We certainly, under this Constitution, this Constitution that we all live by and talk about, have the obligation, we have the right to set standards as to how the flow of commerce will take place.

The senior Senator from Idaho said that you are moving Federal property. Certainly, doesn't the Federal Government, the Congress of the United States have the ability and the right to determine how Federal property is going to be moved? That is an inherent right we have, to determine the flow of commerce over our sovereign borders.

Continually, there have been efforts to say this is only a Nevada problem, this is just a couple of Senators from Nevada carping about a provincial interest; nobody else in the world cares about this other than the Senators from Nevada.

Madam President, every environmental organization in America opposes this legislation, and I say every. I also say that we only need look around. The United Transportation Union, you would think that this union would be really enthused about hauling large cargo. No, they are not real enthused. In fact, in a letter of April 8 of this year, the national director of this union, with a copy of a letter to the international president, C.L. Little, states:

> In its present form, S. 104, the Nuclear Waste Policy Act of 1997, advocates a reckless and unsafe shipping campaign of spent nuclear fuel and high-level radioactive waste.

Madam President, the United Transportation Union, to my knowledge, does not have a local. It does not have a local union in Nevada. If it does, I do not know about it. There may be one up in the northern part of the State where the railroad goes through, but I really doubt it. This letter is not driven by Nevada interests. It is driven by the United Transportation Union that cares about its members and wants safe transportation of products. The letter goes on to say:

> The Chairman of the Nuclear Waste Technical Review Board has testified to serious deficiencies in the transportation planning and preparation that are so necessary to execute this campaign safely . . .
>
> Serious questions remain regarding containment integrity of the transportation canisters that would have to be designed, tested, evaluated, certified and procured. Presently the country has only a few shipping containers that were developed and tested a number of years ago.

I was going to say a long time ago, which is, in fact, the case.

> These have apparently proven durable under some accident environments.

And we talked about that. If the accident occurs and you are not going more than 30 miles an hour, you are in pretty good shape. If the fire isn't burning more than 1,400 degrees, you are OK. Of course, diesel burns at 1,800 degrees. They go on to say:

> The NRC certification requirements for newly manufactured containers have raised serious concerns regarding their integrity.

That is the ones that are now in existence.

> A program of design and full-scale testing is desperately needed to generate confidence that the transportation campaign could be done safely.

This is the not driven by Nevada interests. This is driven by interests of a national union that is concerned about what is shipped across the railways of this country.

Now, I know there are Baptist churches in Nevada, but I have to tell you, I do not have enough power over the Baptist churches in Nevada to have them prepare a letter from the entire Baptist ministry of this country opposing this legislation. I wish I had that ability, but I do not.

In spite of that, Madam President, just a few days ago they wrote a letter to every Senator in this body saying, among other things:

> S. 104 would require the premature transportation of nuclear waste, placing communities in some 43 States at risk. Current cask regulations fail to consider the full range of plausible accident conditions and do not require compliance testing of full-cask models.

I did not make this up. I did not write this letter. This is written from the National Ministries of the American Baptist Churches USA.

> The American Baptist Churches USA, a denomination of over one million members in all 50 States, regards the right to a secure and healthy environment, clean air, pure water and an Earth that can nurture and support present and future generations as a human right. This right is rooted in the Biblical revelation that God cares for the good of all, has delivered us from sin and intends that we express love toward our neighbors. Our concern for persons and the earth we share compels us to support efforts to transport and dispose of hazardous and radioactive waste in a safe and secure manner. S. 104 fails to meet this criteria for safety and security. For these reasons, I urge you to oppose S. 104.

The director, Curtis W. Ramsey-Lucas, National Ministries of American Baptist Churches USA.

Madam President, this is not a Nevada letter. There are Baptist churches in Nevada. I am very thankful for that. Here is a group of millions of people who are interested in this issue but only as it protects people, and this legislation does not protect people.

We have from the State of Missouri two members from the other party. They do not represent this side of the aisle, but yet the Missouri Coalition for the Environment writes a letter saying:

> Missouri would surely be one of the primary States that would suffer a high percentage of the train and truck shipments because of its central location and the relatively well-maintained conditions of its rail tracks and roads.
>
> Political leaders may seek to comfort their urban constituents by promising that these shipments would avoid highly populated areas. However, such areas are precisely where the best transit routes cover. Because industrial job centers receive the greatest number of train and truck shipments, the roads, rails and bridges are maintained better than more isolated routes.
>
> Although no one knows exactly which routes the railroad and trucking companies would choose, current computer analyses predict that all but seven States would be affected by this massive—

Listen to this word—

> fruitbasket upset.
>
> Because all irradiated nuclear power plant fuel contains plutonium—a primary component of nuclear bombs—the Nuclear Regulatory Commission requires that when shipments transit cities of over 100,000 either by rail or highway, two armed escorts—

Now, this does not say armed guards, two armed escorts—

> must accompany every shipment of the irradiated fuel in an effort to protect against terrorists.
>
> Until a permanent repository is built and in operation, we believe the wisest, safest move would be to prevent any move of America's high-level radioactive waste through our cities and towns.

Madam President, the point I am making is this is not a Nevada issue only. This is an issue that is here because it is being driven by big money. Utilities making, as we indicated, over 17 percent profits, they want to shun the responsibility that they have created with nuclear garbage and get it out of their hands.

All the talk about having to do it by next year is poppycock. The court case was very clear. If the responsibility is that of the Federal Government, and they are the reason that the repository is not ready and it is their fault, then they will have to pay the damages. What are the damages? It is the cost of storage. We have already established that the cost of storage is almost meaningless. On-site storage costs almost nothing, and it is safe, as indicated by the Missouri Coalition for the Environment, by the National Ministries of the Baptist Church.

Mr. BRYAN. Will the Senator yield for a question?

Mr. REID. And by the United Transportation Union. I would be happy to yield.

Mr. BRYAN. We have heard considerable debate in the Chamber here about the horrendous liability that may exist out there because everyone concedes that the Department would not be able to physically accept possession of the waste in 1998. I thought I understood the Senator to indicate that there is at least some measure of damages provided. We have heard all kinds of billions and billions of dollars. I wasn't sure that I heard the Senator's comments.

Mr. REID. I would answer my friend's question. We have made, since this bill came up, we have made $21 billion for the country. The figure was originally $80 billion. You heard the remarks of the proponents of this legislation. They said it is down to $59 billion. The truth is it should be down in the low millions, because to store this substance onsite costs almost nothing. The average cost per site is $5 million. Let us say we have 100 sites. We have 109 sites. We are talking about $50 million or whatever it is. Significantly less than $59 billion.

Mr. BRYAN. Am I correctly informed that each of the utilities has entered into a contract with the Department of Energy dating back to the enactment of the Nuclear Waste Policy Act? Is that the Senator's understanding?

Mr. REID. Absolutely true. It is by contract.

Mr. BRYAN. By contract. And there are provisions, if I understand it, that specifically relate to the scenario that is going to occur, namely, that nuclear waste, its physical possession cannot be accepted in 1998, and there are specific provisions in that contract, if I understand correctly.

Mr. REID. Absolutely. And the court, in making its decision, like many courts do, said let us send this back and take a look at what the contractual provisions are. And the contractual provisions are very direct and concise. This is not going to generate a lot of lawsuits.

Mr. BRYAN. And the measure of damages, as I recall, that is in that contract, it is additional cost that the utilities will incur, and that additional cost would be the provision of additional storage during that period of time, if I am correctly informed.

Mr. REID. The Senator is absolutely right. If they decided to leave it in the cooling ponds, whatever the cost of that would be during that interim period of time for the storage ponds. If they decide to do the right thing, which is probably dry cask storage containment, then it would be an average of $5 million per site.

Mr. BRYAN. And they could use that as an offset in terms of what they are paying into the Nuclear Waste trust fund right now.

Mr. REID. Absolutely right. In preparation for a permanent repository. And that is why I say to my friend from Nevada and everyone else, this is not a Nevada-only issue. We are here espousing what we feel is appropriate to protect the State of Nevada. But that is only secondary to the issues that affect this whole country and that is why the Baptist Ministries, the United Transportation Union and the people from Missouri—and I only picked a few of the letters. As you know, there are several hundred organizations that we know of—oppose this legislation, which is so unsafe for the environment and so unnecessary, and only being driven by the gluttonous utilities of this country.

Mr. BRYAN. So the argument that we have heard in the Chamber that ratepayers will pay twice is specious, because to the extent that after 1998 nuclear waste would not be taken physically from a site, it cannot be under any scenario, the ratepayers would then be protected because any additional costs that the utilities would incur would be deducted from the payments that the utilities would have to make into the nuclear waste trust fund, so there would be no double payment.

Mr. REID. I would respond to my friend, that is absolutely correct. A first-year law student not even having taken a course in contracts would read that and understand that it is one of the most simple contracts ever written, and that is why the court did not spend a lot of time on that issue.

Mr. BRYAN. It strikes me as curious, if I am hearing the Senator respond, that, indeed, the senior Senator and I have introduced for a number of years legislation that would accomplish the same provision that exists in the contract; namely, to the extent that there is not the ability to physically take possession, the utility would be entitled to a reimbursement in the form of the reduction in the payments made to the nuclear waste trust fund.

Mr. REID. I would respond to my friend, we did that prior to the court rendering its decision. Probably now the legislation is unnecessary, but we could certainly do that. And I think it would make things a little clearer. But it is really unnecessary now because the court, in effect, has ruled that way.

Mr. BRYAN. I thank the Senator from Nevada.

Mr. REID. So, Madam President, what we are saying is that this amendment simply establishes what should be the law of this land. That is, if you are going to haul, as indicated in the chart behind the manager of the bill and the chart behind my colleague from the State of Nevada, showing all these routes all over the country, what we are saying is this product, if it is going to be transported through a State, the Governor should give the OK.

We have been told here for several days now that transporting this product is going to be just as safe as carrying a quart of milk from the store to your home. If that is the case, the Governors that I have mentioned, Beasley, Hunt, Romer, O'Bannon, Voinovich, Wilson from California, Miller from Nevada—and all the other fine Governors, chief executives of the States, they should be able to sit down with their staffs, it should be explained to them how safe this is, they would sign on the dotted line, and their constituents would feel happy that the government was protecting their interests.

If we do not do this we are going to wind up with a situation that has already occurred in recent days in Europe where, to move this product in the country of Germany, 300 miles, you had to call up 30,000 police and armed guards to transport at the rate of 2 miles an hour. They had to go 2 miles an hour because people had dug huge holes under the roadways and put in, in effect, disguised covers so these vehicles would fall into them—2 miles an hour. There were 170 people injured, hundreds of people arrested. And Germany's parliament said we are not going to do this anymore. We are going to reassess our situation.

That is what we should be doing here, but we cannot reassess the situation because the utilities, with all of their money, are dictating what is going on here on the Senate floor. That is what this amendment is all about.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Madam President, I think it is appropriate that we move on to vote as soon as possible. But I would like to make a couple of points that I think are pertinent to the debate that is at hand.

First of all, I think we have to recognize the premise that nobody wants to

take the waste. On the other hand, I think we also have to recognize the reality of those who have the waste. Currently, we have in the State of Washington, at Hanford, a significant abundance of spent fuel, about 2,133 metric tons over here at Hanford. I have been out there. It is right on the edge of the Columbia River. These were the first graphite reactors; and the first generation of nuclear bombs that were used in Hiroshima and Nagasaki were created there.

The State of Washington has also, at that Hanford facility, 61 million gallons of liquid, high-level waste in 177 tanks. That is just the harsh reality. Savannah River, in South Carolina, 206 metric tons of high-level spent fuel, 33 million gallons of liquid waste. There is more that comes in every day. It comes from overseas and from our research reactors. How does it come? It comes through a transportation network, 2,400 shipments from 1979 to 1995. Every State has had shipments with the exception of Florida and South Dakota.

So, when we talk about transportation, we have a transportation system. Why is it not news? Because nothing is happening. It is safe.

Mr. CRAIG. Will the Senator yield on the issue of transportation?

Mr. MURKOWSKI. I will be happy to yield to my friend from Idaho.

Mr. CRAIG. The Senator from Nevada said you and I portrayed the transportation as safe as transporting a quart of milk home from the store. I think the record ought to be corrected. The transportation system for nuclear waste is safer than transporting a quart of milk home.

Have you ever dropped a quart of milk on the floor of the supermarket or on the floor of the kitchen? I have, and I have burst the container. You can drop these containers 50 feet onto a piece of concrete and they do not burst. That is the characteristics of the container.

I think, when we also get in our car at the supermarket and drive home, we do not have a police escort in front of us and behind us, making sure that the road is perfectly clear so someone does not sideswipe us at the intersection or hit us as we are leaving.

I know what the Senator from Nevada was trying to do. But the reality is, the transportation of high-level radioactive materials in this country is, by far, much safer than transporting a quart of milk home from the supermarket. There is a lot of milk spilled between the supermarket and the kitchen of the average residence in our country. But to our knowledge not one curie of radioactivity has ever been spilled going from a reactor to a storage site, once it was containerized and in its mode of transportation.

I thank my colleague for yielding. That is an important correction. We ought not make light of our arguments here because the facts are very clear when it comes to transporting this critical material.

Mr. MURKOWSKI. Let me point out to the Senator from Idaho, this is a typical cask that has been used since 1964 for shipping by truck transport. These are designed according to a very, very technical and highly engineered requirement that would associate itself with whatever the exposure is of a wreck, dropping from a high level. They have tested these. They have tested them with a railroad car at 60 to 70 miles an hour, dropping them from various levels. So the technology is here.

These are the facts, as we look at this chart of where the waste is currently, and the position our friends from Nevada have taken, which is "Do not put it in Nevada, leave it where it is." To highlight, again, the transportation chart, the one that shows the network, you just cannot reflect reality, and that is reality, 2,400 shipments. It has been safe. We have never had an accident that resulted in any exposure of any kind. We had a couple of minor trucking accidents, but clearly the cask withstood whatever the exposure was.

Let me add one more consideration relative to where the significant areas of waste are. In addition to Savannah River and Hanford, at Oak Ridge, TN, we have 1 metric ton of spent fuel in storage and what we have there are some tailings and low-level waste as well.

The Senator said it was not my State of Alaska that was affected, and that is true. But I would like the RECORD to note that we, in Alaska, at Amchitka, had the two largest underground nuclear explosions ever initiated and we are still monitoring those areas, relative to any waste that might be depleting into the landmass.

So, the point I want to make here is that everybody shares in the concern of what we do with our nuclear waste. That is what this legislation is all about, what we do with the waste.

There has been some discussion about what the damages, relative to the inability of the Government to perform on its contract to take the waste in coming years, what that might be. The lawyers are going to make that determination. But let us be realistic and recognize what the court said. The court ruled the Department of Energy had an obligation to take the spent fuel in 1998. And they promptly rejected the DOE's attempt to file a motion to dismiss. As a consequence, the Federal Government is clearly liable.

How much are the damages likely to be? Again, that is like giving the lawyers a license to go after damages or full employment. The cost of the storage of spent fuel is estimated to be about $20 billion. That is the cost. That is the cost to the Government, when the Government fails to perform on its contractual obligation starting next year. The return of nuclear waste fees—they have to return what they collected from the ratepayers, about $8.5 billion. The interest on that for the last several years, as a consequence to it building up to $13 billion, is going to be somewhere in the area of $15 billion to $27 billion and the consequential damages associated could amount to an estimated shutdown of 25 percent of the nuclear plants due to insufficient storage—another $20 or $24 billion.

I do not think there is any point, necessarily, to try to sharpen up the figures on what the damages are. Clearly there are going to be damages as a consequence of the Government's inability to respond to its contractual agreement.

What I wanted to say, relative to the point of Nevada being the best place for this, showing the Nevada chart again, is we have had 800 nuclear weapons tests in this area for approximately 50 years. And the proposed location for the interim repository is here as well as, hopefully, the permanent repository that we spent approximately $6 billion on. We will probably spend as much as $30 billion to finally get it licensed.

I have a couple of other comments relative to points that have been made, that I think need to be cleared up. I read a copy of the editorial in the Chicago Tribune of April 8. There was a reference to a possible association with regard to support for President Clinton, who agreed to oppose the legislation if Nevada's Democratic Governor and two Senators supported his reelection. That is obviously literary jargon, but, by the same token, I noted in the debate, time and time again, a reference that none of the environmental groups support this bill. Of course, I think it is fair to say the President received almost unanimous support from America's environmental groups relative to their particular policies.

What we have here from the standpoint of the environmental groups is, many of them, their objective is to simply shut down the nuclear industry as we know it today. They do not accept the responsibility for picking up on where we would generate the offset of energy as a consequence of shutting down the nuclear industry. They do not give any credence to reducing greenhouse gases as a consequence of the contribution that nuclear energy can bring to lessening or eliminating emissions.

No consideration is given to the reality that many of the nations that we compete with internationally are going to achieve their reductions of particulates and emissions as a consequence of moving toward nuclear power. France is already 98 percent nuclear power. Japan is actively moving into the area and they are beginning to reprocess. So

I think it is fair to say as we stand still and debate on and on, endless discussions about the issue of what we are going to do with our waste, other countries are moving into advanced technology and reprocessing the waste.

This particular second-degree amendment talks about States rights, and we are all sensitive to that aspect.

However, the reality of States and the interest of States has to be addressed in the consideration of the major chart which shows where the waste is and the reality that we want to move this waste to one site. As a consequence of that, I think it is fair to note we have some inconsistencies relative to the statements that have been made by my good friends on the other side.

There has been a reference that we all have to do a certain amount of sacrifice relative to States storing nuclear waste and nuclear waste fuel, and that certainly has been done by the State of Nevada. They were chosen for reasons unknown to me, but nevertheless chosen as the ideal site for nuclear explosions over those some 50 years. But there was a reference made that suggested that the transportation of nuclear fuel was an eminent right of a State to make a determination that it was or was not in the best interest of that State. But that concept defeats the logic of what we are attempting to achieve here, and that is to get it out of the States, to move it to one central repository.

As far as the history of at least some Members of the Nevada delegation, let me again refer to action that was taken some time ago. Again, I refer to this picture of the Nevada test site, where the last underground explosion occurred in approximately 1991. Underground tests are still being performed there with nuclear materials being exploded with conventional explosives.

During this time, the Nevada delegation, we assume, has not rejected that continued activity, but it is even more interesting to note that one of the Senators during his association with public service from Nevada supported storing nuclear waste at the test site. If you are going to support it, Madam President, you are going to have to get it there. So, if you support it, the realization of how you are going to move it across this network of States gets to the very crux of where we are in the second-degree amendment.

Let me read a relative portion of the Nevada Assembly Joint Resolution No. 15, and this is a chart of the entire resolution dated February 26, 1975, and the appropriate portion:

Whereas, the people of southern Nevada have confidence in the safety record of the Nevada test site and in the ability of the staff of the site to maintain safety in the handling of nuclear materials;

Whereas, nuclear waste disposal can be carried out at the Nevada test site with minimal capital investment relative to other locations;

Now, therefore, be it resolved by the Assembly of the State of Nevada jointly that the legislature of the State of Nevada strongly urges the Energy Research and Development Administration to choose Nevada test site for the disposal of nuclear waste.

This resolution passed the Nevada Senate by a 12-to-6 vote, aided by one of the Senators from Nevada, who is here today, and signed by the Governor of Nevada, Mike O'Callaghan.

I do not know what has changed. The Nevada test site out there certainly has not changed. It is the same as it was. It still has a trained work force, and it still has an infrastructure for dealing with nuclear materials. The geology of the site certainly has not changed, and, obviously, some of the Senators thought it was the best place to store nuclear waste in 1975 or they probably would not have voted for it back then.

So that is the reality relative to this issue, that nobody wants it, that it is stored in 80 sites in 41 States, and the answer is to move it to one safe site. If you do not move it, it is going to sit where it is, and that is not acceptable. As a consequence, we are at a time where it is imperative that we recognize that adoption of the second-degree amendment would simply kill the legislation, kill the bill and leave the waste where it is, and I do not think that is in the interest of the 50 States.

Madam President, I propose to move to table the Reid-Bryan amendment.

Mr. BRYAN. Will the chairman just allow a brief response?

Mr. MURKOWSKI. Sure.

Mr. BRYAN. I appreciate that.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Madam President, I appreciate that, and I will be brief. I want to respond to the comments about the resolution adopted by the Nevada Legislature in 1975. I think we have to put things in context. In 1951, we were assured that the detonation of nuclear bombs in the air 60 miles from Las Vegas was a very safe thing to do; you can rely upon us; you can trust us; we will never do anything. The scientific community embraced that, or at least we were told that at the time, and Nevadans agreed to do that. No scientist in the world would suggest to any community that to detonate a nuclear bomb within 60 miles of a metropolitan area is absolutely safe, and, in point of fact, we entered into an atmospheric nuclear test ban in 1963.

If Nevadans can be faulted, they can be faulted because they relied upon representations of their Government which they believed to be true. We were all in America less sophisticated about the risk inherent in detonating bombs in the air.

So, too, it was in 1975. If Nevadans can be faulted, we were less sophisticated. But I point out to the chairman and others that the world is dramatically different today than it was in 1975, and we know a lot more about the risks.

Prior to 1979, I am sure that it would have been asserted not a chance in the world that any of the reactors in America would ever have a problem; we have the most preeminent, highly qualified, most sophisticated people in the world. Nobody today believes that to be categorically true. Three Mile Island occurred, and our naivete about the risks of nuclear power have been irreparably shattered, and nobody accepts those representations today.

Before the worldwide devastating impact in Chernobyl, I am sure everybody was assured there was no problem with any of these reactors, there was no risk, no danger. My point is that we are all more sophisticated today, and Nevadans fully understand the risks that are involved with storage of nuclear waste, and they have rejected it both by the State legislature since that period of time, and Democrats and Republicans alike, in the most recent survey, in numbers in excess of 70 percent categorically reject that storage.

So I think it is somewhat unfair to suggest we be judged by an earlier time, less sophisticated, more naive and perhaps, if we can be faulted, more trusting.

Let me just say by way of conclusion, this is a highly technical debate. Much of it is arcane, much of it is not easy to understand, and for that reason, I am indebted to the senior Senator from Idaho, because I think he has framed the issue that all of us can understand.

If you believe that the shipment of nuclear waste, 125-ton casks by rail, 25-ton casks by truck, containing the equivalent radioactivity of 200 bombs the size dropped on Hiroshima, is as safe as the transportation of milk from the market to your home or across the country, let me just say you should vote against the Reid and Bryan amendment. But if you believe, as I believe most Americans do, that when you are shipping nuclear waste, 85,000 metric tons, 17,000 shipments, for decades to come over thousands and thousands of miles through 43 States where 51 million Americans live within a mile, then I think you might think that it is a little bit more risky than shipping milk from point A to point B. I believe that the logic of the Reid-Bryan amendment is inescapable, and I believe that you want to support us and to protect the citizens of your State. I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Madam President, I move to table the Reid-Bryan second-degree amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 28, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Minnesota [Mr. GRAMS] is necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr. DORGAN], and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent, because of the severe disaster conditions in their States.

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

The result was announced—yeas 72, nays 24, as follows:

[Rollcall Vote No. 36 Leg.]

YEAS—72

Abraham	Gorton	Lugar
Akaka	Graham	Mack
Allard	Gramm	McCain
Ashcroft	Grassley	McConnell
Bennett	Gregg	Moseley-Braun
Biden	Hagel	Murkowski
Bingaman	Hatch	Murray
Bond	Helms	Nickles
Brownback	Hollings	Robb
Bumpers	Hutchinson	Roberts
Burns	Hutchison	Roth
Byrd	Inhofe	Santorum
Chafee	Jeffords	Sessions
Cochran	Johnson	Shelby
Collins	Kempthorne	Smith (NH)
Coverdell	Kennedy	Smith (OR)
Craig	Kerry	Snowe
D'Amato	Kohl	Specter
DeWine	Kyl	Stevens
Dodd	Lautenberg	Thomas
Domenici	Leahy	Thompson
Enzi	Levin	Thurmond
Faircloth	Lieberman	Torricelli
Frist	Lott	Warner

NAYS—24

Baucus	Durbin	Landrieu
Boxer	Feingold	Mikulski
Breaux	Feinstein	Moynihan
Bryan	Ford	Reed
Campbell	Glenn	Reid
Cleland	Harkin	Rockefeller
Coats	Inouye	Sarbanes
Daschle	Kerrey	Wyden

NOT VOTING—4

Conrad	Grams
Dorgan	Wellstone

The motion to lay on the table the amendment (No. 28, as modified) was agreed to.

Mr. MURKOWSKI. I move to reconsider the vote.

Mr. REID. I move to lay it on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 27

The PRESIDING OFFICER. The pending question is amendment 27, offered by the Senator from South Carolina [Mr. THURMOND].

Mr. THURMOND. Mr. President, I rise to ask for passage of the Thurmond-Hollings amendment to the pending Nuclear Waste Policy Act bill. The pending bill includes a prohibition against storing commercial spent nuclear fuel at the Hanford site in Washington State. This amendment would include an exemption for the Savannah River site and an adjoining site in Barnwell County, SC.

Mr. President, the purpose of the amendment is to level the playing field among all states, should the Department of Energy have to select an alternate interim storage site.

There are three sites under the jurisdiction of the Department of Energy which currently have facilities that might be capable of accepting spent nuclear fuel. They are the Hanford Nuclear Reservation in Washington, the Idaho National Environmental and Engineering Laboratory in Idaho, and the Savannah River site in South Carolina. Let me note that these facilities are near their capacity and would require many significant upgrades to take on a commercial mission.

The pending bill explicitly exempts the Hanford site from being selected for interim storage. The State of Idaho has a legally enforceable court order prohibiting importation of new wastes into the State. This leaves South Carolina as the only other State with facilities capable of accepting spent nuclear fuel.

Passage of the amendment is not intended to impact the overall success or failure of this legislation. It is only intended to ensure that if the Department finds that the Yucca Mountain facility is not suitable for spent fuel storage, that all States would then be placed on an equal footing for the siting and construction of a new state-of-the-art storage facility.

Mr. President, I urge adoption of the amendment.

Mr. MURKOWSKI. I believe both sides are ready to accept the amendment by voice vote.

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

The question is on agreeing to the amendment.

The amendment (No. 27) was agreed to.

Mr. MURKOWSKI. I move to reconsider the vote.

Mr. REID. I move to lay it on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 26

Mr. MURKOWSKI. Mr. President, I ask for the yeas and nays on the Murkowski substitute.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

Yeas and nays were ordered.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. 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. MURKOWSKI. I ask unanimous consent there now be a period of morning business until the hour of 1:30, with Senators permitted to speak for up to 5 minutes.

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

The Chair recognizes the Senator from New Mexico.

PRIVILEGE OF THE FLOOR

Mr. BINGAMAN. Mr. President, I ask unanimous consent that Dr. Bob Simon, who is on detail on my staff, be granted the privilege of the floor during the pendency of S. 104.

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

Mr. BINGAMAN. 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.

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

(The remarks of Mr. LEAHY pertaining to the introduction of S. 546 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEAHY. I ask unanimous consent to proceed for 1 minute.

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

FEDERAL JUDICIARY VACANCIES

Mr. LEAHY. Mr. President, we are now in April and we have been in session for 4 months. We have confirmed two Federal judges in 4 months. That is half a Federal judge a month. There are almost 100 vacancies in our Federal judiciary. That means that puts a strain on our Federal justice system. Cases cannot be heard because judges are not there. Prosecutors are forced to plea bargain in cases they do not want to. If you are a private litigant in a business or just an individual and you have suits you want heard, they cannot be heard.

The Chief Justice of the United States has said it is a crisis situation. It is.

Mr. President, I urge the leadership of this body to start moving forward

and get some of the vacancies filled, take the judges that have already been nominated, get them confirmed, and show respect to the independent Federal judiciary of this country.

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. LIEBERMAN. 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. LIEBERMAN. Mr. President, I ask unanimous consent that I may be allowed to proceed as in morning business.

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

REMEMBERING THE HOLOCAUST

Mr. LIEBERMAN. Mr. President, this month we observe the 52d anniversary of the beginning of the end of World War II, and the liberation of victims of the Holocaust in Europe. Just 2 years ago, the 50th anniversary of the war's end, there were many ceremonies, memorials, books, articles, and television programs marking the events of 1945. Now, much of the world's attention seems focused on the coming millennium, and the beginning of the 21st century.

But we must not allow ourselves to forget those events of the 20th century that continue to shape our lives. And we must never allow humanity to forget the awful truth of the Holocaust, for if we do, we risk unleashing the horror of that time on the world once again. The act of remembrance becomes more difficult with each passing year, for there remain fewer and fewer eyewitnesses to history. Fewer survivors of the Holocaust remain. Fewer liberators are alive to tell what they saw with their own eyes.

And so it falls upon us, the children of the survivors and the liberators, the victims and the witnesses, to carry this burden into the new century, to tell our own children all we know about the horrors visited upon the world a little more than five decades ago, and to pray that what is our history remains history.

Mr. President, a short while ago, a distinguished American statesman, Paul Wolfowitz, said, "Our goal, as we enter the 21st century, is to make sure that it does not repeat the 20th century," which is to say the two world wars, the cold war, and all that occurred within it.

Today, I wish to speak briefly about one event in the history of the Holocaust and World War II, and that is the liberation of Dachau, the anniversary of which falls less than 3 weeks from today. And I will do so in the words of the 42d Rainbow Infantry Division's "History of World War II," written shortly after the war's end:

> That word, Dachau, is one which few men of the Rainbow will ever forget. They had heard of Nazi concentration camps and believed or half-believed the stories of the SS atrocities and brutalities conducted in them. Soon they were to see the most famous of all German horror prisons. The oldest such camp in Germany, its very name was feared. Men and women who entered those massive stone gates as prisoners never came out. Inside them was practiced systematic murder. Men who had seen friends die and witnessed all the horrors or war were to turn pale and sick at what they saw at Dachau . . .
>
> As the first American entered the prison the 33,000 inmates went wild with joy and at the same time joined in the battle against the SS, some of whom had changed into prisoners striped uniform in an attempt to escape.
>
> The first hysterical group to see the Americans rushed and were pushed into an electrified fence which surrounded the principal enclosure and several of them were killed. As the Americans entered the enclosure they rushed to them and tried to throw their arms around them. . . .
>
> The men of the Second Battalion began moving through the camp. Everywhere they saw sights which filled them with horror.
>
> Drawn up on sidings outside the camp itself they found 50 boxcars, each one filled with about 30 men who had either starved to death in these cars or had been killed by the machine guns of the guards when they tried to escape. . . .
>
> In the camp itself there were bodies everywhere. The majority of the guards had fled the night before the Rainbowmen arrived, but before they left they had roamed through the camp killing important prisoners or persons against whom they bore a grudge. . . . Then the guards decided this method was too slow and they turned their machine guns on the inmates. Before they stopped and fled they had killed more than 2,000 in an orgy of murder. Inmates of the camp had gathered these bodies into piles, stacking them up like cordwood. . . .
>
> Toward the end [of the war] . . . the Nazis had run out of coal and had no way to cremate the bodies, but still the business of murder by gas continued and hundreds of others died of starvation. These bodies the Rainbowmen found dumped into open graves or thrown into the moat until they dammed the water. The stench of the camp was nauseating and in the huts in which the inmates lived the odor was overpowering. Beaten, tortured and starved by the guards, some of these people had become little more than animals. . . .
>
> Dachau was a nightmare to all the men of the Division who saw it . . . but it was also a lesson. "Now I know why we are fighting," man after man said. "The Nazis who conceived such a place as that were madmen and those people who operated it were insane. We cannot live in the same world with them. . . ."

Mr. President, I have had the honor of meeting some of the veterans of the Rainbow Division, and they have always carried with them the terrible memory of Dachau. And yet, as heroic as their work in fighting the Nazis and liberating the victims of the Holocaust was, to a man they deny any special attention. Like so many men of their generation who did their duty, they simply say, "we had a job to do, and we did it." In so doing, they defended not only the security of the United States of America. They demonstrated that to be human was to be capable of great acts of courage and goodness, even in the face of unspeakable cowardice and evil.

Mr. President, I have had the honor of meeting several of the veterans of that Rainbow Division, and they have always carried with them terrible memories of Dachau. Yet, as heroic as their work in fighting Nazis and liberating the victims of the Holocaust was, to a man they denied any special attention. They pushed it aside like so many men in our generation who did their duty. They simply say over and over again, "We had a job to do and we did it." In so doing, they defended not only the security of the United States of America; they demonstrated that to be human was to be capable of great acts of courage and goodness, even in the face of unspeakable cowardice and evil.

Mr. President, in closing, I would like to make special mention of two people involved in this one story of the Holocaust and the liberation of Dachau. One is a constituent, Robert T. Kennedy, of Wallingford, CT, who at age 32 was drafted into the Army, in part because of his expertise in radio technology, and despite the fact he had a heart condition. Like so many others of his generation, he answered the call of duty, even though it meant leaving his wife, Beatrice, and 6-month-old son, Bobby, at home. Young Bob was nearly 3 when his dad finally returned from the war. Sergeant Kennedy was a member of the Rainbow Division, and he witnessed the horrors of Dachau. And he made sure to tell his children all about the concentration camp, even at an age when they could barely grasp its meaning. He spoke of the rage he and his fellow soldiers felt for those who made torture and murder a way of life, and he told of how the men of the Rainbow forced the civilian townspeople of Dachau to march up to the nearby camp and see for themselves what most, if not all, of them surely must have known was occurring for so many years. Sergeant Kennedy passed away in 1976, but the memory of his service lives on in the hearts of his family.

Another person who was there, in that same dark corner of the Earth at the same moment in history as Sergeant Kennedy and the men of the Rainbow Division, was Ella Wieder, an inmate first at Auschwitz, and then at Dachau-Allach, a subcamp of Dachau also liberated at the end of April 1945. Apparently, it was her work as a slave laborer that, fortunately, stood in the way of her termination long enough for her to survive the Holocaust. After the war she returned to her native Czechoslovakia, and met Rabbi Samuel

Freilich. They married, and soon thereafter gave birth to a daughter, Hadassah, who is my wife, and the mother of our child, Nana.

Mr. President, I tell this story with some feeling today particularly because for the last 17 years Sgt. Robert Kennedy's son, Jim Kennedy, has been my spokesman, my press secretary, my communications director, my muse, and, best of all, my friend.

Tomorrow, after these 17 years in the movement of life that is inevitable, Jim Kennedy, who for the first time is sitting by my side on the floor, is leaving the service of the U.S. Government, and, more particularly, work at my own office, to go on to a wonderful opportunity in the private sector in New York.

I cannot thank him enough, and I appreciate the opportunity to do so publicly, not just for the extraordinary eloquence and hard work that he has brought to our work together but to the profound sense of values carrying on the heroism of his father and his family that he has brought to his work with me, to his personal life, to his marriage, and to his fatherhood. I cannot thank him enough. I will miss him. But I wish him all of God's blessings in the years ahead.

I know that, though we will not be working together, our friendship will go on for as long as the Good Lord gives us the opportunity to be alive on this Earth.

Mr. President, life goes on, despite the efforts of the Nazis and so many others to snuff it out. With this tremendous yearning and quest to realize the rights that our Constitution and Declaration of Independence enshrines to life, liberty, and the pursuit of happiness we prevail. And with those rights, however, comes the responsibility of caring for the lives of others. That means remembering the past and its shameful secrets in a way that secures a more hopeful future. It means carrying forth the lessons of the 20th century into the 21st, and telling the stories of the heroes, like Sgt. Kennedy, and the villains of this time in hopes that future generations will never know the enormous terror that once ruled in the dismal environs of Dachau not so long ago. And it means being grateful to all those here at the Senate, like Jim Kennedy who helped people like me give service to the public, and hopefully in that service make this a freer, better country and world.

I thank you, Mr. President, and I yield the floor.

Mr. SMITH of Oregon addressed the Chair.

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

Mr. SMITH of Oregon. Mr. President, I request 10 minutes as part of morning business.

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

TAX LIMITATION AMENDMENT

Mr. SMITH of Oregon. Mr. President, I rise today to join 19 of my colleagues as a cosponsor of the tax limitation amendment, a proposed amendment to the Constitution to require a two-thirds vote of the House and Senate to raise taxes.

I stand here as an elected representative of the State of Oregon. A State that last year added a three-fifths vote of its legislatures as an amendment to its State constitution in order to raise taxes.

This requirement stipulates that when Government seeks to raise taxes, to increase what it takes out of its citizens pocketbooks, there ought to be more than a narrow agreement—and, indeed there ought to be a broad consensus.

Oregonians believe that before there is to be an increase in taxes, there has to be a firm belief by a supermajority of its elected representatives that this is necessary. That is why we amended the State constitution to require just such a supermajority in 1996. Further, a two-thirds vote requirement fits with the spirit of the Federal Constitution. Supermajority voting requirements are found throughout the Constitution. Some people say to me, "Well, you don't need a supermajority voting requirement. We rule by majority in this country." But the truth is our Founding Fathers knew there were times when it had to be otherwise. That is why in articles I, II, V, VII, VIII, IX, and XXV there are supermajority voting requirements. These are applied to things like motions to consent to a treaty, to override a Presidential veto, or to vote in the case of a Presidential disability.

Further, the 16th amendment, which provided for the Federal income tax, had to be approved by a vote of two-thirds of Congress and three-fourths of the States. It is logical that an amendment to extend this tax burden would require a supermajority vote.

Our Founding Fathers saw reason to check the simple majorities used in deciding issues in a democracy. In the Federalist Papers, Hamilton, Madison, and Jay all cautioned that simple majorities can lead to mob rule.

Indeed, our Founding Fathers were particularly sensitive to protecting our citizens from unjust taxation. Indeed, our break from Great Britain stems from a fight over unjust taxation.

Ours is a nation born out of a tax rebellion. And the spirit of that rebellion still beats in the heart of Americans.

Now some may say we don't need this amendment because the people can simply vote against lawmakers who keep increasing taxes.

In the Federalist Papers—Federalist 51—however, James Madison said: "A dependence on the people is no doubt the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions." And that's what this proposed amendment is: an auxiliary precaution against overtaxation.

I believe it is imperative, now that the balanced budget amendment has been defeated, that any action to increase taxes require a supermajority of both Houses. In my opinion, without this two-thirds rule, politicians too easily fall back on tax increases in order to balance the budget.

Really, there are just three options for balancing the budget: You can cut discretionary spending, cut entitlement spending, or you can raise taxes.

As for No. 1—there simply isn't enough discretionary funding to cut, in order to balance the budget.

As for No. 2—entitlement costs are spiraling out of control and each year the Clinton administration shows that it is unwilling even to educate the American people as to the hard choices that lie ahead.

This leaves No. 3—raising taxes—as the last option. And that option is the one I would like to see made more difficult to undertake. Yet at the moment it only takes a simple majority—50 plus 1 in the Senate—to raise taxes.

Indeed, the 1993 Clinton tax bill, the single largest tax increase in the Nation's history, passed by this slim margin of 50 Senators, plus the Vice President acting as President of the Senate.

As I have said, many States have already passed similar legislation to make it harder to take more in taxes out of the citizen's pocketbook. This legislation works on the State level. It is needed at the Federal level. And this fact is unmistakable.

In most of those States where a supermajority is required to raise taxes, taxes as a proportion of personal income have declined. In those States without the supermajority, taxes as a proportion of personal income have risen.

I think most Americans believe they are already paying too much in Federal income taxes. What some call tax day—April 15—is next week.

Let me take a moment and put things in perspective for you—how taxes have risen over the last few decades.

What we call tax freedom day—the day that the money you earn starts going into your own pocket and not the Government's, has changed. In 1950 it was April 3.

This year it will be sometime in mid-May.

In fact, today the average family pays more in taxes each year than it does in food, shelter, clothing and medical care combined.

Add up the taxes—local, State, and Federal—for most it takes half of what people make. Can't we in Government discharge our legitimate public obligations on such a percentage? I think we can, I think we should, and we must.

I want to see our Government balance its budget. But I also want to see this trend of increasing taxation come to an end. I believe that this tax limitation amendment is the surest way to do that.

And I urge my colleagues to support the tax limitation amendment.

Thank you, Mr. President. I yield the remainder of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

KICK BUTTS DAY

Mr. LAUTENBERG. Mr. President, today is the day known as Kick Butts Day. It is a day when kids all over the country will express their opposition to cigarette addiction and the dangers that it poses to health. They are resisting tobacco company efforts to target them as consumers and ensnare them in a lifetime of addiction.

That is why I want to spend a few minutes today to discuss the subject of the possible legislative settlement of claims against the tobacco industry. It has been suggested that perhaps the example set by Liggett & Myers, the company that agreed to reveal its innermost documents to tell the public at large everything that went on in the secret meetings of their company and other companies with whom they were working, has apparently been an inducement for other companies that think perhaps now that the pressure is on the tobacco industry maybe they can affect a settlement. Well, this is no time for that kind of thing.

On Tuesday of this week, I introduced the Tobacco Disclosure and Warning Act, which would require the tobacco companies to disclose the ingredients and the carcinogens in their products and place larger and clearer warning labels on their packs. These new labels would send a more effective message to kids about the dangers of smoking.

Yesterday, I spoke in the Chamber about the Joe Camel advertising campaign by R.J. Reynolds. This advertising campaign uses cartoons to market cigarettes to kids. Senators DURBIN, WELLSTONE, HARKIN, KENNEDY, MURRAY, and WYDEN have joined me in sending a letter to the chairman of the FTC asking him to bring an unfair advertising case against R.J. Reynolds for the Joe Camel ads.

In a stunning development several weeks ago, this cloak of deception that shrouded the activities of the tobacco industry was removed when the Liggett group settled 22 State lawsuits because they admitted that smoking causes cancer and other diseases, that nicotine is addictive, and that the tobacco industry targets underage smokers. It also agreed to a 25-year payment schedule to the States, to release internal documents providing evidence of the above claims, and to accept FDA regulation along with stark new warning labels on its cigarettes. This settlement that was worked out between Liggett and the State attorneys general is truly historic. It will open up the floodgates of information about tobacco. The truth is that smoking is addictive and it kills.

The documents that will become public as a result of this settlement will help expose the conspiracy of deception and intimidation tobacco giants have engaged in for years. They have used this deception to thwart claims against them in court, to derail reasonable attempts at regulation, and to curb public education programs to protect the public health.

It is rumored that the tobacco industry, or at least some firms, will now seek protection from Congress, asking for a "global settlement" of claims against them. I hope that every Senator will maintain a healthy skepticism about any proposed legislative settlement of legal claims against the tobacco companies.

The bipartisan group of attorneys general pursuing these lawsuits have shown enormous courage and tenacity in the face of tobacco industry stonewalling. We should not undercut them. Nor should we intervene to help the companies in pending litigation brought by individual Americans who suffered harm as a result of the industry's deadly and deceptive practices. We should not hinder the ability of the States and the taxpayers that they represent, or individuals, to receive just and fair compensation for the harm or expense that they suffered.

I hope Members of this body will be very analytical as they hear this appeal and resist efforts to bail out the tobacco industry in Congress.

Mr. President, I yield the floor.

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

Mr. MCCAIN. I thank the Chair.

(The remarks of Mr. MCCAIN and Mrs. HUTCHISON pertaining to the introduction of S. 547 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. HUTCHISON. 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. WYDEN. 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. WYDEN. Mr. President, I ask unanimous consent to speak up to 15 minutes as part of morning business.

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

Mr. WYDEN. Thank you very much, Mr. President.

MEDICARE REFORM PRINCIPLES

Mr. WYDEN. Mr. President, as you know, I have come to the floor each day this week to talk about what I think is the critical need for the Senate to move forward with bipartisan Medicare reform. I believe there is a unique window of opportunity now for action, a window built around the proposition that our economy is moving forward in a positive way. Certainly, we are a few years away from the demographic earthquake that is coming, and I believe it is possible to fashion a bipartisan package that will also achieve real savings to advance the cause of enacting a balanced budget.

I come to the floor today to reflect for just a few moments on some of the discussion over the last few days as it relates to Medicare and the budget. It is my view that Senator DOMENICI, the chairman of the Senate Budget Committee, said it very well a number of weeks ago when the Budget Committee first began hearings on this year's budget, when Senator DOMENICI said, with respect to Medicare, policy must drive the budget numbers. Unfortunately, that has not been the case in the past, and I am concerned, based on the discussions that have gone on in the last couple of days as well, that we are moving away from the need for structural Medicare reform that is in the interests of both seniors and taxpayers.

In the last Congress, I think we did see a numbers-driven approach to Medicare. Over in the other body, there was a judgment made that spending for Medicare had to be reduced $274 billion. Others in my party proposed reducing Medicare spending by a smaller sum. In both instances, I do not think enough attention was paid to the need to come up with sensible policies that would really show how you could get to those kinds of budget savings proposed by either party in a way that was good for both seniors and for taxpayers.

If we look at the debate over the last couple of days, we see some of the discussion again moving just to the question of a budget number. I am convinced that it is possible over the next 5 years to save about $100 billion as it relates to the Medicare Program and do it in a way that protects the interests of older people and also will help to reduce the deficit.

But I think it is even more important—even more important, Mr. President—that this body understand that the big challenge is to lay the foundation for 21st century Medicare and that

that challenge goes far beyond the question that has driven discussions the last couple of days. What we have to do is start bringing choice and competition to the Medicare Program. That is what is driving progress as it relates to health care reform in the private sector, and, obviously, choice and competition is what Members of this body enjoy through the Federal employee plan.

I think it is possible to do this in a way that protects the rights of patients and makes sure that as we look to the future with more choice and more competition, that it is a future that does not involve health plans with gag clauses, does not strip seniors of their rights to appeal a denial of benefits, makes sure that their grievance procedures include what are called "report cards" so that our country can find out if people who sign up for health maintenance organizations drop out a few months later because service is unacceptable.

The Congress now, as we move to try to develop a budget resolution, I think can find an opportunity to generate real savings.

I do not want to, in any way, minimize the importance of that task in getting a budget. But we can do it in a way that will also ensure that the kind of structural changes in Medicare are made and we put this program on a solid footing. If that is not done, Mr. President, we will see a continuation of the kinds of problems that Chairman GRASSLEY demonstrated this morning at the Senate Committee on Aging.

Senator GRASSLEY held a very important hearing as it related to accountability in the Medicare Program and particularly as it related to managed care. What Senator GRASSLEY's hearing pursued was making sure that older people could have access to good information so they could make choices in their Medicare.

In this country, we have, unfortunately, because Medicare has not been modernized, a situation where older people either have no choices, which goes on in rural parts of the United States, such as the area that the Presiding Officer represents and I represent, or, as we saw this morning in Chairman GRASSLEY's hearing, places like Los Angeles where there is kind of a blizzard of information offered and it is not possible for older people to compare the policies that are offered to them in an intelligible kind of way.

I said at Mr. GRASSLEY's hearing that as we go forward with Medicare discussions let us make sure that his work, which is designed to empower consumers and is certainly not going to be a budget buster because it is largely an effort to try to force disclosure and comparability of these various plans—I urged that Chairman GRASSLEY's work be included in a final bipartisan package.

Suffice it to say, you do not hear much discussion in terms of the budget discussions about the work that Chairman GRASSLEY is doing or about the role of the Federal Employees Health Benefits Plan. And, unfortunately, there has not been enough focus on how the Medicare Program rewards waste and penalizes frugality. The private sector consigned that kind of approach to the attic years ago but that is how Medicare does business today.

Mr. President, and colleagues, I think that as these discussions go forward—and certainly yesterday they dominated the debate about the budget—we have to remember that it is critical that Medicare be part of an effort to help address the financial challenges that our Government faces. I think that that can be done in a way that is good for seniors and good for taxpayers, but that it is even more important that the bipartisan changes in Medicare focus on the structural and underlying concerns that are plaguing this program.

In much of the United States, the Medicare Program is a bureaucratic Tin Lizzie. It is clunky. It is inefficient. It is volume driven. And it is doing all the kinds of things that if another agency, such as the Pentagon, was doing, there would be a vast outcry.

But we are not making the changes that the Medicare Program needs so as to make it secure for the 21st century, so as to make it secure for both seniors and for taxpayers. And that is why I come to the floor today, to say that this debate that we have seen in the last couple of days about budget numbers is important, but it is even more important to talk about the underlying and structural changes that the program needs for the 21st century.

Mr. President, let me conclude by saying that I think that this debate about Medicare has been a bit like a high school sock hop where in effect everyone looks at the dance floor and no one really wants to go first. And I believe that now, if we put a focus on bipartisan structural changes in Medicare, a focus that says that the old debate about just trying to find a budget number for purposes of the budget resolution is not the way to proceed, but that we have a bigger challenge which is to get this program on track for the 21st century, that that kind of approach will allow us to make real progress.

I have enormous admiration for Chairman DOMENICI who has made it very clear that he wants to proceed in a way that does help to reform Medicare policy for the 21st century. I think it is very clear that the Clinton administration has in some of their Medicare proposals reforms that would also help to advance a bipartisan compromise.

I tried to take, in my legislation, the Medicare Modernization and Patient Protection Act, some of the key principles that both political parties had advanced in recent years. I believe that if the Congress does not get stuck in the old debate about just finding a budget number, regardless of the implications for the program long term, we can, in this session of Congress, get the Medicare Program ready for the 21st century.

That is what I am committed to doing, Mr. President. It is a bipartisan challenge. And I intend to come to this floor on an ongoing basis, as I have done today, to talk about the key issues with respect to Medicare reform. And the events of the last couple of days, which take us back, in my view, to just a budget question rather than making sure the policy changes are made, are exactly what we have to tackle. There is the opportunity now to get Medicare on the right course for the 21st century.

As I have said, Mr. President, I have visited the floor each day this week to talk about Medicare reform, and the brief window of opportunity I believe this Congress may have to effect strong, stabilizing, and sensible structural reforms in this program.

This should be about more than saving a targeted number of dollars in spending over the next 5 years, or adjusting the Medicare part B up or down to accommodate short term fiscal goals.

To quote my friend Senator DOMENICI, the chairman of the Budget Committee, this should not be about numbers driving policy, not for something as important as the long-term integrity of the Medicare Program.

We have the opportunity in the 105th Congress to begin turning this 30-year-old, Tin-Lizzie style program into a 21st century, comprehensive seniors health system, employing the tools and the innovations that have already marked much of the rest of American health care for the better.

The reformed Medicare Program I envision, and which I believe is within our grasp, is a health plan that is about choice, quality, and access, and also about the efficiencies that characterize much of our Nation's private health care marketplace.

Over the last few days, the conversation about Medicare reform has for the most part revolved around the negotiations between the White House and the congressional budget committees, and whether we can get close enough on a 5-year savings figure in order to proceed with marking up what we all hope will be a bipartisan budget resolution for 1998.

I hope we can.

And I commend all the parties involved in trying to hammer this out. I know it is tough. It is obvious from my limited involvement in this process that the determination of the Medicare piece may be the single most important function of putting together a

Federal budget, or failing in that effort, this year.

But I would go beyond that.

I believe that my colleagues and I will be spending years together talking about Medicare as the major piece of the Federal budget process. I say this because Medicare threatens to be the monster that devours the budget, and with it the prospect of a health and secure future for millions of future retirees.

And quite obviously, the longer we wait to put the brakes to the run away spending aspects of this program, the greater the political crunch we face in terms of dealing with the economic impact of the 75 million baby boomers—this demographic tsunami—that is set to begin hitting the program in the year 2013.

During the next 30 years, we will see a society shift from the current four taxpaying wage-earners supporting each retiree to just two workers for each retiree.

You do the math. The prospect is far from pretty.

And that picture doesn't get better by merely formulating a number for spending reductions over the next 5 years. We can and must do better.

If we focus merely on the short-term problems—and I agree that they are substantial—we risk losing the chance to change Medicare's essential structure to deal with the long-term, and much tougher problems to come.

And that is why I must say that I am disappointed in certain aspects of the President's budget—I think this Congress can do better.

Specifically, we are given in the President's Medicare reform ideas a method of adjusting rates in our payments to Medicare managed care plans which will No. 1, not focus a significant and targeted reduction in the rates of payment that we make to vastly overpaid plans in many of our large metropolitan areas, and No. 2, continues the "starve-'em, and kill-'em" approach to paying for coordinated plans—and for encouraging choice, in rural areas around the country, and in areas of high health care efficiency like my home State of Oregon.

I've said it before, earlier this week. I will say it again.

This is not the way to bring 21st century medicine to our Nation's 38 million Medicare eligible citizens.

It is not the way to begin the long-term restructuring of the Medicare necessary to establishing a humane, cost-efficient and choice-rich program that will maintain financial equilibrium well into the next century, and not for just the next half dozen years.

Mr. President, we must look to what is happening in the private health insurance market in this Nation in order to chart the new course for Medicare. Over the last decade, run away cost-growth in that market has been reduced to rises in per capita spending that are now just about steady with the increase in the consumer price index—a massive, massive change.

No employer, now, will tell you that health care is cheap. But certainly, far fewer employers are now saying that the cost of health care provided to employees is putting them out of business.

Our business is the Federal budget.

We have a fiduciary responsibility to keep the Government solvent.

I ran my election campaign on the promise that I would work my hardest—and bear my share of the heavy lifting—to balance the budget and end deficit spending.

And I know that all of us, every one of us, Democrat and Republican, realizes that balance can't be bought cheaply or painlessly.

Addressing Medicare's long-term financial problems in ways that maintain the program's long-standing commitment to a defined package of benefits, no matter how sick or poor the senior, must be at the top of our Federal budget agenda.

Mr. President, today I want to conclude my floor statements this week with a short list of basic principles which I believe must under-line Medicare's restructuring effort this year, and which I am convinced a broad, bipartisan consensus may be reached.

I am not arguing that this is the entire reform menu.

And many will note that there's a lot of spinach on the bill of fare before you get to the desert portions.

But I do believe that this is a square-meal reform agenda:

First, I believe that we have to agree in a bipartisan fashion that Medicare remains a defined benefits program, first, last, and always.

We should never turn Medicare into an exercise where elderly and frail beneficiaries, most often single women living on their own on limited fixed incomes, are given a check once a month and told, "here's your benefit, your voucher—go out and buy health care you need and if the benefit runs out I hope you can find help, elsewhere."

This would be an egregious retreat from a basic social contract with our Nation's senior citizens, and one for which I think there is little justification given the kinds of savings we can extract from the program by requiring better management, better plans and more choice.

Second, we must develop spending controls that guarantee access, but at the lowest possible cost to the program and the beneficiaries. Medicare must employ prospective payment systems, putting providers on a daily reimbursement diet, for skilled nursing facilities and for home care, and for other portions of fee-for-service Medicare as opportunities present themselves.

I have introduced a bill that would in part save approximately $20 billion over 5 years from these kinds of management systems in home care and skilled nursing facilities. Similar gatekeeping ought to be considered for other portions of Medicare that are now driven totally by volume.

Third, the current system of paying for Medicare managed care plans, based primarily on the local cost of fee-for-service Medicine, makes no sense, and we've got to fix it.

We have the strange situation where the highest-cost, volume-driven portion of the program determining how we pay, or reimburse, the part of the program designed to operate as a managed, cost-efficient model.

Our purpose is defeated by trying to marry two completely antagonistic systems. And there are very unwholesome results in the form of beneficiaries in vast numbers of counties where Medicare managed care payments are either dramatically too low, or horrendously too high.

In California alone, the U.S. General Accounting Office has estimated that this leads to over-payments to plans as high as $1 billion per year.

We have to de-couple the cost of fee-for-service medicine from the formula we use to determine payments to Medicare managed care plans.

Fourth, in a world where we hope that Medicare beneficiaries will have many more choices for health care, Medicare must work much harder to empower those consumers to make appropriate choices.

And this is about better information about the plans available to them, and tools by which consumers can make informed choices about which plan is best for them.

Mr. President, today I spent some time at a Senate Select Committee on Aging hearing that focused on this very issue. We heard testimony on the horrendous difficulty beneficiaries had in places where choice currently exists, trying to figure out what each available plan might provide. The plan brochures are confusing and filled with technicaleeze. And most importantly, it's obvious that there's no way most consumers are going to be able to sit down at a kitchen table and compare one plan against another.

That's got to change. We need a system for Medicare beneficiaries not unlike the system we have in the Federal Employees Health Benefits Program where plans are required to present themselves using conforming language so that comparisons can be drawn.

And we need qualitative analysis by HCFA regarding how well individual plans perform—report card grades, if you will, on items ranging from disenrollment, to how long doctors stay with plans, to how many grievances are filed by beneficiaries.

Fifth, beneficiaries must be reassured that improving consumer protection is still a front-burner issue.

Appeals processes on denial of services must be streamlined. Medicare supplemental insurance laws must be reformed to guarantee issue of Medigap policies to seniors.

HCFA should employ more ombudsmen to help seniors navigate through a Medicare system that will offer more choices, and necessarily will be somewhat more complicated than traditional Medicare.

Five points—a modest agenda. But one that can begin creating huge dividends for our most important social program if we begin our work, now.

There is, I know, a great deal of attraction in subcontracting the job of reforming Medicare to a bipartisan commission. I have a great deal of respect for my colleagues who have made this argument.

Indeed, the conventional wisdom is that Congress simply does not have the political will to tackle this tough question.

I have had a number of conversations with colleagues on both sides of the aisle, however, and surprising as it may seem there appears to be a hunger to attempt Medicare reform, now. I think there's a general recognition that we enjoy a window of opportunity that is characterized by rapidly falling budget deficits, strong employment and a growing economy, and that the general environment for fixing Medicare may not get much better for an awfully long time.

And finally, let me remind colleagues that the ideas offered here today are not radical, and are really not out of left field.

This model of a competitive, choice-rich Medicare that is efficient while maintaining quality has been road-tested—indeed it exists today—in Oregon, where low-cost, high-quality, coordinated care Medicare now embraces almost 60 percent of the Portland metropolitan area market, and where the highest reimbursement rates for such care are still almost 20 percent below the national average.

We have seen the future.

It works.

It is time for this Congress to begin implementing changes in Medicare that transforms the national program along the lines of what has worked for thousands of seniors in Oregon.

CHEMICAL WEAPONS

Mr. TORRICELLI. Mr. President, this morning, millions of Americans awoke to some startling revelations, news that was particularly painful to thousands of veterans of the Persian Gulf war. Yesterday the Central Intelligence Agency released a report that stated that as early as 1984 it had intelligence reports warning that chemical weapons held by the military of Iraq were stored at a previously undisclosed chemical weapons site.

Indeed, in 1986, the CIA had received even more specific reports and obtained a copy of an Iraqi chemical weapons production plan that mentioned large storage facilities and the exact location and even the types of chemicals and other weapons that were being stored at that location.

Despite each of these reports and the existence of this detailed information in the very files of the Central Intelligence Agency, the Pentagon was not informed at any level on any basis of any of this information when the ground war commenced in the Persian Gulf in January 1991.

Without this information, tragically, American ground forces entered the specific chemical weapons storage facility named within Central Intelligence Agency files in March 1991. Fully 20,000 American soldiers were in the vicinity and potentially were exposed to the residue of those chemicals when this facility was destroyed.

Two days later, after the destruction of the facility, potentially after 20,000 American soldiers were exposed to these chemical weapons, the Central Intelligence Agency informed the Pentagon of this information and a possible exposure.

Mr. President, yesterday Dr. Robert Walpole, a CIA agency official investigating this incident on behalf of the Central Intelligence Agency, issued an apology to the Nation's veterans. It is not good enough. This Nation for several years has been agonizing about the cause of unknown illnesses among our soldiers. During all of that study, during all the long nights of wonder and doubt and pain, this information was not supplied to the President, the Congress, the commission studying this information or, most importantly, those veterans whose lives may have been permanently changed and damaged. And now we are given an apology.

Mr. President, this is more than a failure in a single instant. It is another example of the fact that the American people and this Government are not being adequately served by the American intelligence community.

Dr. Walpole stated the reasons, in his judgment, for this failure. He said, first, that there was tunnel vision in the American intelligence community; second, that there had been an incomplete search of the files; and, third and perhaps most chilling to all of us who share these concerns about the role of the American intelligence community in working with our military and civilian personnel, he said there was a reluctance by some CIA officials to share some of its most sensitive information with Government officials.

It appeared that some CIA officials knowingly and consciously weighed the sources of their information with the potential of sharing that information with the U.S. military and made the wrong judgment, making victims, potentially, out of our own soldiers.

Mr. President, this is not an isolated failure of intelligence policy. It is indicative of a continuing plague of bad judgment, and it is an indication of a need for large-scale institutional reform of how the intelligence community conducts its business, makes its judgments, and shares its information with elected officials and the U.S. military.

We are experiencing again not only a failure of leadership, but an inability to share at the proper time in the proper manner with the leadership of this Government sensitive intelligence information.

The intelligence community was created in this country to ensure that elected officials had the best information to make the right security judgments for this country, so that the U.S. military would have the best possible information to both prevail in conflicts and minimize casualties. Neither can be accomplished if officials of the intelligence community do not feel a responsibility, indeed, are not driven by the need to share the best information with the leadership of the U.S. Government.

An apology has been issued to the Armed Forces of the United States and those who may have suffered as a result of this incident. It is not only inadequate, it is a disservice to every man and woman who wears the uniform of this country. The President of the United States and this Congress must respond to this latest incident by beginning institutional reform in the organization, the leadership and, indeed, the mission of the Central Intelligence Agency.

Mr. President, I yield the floor and thank you for your indulgence.

MISSISSIPPI'S ENVIRONMENTAL SCORE CARD: "LOUISIANA QUILLWORT 1 AND TIMBER INDUSTRY 1"

Mr. LOTT. Mr. President, finding a new species of plant in America brings mixed reactions. From scientists, it brings the excitement of biodiversity and more opportunities for scientific investigation. But for many Americans, an endangered plant listing often places strict controls on the use and resources of the land where the plant is found. When an endangered plant is found in a national forest, it can curtail the multiple use mission of the U.S. Forest Service. Its mere occurrence can stop the timber harvesting, which is so important to the rejuvenation of the entire forest habitat. And when trees are not cut, there are dramatic economic consequences for the community that lives near the forest and depends on it for jobs.

You can be sure that enthusiasm was not over flowing when Mr. Steve Leonard, Camp Shelby's Heritage Inventory Botanist, announced that the Louisiana quillwort was found in the

DeSoto ranger district in Perry County, MI on May 24, 1996.

Mr. President, let me tell you about Perry County. Perry County has only three towns and roughly 11,000 citizens. Perry County contains 410,000 acres, 162,000 of which—over 39 percent—are national forest lands. The employment opportunities are limited primarily to the timber industry. The harvesting and marketing of forest products in the county has created over 1,800 jobs, of which 330 are involved in timber sales in the national forest. Currently, the unemployment rate is 7 percent. This year, Perry County's payment from the U.S. Forest Service for timber sales was cut by $1.5 million. This money would have been used by Perry County's schools to offset the loss of tax revenue received because of the large land ownership by the Federal Government.

Now along comes the quillwort. This county is already absorbing the economic impacts of repeated and failed government attempts to establish habitats for the endangered red cockaded woodpeckers in the DeSoto National Forest. And let's not forget the restrictions for those gopher tortoise.

The residents of Perry County love the environment and many make their living from the environment, but the ever growing restriction on land use challenges their commitment.

The Louisiana quillwort is a very small grass-like plant with just a few strands—smaller than this ballpoint pen—whose scientific name is Isoetes Louisianensis. It was first discovered 5 years ago on private property in just two parishes of Louisiana. It was promptly listed as endangered by the U.S. Fish and Wildlife Service, but since then, there has been no monitoring of its population. To this day, there still remains huge scientific factual gaps on the known and potential threats to this plant.

There is one thing I know for sure. There is a lot of this quillwort growing on the edges of stream beds in Mississippi's DeSoto National Forest. It may be scarce in Louisiana, but Mississippi clearly has more than our fair share. This is not unlike many other aspects of the ever-continuing rivalry with our neighboring State. I say this with great respect for my friend and colleague Senator JOHN BREAUX, but maybe the name of this species should be changed.

Mr. President, today I am here to honor the dedicated efforts of the U.S. Forest Service employees who walked over 200 miles of stream beds this past winter in order to locate quillwort populations and to ensure there would be no disruptions of timber sales. This was no easy task. The heavy winter rains left boot-sucking mud everywhere.

Mr. President, at the end of my remarks I would like to submit for the record the names of all 48 U.S. Forest Service personnel involved in this effort. I want to recognize them and to thank them. And I know the citizens of Perry County want to thank them.

This was more than an effort by the U.S. Forest Service. It is the story of the individual leadership and excellence of Mr. Don Neal and Ms. Kim Kennedy, two very able U.S. Forest Service employees. They did an outstanding job of determining the environmental consequences and developing a plan of action. Thanks to their efforts, the plan minimized economic impact without compromising the required protection necessary for the quillwort's habitat.

This is also the story of two Federal agencies—each with partially conflicting missions. It took 4 years following the quillwort's initial discovery for the U.S. Fish and Wildlife Service to approve a recovery plan. Fortunately, it took the U.S. Forest Service only 2 months to issue implementing directives. This swift action occurred under the watchful eye of Mr. Robert Joslin, the regional forester in Atlanta. He is to be commended not only for his actions when faced with the quillwort, but for his many years of dedicated leadership for balanced forest management throughout the Southeast. The forests have thrived. Thank you, Bob.

The quillwort protection plan established a 165 foot buffer zone on either side of a streambed. Limiting timber harvesting within this zone maintained a heavy overhead canopy and filtered the light reaching the stream's surface. The cutting restriction also curtailed sedimentation and changes to drainage patterns. The quillwort seems to like small intermittent streams.

This protection plan created a real challenge for Don and Kim because, at that time, there were 25 active timber sales in 51 compartments of the DeSoto ranger district. Four even had loggers on site.

Due to the lack of factual knowledge about the quillwort's habitat—especially since it was now newly discovered in Mississippi—determining which drainage to survey proved difficult. The U.S. Forest Service stepped up to the plate and made the decision to survey all drainage within or immediately adjacent to cutting units. And, to err on the side of caution, the survey was 20 percent wider than the 165 foot buffer suggested in the recovery plan.

The DeSoto district established an incident command system team to organize and survey 137 miles of streams on all active timber sales and 88 miles of streams in sales planned for next fiscal year. Timber sales were prioritized for survey in the following order: those with loggers on site; sales with open payment units; sales which had not been opened; and finally next year's planned sales.

It took 34 days of slow slogging up and down streambeds—both sides.

More quillwort was found. Louisiana quillwort was found on four active timber sales, three of which required modification before being released for cutting. It was also found on seven sales planned for next year, two of which were modified before the sales were finalized. The rest of the Louisiana quillwort was located in existing set aside buffer zones.

Throughout the survey process, Ms. Kennedy maintained constant contact with the U.S. Fish and Wildlife Service offices in Jackson and Vicksburg. Her persistence ensured that the appropriate NEPA documents were amended and the timber sales were modified. Without this level of attention, the sales could easily have experienced bureaucratic disruptions.

Mr. President, this is clearly an environmental success story for all. An endangered plant was found. The habitat around identified populations was protected. Trees were still cut.

I believe a mutually successful coexistence occurred. The quillwort won. Perry County won. The U.S. Fish and Wildlife Service won. The U.S. Forest Service won. I applaud the U.S. Forest Service for protecting the quillwort's habitat with a flexible rapid response. They did not take the easy route and stop all contracts.

I'd also like to note that this process has allowed the Forest Service to significantly expand the scientific knowledge about this quillwort species. With all these new and frequently large finds, it makes me wonder just how endangered this plant really is? I hope the agency charged with monitoring the livelihood of the quillwort will not ignore this information.

Mr. President, there is another question that cannot be overlooked when talking about the DeSoto National Forest. Why has the annual forest regeneration program dwindled down to less than 1 percent of the total acreage while over 33 percent of the forest has pine trees well beyond rotation age? And why is only 35 percent of the annual growth being harvested? This only causes these pine forests to get older.

Mississippi's largest cash crop is timber. Every Mississippian has been behind a log truck on its way to a mill at some point, and every Mississippian knows a little about silviculture. We know that pine forests should be rotated and harvested to maintain their health. We also recognize that old trees are vulnerable to the pine beatle which jeopardizes healthy sections of the forest. Good silviculture prevents a pine forest from getting too old. Good silviculture encourages selective tree harvesting. Good silviculture creates healthy forests. Good silviculture creates an economically thriving community in all sectors.

I want to challenge the U.S. Forest Service to give me a credible response

to this question: Why are we only harvesting a small percentage of the annual growth? I do not want my inquiry to be dismissed with the weak excuse that we just did not have enough people to prepare a sale. The quillwort drew 48 Forest Service employees. How many Forest Service employees worked on timber sales during this timeframe? Recent claims that budget reductions have curtailed the timber sale program only go so far. In Mississippi, mature pine trees are ready to be cut. And the school district, county government, and timber farmers of Perry County who depend on these revenues are anxiously awaiting that day. The citizens of Perry County deserve no less. I urge a full, honest, and equal commitment to all of the U.S. Forest Service's missions.

It is a sad fact that the U.S. Forest Service does not even live up to its existing and approved forest management plans nationwide. It repeatedly disregards programmed sales, making it impossible for counties like Perry County to plan its school budgets. I view forest plans as a contract between the Forest Service and each county. I do not expect these contracts to be broken. When these contacts are broken, the schoolchildren are the big losers.

I would like to personally invite the new head of the U.S. Forest Service to visit Mississippi's national forests to discuss his plans to honor his agency's commitments to Perry County and Mississippi.

In conclusion, Mr. President, I want to reiterate my appreciation for the extraordinary efforts of the regional forester in Atlanta and the district ranger and his employees in the Desoto district. They reflect great credit upon the proud tradition of the U.S. Forest Service. A proper balance was struck—a plant was protected and the interests of the citizens it affected were equally protected. This proves a mutually beneficial coexistence can occur.

Mr. President, I request unanimous consent to list the names of the 48 DeSoto National Forest employees who walked the streambeds in search of quillworts. I ask that my colleagues join me in recognizing their extraordinary efforts:

Kent Ainsworth, Debbie Lindsay, Eddie Bagget, Gary Lott, Jim Barner, Ed Lumpkin, Anthony Bolton, Robert Lumpkin, Hildred Bolton, Dean McCardle, Anthony Bond, Richard McCardle, Charles Broome, Wayne McCardle, Ed Bratcher, Mike McGregor, Steve Cobb, Don Neal, Robert Cooper, Gordon Pearce, Keith Coursey, Lee Prine, Jefferson Davis, Robert Reams, Frank Grady, Tony Rivers, Charles Grice, Patricia Rogers, Alicia Gruver, Joe Schonewitz, Andy Hunter, Ray Shows, Harvest Jackson, Robert Smistik, Kim Kennedy, John Stewart, Rebecca Ladnier, Wayne Stone, Gail Lassalle, Diane Tyrone, Pete Lassalle, Larry Walters, Steve Lee, David Wallace, Lisa Lewis, Donald Williams, and Mike Lick. Bruce Wilson.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, April 9, 1997, the Federal debt stood at $5,380,948,025,320.90.—Five trillion, three hundred eighty billion, nine hundred forty-eight million, twenty-five thousand, three hundred twenty and ninety cents.

One year ago, April 9, 1996, the Federal debt stood at $5,130,578,000,000—Five trillion, one hundred thirty billion, five hundred seventy-eight million.

Five years ago, April 9, 1992, the Federal debt stood at $3,894,405,000,000—Three trillion, eight hundred ninety-four billion, four hundred five million.

Ten years ago, April 9, 1987, the Federal debt stood at $2,283,040,000,000—Two trillion, two hundred eighty-three billion, forty million.

Fifteen years ago, April 9, 1982, the Federal debt stood at $1,061,116,000,000—One trillion, sixty-one billion, one hundred sixteen million—which reflects a debt increase of more than $4 trillion—$4,319,832,025,320.90—Four trillion, three hundred nineteen billion, eight hundred thirty-two million, twenty-five thousand, three hundred twenty dollars and ninety cents—during the past 15 years.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING APRIL 4

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending April 4, the United States imported 8,330,000 barrels of oil each day, 1,534,000 barrels more than the 6,796,000 imported during the same week a year ago.

Americans relied on foreign oil for 56.5 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf war, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers? Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the United States—now 8,330,000 barrels a day.

Mr. President, I yield the floor at this time.

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

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

NUCLEAR WASTE POLICY ACT AMENDMENTS

The Senate continued with consideration of the bill.

Mr. MURKOWSKI. Mr. President, in the course of resolving the status of Senate bill 104 and recognizing that we have just concluded a vote and the vote was 72 to 24, and it was a tabling motion which would have, had it passed, invited every State Governor to prohibit the transfer and transportation of nuclear waste through those States, I will discuss a few States at random, Mr. President. I hope the Members in their offices will reflect on these charts because there are just a few States where the problem exists today. The point of this examination is to simply state that the alternative is to leave the waste in these States or provide an alternative.

Now, again, I want to refer to the major chart which shows where the waste lay currently. There are 80 sites in 41 States. The commercial reactors, shut down reactors, spent fuel on site, commercial spent fuel, nuclear storage facilities, it is non-DOE reactors, it is Navy reactor fuel, it is Department of Energy—all in spent nuclear fuel and high-level radioactive waste. That is where it is, Mr. President.

The question is, Do we want to leave it there or do we want to move it? Now, the next chart again will attempt to show our experience in moving waste through the country because we have done it for an extended period of time. We have had 2,400 movements all over the country. As soon as the chart comes, it will show that it has moved through all States with the exception of South Dakota and Florida.

Now, again the choice that we have relative to an alternative is leave it where it is. We have here the chart which shows the transportation routes of the waste moving across the United States, and it has not been a big deal. The reason is because there have not been any incidents. It has moved safely. It has been moving in containers subject to State and Federal law from 1979 to 1995. So to suggest that it cannot be moved safely or to suggest that we are suddenly thrust upon some kind of a crisis because we are about to move the waste to a temporary repository in Nevada—facts dictate otherwise. It is moved by rail, indicated by the red, it is moved by highway, as indicated by the blue network. Every State but Florida and South Dakota have escaped. That is the reality.

As we look at the argument here, to a large degree, the transportation argument has little validity. This would be the same type of waste that we would be moving from our reactors. Where do we propose to move it? From all the sites I showed on the previous chart, to one site out in the Nevada test site used for over 50 years for more than 800 nuclear weapons tests. I have yet to have anybody come to the floor and suggest there is a better place.

I recognize the reality that nobody wants it but we will look how this dilemma affects a few States. Take Connecticut, for example—and it is significant in Connecticut because nuclear energy makes up 70 percent of the energy that is produced in Connecticut—those ratepayers have paid $521 million over the last 12 years, or thereabouts, into a fund which the Federal Government has taken and put into a general fund for the specific purpose of taking Connecticut's waste. That was a contractual commitment. It is due next year. Connecticut should, under a contractual agreement, be relieved of its waste. The ratepayers have paid, as I said, $521 million. In Connecticut, there are four units, the Connecticut Yankee and the Millstone 1, 2 and 3. Those reactors have stored 1,505 metric tons of waste. It is stored in Connecticut. If this bill does not pass, it will stay in Connecticut. A portion of it is Department of Energy defense waste.

Now, the significant thing here, Mr. President, is that Millstone 1 would be full by 1998. Now what does that mean? It means their storage, the pools adjacent to the reactors, will be full. What will they do? Either build more storage and get new permits, because the Federal Government is not going to be able to take it, or the other alternative is to shut down the reactor. Millstone 2 and 3 will be filled up by the year 2000. What will they do then? Shut down the reactor? Haddam Neck will be filled up in the year 2001. These are factual circumstances surrounding the state of the industry in Connecticut.

Now, if I was representing Connecticut, I would want to get the waste out of there, because two things will happen. One is if this bill passes, the waste will get out. If it does not, the waste is not going to get out, and when these reactors shut down because storage is at capacity the waste is still going to be there. It will be sitting there until somebody does something with it. And to do something with it, you have to move it. Otherwise, it will stay there.

Again, we have a location. I am sure my friend is getting tired of me showing the desert of Nevada where for 50 years we have had testing.

Now, looking to another State, moving south a little bit, the State of Georgia. Now, Georgia is dependent 30 percent on nuclear power. The residents of Georgia paid $304 million into the waste fund. They paid that basically to the Government to take the waste. The Government cannot do it. We have four units, Hatch 1 and 2 and Vogtle 1 and 2. The waste stored in Georgia is 1,182 metric tons at the Savannah River site. The waste stored is 206 metric tons over on the South Carolina-Georgia border. Hatch 1 and 2 reactors will be filled by 1999, and Vogtle 1 and 2 will be filled by the year 2008. Again, we have a case where State ratepayers have paid it, and what have they gotten from the Federal Government? Nothing, other than a chance to continue to store their waste. How long? It is indefinite if this bill does not pass, because nobody can agree on where to put it. The alternative is to leave it where it is, and it will stay there after the reactors have shut down because we do not have anyplace to put it.

Moving on, Mr. President, to Illinois. This is even a bigger set of realities. The State of Illinois is 54 percent dependent on nuclear power. You say "dependent"—what does that mean? It means 54 percent of the energy comes from nuclear power. There are alternatives, sure, coal-fired, oil-fired plants. They all cost money, all take permitting time. Illinois has paid into the waste fund, the residents have paid $1.36 billion, paid to the Federal Government to take the waste next year. The Federal Government will not do it, and they have 13 units in Illinois: Braidwood 1 and 2, Byron 1 and 2, Clinton, Dresden 2 and 3, LaSalle 1 and 2, Quad Cities 1 and 2, and Zion 1 and 2. They have 5,215 metric tons of waste in Illinois. A DOE research reactor is fueled there, with an additional 40 metric tons. A State that is 54 percent dependent.

Looking at their reactors when they have to shut down, because the storage pools are filled: Dresden 3, the year 2000. Dresden 2, the year 2002. Clinton, the year 2003. Quad Cities 1 and 2, the year 2006. Zion 1 and 2, 2006. LaSalle, 1 and 2, 2013. Byron 1 and 2, 2015. Braidwood 1 and 2, 2019. That is a reality. What will Illinois do? Perhaps they will try and buy energy from other States, but that will deplete, if you will, the availability of supply. This is a crisis.

This is the reality, that somebody else before this body had another plan to relieve, if you will, these States of the storage that is licensed. They cannot just store beyond their capacity. They store to their designing capacity. They are prepared to do that but they exceed that capacity in those years. And their ability to increase, that is going to be very, very difficult because for one thing the environmental community is opposed to any nuclear power generation and is going to object. They do not give any credit for the contribution that nuclear energy brings to air quality, including lessening emissions and reducing the greenhouse effect. It is one thing to criticize, but the environmental community has an obligation to come up with alternative and, their alternative is "no nuclear." They like alternative energies, which I do, too, except they are not ready and they are not economic and are not here.

In the meantime, the residents of Illinois are entitled to and will demand energy. What will happen in Illinois is they will have to shut reactors and maybe they will not have air conditioning. Maybe they will have brownouts. This is an obligation that we have in this body to address now because if you do not move it out of there it will stay, the reactors are shut down, and they are stuck with storing high-level energy that is not producing anything, not producing power anymore, and the dilemma is, well, that is a problem for Illinois.

We have an opportunity to correct that today. That is what Senate bill 104 is all about—taking that waste. Remember, when you talk about transportation, to take it, you have to move it. We have moved it safely, and we can.

Now, in the State of Louisiana, my good friend, Senator Bennett Johnston, whom I worked with so closely over the years on the Energy and Natural Resources Committee—and I might add Senator Johnston supported this legislation the last time around because he is a realist and he recognizes we have a crisis. We have to address it. We cannot simply ignore it. The difficulty is we have to put it somewhere. That somewhere, unfortunately, is the desert in Nevada.

In the case of Louisiana, the ratepayers have paid $135 million over 12 to 13 years. There are two units, River Bend 1 and Waterford 3. How much waste? Mr. President, 567 metric tons. When do they run out of capacity? Waterford 3, in the year 2002. River Bend 1, the year 2007. The State is 24 percent dependent on nuclear energy. You can say, well, why the hurry? Remember, we have been 15 years in this process now. Yucca Mountain, when completed, will not be ready until the year 2015, so if we do not address this today, there is no answer. We are just putting it off.

Now, looking at Michigan, Mr. President. Ratepayers in Michigan have paid $510 million into the fund. There are five units: Big Rock Point, Cook 1 and 2, Fermi; 1,500 metric tons of high-level waste are stored there. This State, 26 percent, a quarter of the power, is generated from nuclear energy. Palisades goes down in 1992; Big Rock Point in 1997; Fermi 2 in 2001; Cook 1 and 2 in 2014.

If I was from Michigan, I would be very concerned about the reality of two points. One, continuing to have a source of power within my State, which means my reactors have to continue to operate, which means I have

to relieve my storage capacity. I would be very concerned. I would be very concerned about losing that power base and what I am going to do without it. I would be even more concerned if I didn't get some relief and I could not move it and it just sat there after my reactors shut down. That is what is going to happen in Michigan, and in every other State that is in a crisis relative to storage. As I have indicated, there are several.

Let's look at New Jersey. The ratepayers in New Jersey have paid $382 million into the waste fund. What have they gotten for it? Absolutely nothing. The Federal Government promised in 15 years to have a sufficient repository ready by next year to take the waste. The citizens of New Jersey have acted in good faith. They paid the price. The Federal Government has not honored its commitment. They paid $382 million. They have four units: Hope Creek, Oyster Creek and Salem 1 and 2. They have 1,369 metric tons of waste sitting in New Jersey. Their only hope to get it out is to have a designated repository, designated in time to address reality. Reality is that Oyster Creek is in crisis now. That is full now. What are they going to do? Hope Creek will be full in the year 2007, Salem 1 in the year 2013, Salem 2 in 2018. New Jersey is 62 percent dependent on nuclear power. If I was from New Jersey, I would be pretty concerned about that. I would be pretty concerned about reality, pretty concerned about the Federal Government committing to its contractual agreement so that I could relieve my dependence before I have to shut down, and pretty concerned that, if I don't get it, I am going to be stuck with the waste in my reactor pools with no relief in sight and no generating capacity. I would say New Jersey is in a crisis.

Well, let's go out West, to Oregon. It is a little less out there. Ratepayers in Oregon have paid $76 million. They have one unit, Trojan. Waste stored is 424 metric tons. Across the Columbia River from Oregon, which divides the two States, we have the Hanford site. Waste stored there is 2,133 metric tons. Trojan is closed for decommissioning. What does that mean? It means the waste is still there. I don't know whether the delegation from Oregon is satisfied to just leave it there. But unless we have a place to put it, it is going to stay there. We have proved that we can transport it throughout the country. I am sure that the State of Washington would not be anxious to take it. Hanford already has over 2,000 metric tons. So here, again, is a case of another State that acted in good faith. The ratepayers have paid in. The reactor is closed for decommissioning. There is no place, Mr. President, to take the waste.

The last exhibit—and I could go on and on, but this gives you an idea of the crisis proportion we are in—the State of Wisconsin, the dairy State. Nearly a quarter dependent on nuclear power—22 percent to be exact. The residents paid $219 million into the waste fund. What do they have to show for it? Nothing. The Federal Government, when it takes this money, doesn't put it in escrow to have it ready to meet its obligation. It goes into the general fund. So what we would have to do now is appropriate funds to meet our obligation. Nevertheless, it has been paid in. There are three units: Kewaunee and Point Beach 1 and 2. About 967 metric tons are stored in Wisconsin. The status of the Point Beach 1 and 2 plants, I gather, is that they are full now. They have a crisis there right now. Kewaunee will be full in the year 2001.

I don't know what the residents of Wisconsin know or whether they understand or whether they care. But Point Beach 1 and 2 is at capacity. They had to initiate some relief by dry cask storage adjacent to the reactors. This is something new and innovative that takes licensing. Well, you could say, "let's leave it there." If you want it left in Wisconsin, then don't vote for S. 104. Kewaunee, in the year 2001. If I were from Wisconsin, I would want to move this stuff out. I would want the Federal Government to respond to the $219 million from the ratepayers. I would not want to run the risk of leaving it there. Now we are taking it out of the pools and putting it in areas adjacent to the reactor, dry cask storage. The State's electricity relative to its dependence is 22 percent.

So, there you have it, Mr. President. Those are a few reasons why it is critical that we act now, a few reasons why it is critical that these States and the Members of this body from those States recognize that this offers relief from leaving it where it is and putting it out in the desert where we have a trained work force, we have security, we have the very real likelihood that the permanent repository is going to be determined to be there. But it is not going to be ready until the year 2015. So this provides the relief that is needed now, and it provides a responsible consideration relative to the necessity of a decision being made now.

I think it is fair to say, finally, Mr. President, that to not act on this matter now is to not only disregard the responsibility we have here to minimize the risk to the taxpayers relative to the liability that is going to pile up next year when we can't take the waste, but I think it is also very important to recognize that we are doing a disservice to these States by not providing them with an alternative other than leaving the waste where it is, in 41 States at 80 locations.

I wish there were some other way that we could put it in some other area that would not raise opposition. But I can tell you, Mr. President—and you have observed the debate—the reality is that whatever State we put it in, we are going to get a similar reaction—an extended objection from representatives of that State. Let's recognize the problem for what it is.

Where, of all the places, is the best place to site a temporary repository? I will conclude by referring again to the area that has been polluted for 50 years with 800 nuclear weapons tests, an area that meets as many of the geological applications that are preferred relative to storage, both permanent and interim, of any that have been identified. So let's not wait any longer, Mr. President. I know there are a few more amendments that are pending on this legislation.

I will conclude my remarks by thanking the Chair, and I will indicate that it is my intention to proceed through the remaining amendments with the cooperation of my good friends from Nevada.

I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Nevada.

Mr. REID. Mr. President, I want to briefly respond to my friend, the manager of this legislation. I say that it appears that, if we continue to work the way we have today and yesterday, we should be able to work something out on a final disposition of this at a time when the leaders wish that to be done.

The one thing I want to make very clear, Mr. President, is that we have to respond to a statement of my friend from Alaska that this is a crisis that we are dealing with. The only crisis we are dealing with is the pocketbook of the utilities—not that they are going to be burdened with huge costs, but it may cut down some of their profit margin. These companies are making huge profits, as was indicated in the chart yesterday, which is now spread across the record of this Senate. The utilities are making huge amounts of money to generate electricity by virtue of nuclear power.

There is no crisis, as far as needing to undercut or circumvent the present law. The present law says that at Yucca Mountain in Nevada—they are characterizing a mountain, Yucca Mountain. In that mountain, we have a huge tunnel that is being bored by a big boring machine. The cost of that hole in the ground is $60,000 a foot. That has now gone almost 5 miles through that mountain. When I say "through the mountain," it is in a horseshoe shape almost 5 miles long.

This Government appropriated almost $200 million last year for the purposes of continuing the characterization of that mountain. The work at Yucca Mountain has been going on now for more than a decade. It seems to me

rather strange that we would waste all the money, billions of dollars, to determine if in fact that site is suitable.

What this legislation does is simply say that we are going to pour a cement pad in the middle of the desert and dump this stuff on top of the ground, not protect it from the weather, the elements, or anything else.

Mr. President, I say to my colleagues, who would you rather trust, the hundreds of organizations that oppose this legislation, including the Baptist Ministry and the United Transportation Workers, who have to deal with products on a daily basis traveling across this country, and the Missouri Alliance, which I read from this morning, organizations like that, or nuclear utilities? Nuclear utilities are the only organizations pushing this legislation.

I have mentioned a number of times that one of the most important elements of policy is public confidence that the Government knows what it is doing and their interests are being accommodated. Nuclear waste disposal efforts have, time and time again, demonstrated that we, the Government, don't know what we are doing. We have rewritten policy any number of times. We have abandoned the notion of characterizing more than one site because it was too difficult to decide which sites to study. We have changed the acceptance criteria in midstream because it was too difficult to prove that Yucca Mountain would be acceptable.

I just think that this policy is bad. To think that we are now going to transport this stuff over 3,000 miles because utilities want us to do it is ridiculous. We can't transport nuclear waste. We don't have the containers to do it safely. We don't have the transportation routes to do it safely. Why are we doing this mad rush to satisfy the gluttonous utilities? I don't think there is a good reason in public policy to do so.

So I hope that my colleagues will understand that there is no emergency. There is no crisis to transport nuclear waste. As indicated by one of the sponsors of this legislation, the senior Senator from Idaho, it is safer—I am not paraphrasing it—it is safer to transport nuclear waste than it is to buy a carton of milk at the store and take it to your home. It is safer to transport nuclear waste. Well, if that is the case, then I think we should go one step further in safety and leave it where it is. If the cooling ponds are filled and there is no more room for spent fuel rods, then do what they are doing at a number of sites in this country. Reuse the dry cask storage—use the containment policy. It is cheap and extremely efficient while we await the determination as to whether or not Yucca Mountain is a suitable site.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I thank the Chair. I know this all gets pretty arcane and esoteric. But I think the presentation made by the Senator from Alaska would maybe give the impression that somehow ratepayers would be victimized under the present system. I think some clarification needs to be made. I think it is important to understand that each of the reactors that he referenced will have a period of time in which they shut down. That is because each reactor is licensed for a fixed period of time. So if one looks at all of the reactors across the country, the last reactor to shut down is in the year 2033. And between now and the year 2033 all of the reactors which have been referenced in the charts which the Senator from Alaska has called to our attention will shut down depending upon the period of their license.

So the point I seek to make is that over the next 40 years, or 36 years, each of the reactors will be licensed.

I mention that because the responsibility of the nuclear waste fund exists long after the last reactor shuts down. That is to say there will continually be a responsibility until it is estimated the year 2071 to deal with the issue of nuclear waste because as reactors close down fuel will be moved into the ponds or the pools. Then ultimately in theory they will be transported to a permanent repository.

So you can see it here. This is the mill fee presently under the law. Each utility is paying one mill for each kilowatt-hour generated by a nuclear reactor. That is the current payment schedule. That mill fee payment will decline. As you can see here, here is 1995, but you can see going out to the year 2033, or thereabouts, it will be zero. The reason for that is that the mill fees being paid into the nuclear waste trust fund are only generated by kilowatt-hours generated by nuclear reactors. So you can see here that the balance of the nuclear waste trust fund peaks up here sometime around the year 2010. So in all of this buildup referenced in the fund, that buildup is going to be necessary because of the outyears, after 2033 when not 1 cent will go into the nuclear waste trust fund because there will be no reactors generating electrical energy. You will need the money to take care of it in the outyears.

So what is occurring now was contemplated in 1982 when the Congress passed the Nuclear Waste Policy Act; namely, that there would be a mill fee payment system in which the mill fees would go into the nuclear waste trust fund, that it would build up to a substantial surplus, and that surplus would be needed in the outyears when the responsibility to handle the waste continues even though no money is going into the nuclear waste trust fund.

A ratepayer can make a legitimate complaint or a grievance in 1998, as we have all agreed on the floor. There is no permanent repository open. There is no type of storage that will be available under any scenario. Whatever ill-conceived form S. 104 could possibly be enacted in, there is no way that there will be any storage space available at any kind of an interim facility in the year 1998.

Having recognized that, this Senator has offered legislation over the years that says in effect that after 1998, when utilities may incur additional costs because they had expected that a nuclear waste repository would be opened, a nuclear utility could incur additional expense. I concede that. The additional expense may be that they have to provide some dry cask storage, and they may have to reconfigure the space where they currently have the fuel assemblies racked. There could be some additional costs. And that would be unfair to the ratepayer because the system of mill fee payments did contemplate that in 1998 there would be storage facilities open.

So the solution to any contention of inequity is to simply say that, if the legislation which I have introduced on a number of occasions is to the extent that a utility incurs any additional expense after 1998 because the permanent storage is not available, that utility should be able to offset its additional costs by reducing its payments into the nuclear waste trust fund. That is fair, Mr. President. But the notion that somehow the utilities have paid all of this money in and they are not getting what they bargained for is simply not the case. It is true that there is no permanent storage in 1998. We recognize that in the legislation which I have introduced, and we simply provide the utilities an offset.

I urge my colleagues, those who may have an interest in this, to look at the "Nuclear Waste Fund Fee Adequacy and Assessment." This is a document prepared by the U.S. Department of Energy, Office of Civilian Radioactive Waste Management. That has the full schedule of what is contemplated by way of receipts into the fund as well as the expenses that would be incurred after 2033.

Finally, let me make a point. If we are truly talking about being financially responsible, this fund, according to the General Accounting Office, is underfunded by as much as $4 billion to $8 billion. That is to say every bit of this buildup, plus an additional $4 billion to $8 billion, will be necessary in order to handle the waste out to the year 2071 when there will still be responsibilities under the time schedule.

So I think it is misleading to suggest that in some way the utility ratepayers are being dealt with unfairly. They certainly would be dealt with unfairly if they are not able to offset the expense.

I must say I am rather surprised that this legislation, S. 104, does nothing to

deal with the fact that there will be additional costs incurred by the utilities after 1998. That is the legislation that has been pending before the Congress for a number of years.

I would also point out to my colleagues that as recently as this past month the newly confirmed Secretary of Energy has indicated he is willing to sit down and talk to the utilities about compensation in the form of additional expenses that they may incur. So when you look at it in that context, this has nothing to do with unfairness to the ratepayers. It has nothing to do with double payments. We can and should responsibly deal with that issue. This is again the siren's call that the industry has invoked now for two decades. "We just want to get this stuff moved. Let's get it on a train. Let's get it on a truck. Let's get it out of town today, tomorrow, and we could care less what may occur."

I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I will be very brief. There are a couple of points I want to make relative to the continued debate. One is the reference to the profits of the utilities. Most utilities are heavily regulated, and as a consequence the States have a considerable influence on determining the return on investment. I am not going to argue the merits of just what that return is. I think it varies within the industry, and it varies by the producer of power, their power lot, and it has to do with incurred debt and the ability to amortize that debt. But one thing that wasn't mentioned is that these utilities have provided reliable power to the residents of the individual States since they came online—reliable power from a source that emitted no emissions, contributed nothing to greenhouse gases, and basically the cleanest source of power that we know today on a significant magnitude to maintaining air quality. So the environmental contribution by nuclear power from the standpoint of its emissions is really beyond compare.

So let's acknowledge, indeed, that the utilities have done a job. They have provided power which is reliable and clean. Without them there is no considered replacement that has been identified.

The issue of containers continues to come up. If we can ship high-level waste from Europe to the United States, military waste from Europe to the United States and to Russia—we watch the British, we watch the French, we watch the Japanese move waste from Japan to France for reprocessing and back—to suggest that we are not going to build safe containers is simply unrealistic.

The point has been made that we are in some of these reactors storing our waste on site in casks on the surface suggests just one thing. We are preparing to basically leave it where it is, leave it with 41 States at the 80 sites, and that is the answer that the other side has for relief. Leave it all over the place. If it is safe enough to leave at a reactor in a cask on the surface, certainly it is safe enough to leave it out in the desert in an area where we have had 50 years of nuclear explosions, where we have a work force that is trained, security force, and so forth.

So I just do not buy that argument. That is just an argument for leaving it where it is, and that is just not good enough. It is not good enough for the Senator from Alaska, it is not good enough for the States that are affected.

If you look at the schedule, the viability assessment is anticipated to be completed by the end of next year. I am told the odds of that being favorable are about 90 percent. This is relative to a permanent repository at Yucca being completed.

So when that viability assessment is done next year, we will begin to initiate the process of developing the EIS on the temporary repository. Then the President has to determine the viability. That is going to take place in 1999. If the Nevada test site is determined it will be determined at that date, approximately March 1999, and by April 1999 the license application will be presented to the NRC and we anticipate the EIS to be completed on the temporary repository by the year 2000. Construction can begin when the EIS is done. Construction would begin, we anticipate, when we get the license from the NRC, in roughly 2001, and we could accept the casks coming from the nuclear reactors into the temporary repository out in the Nevada desert no later than the year 2000.

So there is the schedule relative to the timeframe under which we can begin to accept spent fuel into the Nevada desert temporary repository. The alternative to that—and that is what the other side would have you suggest—is to wait until Yucca Mountain is done, and that is the year 2015.

We have a theme here that has been around for a long time and we continue, and it is here today and it is a legacy of broken promises. I think it is time that the Government start keeping its promises. It was 15 years ago that Congress passed a law that made a deal with America's electric consumers, and here was the deal. People who bought electricity from nuclear power plants would pay a small additional charge on their electric bills. In return, the Department of Energy would build storage and disposal facilities for used nuclear fuel from the nuclear power plants that supply 22 percent of our Nation's electricity—22 percent—second only to fossil fuels, coal. These facilities, as I have indicated, would be ready in 1998, at which time the Department of Energy would begin removing used fuel from the nuclear power sites.

The consumers paid their money, but as it now stands the DOE is not going to hold up its end of the bargain.

I think it is a travesty that we still are here today trying to get the Department of Energy to fulfill its responsibility to build a facility to manage this radioactive waste. In 15 years and nearly $13 billion in consumer funding for this program, it is pretty hard to see the progress that we have made. All consumers have in exchange for the billions of dollars so far is a legacy of broken promises from the Federal Government. Worse yet, the Energy Department says it cannot begin accepting fuel in the permanent repository until the year 2015, and that is if everything goes as planned.

If you will bear with me, I would like to wander through the legacy of broken promises. Let us go back to 1984. This was a clear promise. Don Hodel, then Secretary of Energy, affirmed that the Energy Department is obligated to begin accepting spent nuclear fuel from nuclear power plants in 1998 whether or not a permanent disposal facility is ready.

Nineteen eighty-seven, 3 years from 1984. Congress then designates Yucca Mountain, NV, as the only site to be evaluated—the only site to be evaluated. Congress, that is us, Mr. President. The Energy Department announces a 5-year delay in the opening date for a disposal facility, from 1998 to the year 2003. We went on from 1987 to 1989, another delay, another promise. The Department of Energy announces another major delay in the opening date for a permanent disposal facility until the year 2010 this time.

Well, moving on; 1991 comes. We have mounting concerns. And the first sign of concerns appear over the Energy Department's ability to meet its obligation under the Nuclear Waste Policy Act. So the State of Minnesota tells Energy Secretary James Watkins that it is highly probable that the Department of Energy will experience significant delay in meeting its obligation to begin taking high-level radioactive waste in 1998.

May 1992. What do we have? More promises. Secretary of Energy Watkins tells Minnesota that the DOE is committed to fulfill the mandates imposed by the Nuclear Waste Policy Act. The Department has sound, integrated program plans that should enable them to begin to receive spent fuel at an MRS—monitored retrievable storage—facility in 1998.

December 1992, yet another promise. Energy Secretary Watkins acknowledges that attempts to find a volunteer host for an MRS facility have not succeeded. Another disappointment. He promises whatever is necessary to ensure that the Energy Department is

able to start removing spent fuel from nuclear power plant sites in 1998.

Well, moving on to May 1993, we get an affirmation from Secretary of Energy O'Leary that there is a moral obligation that the Department of Energy has to the electric utilities and their customers. And I quote: "If it does not have a legal obligation, then it has a moral obligation."

Well, I do not know whether you can make soup out of that. In May 1994, notice of inquiry. The Department of Energy publishes a notice of inquiry to address the concerns of affected parties regarding the continued storage of spent nuclear fuel at reactor sites beyond 1998. The energy agency says in its preliminary view it does not have the statutory obligation to accept spent nuclear fuel in 1998 in the absence of an operational repository or suitable storage facility.

In May 1994, 14 utilities and 20 States sue the Department of Energy. A coalition of 14 utilities and public agencies in 20 States file separate but similar lawsuits seeking clarification of the Department of Energy's responsibility to accept spent nuclear fuel beginning in 1998.

April 1995. Here we go. Here is the Government's first acknowledgement of their policy. In April 1995, after starting this in 1984, 11 years, it comes out and says they have no obligation to take the fuel. Talk about a copout. They state that the Federal Government has no legal obligation to begin accepting high-level waste in 1998 if a repository is not open—according to the Department of Energy's interpretation of the Nuclear Waste Policy Act and its contracts with utilities.

Fortunately, the court took another view. In July 1996, the U.S. Court of Appeals ruled that the Department of Energy is obliged to take fuel in 1998, and it is a legal as well as a moral obligation. So we finally got some action. That came out in July.

In December 1996, the Department of Energy decides not to challenge the court ruling and admits failure and admits liability. The DOE acknowledges that it will not be able to meet its commitment to take waste in 1998.

January 1997, the DOE's liability. Well, 46 State regulatory agencies and 33 electric utilities file new action for escrow of nuclear waste fees. That means they did not want them to go into the general fund anymore. They want this to go into an escrow fund so they will be available for the Federal Government to meet its obligation and order the DOE to take spent fuel in 1998.

In March 1997, the court rejects the Department of Energy motion to dismiss before it is filed. The court tells the Department of Energy that a motion to dismiss would be inappropriate in this case and sets the case for damages and hearing of the merits.

The Energy Department must have clear direction to develop an integrated system that will fulfill its obligation to manage the Nation's commercial and defense nuclear waste. S. 104 provides that by requiring construction of a central storage facility for used nuclear fuel and continued scientific investigation of a proposed repository at Yucca Mountain. The legislation also includes appropriate safeguards for the public and the environment at every step and provides consumers with a solution for the billions of dollars they have already paid into the program.

Mr. President, I urge my colleagues to support this comprehensive solution to one of the Nation's most pressing environmental issues and end the string of broken promises.

AMENDMENT NO. 36 TO AMENDMENT NO. 26

Mr. MURKOWSKI. I send an amendment to the desk. It is an amendment to the Murkowski substitute beginning on page 49.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 36 to amendment No. 26.

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

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

The amendment is as follows:

Beginning on p. 49, strike line 11 and all that follows through line 21 on p. 52 and insert the following:

"(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

"(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annual level of appropriations of expenditures on those activities consistent with subsection (d) for each fiscal year in the offsetting collection period, minus—

"(i) any unobligated balance collected pursuant to this paragraph during the previous fiscal year; and

"(ii) the percentage of such appropriation required to be funded by the Federal government pursuant to section 403.

"(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

"(C) For purposes of this paragraph, the term 'offsetting collection period' means—

"(i) the period beginning on October 1, 1998 and ending on September 30, 2001; and

"(ii) the period on and after October 1, 2003

"(3) NUCLEAR WASTE MANDATORY FEE.—

"(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

"(i) 1.0 mill per kilowattt-hour generated and sold, minus

"(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

"Provided, that if the amount under clause (ii) is greater than the amount under clause (1) the fee under this paragraph shall be equal to zero.

"(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal government that are specified in subsection (c)(2). In making this determination the Secretary shall—

"(i) rely on the 'Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program,' dated September 1995, or on a total system lifecycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the government under subsection (c)(2);

"(ii) rely on projections from the Energy Information Administration, consistent with the projections contained in the reference case in the most recent 'Annual Energy Outlook' published by such Administration, in making any estimate of future nuclear power generation; and

"(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

"(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

"(D) The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(4) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2001. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the full amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

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

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

The Chair recognizes the junior Senator from Nevada.

Mr. BRYAN. Mr. President, the amendment being offered by the Senator from Alaska is designed to address a point of order that would lie with this bill with respect to the budget process. We have heard almost endlessly on the floor that the poor ratepayers are not getting this, they are not getting that. We have tried to respond by saying we think the ratepayers have a legitimate issue to raise after 1998, and that there should be a reduction in the payments into the fund because some additional costs are going to be incurred before a permanent repository can be made available under any scenario that one would choose to fantasize.

This is kind of another budget gimmick, and it is technical, but let me just say very briefly that what this does is it deals with nuclear waste that was accumulated prior to 1982, in which the utilities would incur an obligation to pay for that. There were several options available. A number of utilities elected not to make that payment until nuclear waste was actually being received by the permanent repository. So we are not talking about an inconsequential sum, and ratepayers may be interested to know that their utilities, or at least some of them, are going to be paying $2.7 billion before they would otherwise have been required to do so under the previous agreement to deal with the budget. This is designed, it is a budget gimmick, so it does not result in being vulnerable to a budget point of order.

It does, apparently—we are going to have this reviewed—it does, apparently, deal with the budget point of order the senior Senator from Nevada and I were about to make. But I think the point needs to be made, anybody who has this compassion and concern for ratepayers, what this does is trigger the obligation to pay that $2.7 billion before any interim repository could possibly be opened anywhere, under any scenario, before any permanent repository.

Somehow I do not see how this is a better deal for the ratepayers who originally were led to believe that they would have until after nuclear waste was initially received before this $2.7 billion obligation.

So, it looks to me like the ratepayers are on the short end of this one.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Nevada.

Mr. REID. Mr. President, if there is anyone in this body who is concerned about dollars and budgetary numbers, they should be concerned about what is taking place here. They should run from this bill. This is another reason that we should be so thankful we have a constitutional form of government and we have a President who is willing to veto bad legislation. This is bad legislation, getting worse every hour we spend on this floor.

Now the numbers are changing. We are not talking about a few dollars here and a few dollars there; we are talking about $2.7 billion that the ratepayers are going to have to cough up early. This is another example of the gluttonous nuclear utilities taking advantage of the general public. We know we do not have the numbers, as has been proven, because the utilities seem to have a lock on this bill. They are the ones marching it through this Congress. But 16 blocks away, on Pennsylvania Avenue, we have someone who is going to veto this legislation. That is all we have left, because it is very clear that the nuclear utilities have a lock on this legislation that is getting worse by the hour.

Mr. MURKOWSKI addressed the Chair.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. Mr. President, I am going to call for a voice vote, but let me very briefly explain our position with regard to the action that is pending before the Senate.

This provision requires the payment of a one-time fee due to be paid in fiscal year 2001. The one-time fee is the fee paid for fuel used before the Nuclear Waste Policy Act was enacted. Most have already paid this fee. The timing of the payment was optional: Immediately or when the fuel was taken. If paid when the fuel was taken, then interest must be paid by the utilities. Most utilities that have not paid the fee put it in escrow, and this simply requires that the fee be turned over to the Federal Government so it can be used as an offset to the user fee implemented by S. 104.

So the amendment simply corrects a technical issue with regard to the fee provision of the substitute. We had been previously advised by CBO that the provision had no Budget Act impact and, as a consequence, this action basically makes us in conformance with the Budget Act.

Mr. BRYAN. Mr. President, I certainly am not going to object to a voice vote on this, but might I ask the chairman a question on this?

I do not intend to offer an objection, but I think it would be helpful for those who have been listening to the debate, am I not correct this one-time fee, which I am told is $2.7 billion, was not due until the time at which the utilities actually had the waste removed, which would have been 10 or 15 years, whatever the case may be? This does require an accelerated payment by them in order to comply with the Budget Act; is that not correct?

Mr. MURKOWSKI. If I may, I am told that was the deadline for paying the fee. But if you paid earlier, you do not have to pay the interest.

Mr. BRYAN. But the option was whether the utilities—if I am correctly informed, and I certainly stand to be corrected—can take the option not to pay, which would mean that it would be years before that payment would be due.

Mr. MURKOWSKI. That is true, but they would have to pay the penalty of the interest.

Mr. BRYAN. They would have to pay the interest.

Mr. MURKOWSKI. So it is beneficial, since in most cases they have it in escrow, to simply pay it.

Mr. BRYAN. I simply say, not to be argumentative with the chairman, but if the utilities had elected not to make that payment—one would assume they are acting in their own self-interest—this will now compel them to make the payment before they have the benefit of the interim or permanent storage. That is the only point I sought to make.

Mr. MURKOWSKI. My understanding is, if the utilities agree to pay it, it seems to be in their own best interest to pay it and be relieved of the interest. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 36 offered by the Senator from Alaska.

The amendment (No. 36) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. For the benefit of all Senators, I should advise them it is our intention to try to work toward a time agreement with some finality relative to the pending amendments.

It is my understanding that there are two Wellstone amendments that are left, one Bingaman amendment——

Mr. REID. Would the Senator yield?

Mr. MURKOWSKI. I will be happy to.

AMENDMENTS NOS. 29 AND 30, EN BLOC

Mr. REID. I, Mr. President, pursuant to a request from Senator WELLSTONE, who is unable to be here today because of floods in his State, offer at this time, with unanimous-consent, two amendments. It is my understanding that it is part of the unanimous-consent agreement these amendments will be debated on Monday.

I send these two amendments to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. WELLSTONE, proposes, en bloc, amendments numbered 29 and 30.

Mr. REID. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

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

The amendments (Nos. 29 and 30), en bloc, are as follows:

AMENDMENT NO. 29

(Purpose: To ensure that emergency response personnel in all jurisdictions on primary and alternative shipping routes have received training and have been determined to meets standards set by the Secretary before shipments of spent nuclear fuel and high-level nuclear waste)

On page 22 of the substitute, line 5, after "(3)(B)" insert "until the Secretary has made a determination that personnel in all state, local, and tribal jurisdictions on primary and alternative shipping routes have met acceptable standards of training for emergency responses to accidents involving spent nuclear fuel and high-level nuclear waste, as established by the Secretary, and".

AMENDMENT NO. 30

(Purpose: To express the Sense of the Senate regarding Federal assistance for elderly and disabled legal immigrants)

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE REGARDING FEDERAL ASSISTANCE FOR ELDERLY AND DISABLED LEGAL IMMIGRANTS.

It is the sense of the Senate that Congress should take steps to ensure that elderly and disabled legal immigrants who are unable to work, will not be left without Federal assistance essential to their well-being.

Mr. MURKOWSKI. I wonder if we could get a short explanation.

Mr. REID. I also ask unanimous consent that the amendments be laid aside.

The amendments—one of them deals with immigration and the other deals with setting standards for training of people who deal with nuclear waste.

Mr. MURKOWSKI. I thank my friend for the explanation. I have no objection.

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

Mr. REID. I would also say to my friend, the manager of the bill, that it appears that we are trying to work to get a finite number of these amendments, and, hopefully, after the next vote, maybe we can have an agreement—although I guess we are not going to have any votes today, so I withdraw that—maybe after completing the debate on the Thompson amendment.

Mr. MURKOWSKI. If I may interrupt to complete my understanding, for the benefit of other Senators, we have the two Wellstone amendments pending at a time to be determined by the leadership, which is intended to be debated on Monday. Is that correct?

Mr. REID. Yes. Will the Senator yield?

Mr. MURKOWSKI. Yes.

Mr. REID. The Senator from Minnesota has indicated he would be willing to accept a time agreement of 1 hour on each amendment, equally divided.

Mr. MURKOWSKI. I am sure we would accept that. And then there is the disposition of the Bingaman amendment.

Mr. REID. It is my understanding, I say to my friend from Alaska, there are two Bingaman amendments. He may not offer both of them. But he would like to reserve two. He also indicated that he would be willing on those amendments to agree to 1 hour evenly divided.

Mr. MURKOWSKI. On the two amendments?

Mr. REID. That is right.

Mr. MURKOWSKI. That would also take place Monday.

Mr. BRYAN. If the Senator would yield, I am informed that Senator BUMPERS has an amendment, the nature of which I do not know. And Senator DOMENICI has two amendments that I have just been made aware of. I did not know that until a few moments ago. This is just to inform the chairman. There are some things we are going to have to work through.

Mr. MURKOWSKI. I was distracted. Did the Senator from Nevada say Senator BUMPERS?

Mr. BRYAN. Senator BUMPERS has an amendment, and there are two amendments that may—I underscore the word "may"—be offered by the Senator from New Mexico, Mr. DOMENICI. I do not know what his intent may be with respect to them. But apparently those are among the amendments that have been filed, I would advise the chairman.

Mr. MURKOWSKI. I thank my friend.

It is my understanding, then, there will be an attempt to get a time agreement so we can conclude disposition of all amendments at a time Monday that would be determined in a time agreement and that the leadership would affix a vote on those amendments which require it; is that correct?

Mr. BRYAN. Yes.

Mr. MURKOWSKI. With that understanding, it gives the Members an idea of what we might anticipate for the balance of the day.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

AMENDMENT NO. 37 TO AMENDMENT NO. 26

(Purpose: To provide that the President shall not designate the Oak Ridge Reservation in the State of Tennessee as a site for construction of an interim storage facility)

Mr. THOMPSON. Mr. President, I send an amendment to the desk on behalf of myself and Senator FRIST and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON], for Mr. FRIST, for himself, and Mr. THOMPSON, proposes an amendment numbered 37 to amendment No. 26.

On page 28, line 16, after "Washington" insert "or the Oak Ridge Reservation in the State of Tennessee".

Mr. THOMPSON. Mr. President, I rise to offer this amendment today because I am concerned about that section of the bill dealing with what happens if Yucca Mountain is not deemed to be a suitable permanent repository to store spent nuclear fuel. In that event, under this bill, all work on an interim storage site in Nevada would cease and the President would have 18 months to name an alternate site for an interim storage facility.

What I am concerned about is that the bill goes on to say:

The President shall not designate the Hanford Nuclear Reservation in the State of Washington as a site for the construction of an interim storage facility.

So the President will have one less option when he is looking for alternate sites under that scenario. My colleagues from South Carolina have offered an amendment which has subsequently been adopted that would exempt two sites in their State from consideration as well.

Our concern is that Tennessee has been selected before as a site for an interim storage facility. However, it was later soundly rejected as a storage site both by the Congress and the courts. We may be facing the possibility that Tennessee again will be selected as an interim storage site under the scenario I just outlined.

In 1986, the Department of Energy recommended three sites for the location of interim storage facility for spent fuel. All three of those sites were in Tennessee. Given that history, we may be at the top or near the top of the list again, especially if Hanford and Savannah River are taken off the table. Removing Hanford and Savannah River from consideration makes it more likely that Oak Ridge would be selected as an interim storage site.

We should make it clear again today that Tennessee is not an appropriate site to store this waste, just as Congress did in 1987. I assume we will do

the same thing today. Oak Ridge itself is a population center. The city of Oak Ridge has 28,000 residents. Oak Ridge sits directly between two major population centers in our State—Knoxville, with a population of 175,000, and Chattanooga, with a metropolitan area population of approximately 424,000—and it is just 175 miles from the capital of Tennessee, Nashville.

Oak Ridge also sits at the center of three major interstate highways—I–40, I–70, and I–81. Thus, it is an extremely heavily trafficked area.

In addition, Oak Ridge is just 5 miles from the Melton Hill Dam and just 15 miles from Norris Dam. In other words, it sits in close proximity to major waterways and dam facilities.

I would like to think that my concern is not well placed, and it may not be well placed, but as this deliberation has proceeded, it has become more and more a matter of relevant concern. So out of abundance of caution, I think this Congress should make clear what a past Congress made clear—that Oak Ridge is not a suitable place as a storage facility. For this reason, I urge the adoption of the amendment. I yield the floor.

Mr. MURKOWSKI. Let me advise the Senator from Tennessee, we are prepared on this side to accept his amendment. And I am not sure what the disposition is on the other side.

Mr. BRYAN. The Senator from Nevada would not be prepared to accept it and will be asking for a rollcall vote. I would like an opportunity to respond to some of the comments the Senator from Tennessee made. If he needs a little more time, I am happy to allow him to go first, but I want to respond to some of his comments that he made on behalf of his amendment.

Mr. THOMPSON. No. I am finished at this time.

If the Senator has comments to make, please do so.

Mr. BRYAN. I thank the Senator.

Mr. President, I understand the concern that my friend from Tennessee has. It is a concern that Nevadans have had for many years. Let me say where I respectfully disagree with him is that if he is concerned about the movement of nuclear waste to an interim storage facility, the most effective protection that the State of Tennessee and all States have is the existing law—is the existing law.

There are two provisions in the existing law. One of them is specifically in reference to the Senator's concern from the State of Tennessee and, indeed, is a product of the Tennessee State delegation's actions on the floor a decade ago.

Under the present law, no interim storage anywhere in any State can be located until an application for license of a permanent repository. So his State under the current law is absolutely protected, as is every other State. And the reason why that was inserted in the legislation at that time was a policy consideration.

Our colleagues then recognized the great temptation that an interim or temporary facility might become a permanent repository de facto, a concern which the Senators from Nevada are very gravely concerned about. So every State that is concerned about it being a potential target for interim storage under the present law has no need to worry at all. That is the ultimate protection.

The law right now precludes the location of interim storage until the application for licensure for the permit. You cannot have a better protection than that. So if that is the Senator's concern from the State of Tennessee, as I know it is the Senators' from many States, that is the best protection that the State of Tennessee and others have.

Let me just explain to my colleagues what the Senator from Tennessee is asking. The Senator from Tennessee, in the amendment, is asking that his State be exempted from any consideration.

Under the provisions of S. 104, if the President finds there is a reason to reject the permanent storage at the Yucca Mountain facility, then the President is given a time to choose an alternative location for interim storage. And if he does so, that decision has to be approved by the Congress at a subsequent time.

So, in effect, the President would be required to make a choice as to another location around the country, and that decision would have to be ratified by an act of Congress, signed into law by the President.

We believe that S. 104 is unnecessary and unwise, so that our view is that we ought not to be in that position in terms of the legislation, that we ought to reject that because it is unnecessary and unwise and we ought to proceed on the present course, which is to continue the site characterization process that is occurring at Yucca Mountain.

But let me just say, again, with great respect to my friend, who I admire greatly, from Tennessee, he is asking his State to be exempted, even though in 1987 when the Department of Energy—one can assume based upon scientific considerations—had made a determination that three sites in Tennessee would be the best sites in the country for interim storage. If you look at the history of this act, that is the essence of what has gone wrong, why this act, which was originally conceived with some sense of balance and fairness, has gone so far astray.

The original law in 1982, signed into law by the President in 1983, was that we would search the entire country and look for the best site for a permanent repository.

That is pretty hard to argue in principle—nobody exempt, everybody on the board. And we look for the best site. It was also contemplated there would be some regional balance, that we would look into different types of geology—granite, salt domes, welded tuff, perhaps others as well—and that then three sites would be studied, and the President of the United States, from those three sites, would make the decision that has at least some pretension of being rational and fair and scientific.

Here is what happened: Not science, but politics. The 1984 election illuminates the year after the Nuclear Waste Policy Act is enacted into law. Immediately, the incumbent President and his supporters assured people in the Southeast, "Don't worry. We'll never choose the salt domes." It had nothing to do with science. That is all politics. That was one of the first corrupting acts that in effect destroyed any pretense of science, balance, fairness, objectivity.

And then fast forwarding, the Department of Energy began to gather data, and their internal memorandum said, look, the folks in the Northeast are going to object to this, there will be strong political opposition, and the Department of Energy unilaterally abandoned any pretense of a search for a site in a granite formation. Nothing to do with science. Absolutely nothing.

Then what remained of the act was that we would provide the President of the United States, whoever that person might be, with three choices. That was emasculated in 1987, when the "Screw Nevada" bill was enacted, having nothing to do with science. Nobody argued Yucca Mountain should be considered solely and exclusively to the exclusion of everything else except the nuclear utilities and their supporters.

I do not believe you can find a scientist worth his or her salt that will tell you that we ought to have all of our nuclear eggs in one basket. It would be better to have some options on the table to consider other locations and then let the process go forward from there. That is what has made this entire siting process so utterly devoid of any kind of credibility, because the politics has worked through it.

We need the South, so we assured them, in 1984, you will be home free. The DOE looks at political opinion and reaction in the Northeast—no, we are sure not going to look at you. And then the utilities come in and say, look, we do not like the idea of having three sites studied; let us just study the Nevada site—having absolutely nothing to do with science.

Now, fast forward to 1997. I invoke the aid of deity in praying to God we do not get S. 104 enacted into law, and I believe we will not because of the President of the United States, who is taking, in my judgment, the right policy and trying to restore some credibility to the process. However, if S. 104

were enacted into law, the President of the United States is mandated, if he finds Yucca Mountain unsuitable, to make another choice for interim storage. That would have to be submitted to the Congress for approval.

Now, what we are saying is no, we should not allow the President to make that choice.

We ought not to exempt Tennessee, as my friend from Tennessee would have us do, or this morning as our colleagues from South Carolina got their State exempted, and previously the State of Washington. That has absolutely nothing to do with science. That has everything to do with politics.

If you believe for one moment that S. 104 has any merit at all—and in my view it has none, and I oppose it strenuously on a number of grounds that we will get into at a later time during the debate—should not the President of the United States, who is being directed to make other selections with respect to interim storage, have a full range of discretion as to where he should tentatively make that choice, which is always subject to approval by the Congress. We have the right to disagree. But, in effect, what we want to do with these series of amendments that we have dealt with this morning—the Washington exemption, the South Carolina exemption, and now the exemption of my friend from Tennessee—we want to load the deck. It is a stacked deck. "You cannot look at us; we are in Tennessee." "You cannot look at us; we are in South Carolina." That does not have any policy justification at all, in my judgment.

I understand the concern of the able Senator from Tennessee about transporting all this nuclear waste through his State. It would be substantial and extensive. That is why I wish he were allied with us, because if he were, the State of Tennessee and other States would be immune and protected from the irresponsible course of conduct which S. 104 directs us to do.

It is for that reason I find myself in opposition to his amendment, No. 1, on the basis of policy; and No. 2, I believe that makes this legislation, if it is possible, even less defensible than it is in its present unamended form.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Thank you, Mr. President. I appreciate my able colleague's comments. He is eloquent in defense of his position. I respectfully disagree with him with regard to the history of this matter in some respects. It seems often when we agree with a decision, it is based on scientific evidence and when we disagree, it is based on politics.

In this particular matter, the decision not to have the Tennessee site designated as a storage facility actually was also addressed by the courts at that time, and they determined that the DOE at that time in making that decision, violated the Nuclear Waste Act in failing to consult with the State before selecting the sites in Tennessee. So before Congress even got involved in the matter, the courts had addressed the matter and enjoined the DOE from putting the facility in Tennessee.

In listening to my colleague, I am more and more concerned because he makes a case, for his belief anyway that Tennessee apparently would in fact be the logical place once you eliminate all of the other sites that have already been eliminated.

Talking about objective criteria, I think population is one. As I mentioned, the city of Oak Ridge is a city of 28,000 people, in sharp contrast to a place like the Nevada test site, which has a population density of one-half person per square mile. That is subjective criteria. This is not raw politics by any stretch of the imagination.

I am not saying that this site-by-site consideration is the best way to proceed. We simply find ourselves in a situation where we do not want the dagger pointed at the heart of the State of Tennessee, when all the dust settles and find, instead of a place where the facility ought to be, which is embodied in the body of this bill, that we find someplace that the Congress has already rejected in times past as not being meritorious.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if the statement of the Senator from Tennessee is valid, and I am confident that it is, then the Senator should oppose this legislation, because if he believes that there is potential damage to residents of the State of Tennessee, then certainly he should understand that there is significant risk to the people of Nevada. The State of Nevada, people think of as a big wasteland. The fact of the matter is that not far from the Nevada test site are over a million people.

We have significant problems. But not only are there problems in Tennessee and in Nevada; what about the entire route of this transportation? If the Senator from Tennessee is concerned about transportation of nuclear waste within the State of Tennessee, he likewise should be concerned about the transportation of nuclear waste across this country.

We have established, Mr. President, that there are significant groups who are opposed to this legislation. We have yet to find anyone other than utilities companies who favor this legislation, and the utility companies that favor it are necessarily nuclear facilities, with some exceptions.

We have talked this morning and been given a few examples on this floor about the Baptists who oppose this legislation and the United Transportation Workers and an organization in Missouri. We could give hundreds of examples. But I thought it would be appropriate because people believe—I hope they believe—if you are going to side with the Baptists or the nuclear utilities, you should go with the Baptists. But in case someone is concerned about that, we will look at the Evangelical Lutheran Church in America. They wrote a letter to every Senator in this body on March 20 of this year, where they have said, "Don't support S. 104."

In addition to the risks of S. 104, it is objectionable because it weakens environmental standards for nuclear waste disposal by carving loopholes in NEPA, preempting other environmental laws and limiting licensing standards for a permanent repository.

That, Mr. President, really says it all. If, on March 20, they felt that environmental standards were being weakened and loopholes were being carved into the legislation, look what this legislation now is. Every hour that goes by there is a new loophole. We raise a point of order with the Budget Act. Well, what we will do, we will make the utilities and the ratepayers pay $2.7 billion a little early. We want to carve another loophole here for Washington. We will do one for South Carolina, one for Tennessee.

The Evangelical Lutheran church in America opposes this legislation, not because of the Senators from Nevada but because of the Members of their ministry throughout this country. This is some of the worst legislation—and I have been in this Congress for going on 15 years; I know a lot about this legislation—that has ever come through this body. You talk about special-interest legislation; this is it. The Congress has been appropriating for about 15 years a couple hundred million dollars a year, sometimes more than that, examining, characterizing Yucca Mountain. This legislation just basically throws it out. That is what the Evangelical Lutheran church says. This legislation wipes out the legislation for a permanent repository, which is the only hope of having a safe place to store it if, in fact, that can happen.

If the Senator from Tennessee is concerned about safe transportation, he and the other Members of this body should revisit what has taken place in Europe. I repeat, 30,000 troops and soldiers to carry six nuclear waste canisters 300 miles in Germany—30,000 troops. There were 170 people injured. Many went to the hospital. And it cost $150 million to move it at the rate of 2 miles an hour. In addition to that—you think we have concerns about Chattanooga and Oak Ridge being close to a proposed nuclear site?—look what happened in Germany. I am reading from the letter.

The transport of these 6 casks required 30,000 police and $150 million, more than 170 people were injured, more than 500 arrested. Even the police have called for an end of the shipments. They no more like arresting demonstrators, who many sympathize with, than

they like guarding highly radioactivity waste casks.

The writer goes on, "I measured the radiation of these casks at 15 feet."

Mr. President, that distance is from this Senator to the Presiding Officer. The radiation at 15 feet was 50 times higher than background levels, an amount no one should be voluntarily exposed to, and pregnant women and children should never be exposed to. The police, of course, stand much closer than 15 feet, and for hours at a time. No wonder the German parliament has abandoned and suspended the transportation of nuclear waste in Germany. Why? Because you cannot do it.

So, if the sponsors of this amendment are concerned about the safety of the people from Tennessee, then they should be concerned about the safety of the people of this country.

What is the answer to the nuclear waste problem? Leave it where it is in dry cask storage containment or in the cooling ponds. As the representative from the State of Oregon told me this morning in the House, that is why he sided with Representative Vucanovich. If it is safe to transport these nuclear casks, these dry casks—which it is not, we have already established—if it is so safe, leave it where it is. That is why he supported Representative Vucanovich in the past.

This amendment is special legislation, and my friend from Tennessee should be concerned, as I know he is concerned, about the people of this country in addition to the people of Tennessee. That being the case, this amendment shows how fallacious and weak and unsupportable this bill is. It is a bill that is rife with gluttonous nuclear utility industry. That is the only reason it is here and the only reason it is being pushed. This legislation is faulty. It is fake. It is insincere. I said this legislation; I did not say this amendment.

Mr. THOMPSON. Mr. President, my colleague from Tennessee, Senator FRIST, wanted to make a statement on this matter, but he is chairing the Subcommittee on Science and Technology, a subcommittee of the Commerce Committee, so if it is in order, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. REID. I ask unanimous consent this vote be set aside until sometime the two leaders agree would be appropriate.

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

The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I think, again, we have to address the question of informed speculation, and the reference made a few minutes ago by my friend from Nevada to what happened in Germany mixes apples and oranges. The issue was not spent fuel leaving Germany. It was vitrified waste coming back to Germany. There is a substantial difference. What happens in the vitrifying process is that they recover the radioactive material and mix it with a glass form.

It is radioactive. There is no question about it. But to suggest, as my friend from Nevada would, that this is the same stuff as shipping spent fuel, that's the apples and oranges issue.

I think what we have seen today proves my point, which is that nobody wants this. I am not being critical of my friends from Nevada. It doesn't make any difference whether it be the State of Michigan—and Vermont has been suggested as having one of the best types of granite-based rocks, from the standpoint of stability and geology. But I am sure if that were a selected site for a permanent repository, or temporary repository, we would have the delegation from Vermont right where the delegation from Nevada is. That is the reality of this. We have had representatives from the West exempt Washington, and for reasons that Washington says they are fed up, they have had enough waste. They continue to have waste, several hundreds of tons of waste, thousands of tons of waste. They don't want any more. The reason they don't want any more is there is no way to dispose of it. They are beginning to start a vitrification process.

The same is true in South Carolina. They don't want any more. They have it there now. The reason they don't want any more is there is no way to dispose of it. They are vitrifying now. The vitrification is, for the most part, military waste. They are recovering liquid waste from the tanks. I have been out to Hanford and I have been to South Carolina. Now, we are seeing Tennessee. Tennessee has high-level nuclear waste stored there. Idaho does, too. I am kind of surprised we don't have every Senator down here exempting his or her State. That is one way to ensure that they are not going to get it. Then where are you going to put it if you can't put it in one of the 50 States? Are you going to put it on the Atlantic coast? No. Are you going to send it to Canada? They don't want it. You might be able to send it to Europe for a fee, I don't know. So you move to the Pacific. What do you have there? You have some islands. Maybe we have some Indian reservations that might be interested. But, undoubtedly, that would not be suitable to the State governments. We have Palmira off of the Hawaiian islands being mentioned from time to time. There is a group, as a matter of fact, that was promoting it—for a fee. They said they owned the island. They have islands in the South Pacific. Some of them are individual nations, and they have been interested in doing it, perhaps, for a fee. But that is a bit dangerous, Mr. President, because we are not sure what the proliferation capability might be in that kind of situation.

So what has happened today on the floor of the U.S. Senate proves my point, which is that nobody wants it. So we have seen three States exempt themselves. The unfortunate part is that we are still left with our friends from Nevada. I was here when the decision was made to put a permanent repository in Nevada. Several of the staff members were there at that time. There was a Republican Senator from Nevada, who is not here anymore, perhaps as a consequence of that decision being made by that body to put a permanent repository at Yucca Mountain. He fought valiantly, he fought hard, and he is not back here. He lost. That is just the reality of being honest with the facts. The facts are that we have to put it somewhere.

Now, the Nevadans would have you leave it where it is. Well, there is a democratic process around here. Nobody ever said it was fair. I convey that in all humility, relative to the reality of what it means. But Nevada has had an extraordinary experience with nuclear weapons over a long period of time. It has been named as a permanent repository. The reality is that when that permanent repository is done, the waste at the 80 sites in 41 States will be transported there. It is rather inconsistent that we don't hear from our colleagues in Nevada the objection about the continued expenditure that is going into Yucca Mountain; $6 billion has been expended and 4½ miles of tunnel is already done, and they continue to work on the tunnel and continue to spend money. And $30 billion is probably going to be expended before it is licensed and opened. That has some benefit. But what it really says is that the decision that was made by Congress many years ago to site the permanent site at Yucca Mountain, as it progresses, will become a reality and, indeed, Nevada will be the site of a permanent repository.

Virtually everybody is in agreement that we need a permanent repository for our waste, unless we abandon our current policy of burying our high-level nuclear waste. It is kind of interesting because we are one of the few nations that continues to pursue burying waste with plutonium in it. The French and the Japanese recover it through reprocessing. That is how you get rid of the proliferation threat. But there is a mentality and a group of environmental organizations that simply think that that would foster and expand the nuclear power industry in this country and advance nuclear development. I am not here to argue that point today, Mr. President. But that is the harsh reality. We are still talking about burying it. The rest of the world is developing a technology that says it

is too valuable to bury. We don't want the proliferation threat, so we reprocess it in MOX fuel and burn it in our reactors. We even have the technology in the United States at Palos Verdes. I was out there in Arizona. That reactor was built to take MOX fuel. We could do that. If there was ever a crack in the administration's armor relative to nuclear waste, it is their reluctant acknowledgment that they must begin vitrification of military waste in this country. Whether that will lead, ultimately, to the recovery of plutonium and putting that back in the reactors, we have yet to see. So we are proceeding under the tired old argument that we have to bury it.

We are committed on that path, and we are going to spend $30 billion and we are going to put that site in Nevada when it is licensed. So we have a democratic process, we have 50 States, and we have to put it in one of them. Now, we talk about praying to the Lord and the comment that the President is likely to veto S. 104. Well, if anyone would ask the administration, as I have done—I have sent three letters to the President in response to the assertion that the administration doesn't approve of S. 104 —for what their proposal is, the truth is that they have no proposal. You have heard it. Leave it where it is. Leave it where it is until Yucca is done in the year 2015.

I have extensively gone through an explanation of how many of our reactors would have to shut down, what percentage of the 22 percent total power generated by nuclear power contributes to this country. We have reactors that are shutting down now. We have some that will shut down next year. We are going to lose power in various States. Maybe we can temporarily put that high-level waste in casks on the surface. But, remember, these areas were not designed for permanent storage. These reactors are in areas of population. They weren't designed to carry long-term high-level waste in the adjacent areas surrounding them.

This needs to be in one place, not 80 sites. Nobody has come up with a better site than the Nevada desert. So when we talk about the administration's plan, there is no plan. During the confirmation of Secretary of Energy Peña, the best we could get was a commitment that the problem of disposal of nuclear waste was "in his portfolio." Well, that is a gracious acknowledgment. Of course it's in his portfolio; he's the Secretary of Energy. We have had no input from the administration about what to do because the administration has yet to perform under the contractual agreement that is due next year. I suppose it is a stacked deck, if I could respond to my friends from Nevada. But it could be a stacked deck against West Virginia, or a stacked deck against Vermont, or a stacked deck against Alaska. But to leave it where it is, it is a stacked deck against 41 States. That simply is not an alternative, Mr. President.

That is where we are in this debate today, and that is where we have been from the beginning. We wander in and out of concerns relative to casks. Good Heavens, if American engineering can't develop casks designed to withstand whatever the threat is—if the British, the Swedes, the Germans, the Japanese and the French can do it, we can do it.

One more time, if I may, let me show you what has happened in this country. It speaks for itself. There is the transportation network, 2,400 shipments. Do you think those were shipped in rubber bands? Those were shipped, according to Federal and State law, in approved containers. To suggest that we don't have approved containers to ship out, we will get what we have to have. You are not going to build these containers and these casks until you have permission to move it. But these are moving now in approved vessels, just as they would be if they are placed in a temporary repository at Yucca Mountain; they would be placed in appropriate casks. They would either be within a cask, a transportation cask, and removed out there, or left in a double cask, or put in a semipermanent cask.

So what we have here, Mr. President, is a lot of informed speculation, which I guess this place has an abundance of, whether it be spring, winter, or fall. But let's be honest with one another. Where we are in this debate is to either leave it where it is or move it to Nevada where, clearly, my friends don't want it moved. I admire their conviction, diligence and commitment. It is almost like they are willing to lay their lives in the path of whatever movement is occurring on this side. But, unfortunately, that is just the way it is because there is no other alternative. I believe my friend from Tennessee may want to speak a bit on the pending business. Am I correct in my assumption?

Mr. FRIST. Not right now.

Mr. MURKOWSKI. I guess I am incorrect. I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Is the Senator from Tennessee waiting to speak now?

Mr. FRIST. I will just take about 3 minutes in 3 or 4 minutes.

Mr. REID. While the Senator is getting ready, I would like to say a few things.

First of all, there is no question that the two Senators from Nevada are doing everything we can to protect the State of Nevada. But in the process of preparing, as we have for years, for this debate, we have also come to the conclusion that this is not a Nevada issue; this is an issue for the well-being of all the people of this country. That is why organizations throughout this country support opposition to S. 104—churches, environmental groups, and cities are passing resolutions.

The only supporters of this legislation are the very powerful nuclear industry who generate electricity. For example, there has been some talk in this debate that the facility in Connecticut, the Haddam Neck reactor fuel pool would be full by 2001 and the plant might have to close. There has been testimony before the Natural Resources Committee on February 5 that Haddam Neck permanently closed on December 4, 1996, for reasons that had nothing to do with waste disposal issues.

Mr. President, fuel fill-up dates have been exaggerated for reactors that have been examined. This is just all part of the game played by the individuals who do not have rules—the nuclear power generating companies. They change the rules. They change the rules in the very middle of the ball game. They change the rules during timeouts. It doesn't matter. Whatever meets their greedy financial interests they satisfy that by changing the rules in the middle of the game.

Right now we have 109 operating reactors in the United States. All of their waste is stored on site. In effect, S. 104 would create 110 storage sites for nuclear waste using the same technology that is already used at some reactor sites and is available to all the reactor sites.

Why in the world would we want to create another site when we are spending $200 million a year trying to determine if Yucca Mountain is suitable?

Mr. BRYAN. Mr. President, will the Senator yield for a question? I thought I heard the Senator say that if S. 104 is enacted we would have not 109 reactor sites but 110 reactor sites. I invite the Senator's attention looking at this chart. If I understand the point he is trying to make, before S. 104 would be enacted—these would be the various reactor sites—every site prior to its enactment is still there and we add one more at Yucca Mountain, or at the Nevada test site. So we have 110.

Mr. REID. That is right. Although after S. 104, not only would you have the additional site near Las Vegas, but in addition to that you would have a significant number of other temporary sites caused because of accidents, traffic jams, and protests. I mean that is what is not on the bottom chart. Not only do we have the proposed temporary repository near Las Vegas but you will have several temporary sites as a result of the chaos that will ensue with this legislation.

Mr. BRYAN. Will the Senator agree that S. 104 holds out a false promise, that somehow, if it were enacted, everything would disappear and wind up near Las Vegas?

Mr. REID. I say to my friend from Nevada, we would have to show on this

chart after S. 104 massive traffic jams. Remember, to move it in Germany recently, it took 30,000 police. In addition to the 30,000 police, it required medical personnel to haul the people to the hospital. Five hundred people were arrested. The waste only went 300 miles. Think about what would happen if they were to move it 3,500 miles from the State of Maine to the State of Nevada.

So I appreciate the question. The chart is very graphic and shows the potential danger of not having 109 sites but maybe having 125 sites because of what would occur as a result of moving this.

I repeat. Mr. President, if in fact these casks are so good, leave them where they are. In fact, it has been said during the debate here today that the present technology of the casks indicate you can haul it, but in a crash of more than 30 miles an hour the container might be breached, or if you had a fire that occurred as you are hauling that and the fire burns at more than 1,400 degrees you are in big trouble. And the big trouble would occur because diesel fuel burns at 1,800 degrees. That is what propels trains and trucks.

So the question is asked all the time. What do you want to do with it? You leave it where it is until there is a determination made that we can transport it safely and there is a site to accept it.

I also am compelled to respond to a number of things said earlier today by my friend from Idaho. In fact, the description was used of picking up a quart of milk at a store and taking it home. He said no, no. Nuclear waste is safer to transport than that. Well, try to explain that to the people that have really transported nuclear waste. If you look at what has gone on in this country, you will find that Japan is actively pursuing a nuclear program based on reprocessing of nuclear fuel with the aim of becoming energy independent. We understand why. They have no natural resources. But the facts speak volumes of different language. A serious accident at the Honshu breeder reactor, the flagship of the Japanese reprocessing program, in December 1995, ended all thoughts that Japan could breed its own nuclear fuel. Honshu to this day has not been restarted and probably will never restart.

A second serious accident at the Tokyo reprocessing facility in March 1997, just a few weeks ago, ended all thoughts of reprocessing as a serious option, in Japan. In fact, Japan cannot site any new nuclear plants due to overwhelming public opposition. This fact has been acknowledged in numerous newspaper accounts. The Japanese Government is now laying aside all hopes for nuclear expansion, and with reprocessing no longer a viable option Japan now faces a problem. But to think it can be transported safely is just not true.

I would also respond to my friend from Idaho. There has been talk here by him and others that there have been several thousand shipments, a couple of thousand shipments of high-level nuclear waste made in the United States up to this date. Of course, these shipments, mostly of naval reactor fuel, were not only far smaller than any shipment contemplated under this bill but carried a radioactive inventory of thousands of curies rather than tens of millions of curies that would be carried by each cask from a commercial reactor.

These shipments typically travel far fewer miles. There were seven accidents in these 2,400 shipments. A ratio of one accident for every 343 shipments. I say to my friend from Nevada. It has been established here that there has been one nuclear accident for every 343 trips. I ask my friend. Is it not true that there is contemplated at least 17,000 shipments of nuclear garbage under this bill?

Mr. BRYAN. The Senator from Nevada is correct; 17,000 shipments of approximately 85,000 metric tons, shipments that would occur over a period of several decades. So, in effect, what we would have, wherever you live in America, nuclear waste would be streaming into your community and into your State from virtually every point on the compass, not just for a brief period of time but for decades as contemplated.

Mr. REID. I also ask my friend. Then, if it has been established that there would be 2,400 shipments and that we would have 7 accidents, a little math indicates to me that there would be about 50 accidents if the same ratio is maintained hauling these 17,000 shipments. Wouldn't that be about right?

Mr. BRYAN. I have never challenged the Senator's math. That was not the subject that I either excelled in or like. But it seems to me that the Senator is right. I remind my senior colleague that we had an accident, as I recall in 1982, in Livingston, LA. If we use a computer model to determine whether the proposed standards of these casks have no problem at all—these are casks not yet in existence but the proposed casks that would be used for this transit—that the temperatures generated in that accident—not a nuclear accident—but the temperatures were so high and so intense for such a long period of time that the cask design would fail. That indicates that there would be a release of radioactivity. That is not a theoretical, or speculative, or conjectural accident. That is one that actually occurred. If one uses a computer model in terms of the standards being proposed for these casks, those casks would have failed. That means those people in that community—I don't know the area—would have been placed at considerable risk for an extended period of time.

So, as the Senator is suggesting, multiplying the number of accidents that may occur over the course of several decades, many communities could face that kind of exposure, and that is a legitimate concern, it seems to me, for each of us as we contemplate this very dangerous situation.

Mr. REID. I ask my friend. On the maps that he has on the chart to his left, contemplate with me, if he will, where he thinks the 50 accidents will be.

Mr. BRYAN. I would say to my senior colleague, his guess is as good as mine. But we know this. We know that there are 43 States that have corridor routes. I envy our friend from Alaska with whom we have been engaged in this debate over the last few days. He is fortunate that his State is not among them. But most of the rest of us are.

So this is not just a Nevada issue. You have 43 States. You have thousands and thousands of rail and highway miles involved. I remind my colleague that we have 51 million people who live within 1 mile of these rail and highway corridor routes. These are existing routes. Nothing is going to be done new in the context of any construction, or an attempt to bypass communities. We are talking about existing rails and highway corridors.

So when the Senator asks the question of where those would be, may I say with great respect—and not trying to be flip about it—throw a dart at the map of the lower 48 States in America and his guess and my guess would be as good as any that could be conjectured.

Mr. REID. Mr. President, in short, S. 104 is bad policy. As I have indicated with this amendment, what is being done is a further attempt to worsen this bill. S. 104 is an environmental nightmare. It is a financial and public safety threat to America.

Is it any wonder that every environmental group in the United States supports the defeat of S. 104? In addition to churches as has been laid on the Record, transportation unions believe that this legislation is truly a nightmare.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise in support of the underlying legislation, with one hesitation, and that is as it regards an amendment introduced by my colleague from Tennessee on behalf of both of us about 45 minutes ago. I do not want to rehash the various points that have been made thus far, but I would like to speak to the importance of that amendment, the purpose of which was to provide that the President shall not designate the Oak Ridge Reservation in the State of Tennessee as a site for construction of an interim storage facility. The Oak Ridge Reservation is best known initially for its

history in the Manhattan project during the Second World War, but its evolution since that time has truly been amazing.

I had the opportunity to be there 3 days ago with my distinguished colleague from New Mexico, Senator DOMENICI, and we really had a good examination of the ongoing projects in Oak Ridge. Oak Ridge is not simply a semi-idle nuclear site nor a remnant of cold war strategic arms mission. But it is home now to our Nation's largest civilian national lab, a functioning weapons stockpile stewardship and management facility, and a variety of other user facilities for our national research and development effort. As a physician by training, it is poised as a particular interest to me, and is really on the edge of some exciting breakthroughs in the life sciences in genetic research.

Oak Ridge simply would be an unwise location for storage of high-level waste from a purely environmental standpoint. I know earlier references were made in the debate talking about the fact that it had been recommended in the 1980's as a potential site, and that the courts struck that down. But I think it is very important to say that, even though those recommendations had been made in the 1980's, things are very different today, in addition to the fact that they were struck down.

It would simply be an unwise location from an environmental standpoint. The area lies in a geological zone typified by what is called karst topography, which is distinguished by limestone bedrock with water flowing through caverns and underground rivers very close to the surface.

The danger here is that clearly any seepage into the groundwater could potentially put into jeopardy the water supply of several States.

The reason I was not in the Chamber 30 or 40 minutes ago is that I was chairing another hearing, and Dr. Arch Johnston, professor and director of research, center for Earthquake Research and Information at the University of Memphis, testified just an hour ago to the fact that in the 1980's, because of concerns of earthquakes in that area, the Nuclear Regulatory Commission undertook seismic studies, and over the course of that year they demonstrated that through that region of east Tennessee—and it is called the southern Appalachian seismic zone—there were earthquakes noted, but they were noted 2 miles deep and not on the surface. Dr. Johnston said that this is a problem in this zone of the southern Appalachian region, which includes Oak Ridge, because you cannot study it on the surface. Only two zones exceed its level of activity, according to Dr. Johnston, with 90 percent of this is in east Tennessee.

I say all this because the purpose of this amendment, especially in light of this earlier recommendation in the 1980's, is to say that a level playing field would not be established because of the chance that people would look back to that study and put Oak Ridge back on the table, which was clearly inappropriate.

We have the geological arguments, we have the environmental arguments, and I again will not go through the debate that was made by my colleagues—we had the argument of population. Several million people today live within a relatively short distance of Oak Ridge, and although that was not clearly true in 1942 when it was an locally isolated region, it today is within a metropolitan area of nearly a million people.

Thus, in summary, my colleague from Tennessee, Senator THOMPSON, and myself have introduced this amendment, which says that the Oak Ridge reservation should not be considered as a site for the construction of an interim nuclear storage facility for environmental, geological, and population reasons.

I thank you very much. I will urge support of the underlying bill if we can ultimately have this amendment attached.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, we are somewhat optimistic that we are going to have a time agreement soon, and it is my understanding that the leaders are addressing that matter now, so I hope to have some information for Senators very soon.

Let me make a few comments relative to accidents, which, of course, are of concern as we contemplate moving nuclear waste throughout the country. But let us take a look at facts because again we have been graced with a good deal of informed speculation.

Let me refer first to the NEI fact sheet dated June 10, 1996, from the Nuclear Energy Institute, an objective evaluation on the question of accidents. The question was: Have there been accidents that exposed the public to radiation from spent fuel cargo? And the answer is on absolutely no occasion between 1971 and 1989 has any person been exposed to radioactivity or radiation from spent-fuel cargo or associated accidents.

Let us talk about the accidents, Mr. President, because this is what it is all about.

Seven accidents occurred in the movement of 2,400 shipments from 1979 to 1995 as indicated by the chart. None caused any release of radioactivity. The most severe of these, and it was severe, occurred in 1971 in Tennessee. We just heard from the Senator from Tennessee. We had a tractor trailer carrying a 25-ton spent-fuel shipping container swerve to avoid a head-on collision. It went out of control and overturned. The trailer with the container still attached broke free from the tractor and skidded into a rain-filled ditch. The container suffered minor damage but did not release any radioactive material.

Now, how many chemical spills have we had where the tank car was broken open or spilled or punctured in some way? The difference between the two exposures are obvious. These are designed to withstand accidents, and they have. So again we can reflect on the rhetoric, but if we look at reality nothing is risk free, Mr. President, nor is nuclear transportation relative to high-level waste.

A lot of people assume that if there is a penetration, there is going to be a calamity of some kind. Obviously, there would be radiation. But we have technology that addresses that radiation, just as it is addressed when the rods are taken out of the pools. You would think there is some magic here. These nuclear rods sit in the pools. What are in the pools? Water. They come out of the pools. They are exposed. They are placed in a cask. There is exposure there, but it is regulated and controlled.

We have a statement by Mr. Robert M. Jefferson. Who is Mr. Jefferson? He was manager of the Transportation Technology Center at the Sandia National Labs in the early 1970's, distinguished in his knowledge and expertise on the matter of transportation of high-level radioactive wastes.

I ask unanimous consent that his letter of July 16, 1996, be printed in the RECORD.

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

ALBUQUERQUE, NM,
July 16, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

DEAR SENATOR MURKOWSKI: I have been informed that the High-Level Radioactive Waste Bill (S-1936) will be considered on the floor of the Senate this week. I have also been informed that there are concerns about the resulting transportation of spent fuel through various regions of our country. based upon my work in this field over the past 35 years, this fear is unfounded. Let me offer this information for your consideration.

As Manager of the Transportation Technology Center at the Sandia National Labs in the early 70s, I was asked, and subsequently conducted an extensive testing program to both validate the computational tools for evaluating spent fuel shipping containers (casks) and to measure their performance in real world situations. Up until I retired in 1985 Sandia had conducted about 1,500 tests on shipping casks and their subsystems. Five of these tests were conducted on real casks in simulated accidents. In addition, both DOE and NRC funded studies to evaluate the historical experience and to develop risk assessment models to predict shipping cask safety.

As a result of these efforts we reached the conclusion that the transportation of spent

nuclear fuel in casks designed to meet the NRC standards, evaluated and certified by the NRC, would never encounter a transportation accident severe enough to challenge the integrity of the container. Specific among these studies was a review of all severe transportation accidents in this country which reached the conclusion that there has never been an accident that would seriously threaten one of these casks. Coupled with the historical experience in this country and around the world I believe there is no safer transportation activity ever undertaken.

Because transportation of spent fuels has been proven safe by history, analysis and test and should not be a factor in the consideration of this bill, and because of the importance of this bill to the future of our country, I implore you to pass this legislation as soon as possible.

Sincerely,

ROBERT M. JEFFERSON,
Consultant.

Mr. MURKOWSKI. I am just going to read the reference to the question of exposure on transportation. He is responding to the questions relative to his area of responsibility in cask design and transportation, and I quote:

As a result of these efforts we reached the conclusion——

And this is the National Sandia Laboratories——

We reached the conclusion that transportation of spent nuclear fuel in casks designed to meet NRC standards evaluated and certified by NRC would never——

Now, this is something——

Would never encounter a transportation accident severe enough to challenge the integrity of the container.

This is a pretty broad statement by a professional who stands behind his statement with his career.

Would never encounter a transportation accident severe enough to challenge the integrity of the container.

Some of these accidents, I am told, involved flat tires. Well, I am not going to get into all seven accidents.

One other reference, and that is to the Japanese situation.

Yes, there was a leak in the sodium liquid coolant associated with the Honshu reactor in Japan. That reactor is currently shut down. Again, like with all mechanical devices, accidents can occur. In this particular case the accident was addressed by a professional procedure. No one was exposed to radioactivity. And to suggest Japan is somehow abandoning its commitment to nuclear power defies reality.

Outside of Matsue, Japan, is a place called Rekosha. The Japanese are committed to spend $24 billion. I went in the plant. I physically saw it. It is absolute state of the art—$24 billion to initiate a fueling, reprocessing mox fuel facility which would be the most advanced in the world. The reason the Japanese are pursuing this, they obviously have a great deal of sensitivity to nuclear radiation based on their unfortunate experience in the Second World War, but they feel nuclear power generation is appropriate for Japan. It addresses the concern they have over air quality, and it addresses an economic concern they have on dependence on oil from the Mideast. So they have made their decision, Mr. President.

It is important that we keep facts in mind as we address where we are in this debate. Again, the debate boils down to my point: Nobody wants it. We have to put it somewhere. Unfortunately, Nevada seems to be the site that has been selected for the permanent repository.

Mr. President, I am told that there is a colloquy pending which would, I believe, wind up our side's discussion for now.

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. INHOFE. 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. INHOFE. I ask unanimous consent to be recognized for 3 minutes as in morning business.

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

Mr. INHOFE. I thank the Chair.

(The remarks of Mr. INHOFE pertaining to the introduction of S. 556 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. INHOFE. 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. MURKOWSKI. 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. MURKOWSKI. Mr. President, for the benefit of all Senators, I am advised by the leadership that we can expect a vote very soon on the disposition of the Thompson amendment, followed by at least one vote on the Bingaman amendment and a vote on the Bumpers amendment yet tonight.

Mr. BRYAN. May I inquire of my friend, it is my understanding, not at the request of the Senators from Nevada, but my understanding that there was at least a tentative understanding that we would not be having rollcall votes on these pending amendments until next week. Maybe there is some change.

I emphasize for the benefit of all Senators and my colleagues, that is certainly not at the request of the Senators from Nevada, certainly not at the request of the Senator from Alaska, either. But if there has been a change, I think we need to make others aware of that.

Mr. MURKOWSKI. I certainly concur with my friend from Nevada. I was advised by our leadership that agreement has been proposed and, in effect, that is what the leader plans to do. I cannot comment relative to the position on the other side, but I think Senators should simply be aware of the possibility, knowing the way this place works, seldom does the possibility occur. In reality, just the opposite may occur. For anybody who is listening, that appears to be the intent of the leadership, at least as many as three votes yet tonight.

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. KEMPTHORNE. 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. KEMPTHORNE. Mr. President, I would like to, if I may, utilize this opportunity for a few moments to discuss this whole issue of S. 104, the ramifications and some of the particulars of S. 104, and in doing so, I would like to direct a few questions, if I may, to the chairman of the Energy Committee.

I also want to acknowledge that I think the Senator from Alaska, who is the chairman of the Energy Committee, and my colleague from Idaho, the senior Senator, Senator CRAIG, have done a tremendous job on this legislation.

Does this problem exists today? Absolutely. Are we trying to find a solution? Well, we certainly should, and I commend the Senator from Alaska and the senior Senator from Idaho bringing forward what is a solution.

With that, let me ask the chairman, is it true that in July 1996, the U.S. Court of Appeals affirmed the Department of Energy's contractual obligation to take title to the commercial spent nuclear fuel by January 31, 1998?

Mr. MURKOWSKI. The Senator from Idaho is correct, the court made that decision.

Mr. KEMPTHORNE. And is it also true then, Mr. President, that the officials at the Department of Energy decided not to appeal this decision?

Mr. MURKOWSKI. It is my understanding the Department of Energy indicated that they would not appeal the ruling of the court.

Mr. KEMPTHORNE. So we have an affirmation by the courts that title is to be taken by the Federal Government, and we have the Department of Energy that has not sought to appeal that and, in fact, I remember, the Assistant Secretary of Energy, Tom Grumbly, had indicated the Federal Government is going to take title to this.

Is it also true that the Department of Energy has informed the utilities that

it will not be able to meet its contractual and legal obligation to take title to this spent nuclear fuel as called for in the court's ruling?

Mr. MURKOWSKI. That is my understanding. The Senator from Idaho, I think, has projected the position very clearly, that is correct.

Mr. KEMPTHORNE. Is it also true that ratepayers and utilities across the country have paid approximately $13 billion to the Federal Government to dispose of this waste?

Mr. MURKOWSKI. The Senator from Idaho is correct. It is a figure in excess of $13 billion at this time.

Mr. KEMPTHORNE. That has already been paid by the ratepayers.

Mr. MURKOWSKI. The Senator from Idaho is correct. It is my understanding it is going into the general fund. It does not remain in escrow. When the Federal Government takes the waste, they will probably have to appropriate it.

Mr. KEMPTHORNE. I appreciate that. Is it true that utilities currently store spent nuclear fuel in temporary—I underscore temporary—storage facilities that were never intended for long-term storage?

Mr. MURKOWSKI. There are basically two types of storage. One is in a pool adjacent to the reactor which is temporary and, in many cases, that is full. At least one power company is beginning to store their fuel in casks on the surface, they simply have run out of space, and the Senator from Idaho is correct in his assessment that those facilities were not designed to be of a permanent or long-lasting nature, they were to be of a temporary nature pending the movement of that out to a central site.

Mr. KEMPTHORNE. I further ask the Senator from Alaska, in light of the Federal Government's failure to meet its contractual obligation, numerous utilities across the country expect to run out of space, just as you have indicated, to store spent nuclear fuel in the near future. These utilities have two options, as I understand it: they can either shut down operations or they can build additional storage space on site. Are those the two options that currently exist?

Mr. MURKOWSKI. The Senator from Idaho is correct. However, it should be noted that there may be limitations placed on any further storage capacity associated with what they are currently licensed for, and that would be a combination of Federal and State licenses that must be obtained. It is theoretically possible that there may be a determination that the areas are inadequate to store additional fuel and the reactors will have to shut down.

Mr. KEMPTHORNE. To demonstrate, Mr. President, the fact this is a serious problem for many States, I ask the chairman of the Energy Committee, is it true that many States, such as Vermont, Connecticut, Maine, New Jersey, South Carolina, Illinois, New Hampshire and Virginia, generate between 80 percent to approximately 50 percent of the energy needed by their States through nuclear power?

Mr. MURKOWSKI. The Senator is correct. I think New Jersey is up around 70 or 75 percent dependent on nuclear power.

Mr. KEMPTHORNE. And if utilities in these States are forced to shut down nuclear powerplants because there is no place to put the additional spent nuclear fuel, is it true that these States will have to look to alternative sources of energy which has been part of your discussion, such as perhaps burning coal, oil and gas to meet the energy needs of these States?

Mr. MURKOWSKI. The Senator from Idaho is correct, there may be a possibility of purchasing excess energy from Canada, and some of the States adjacent to the Canadian border. Clearly, there is not an access in those areas. It would have to be created.

Mr. KEMPTHORNE. I ask the Senator from Alaska, and point out the Senator from Alaska and my friend from Idaho, Senator CRAIG, have warned the Senate, in light of the Department of Energy's admission that it will not be able to meet its legal obligation to take title to commercial fuel, the court may rule that the Federal Government is liable for the cost of storing this waste. Is it true that some estimates indicate that it may cost between $40 billion to $80 billion to store this waste?

Mr. MURKOWSKI. It is my understanding that the figure is in that range of $40 billion to $80 billion. There was a more precise figure. It was figured at about $59 million. I think it is important for the Senator from Idaho to note evidently there was a meeting recently between the Secretary of Energy and some representatives of the nuclear power industry where the Department of Energy offered to pay the nuclear power companies for storing the fuel at the sites of the reactors.

It is my understanding the industry declined to accept or pursue that proposal any further because it would simply leave the fuel in those temporary areas and would not solve the problem of getting rid of the fuel. It would simply transfer, if you will, a funding mechanism. I think it is rather ironic the administration would make that kind of a proposal when, clearly, the intent of Congress is to provide a permanent repository or, as this bill provides, a temporary repository until such time as Yucca Mountain is predetermined to be suitable.

So what they are doing is kind of, on the one hand, acknowledging their financial responsibility by offering to reimburse them, and acknowledging that they, in 1998, have to take title to the fuel but physically not wanting to take it because they have no place to put it. That is why I have been so critical of the administration's lack of any substantive suggestions on, as they opposed S. 104, what they are for, and they have yet to communicate to this Senator what they are for or what their proposal is relative to the immediacy of these reactors that are facing maximum capacity and potential shutdown.

Mr. KEMPTHORNE. I appreciate the response from the Senator from Alaska. Let me further ask, is it also true, in addition to the commercial fuel we have been discussing, S. 104 will address the national problem of naval fuel and defense high-level waste which is also currently stored in temporary facilities across the country?

Mr. MURKOWSKI. The Senator is correct.

Mr. KEMPTHORNE. Also, as I read S. 104, the Nuclear Waste Policy Act of 1997, I see it will not interrupt the scientific assessment regarding the suitability of Yucca Mountain to serve as a permanent repository for spent nuclear fuel. Indeed, is it true, I ask the Senator from Alaska, that under your bill, the Nevada test site is not designated as an interim storage site until after Yucca Mountain is determined to be suitable to serve as a permanent repository?

Mr. MURKOWSKI. The Senator from Idaho is absolutely correct. We would not anticipate accepting fuel until into the year 2001 or possibly 2002. So that verification must take place. So there would be the assurance that, indeed, Yucca Mountain would be closer to the reality of being a permanent repository.

Mr. KEMPTHORNE. In fact, is it not true that S. 104 gives the President 18 months to designate another interim storage site if Yucca Mountain is found unsuitable for a permanent repository?

Mr. MURKOWSKI. The Senator from Idaho is correct, and the reason for that is, it was felt it was necessary to either have Congress address the responsibility of a temporary repository at Yucca Mountain or the President designate it, and if the President chose not to designate it, it would be at Yucca Mountain.

What we have attempted to do by this legislation is basically close the box so we simply could not walk out of here after a week of debate without a definitive solution to putting our waste, at least in a temporary repository, until Yucca Mountain is done. And we spent a great deal of time discussing and fashioning the bill and felt it imperative that we had to conclude some solid solution as opposed to simply finding ourselves going through an extended debate and leaving it where it is at 80 sites in 41 States.

Mr. KEMPTHORNE. So just to reiterate, if it is determined that Yucca Mountain is not to be the permanent

repository, then this legislation will not designate Yucca Mountain for the temporary repository, and, therefore, the transportation of the nuclear waste would not be coming to Yucca Mountain?

Mr. MURKOWSKI. The Senator is correct.

Mr. KEMPTHORNE. Is it true that Senate bill 104 contains an amendment offered by Senator CRAIG which directs that at least 5 percent of the waste shipped from storage sites shall be defense high-level waste?

Mr. MURKOWSKI. The Senator from Idaho is direct.

Mr. KEMPTHORNE. Is it true that under Senate bill 104 the interim storage facility will be licensed by the Nuclear Regulatory Commission and the Environmental Protection Agency and that they will establish the radiation standards at the interim storage facility?

Mr. MURKOWSKI. It is my understanding.

Mr. KEMPTHORNE. Regarding the Nevada test site, I referenced this as a member of the Senate Armed Services Committee. I am very familiar with the important work previously done at this site.

For example, I believe the United States has conducted 100 aboveground nuclear tests and 804 underground nuclear tests at the Nevada test site.

So I ask the chairman of the Energy Committee, is this the location proposed to serve as the interim storage facility under the Murkowski-Craig bill?

Mr. MURKOWSKI. The Senator from Idaho is correct. That is the general location.

Mr. KEMPTHORNE. Regarding the Nevada test site, in the current fiscal year, Congress provided $230 million to maintain the site for possible underground nuclear tests. The President's budget requested $226 million for the test-readiness program at the Nevada test site in fiscal year 1998.

In June of this year, the Department of Energy will conduct the first of two planned tests called the subcritical tests in the underground tunnels at the Nevada test site. Now these subcritical tests, which cost over $15 million a test, combine high explosives and plutonium to help scientists verify the safety and reliability of our aging nuclear weapons.

I will point out that we currently have the oldest weapons arsenal in our history. These subcritical plutonium tests are compatible with the comprehensive test ban and they are supported I believe by the Senators from Nevada.

I would acknowledge too that the Senator from Nevada, Senator BRYAN, had been a member of the Armed Services Committee. And I had the great pleasure of working with him in the committee, and was sorry to see he had transferred to a different committee.

But when we look at this, I would believe then, asking the Senator from Alaska, we would see the transportation, in order to carry out these tests, of plutonium shipments to Nevada to carry out these tests; would that not be correct?

Mr. MURKOWSKI. The Senator from Idaho makes a very valid point. Obviously, it is going to be shipped in. And it will be shipped in a container that obviously meets the Department of Defense criteria, environmental protection criteria, and the necessary criteria to ensure that the shipment is done in a safe manner and the interests of public health and safety are addressed, as has been the case in numerous other shipments, some 2,400 in the last 15 years.

Mr. KEMPTHORNE. Finally, if I may ask the Senator from Alaska, regarding transportation standards, because that has been a great portion of this whole debate, is it true that Senate bill 104 maintains the highest health and safety standards for the transportation of this nuclear waste to the interim storage facility?

Mr. MURKOWSKI. The Senator from Idaho is correct. It even provides for the training of personnel.

Mr. KEMPTHORNE. Again, if Yucca Mountain is determined to be the permanent repository, this material will go to Yucca Mountain.

Mr. MURKOWSKI. That is correct.

Mr. KEMPTHORNE. If it is determined that Yucca Mountain cannot be the permanent repository, then your legislation states that Yucca Mountain will not be the temporary repository?

Mr. MURKOWSKI. The President would then decide another location. And if the President chose not to decide, it would theoretically go back.

Mr. KEMPTHORNE. I wish to thank the Senator from Alaska.

I would like to say, Mr. President, that there is a problem that exists today. Clearly, this is not a debate of whether you are pronuclear or antinuclear. You have hundreds of metric tons of nuclear waste in over 40 States throughout the United States. We are looking for a solution.

The Nuclear Waste Policy Act of 1997 offers the Nation a safe and scientific verified solution to the problem of nuclear waste.

The Murkowski-Craig bill says, build a safe, central facility to store this waste at a place where our Nation has tested hundreds of nuclear weapons at the same location.

The other side says, leave the waste where it is, in facilities that were not constructed for long-term permanent storage.

One side says, deal with this national problem. The other side says, let us hope the problem goes away.

The Senate and the Nation face a clear choice, and that is to deal with this problem. I appreciate the approach that the Senators from Nevada have taken. I understand where they are coming from with regard to this issue. But I look at all of the nuclear technology, scientific research that has taken place in the State of Nevada over so many, many years. Again the 100 above-ground nuclear tests, the 804 below-ground nuclear tests, and that this is the same area that is being discussed in Senate bill 104 for the temporary storage of this nuclear waste.

I commend the Senator from Alaska, Senator MURKOWSKI, and the Senator from Idaho, Senator CRAIG, for bringing this issue forward so that we can finally deal with it so that we can finally have a solution to what do we do with spent nuclear fuel, because currently there exists no solution. And to do nothing continues that problem of no solution.

I thank the Senator from Alaska and I yield the floor.

Mr. MURKOWSKI. I thank my friend from Idaho for that excellent colloquy.

Mr. BRYAN. Would the Senator from Idaho yield for a question or two?

Mr. KEMPTHORNE. I will be happy to yield.

Mr. BRYAN. Is the Senator from Idaho aware of the fact that there has never been a contemplated interim storage facility at Yucca Mountain? I understood part of the colloquy, that the Senator was suggesting Yucca Mountain as the site for the interim storage.

And my question to my friend from Idaho is, does the Senator from Idaho understand that there has never been a contemplated interim storage facility at Yucca Mountain?

Mr. KEMPTHORNE. I understand that. I understand that Senate 104 opposes that nuclear storage.

Mr. BRYAN. That was not the case, I say with respect. What is contemplated is interim storage at the Nevada test site. The Nevada test site and Yucca Mountain are two separate geographical areas. And the Senator was asking our distinguished chairman a series of questions.

Does the Senator understand that if the President of the United States makes no finding with respect to suitability by March 31, 1999, then automatically the interim storage is designated at the Nevada test site automatically?

Mr. MURKOWSKI. That is right.

Mr. BRYAN. And if the President of the United States makes a determination that Yucca Mountain is not suitable and submits to the Congress an alternative site other than the interim storage site at the Nevada test site, that if the Congress refuses to accept the President's recommendation then automatically the interim storage comes to the Nevada test site?

I know the Senator was distracted, and I will repeat that.

My question to my friend from Idaho is, does the Senator understand that if

the President of the United States makes a finding that Yucca Mountain is not suitable and then under the bill is directed to make a choice of an interim storage site, that interim storage site must be approved by an act of Congress, and if the Congress does not approve that site then automatically the Nevada test site becomes the interim storage?

Mr. KEMPTHORNE. The Senator is correct.

Mr. BRYAN. The point being is, that we do not have a site-selection process here that has any rationale.

And I guess the last question I would ask, because the Nevada test site has been an area that has been used, as the Senator correctly points out, for testing, is the Senator aware that the equivalency of 85,000 metric tons of nuclear waste which would be stored would require 2.3 million atomic tests the size of the test at Alamogordo during World War II—2.3 million tests?

Mr. KEMPTHORNE. Yes. To the Senator from Nevada, you are probably more aware of those numbers than I am, so I would not respond to that.

Mr. BRYAN. I appreciate the Senator may not have that.

But the point that I think needs to be made—if the testing schedule at the Nevada test site should continue at its historical rate, it would take between 10,000 and 100,000 years of that testing schedule to equal the radioactive comparability of the nuclear waste that is being stored in the Nevada test site. I just wanted to make that point.

Mr. KEMPTHORNE. I appreciate that point by the Senator from Nevada.

Again, based upon this very series of questions and discussion I have had with the Senator from Nevada, it demonstrates there has been a tremendous history and knowledge over dealing with the nuclear issue in the State of Nevada. The millions and billions of dollars that have been directed to the State of Nevada by the Federal Government to deal with this Federal issue is well documented. And certainly Nevada has demonstrated that it has the expertise that is there to deal with this issue and is well suited, I believe, to help solve the nuclear issue for the Nation.

I thank the Chair.

Mr. REID addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Nevada.

Mr. REID. We have been here now for several days. Every question that has been asked by the Senator from Idaho has an answer that is much different than the answer given by my friend from Alaska.

The fact of the matter is, that there are hundreds of nuclear tests at the Nevada test site. That was part of the national security of this country. Nevada did not run with open arms "bring these aboveground nuclear tests and kill all our animals, make people have cancer." We did not know at the time. But in spite of it, all of the nuclear tests described by my friend from Idaho created 5 tons of nuclear waste—5 tons. They are talking about moving 85,000 tons to Nevada.

This is not a Nevada issue. Our friends on the other side of the aisle are trying to make this a Nevada issue. It is not a Nevada issue. It is an issue that affects our country, this Nation.

Mr. MURKOWSKI. I wonder if my friend would yield for a question?

Mr. REID. Of course.

Mr. MURKOWSKI. I am the first to acknowledge the probability of some 5 tons of nuclear waste being exposed to the air, the land, moving in whatever moisture that may take place in that arid area. But that is unlike the high-level nuclear waste that would be stored there in a temporary retrievable repository. That waste would be enclosed in casks designed to omit no radioactivity outside the cask.

So I would point out to my friend that there is a significant difference when you talk about 85 tons of contained waste in many, many containers that are designed to hold it with no exposed radioactivity outside and 5 tons of nuclear waste that just went up. It is in the dust. It is in the air. And that is indeed unfortunate. I think it does express a difference.

Mr. REID. I would just say that is why, because of the aboveground tests, there was radiation which went various places because of the cloud.

The fact of the matter is we all know such explosions are very dangerous. That is why they should continue the characterization at Yucca Mountain until they find a safe place to dispose of this garbage. The transportation is a problem, a significant problem. We have established that, I think, with substantive evidence today.

Mr. President, suffice it to say we believe that the record is clear in answering every argument that has been suggested by the Senator from Idaho. I hope staff Members and Senators have had an opportunity to listen to this debate. We are where we are today because the nuclear power industry is trying to short circuit the system. There is no reason to transport nuclear waste to an interim storage site until there is a permanent repository. Even then, we have to be careful about the transportation.

I do not want to go over the same arguments we have talked about on a number of occasions. It is my understanding there is to be a vote, and after that the leaders, hopefully, will be able to propound a unanimous-consent request.

VOTE ON AMENDMENT NO. 37

Mr. MURKOWSKI. Under the previous order, having consulted with both leaders, I ask unanimous consent that the Senate now resume amendment No. 37. It is my understanding we are ready to vote on it.

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

Under the previous order, the question is on agreeing to amendment No. 37, offered by the Senator from Tennessee.

The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Minnesota [Mr. GRAMS] and the Senator from Arkansas [Mr. HUTCHINSON] are necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr. DORGAN], and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent due to the severe disaster in their States.

I further announce that the Senator from California [Mrs. FEINSTEIN] is absent due to illness.

I also announce that the Senator from California [Mrs. BOXER] is necessarily absent.

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

The result was announced—yeas 60, nays 33, as follows:

[Rollcall Vote No. 37 Leg.]

YEAS—60

Abraham	Faircloth	McCain
Allard	Ford	McConnell
Ashcroft	Frist	Murkowski
Bennett	Gorton	Murray
Bond	Graham	Nickles
Brownback	Gramm	Roberts
Bumpers	Grassley	Roth
Burns	Gregg	Santorum
Campbell	Hagel	Sessions
Chafee	Hatch	Shelby
Cleland	Helms	Smith (NH)
Coats	Hutchison	Smith (OR)
Cochran	Inhofe	Snowe
Collins	Jeffords	Specter
Coverdell	Johnson	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Warner
Enzi	Mack	Wyden

NAYS—33

Akaka	Glenn	Levin
Baucus	Harkin	Lieberman
Biden	Hollings	Mikulski
Bingaman	Inouye	Moseley-Braun
Breaux	Kennedy	Moynihan
Bryan	Kerrey	Reed
Byrd	Kerry	Reid
Daschle	Kohl	Robb
Dodd	Landrieu	Rockefeller
Durbin	Lautenberg	Sarbanes
Feingold	Leahy	Torricelli

NOT VOTING—7

Boxer	Feinstein	Wellstone
Conrad	Grams	
Dorgan	Hutchinson	

The amendment (No. 37) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. CAMPBELL. Mr. President, today I express my concern for the Nuclear Waste Policy Act of 1997. I first want to reiterate my firm belief that a

permanent geological repository represents the most responsible solution for the ultimate disposition of spent commercial nuclear reactor fuel.

Presently, this radioactive material sits in temporary storage at 70 or so sites around the country, including my State, Colorado. Colorado also has several tons of the much deadlier plutonium haunting Rocky Flats, less than 20 miles from Denver. So, I am no stranger to nuclear material, the related hazards and costs. Nor is my view different from that of any other Coloradan, or citizen of any other State—I want safe, efficient, responsible solutions to the questions presented by nuclear technology.

But S. 104 does not present a safe, responsible solution to the question of commercial spent fuel and I cannot vote for it. First, S. 104 would make Denver the crossroads of radioactive material on an almost daily basis for the next 30 years. S. 104 will send much of the spent fuel and high-level nuclear waste from eastern States traveling west through Denver on I–70, while trans-uranic waste from Idaho will travel south through Denver on I–25 to New Mexico.

Therefore, my first point of concern is that Colorado would bear the brunt of the risks of truck and train accidents and the risks of radioactive releases almost every day, for the next 30 years. This gives me great pause. Only with the utmost confidence in the transportation details—the routing plans, the casks housing the spent fuel assemblies, the emergency response preparedness—would I feel comfortable subjecting the residents of Colorado to this great burden. I do not have that confidence yet. In fact, for example, the Colorado Highway Patrol has indicated that I–70 west of Denver is simply not suitable for the safe transportation of radioactive materials. Federal preemption through S. 104, however, threatens to override the CHP's designation and force the use of the I–70 corridor anyway.

I do not mean to suggest that this is my only concern with S. 104, or that this concern in and of itself would be sufficient to cause my opposition. If the bulk of S. 104 represented a sound, responsible solution to an urgent national problem, then my analysis would be quite different. S. 104 is not such a bill, however.

Although no one can deny the growing problem of spent nuclear fuel throughout our country, the problem is currently not one of safety, but one of cost. It costs the utilities and, therefore, the ratepayers a lot of money to store this material in temporary facilities. Again, Colorado is not immune. Many Colorado ratepayers contributed to the nuclear waste fund, which was established to finance the permanent disposal of this material, and must pay to maintain storage. But, by all accounts, safety is not an urgent issue for temporary, onsite storage in Colorado or any other State. Were safety an urgent consideration at this point, again, my analysis would be quite different.

What concerns me most, however, is the chronology of disposal in S. 104. This bill requires that the Energy Department construct an interim storage site 100 miles north of Las Vegas, NV, and begin accepting spent fuel and high-level nuclear waste well before the permanent repository at nearby Yucca Mountain, NV, is licensed, or even found suitable for permanent disposal.

Consequently, there is the very real danger that, even if the permanent site is for some reason deemed unsuitable for disposal of the spent fuel, it will be used anyway simply because the waste would already be nearby at the interim site. Worst yet, there is the danger that the material would remain at the interim site indefinitely. Finally, there is the haunting specter that if Yucca Mountain is not found suitable as a permanent repository, all the spent fuel then stored at the interim site would have to be shipped back across the country—through Colorado again—to some other site.

I am sympathetic to the pressures bearing on the nuclear utilities and the ratepayers who have paid once already to have this material disposed of and who must pay again to store this waste while Yucca Mountain is prepared. I also understand that the Energy Department is contractually obligated to begin removing the spent fuel from the States by 1998.

But, the safe, responsible disposition of material that will remain deadly for many tens of thousands of years is simply not like buying a car. If it takes some years longer than anticipated, if it costs more money than we thought at first, so be it. In finding a safe place in which to keep this material for a time longer in duration than all of recorded human history, 5, 10, even 20 additional years should not deter us. In the context of radioactive waste, truly, I would rather be safe, than sorry. These words point the way to a better approach to a daunting national problem. S. 104 does not.

Mr. CRAIG. Mr. President, I address this body to express my support of S. 104, the Nuclear Waste Policy Act of 1997.

Today, I wish to address specifically provisions of the substitute amendment introduced yesterday by the chairman, my colleague from Alaska.

Before I discuss the details of our substitute amendment, however, I would like to set the backdrop for my remarks.

This week, while debating the motion to proceed, you have heard my colleague from Alaska, the able chairman of the Energy and Natural Resources Committee, invite those who say they cannot support provisions of this bill, S. 104, to suggest alternatives.

I hope all of my colleagues heard this invitation and I know some of my colleagues accepted this invitation.

The provisions of our substitute are a product of this invitation, to participate with us in solving this national problem—the problem of spent nuclear fuel and radioactive waste, and how to address this problem in a timely manner.

We have listened to those who have expressed concerns about this legislation.

In our effort to continue and enhance the strong bipartisan support for this legislation, our substitute addresses, point-by-point, the concerns expressed by the other side.

Let me discuss these changed provisions.

First, we had heard concerns that the schedule outlined in S. 104 for the development of an interim storage facility is unrealistic.

Mr. President, our substitute now extends the schedule for siting and licensing of the interim storage facility: from the original proposal of the year 1999, we now have a facility operating in 2003.

But let me talk about why we have extended the schedule.

The interim storage facility will be licensed by fully exercising all provisions of the Nuclear Regulatory Commission licensing process.

We have extended the schedule for environmental reviews.

We have extended the schedule for public involvement in this licensing process.

Let me repeat this.

We have heard allegations that S. 104 does not allow for public involvement.

Public involvement during licensing has always been part of the S. 104 process for an interim storage facility.

By extending our schedule to 2003, there will be even more time and ample opportunity for the public to participate in the licensing process.

Another provision that is changed by our substitute is that we have shortened the license duration—the operating period—of the interim storage facility from 100 years to 40 years.

We have also provided that the amount of fuel and high-level radioactive waste stored in the interim storage facility will be only that amount needed to fulfill the Government's obligations until a permanent repository is available.

Mr. President, we are not looking for a blank check on this facility.

We propose to build only what is needed to stem the Government's looming financial liability under the lawsuit and the contracts signed in 1982.

We have accommodated our critics on their concerns regarding preemption of other laws.

Our substitute now contains language virtually identical to the preemption provision of the Hazardous Materials Transportation Act.

I hope this finally puts to rest the entirely misguided allegation that this legislation will gut environmental laws.

That simply has never been the truth.

The language of our substitute on the issue of preemption requires compliance with applicable environmental laws and hopefully puts this issue to rest.

Finally, our substitute revises the approach to setting an environmental standard for the deep geologic repository.

S. 104, as introduced, set a standard of 100 millirem.

On Monday, I addressed this body and set this 100 millirem in the context of everyday risks, from day-to-day living.

I noted for my colleagues that we receive an annual radiation dose of 80 millirem simply from working day-today in the Capitol Building—a product of the granite and other building materials here.

We have listened, however, to the concerns that this legislation should allow a risk-based standard.

We have heard suggestions that this legislation should adopt the recommendations of the National Academy of Sciences.

As I have stated, in our openness to enhancing the broad, bipartisan support already enjoyed by this legislation, we have listened to these suggestions.

Therefore, our substitute now requires that the Environmental Protection Agency determine a risk-based radiation standard for the repository.

Our substitute directs that the Environmental Protection Agency set this radiation standard in accordance with the National Academy of Sciences recommendations.

Mr. President, I commend my colleague, the chairman of the Energy and Natural Resources Committee, the Senator from Alaska, in conducting a process for developing this legislation, and this substitute, that I believe to be unprecedented in its openness and its willingness to hear and respond to the concerns of our opponents.

When this substitute and the Committee amendments are considered in their totality, I can firmly state that this legislation will decisively deal with the issue of spent nuclear fuel and high-level radioactive waste, and it will deal with this issue in the most stringent, most safe, and most environmentally sound manner.

S. 104, the Nuclear Waste Policy Act of 1997, will allow the Government to fulfill the contractual obligation it assumed, under the law passed by this body in 1982.

The deadline for action on this obligation is just 9 months away.

I urge my colleagues to consider thoroughly the changes made by this substitute, to consider the basis for any concerns they may have had.

I assert that, with these changes, there simply are no possible reasons for any action other than support of final passage of S. 104.

Mr. MURKOWSKI. Mr. President, for the benefit of all Senators, it is my understanding that we very likely can dispose of three amendments in the balance of the evening. One, as I understand it, is going to be offered by Senator BUMPERS from Arkansas. I might ask how much time he will require.

Mr. BUMPERS. I suggest 20 minutes equally divided.

Mr. MURKOWSKI. I will accept that. A Bingaman amendment, we anticipate—we are not sure the Senator is on the floor at this time. We will have to wait for Senator BINGAMAN. And we have a Domenici amendment that we are prepared to take on this side. I believe there may be an objection from the other side. That could be held over until Monday. One of the Domenici amendments we are prepared to take at this time.

Mr. DOMENICI. Can we do that now?

Mr. MURKOWSKI. I will take Senator BUMPERS while he is in the mood. Senator BINGAMAN, as I understand, has agreed to 20 minutes on either side, so 40 minutes total. That gives you an idea of what to anticipate for the remainder of the evening. We anticipate two votes.

I will ask unanimous consent that the time on the Bumpers amendment No. 33—might I ask if I heard the Senator from Arkansas correctly, that he wanted 2 minutes?

Mr. BUMPERS. I said 20 minutes equally divided.

Mr. MURKOWSKI. I thought the Senator said 2 minutes. I ask unanimous consent for the following agreement: That the time on the Bumpers amendment No. 33 be limited to 20 minutes with no second-degree amendments, equally divided, and that the time on the Bingaman amendment be limited to 40 minutes——

Mr. BINGAMAN. Make that 30 minutes, and I will take a little less.

Mr. MURKOWSKI. Thirty minutes equally divided, and that no second-degree amendments be in order.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object, Mr. President, I do so only to suggest that we stack the two votes and that they be held no later than 6:45.

Mr. LOTT. Mr. President, let me make sure I understand what the chairman and the Democratic leader are working on here. We have two remaining votes here, and we would stack those at 6:45. Is the recommendation both of those votes at 6:45?

Mr. MURKOWSKI. Or earlier.

Mr. LOTT. Then that would only leave for consideration next week two amendments on Monday, and we would have stacked votes. Are we ready to enter into this agreement?

Mr. MURKOWSKI. It is my understanding that we would have the two Wellstone amendments pending on Monday, and we would have one Domenici amendment, which is still in disagreement—

Mr. BRYAN. I believe we are going to be able to resolve this in a minute or two.

Mr. LOTT. I want to pursue the details of what would be left. It is my intent that we have no more than three votes stacked on Tuesday morning. We will need to work out the final agreement. I have no objection to these two votes at 6:45.

Mr. DASCHLE. Mr. President, I think it would be helpful if, in the next 45 minutes, we worked out the final arrangement for the vote to be taken on Tuesday. I amend my request to see if we can finish the votes at 6:30. I think if you take the time both Senators require, we could accommodate the Senators and still finish by 6:30. I amend my request in that regard.

Mr. DURBIN. Will the majority leader yield for a question?

Mr. LOTT. Yes.

Mr. DURBIN. Would the majority leader respond in reference to the pending question relative to Mr. Pete Peterson's confirmation as Ambassador to Vietnam?

Mr. LOTT. Mr. President, is this under a reservation, reserving the right to object?

Before I respond to that, Mr. President, if I could direct a question to the Democratic leader, to make sure I understand again what he is saying, is that all debate will be concluded at 6:30.

Mr. DASCHLE. That is correct on the two amendments.

Mr. LOTT. That the vote begin.

Mr. DASCHLE. At 6:30.

Mr. LOTT. And, further, that all votes be concluded by a specific time?

Mr. DASCHLE. No.

Mr. LOTT. Strictly at 6:30 we would vote. That is fine. I have no objection to that.

With regard to the question, we are still working on trying to get final clearance on the Pete Peterson nomination to be ambassador. I am hoping that while we are having this final debate and getting the vote on these issues that we will be able to bring that to the floor for consideration this afternoon possibly on a voice vote. But depending on when we get done, it may require some time and a recorded vote. I believe we can get it up tonight. If we run into a snag on this agreement, it would be our intent then to try to do it during the day Tuesday, probably. I would like to do it tonight. We are working on it. We have asked the administration for some information that

is critical. I believe we will have a response in the next 4 hours.

I thank the minority leader.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Without objection, it is so ordered.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, if I might engage the chairman of the Energy Committee, on the two DOMENICI amendments, Senator REID and I have no objection. We are prepared to accept those.

Mr. MURKOWSKI. I advise my friend from Nevada that one of amendments is satisfactory to us. We have a second degree on the second amendment which has been worked out I believe with the Senator from New Mexico.

Is the Senator aware of the second degree?

Mr. BRYAN. I am not. No. I am not aware of a second-degree amendment.

Mr. MURKOWSKI. We would be happy to provide you with that. But in the interest of moving this now, we will move the one that there is no objection to.

AMENDMENT NO. 40 TO AMENDMENT NO. 26

(Purpose: To prevent "double counting" in the determination of the fee)

Mr. DOMENICI. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 40 to Amendment No. 26.

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

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

The amendment is as follows:

In the pending amendment, beginning on page 49 line 11 strike all through page 53 line 11 and insert the following:

"(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

"(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annnual level of appropriations for expenditures on those activities consistent with subsection (d) for each fiscal year in the offsetting collection period, minus—

the percentage of such appropriation required to be funded by the Federal government pursuant to section 403.

"(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

"(C) For purposes of this paragraph, the term 'offsetting collection period' means—

"(i) the period beginning on October 1, 1998 and ending on September 30, 2001; and

"(ii) the period on and after October 1, 2006.

"(3) NUCLEAR WASTE MANDATORY FEE.—

"(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

"(i) 1.0 mill per kilowatt-hour generated and sold, minus—

"(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

"Provided, that if the amount under clause (ii) is greater than the amount under clause (i) the fee under this paragraph shall be equal to zero.

"(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal government that are specified in subsection (c)(2). In making this determination the Secretary shall—

"(i) reply on the 'Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program,' dated September 1995, or on a total system life-cycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the government under subsection (c)(2);

"(ii) rely on projections from the Energy Information Administration, consistent with the projections contained in the reference case in the most recent 'Annual Energy Outlook' published by such Administration, in making any estimate of future nuclear power generation; and

"(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

"(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

"(D) The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(4) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2001. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the full amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

"(4) EXPENDITURES IF SHORTFALL.—If, during any fiscal year on or after October 1, 1997, the aggregate amount of fees assessed under this subsection is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—

The percentage of such appropriations required to be funded by the Federal Government pursuant section 403—

the Secretary may make expenditures from the Nuclear Waste Fund up to the level equal to the difference between the amount appropriated and the amount of fees assessed under this subsection.

Mr. DOMENICI. Mr. President, the purpose of this amendment is to correct some double counting of budget authority that occurs when calculating the annual fee for the nuclear waste collection. I think it is agreed to on all sides.

I yield the floor.

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

Mr. MURKOWSKI. Mr. President, we have no objection and urge adoption of the amendment.

Mr. BRYAN. We have no objection, Mr. President.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 40) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 33 TO AMENDMENT NO. 26

(Purpose: To clarify Congressional intent with respect to enactment of this Act in response to DOE's inability to meet the January 31, 1998 contractual deadline to start disposing of spent nuclear fuel)

Mr. BUMPERS. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 33.

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

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

The amendment is as follows:

On page 75, strike lines 4 through 8 and insert:

"It is the sense of the Senate that—

"(1) the Department of Energy has entered into contracts with utilities for the disposal

of spent nuclear fuel or high-level radioactive waste, under section 302(a) of the Nuclear Waste Policy Act of 1982, based on the standard contract in subpart B of 961 of title 10, Code of Federal Regulations;

"(2) the U.S. Court of Appeals for the District of Columbia Circuit, in *Indiana Michigan Power Company* v. *DOE*, has interpreted the Nuclear Waste Policy Act of 1982 to require the Department of Energy to start disposing of the utilities' spent nuclear fuel no later than January 31, 1998;

"(3) the Department of Energy cannot begin to receive and transport significant amounts of spent nuclear fuel by January 31, 1998, because of delays arising out of causes beyond the control and without the fault or negligence of the Department of Energy, including the following acts of Government in its sovereign capacity—

"(A) the failure of Congress to appropriate funds requested by the Department in order to proceed expeditiously with—

"(i) the characterization and development of the Yucca Mountain site, and

"(ii) the design and development of associated systems required to transport spent nuclear fuel;

"(B) the enactment by Congress, since 1982, of additional environmental statutes affecting the process of designing and licensing the repository;

"(C) the failure of the Environmental Protection Agency to meet statutory deadlines in section 801 of the Energy Policy Act of 1992 for the promulgation of radiation standards for the Yucca Mountain site; and

"(D) delays on the part of the State of Nevada in issuing permits necessary for the Department to initiate exploratory activities at the Yucca Mountain site;

"(4) the enactment of this Act is intended by the Congress to address the Department's inability to meet the January 31, 1998, deadline and to provide an adequate remedy to contract holders by ensuring that the Department meets its obligations under the contracts in paragraph (1) at the earliest practicable time, consistent with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and applicable Commission regulations; and

"(5) in any action alleging failure by the Department to perform its obligation to start disposing of spent nuclear fuel by January 31, 1998, under a contract based on the standard contract in subpart B of part 961 of title 10, Code of Federal Regulations, the court should take due account of article IX(A) of such standard contract.".

Mr. BUMPERS. Mr. President, this is fairly simple and will only take about 10 minutes.

Mr. President, last July a D.C. circuit court ruled that the Waste Policy Act of 1982 required the Department of Energy to take the utilities' nuclear waste in 1998. The utilities and the public service commissions brought two separate actions, and the court consolidated them. They argued that DOE was clearly under an obligation to take this waste in 1998. And the court ruled in their favor saying—this is good news for my adversaries on this amendment—"In conclusion, we hold that the petitioners' reading of the statute comports with the plain language of the measure. * * * Thus, we hold that section 302(a)(5)(B) creates an obligation in DOE, reciprocal to the utilities' obligation to pay, to start disposing of the [nuclear waste] no later than January 31, 1998."

You may think that the utilities have all the best of it as a result of that decision, and they may very well have. But as you know, there is a case pending now in the D.C. Circuit in which the utility companies are seeking a judgment seeking to have the fees that they are paying put in escrow. I am not sure what they get out of that. But the purpose of this amendment is very simple. The District of Columbia Circuit right now has this action of the utility companies under consideration. As I said, the utility companies are asking that the fees they are paying, which is hundreds of millions of dollars a year, be put in escrow. And in my opinion, in order for the court to rule on that, the court is going to have to again look at the contract—not the Nuclear Waste Policy Act, which they interpreted in last July's decision—bear in mind we are talking about two different lawsuits. Last summer, in July, the court was interpreting the Nuclear Waste Policy Act of 1982. This time, in my opinion, they have to look at the contract and see if the contract that was negotiated pursuant to that act requires the Department of Energy to take this waste.

So here is my amendment. It is written in the mother tongue, which is in English, so everybody here ought to be able to understand it. This is a sense-of-the-Senate amendment. It states that it is the sense of the Senate that the Department of Energy's failure to meet the January 1998 deadline was caused by Congress' failure to appropriate funds the program needed and other Government actions beyond DOE's control, and that the court should take the contract's provisions on excusable delays into consideration when it rules on the pending lawsuits.

As I said, that is the mother tongue, and it is not hard to understand. Look at the contract. See what the contract says. Is the United States, or the Department of Energy, under the terms of the contract, excused for its inability to take this waste in 1998? Bear in mind that court last summer did not find DOE liable for a breach of contract. A breach of contract is the failure without a legal excuse to perform the contract. All you brilliant lawyers here understand that. We have a contract. That is what the court is going to be construing. This is a sense of the Senate calling to the court's attention some language that was in the contract. And I have not heard this debated one minute since this debate started. The question is, was there a failure to have a permanent repository ready to take this waste in 1998? Was that their fault? I submit that it was not. But that is not what we are debating here. That is my opinion. My opinion is, and I really defy anybody to say otherwise, that the reason they didn't have it ready is because the Government didn't appropriate the money fast enough to do it.

Listen to this. Here is what the contract says. The Government will not be liable "for damages caused by a failure to perform its obligations" under the contract "if such failure arises out of causes beyond the control and without the fault or negligence" of DOE.

That is simple enough. Anybody can understand that. The contract goes on to state that "acts of the Government"—that is us, colleagues—"acts of the Government" that "cause delay in scheduled acceptance or transport" of utility waste shall be an excusable failure by the Department of Energy.

It says that DOE shall notify the utilities of such a delay and "the parties will readjust their schedules, as appropriate, to accommodate such delay."

I don't know how many lawyers there are in the U.S. Senate. But I promise you there isn't a lawyer here worth the powder of blowing you know where that hasn't had cases exactly like this. All contracts provide for excusable delays. What do you do if you have a delay that is beyond your control? What if you have a tornado blow a project away while you are right in the middle of it? Normally you would have insurance to cover that. That is normally covered by contracts. Here they simply say, if there is any justifiable reason for the DOE not being ready to take this fuel in January of 1998, that is a legitimate excuse and that includes actions by the Government, and the actions of the Government was we didn't appropriate the money to get the repository built. Now the utilities are coming in and saying, "We don't care about the language of the contract. We want you to take it, or put our money in escrow."

There have been all kinds of figures. I am not going to debate the amount of money involved here. I have heard a lot of figures thrown around about what this is going to cost the Government by not taking this spent fuel, and those figures are so exaggerated, if you look at the details of what the cost is likely to be, it is exaggerated by a magnitude of about 300 percent.

But it is not correct for Senators on the floor of the U.S. Senate to suggest—indeed, openly state, as I heard some do—that this is already a done deal and that DOE has already been found liable. That is not true. The contract is now under consideration by the U.S. Court of Appeals in Washington, DC. I submit to you that if anybody is to blame it is us. We are the ones who kept DOE from being prepared to take this.

So, Mr. President, I think it is only appropriate. After all, we are not trying to interfere with the judicial proceedings. We are simply saying it is a sense of the Senate that this language

which I just read to you should be very carefully considered by the court. There not only is not nothing wrong with that, there is everything in the world right about it. And the court is going to interpret the contract, and here is the clear language of it.

I say in my sense-of-the-Senate amendment that the court should take the contract's provisions on excusable delays into consideration when it rules on the pending lawsuit.

Why wouldn't it? DOE didn't put that language in there just to make the contract a little longer. They put it in there so that they would have an out if there was an excusable delay. There has been an excusable delay. All I am saying is it is the sense of the Senate that we ought to call that to the attention of the court.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I appreciate the persuasive arguments of my friend from Arkansas who is a well-known lawyer. I happen to be a banker and not nearly as well known. But I know what a contract is. A contract is a binding commitment of performance. And the question that the Senator from Arkansas raises in his amendment is the sanctity of that contract. This is a subject of pending litigation. I think it is inappropriate to interfere in the sanctity of the Federal contracts. We have a fair administrative process. The courts are involved in this. I think it is important to look at a little history because the Department of Energy has been aware of its obligation since 1982.

My reading of the Bumpers amendment suggests that it is essentially representing a determination now by Congress that the Department of Energy is faultless in its default. I think it is the court's job to make that determination. In my opinion, the Department of Energy has followed a consistent course of delay, a consistent course of avoidance including their failure to ask Congress for any additional funds or authority needed to meet the obligation.

The Senator from Arkansas suggests that it is the responsibility of the Congress because Congress did not appropriate any money. I am not aware that the Department of Energy ever asked for any money.

Let us look at the history because I hope that my colleague from Arkansas, when he clearly listens, will agree that this legacy of broken promises is something that is reprehensible relative to a responsible department addressing its contractual commitment. I think it sets, if you will, a norm on the issue of contracts. If a contract with the Government is not binding, it sets a pretty poor example, a pretty poor example for youth and a pretty poor example of how Government meets its obligations.

Mr. FORD. Mr. President, will the Senator from Alaska yield for a question?

Mr. MURKOWSKI. I would be happy to yield for one question.

Mr. FORD. I just want to make one thing clear, and I am not a lawyer, not even a famous banker.

Mr. MURKOWSKI. That takes care of both Senators.

Mr. FORD. That takes care of both. I understand the Senator from Alaska says a contract is binding, but the content of the contract is what binds you. Therefore, if the contract says certain things, you are bound to what the contract says. I think the Senator is evading, in my judgment, the content of the agreement.

Mr. MURKOWSKI. I appreciate the views of my friend from Kentucky.

Mr. FORD. And this is from both Senators.

Mr. MURKOWSKI. I think it is the responsibility of the court to make the determination of what the contract says, not the Senator from Arkansas or the Senator from Alaska or the Senator from Kentucky. And that is what the court has done. And if the Senator will bear with me while I go through the history, I think he will agree.

Mr. FORD. But we have every obligation, because we pass the law, to be sure that the legislative language, the legislative history is understood by the courts also.

Mr. MURKOWSKI. I would certainly agree with my friend from Kentucky, and I hope he will agree after a short review of the history that that is exactly what happens.

Let me give you my version of the record because it goes back to a legacy of broken promises starting in 1984. We had a commitment, a clear promise by Don Hodel, then Secretary of Energy, affirming that the Energy Department is obligated to begin accepting spent nuclear fuel from nuclear powerplants in 1998 whether or not a permanent disposal facility is ready.

Now, we went on a few years and got into 1987, a 3-year delay. Congress then, this body, designated Yucca Mountain, NV, as the only site to be evaluated. Meanwhile, the Department of Energy announces a 5-year delay in the opening date for a disposal facility from 1998 to the year 2003. They did not ask for any money. They did not mention money. They simply announced a 5-year delay in the opening day.

In 1989, another delay, another promise. The Department of Energy announces another delay in the opening date for a permanent disposal facility until the year 2010. We are told now, of course, by the most recent Secretary of Energy, Hazel O'Leary, that that cannot be ready until the year 2015.

We went on in 1991 with mounting concerns. The first sign of concern appears over the Energy Department's ability to meet its obligations under the Nuclear Waste Policy Act. The State of Minnesota tells the Energy Secretary, James Watkins, that it is "highly probable that your department will experience significant delay in meeting its obligation to begin taking high-level radioactive waste in 1998." Nothing about money.

So we move into 1992. More promises. Secretary Watkins tells Minnesota's DOE, and I quote, "The DOE is committed to fulfill the mandates imposed by the Nuclear Waste Policy Act. The department has sound, integrated programs and plans that should enable us to begin spent fuel receipt on an MRS, a monitored retrievable, storage facility in 1998."

We move to December 1992, another promise. Energy Secretary Watkins acknowledges that attempts to find a volunteer host for an MRS facility have not succeeded. He promised to do whatever is necessary to ensure that the Energy Department is able to start removing spent fuel from nuclear power sites in 1998.

I do not know what my friend would think of the moral obligation, but it is interesting to note that Secretary O'Leary in May 1993 affirms that the Energy Department "has an obligation" to electric utilities and their customers. "If it does not have a legal obligation, then it has a moral obligation." That really does not mean much other than acknowledgement of just a moral obligation.

But in May 1994 there was a notice of inquiry. DOE published a notice of inquiry to address the concerns of affected parties regarding the continued storage of spent nuclear fuel at reactor sites beyond 1998. The energy agency says, "Preliminarily, it's our view that it does not have a statutory obligation to accept spent nuclear fuel in 1998 in the absence of an operational repository or suitable storage facility."

That is the first time they denied, if you will, that they had a statutory obligation to accept the spent fuel.

Well, then we move over to May 1994 and 14 utilities and 20 States bring suit to the Department of Energy. A coalition of 14 utilities and public agencies in 20 States file separate but similar lawsuits seeking clarification of the Energy Department's responsibility to accept spent fuel beginning back in 1998.

Then we go to April 1995. No obligation to take the fuel, the Department of Energy says. No obligation on the one hand. Previously, they said they did not have a statutory obligation. In April, they said the Federal Government has no legal obligation to begin accepting high-level waste in 1998 if a repository is not open, according to the DOE's interpretation of the Nuclear

Waste Policy Act and contracts with utilities. Still no mention about funding.

In July 1996 we have a different view, a very different view. In July 1996 the court ruled, and this is the U.S. Court of Appeals, that the Department of Energy's obligation to take the fuel in 1998 is a legal as well as a moral obligation. So there we have the dictate of the court, which I think addresses the concern of the Senator from Arkansas.

In December 1996, the Department of Energy does not challenge the court's ruling and admits failure. The DOE acknowledges that it will not be able to meet its commitments to take the waste in 1998.

In January 1997, the DOE's liability is addressed and 46 State regulatory agencies and 33 electric utilities file new action for escrow of nuclear waste funds and to order the DOE to take the spent fuel in 1998.

In March 1997, the court rejects the Department of Energy's motion to dismiss before it is filed.

So that is the last legal action. The court tells the DOE that a motion to dismiss would be "inappropriate in this case" and sets the case for damages for a hearing on the merits.

Mr. President, a deal is a deal.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator's time has expired.

The Senator from New Mexico.

AMENDMENT NO. 41 TO AMENDMENT NO. 26

(Purpose: To strike all provisions relating to special consideration of potential sites for an interim storage facility)

Mr. BINGAMAN. Mr. President, I understand it is appropriate at this point for me to send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Yes.

Mr. BINGAMAN. I do so.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 41 to Amendment No. 26.

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

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

The amendment is as follows:

On page 28, strike the second sentence of section 204(c)(2).

Mr. BINGAMAN. Mr. President, in order to describe what this amendment does, let me first just give my colleagues the context, the way this bill is structured so they understand what we are talking about here.

Under this bill, the way it is pending before us, we have the Secretary of Energy proceeding to go forward and study and analyze the appropriateness of using the Yucca Mountain site as a permanent repository and doing what is called the viability assessment to decide whether Yucca Mountain is going to be the right site, or an appropriate site.

If the Department of Energy, the Secretary of Energy, advises the President and the President determines that Yucca Mountain is not a proper site, then at that point we go to plan B, and plan B says that the President then has 18 months in which to choose another interim site for the waste except that under the bill the way it now stands after the last amendment and previous amendments that were adopted, he can choose another site with some exceptions.

The exceptions are, first, the President shall not designate the Hanford Nuclear Reservation in the State of Washington as a site for the construction of an interim storage facility. The second exception is that he shall not designate the Savannah River site and any of Barnwell County in the State of South Carolina. And, of course, we just adopted an amendment saying that he shall not designate the Oak Ridge reservation in the State of Tennessee.

Mr. President, what this amendment does that I am offering right now is say let us strike those exceptions. If in fact the President determines that Yucca Mountain is not the right site for a permanent repository, then we ought to all be in this thing together and the Secretary and the President should have full discretion to designate whatever site they want. Otherwise, Mr. President, I as a Senator from New Mexico have to answer the question from my constituents, why didn't I stand up and get some exceptions added for New Mexico.

For example, everyone in my State knows that we have a nuclear waste site being constructed in New Mexico and not too far from being opened, the WIPP site, the Waste Isolation Pilot Plan. Why didn't I stand up and offer an amendment to exclude the WIPP site? That would be a very logical thing to do.

If I were representing Colorado, I think the citizens of Colorado would have a very legitimate question that they could put to me: Why didn't you, Senator, stand up and move to exclude Rocky Flats? That is a contaminated site, just as contaminated as Hanford, just as contaminated as Savannah River. Rocky Flats certainly should be on the list of excluded sites.

If I was representing Idaho, why haven't I excluded the Idaho site? There is great concern in the State of Idaho about the possibility of nuclear waste remaining in that State. Ohio, the mound site. There has been a lot of concern about contamination of the mound site. How could a Senator representing the good people of Ohio explain to them why that site was not also excluded? What about Florida? We have the Pinellas site there which was a manufacturing site for components for nuclear weapons. Why haven't we excluded that site?

I would ask how any Senator here could stand and explain to their constituents why we have not excluded all Superfund sites. Superfund sites would be very logical sites for the President to choose as an alternative to this Nevada site if in fact the President has to make that determination.

What about shutdown military bases. Why shouldn't we exclude them? There is a real danger in many of our States—we have been fortunate in New Mexico. None of our military bases have been shut down, but there are many States in the country where military bases have been shut down. If I was representing one of those States, I would want to be sure that shutdown military bases were not on the list that the President could choose from.

So, I think I have made the point fairly clear that it is very hard for me to explain to people in my State why I am opposed to putting waste in Tennessee, I am opposed to putting waste in South Carolina, I am opposed to putting waste in Washington State, but I do not mind putting it in our State. That is a very difficult argument to make.

So my amendment would say, look, let us eliminate the exceptions. Let us recognize that there is a certain amount of risk involved in the legislation we are passing. The risk says if we determine, if the President determines, down the road that Yucca Mountain is not to be chosen, then we are all in this thing together and everyone is in the barrel. We cannot just say this State is out, that State is out, the other State is out, and the other 47 are in the barrel.

I think that is only reasonable. I know we have a lot of so-called NIMBY amendments around the Congress—"not in my backyard" is a NIMBY amendment. We have three NIMBY amendments stuck in this bill so far. I am just wondering why we do not have 47 additional ones stuck in here so we can exclude all 50 States, if we are going to exclude 3. So my amendment would say let us eliminate the three that are there. If we are going to go down this road, if we are going to adopt this bill, if we are going to give the President discretion to choose an alternative site, let us give him discretion to choose an alternative site wherever he determines or she determines it makes sense to put this waste.

That is the sum and substance of the amendment. To me it is straightforward. It is good government. It is good politics for any of us who represent States other than the three that are now excluded. I hope very much my colleagues will support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, if I may make a correction regarding what I believe is the intent of my friend from New Mexico. It does not exclude a State, but it does exclude sites. My State of Alaska has had the experience of two underground nuclear explosions, the two largest that have ever occurred. That is the limitation of our experience. I cannot speak for Senators from the State of Washington or Oregon. Senator WYDEN, as you know, felt very strongly about eliminating the Hanford site. He explained his rationale to me, that Hanford was still receiving substantial quantities of waste associated with reactors that had been cut up from the submarines, coming up the Columbia River. I hope he comes to the floor and speaks for himself, but on this matter he explained that he felt that Hanford had taken enough waste and Hanford is the largest current holder of spent nuclear fuel in inventory in tonnage, approximately 2,133 tons. Whether that satisfies the Senator from New Mexico, I do not know.

Savannah River, SC, Senator THURMOND and Senator HOLLINGS felt very strongly about the continued responsibility of the Savannah River facility to take additional waste, wastes coming in from Europe at this time, waste that is being vitrified. They have approximately 206 metric tons.

At Oak Ridge, in Tennessee, Senator FRIST and Senator THOMPSON have indicated their concern. They currently have 46 tons of spent nuclear fuel.

Whether those sites can be construed as different, I think you could probably make a case, from the situation in your State—but I cannot speak for your State and I will not. The only thing I can say is this is spent nuclear fuel. The theory, as the Senator knows, of this process of everybody coming in and eliminating his State could progress on this floor. We could go through 47, 48, 49—whether we would get them all and come full circle, I do not know. But I can express that these sites have major cleanup operations ongoing, unlike other sites. The Department of Energy is spending literally billions of dollars to attempt to stabilize these wastes. I have been out to Hanford. I have seen the efforts out there to generate the technology, to get the destabilized waste out of the tanks. Some of those tanks are believed to be unstable and leaking.

I have seen the efforts at Savannah to recover the liquid waste from the tanks. The spent fuel is in pools and corroding. I have seen that physically. They claim they have a priority. I cannot make that scientific judgment. But the Senators from those States are obviously concerned that these sites cannot handle the new job of dealing with more commercial fuel and continuing their obligation to clean up sites that have not been properly taken care of. So I think, if I can perhaps express the argument which I assume prevails among the majority of my colleagues who have spoken on this subject—I would welcome the rest of them to come down and speak for themselves. I reserve the remaining time on our side to accommodate those Members.

Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. All time is concluded at 6:30, so we have about 9 minutes left.

Mr. MURKOWSKI. It is equally divided?

The PRESIDING OFFICER. To whomever uses the time first.

Mr. MURKOWSKI. Is there any objection to splitting the remaining time?

Mr. BINGAMAN. I will be glad to split the time.

Mr. MURKOWSKI. I propose we split the time, and I reserve the remainder of my time for Members from those States.

The PRESIDING OFFICER. Without objection, it is so ordered. The time will be so divided.

Mr. BINGAMAN. Mr. President, let me respond. I certainly agree with the Chairman's point that these Senators are greatly concerned about these sites in their States. I compliment them for proposing and being able to get these amendments that they have gotten into this bill into the bill. I think they have done very good work in representing their States' interests. My point is that there are many other sites in this country which have an equal or perhaps an even greater claim to being excluded. We need to either put those sites in or take these sites out. That is the simple thrust of my amendment.

Much of the waste that is concerning people at Savannah River, Oak Ridge, and Hanford—some of that waste will wind up in my State and not on an interim basis. Under the proposal for the WIPP site, that is a permanent repository for transuranic defense-related waste. These Senators are providing that they will not have to take any additional interim waste, and the plans are that much of the waste that they are now complaining about having been put in their States will in fact travel to my State of New Mexico in the future once the WIPP site is open. So I have great difficulty agreeing with them that their States should be excluded from possible consideration as a future interim site while my State should be included.

As I say, I would feel the same way if I were representing Rocky Flats in Colorado, if I were representing Ohio, the mound site there, or if I were representing the Pinellas shutdown facility in Florida. And, of course, as all of us know, there are a great many Superfund sites around the country which have been determined to be contaminated. I think all of those sites would be at great risk of being chosen by the President and therefore they, their Senators, would want to stand up and get their States or their sites excluded as well.

Mr. President, I think this is a very difficult issue, where you put nuclear waste. But the only way I know to get from here to there, to a reasonable result, is to say we are all going to have to share the risk. That is what my amendment would try to do.

I yield the floor. I ask, is there additional time on my side?

The PRESIDING OFFICER. Less than a minute.

Mr. BINGAMAN. I reserve that time and yield the floor.

Mr. MURKOWSKI. Mr. President, it is my understanding the Senator from Oregon wants to speak. We have about 6 minutes left. I yield 2 minutes to the Senator.

Mr. WYDEN. Thank you very much, Mr. Chairman. I suspect that there are some who now think this whole discussion is sort of a question of "not in my backyard" run wild. I submit to my colleagues, that is not what is at issue. In fact, Hanford is in Washington State. It is not in the State of Oregon. But I care greatly about this because there is already more high-level nuclear waste now stored at Hanford than at any other Federal facility in the Nation. There is no place in the United States where nuclear materials are stored under worse conditions than at Hanford. So, the fact is, if there are to be tens of thousands of tons of additional nuclear waste parked at Hanford, even though it is not safely storing the waste it now has on site, there will be great problems for the Pacific Northwest. So, I tell the Senate today, and Senator SMITH also joins me in this effort, that I think this is a critical public health and safety question that when, in fact, you have high-level nuclear waste stored there already and you cannot deal with that safely, you certainly should not put additional waste there.

I thank Chairman MURKOWSKI for yielding to me. I want to say to the Senate, this is not, in my view, a question of not in my backyard run rampant, but that there are really public interest reasons for ensuring that additional problems are not foist upon the Pacific Northwest. I thank the chairman for yielding.

Mr. MURKOWSKI. Mr. President, I think my time is about up. I do not see anybody rising to speak on it. I think each Member should evaluate for himself or herself, relative to the question of whether or not there is a certain uniqueness associated with the Hanford site, the Savannah site, and the Oak Ridge site. I hope we would not have any more amendments coming up to address individual States, because I do not think they could fall under the same category.

Mr. President, I ask that we vote first on the Bumpers amendment.

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

The PRESIDING OFFICER. Is the Senator asking to vote first on the Bumpers amendment?

Mr. MURKOWSKI. First on the Bumpers amendment followed by the Bingaman amendment. I ask for the yeas and nays on both. Is there any objection to 10 minutes?

Mr. BINGAMAN. Mr. President, I have no objection. I would like to take my additional 30 seconds to conclude my debate on my amendment before we start the votes.

Mr. MURKOWSKI. I ask unanimous consent the second vote be a 10-minute rollcall vote to accommodate Senators.

Mr. BINGAMAN. Could we have a 2-minute period, equally divided, a minute each before the second vote to explain just what it is?

Mr. MURKOWSKI. I have no objection.

Mr. BINGAMAN. Could we have a ruling on the request for the yeas and nays?

The PRESIDING OFFICER. Without objection, the first vote will be on the Bumpers amendment.

Mr. BUMPERS. 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 Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I will be very brief.

The PRESIDING OFFICER. Forty-five seconds.

Mr. BINGAMAN. Forty-five seconds? I will not take any longer.

I appreciate the comments of the Senator from Oregon and his concern for the Pacific Northwest. I compliment him on getting this provision in the bill. I will only make the point that I represent the desert Southwest, not the Pacific Northwest. And just as the Pacific Northwest ought to be excluded, so should the desert Southwest. Therefore, I suggest we have a level playing field and not exclude anyone. We all ought to be in this barrel together.

When we get to my amendment, I will restate that position, because we will have 2 minutes of additional debate on it.

I also support Senator BUMPERS' amendment which we are going to vote on right now.

The PRESIDING OFFICER. All time has expired.

VOTE ON AMENDMENT NO. 33

The PRESIDING OFFICER. The question is on agreeing to the Bumpers amendment No. 33. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Minnesota [Mr. GRAMS] and the Senator from Arkansas [Mr. HUTCHINSON], are necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr. DORGAN], and the Senator from Minnesota [Mr. WELLSTONE], are necessarily absent due to severe disaster conditions in their States.

I further announce that the Senator from California [Mrs. BOXER] is necessarily absent.

I also announce that the Senator from California [Mrs. FEINSTEIN] is absent due to illness.

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

The result was announced—yeas 24, nays 69, as follows:

[Rollcall Vote No. 38 Leg.]

YEAS—24

Akaka	Durbin	Lautenberg
Baucus	Ford	Moynihan
Biden	Glenn	Murray
Bingaman	Harkin	Reed
Breaux	Inouye	Reid
Bryan	Kennedy	Rockefeller
Bumpers	Kerry	Torricelli
Daschle	Landrieu	Wyden

NAYS—69

Abraham	Frist	Mack
Allard	Gorton	McCain
Ashcroft	Graham	McConnell
Bennett	Gramm	Mikulski
Bond	Grassley	Moseley-Braun
Brownback	Gregg	Murkowski
Burns	Hagel	Nickles
Byrd	Hatch	Robb
Campbell	Helms	Roberts
Chafee	Hollings	Roth
Cleland	Hutchison	Santorum
Coats	Inhofe	Sarbanes
Cochran	Jeffords	Sessions
Collins	Johnson	Shelby
Coverdell	Kempthorne	Smith (NH)
Craig	Kerrey	Smith (OR)
D'Amato	Kohl	Snowe
DeWine	Kyl	Specter
Dodd	Leahy	Stevens
Domenici	Levin	Thomas
Enzi	Lieberman	Thompson
Faircloth	Lott	Thurmond
Feingold	Lugar	Warner

NOT VOTING—7

Boxer	Feinstein	Wellstone
Conrad	Grams	
Dorgan	Hutchinson	

The amendment (No. 33) was rejected.

Mr. MURKOWSKI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the senior Senator from West Virginia, Senator BYRD, be recognized for 3 minutes following the next vote.

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

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

VOTE ON AMENDMENT NO. 41

Mr. MURKOWSKI. Mr. President, my understanding is that the Bingaman amendment is next; and there is 1 minute on both sides, I believe Senator BINGAMAN and then Senator WYDEN.

The PRESIDING OFFICER. By agreement there is 1 minute on each side prior to voting on the Bingaman amendment.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, this amendment is straightforward. The bill, as it now stands before us, says that the Department of Energy will go ahead and try to determine whether it can use the Yucca Mountain site in Nevada for a permanent repository.

Mr. President, the Department of Energy will go ahead and try to determine if it can use the Yucca Mountain site. If the President decides, before the deadline in here, in 1999, that Yucca Mountain is not an appropriate site, then they cannot proceed with Yucca Mountain anymore.

The President is given 18 months to find another interim site for this nuclear waste, except that the President—and this is in the bill now—it says: The President shall not designate Hanford Nuclear Reservation in the State of Washington and the Savannah River site in Barnwell County in the State of South Carolina or the Oak Ridge Reservation in the State of Tennessee as a site for construction of an interim storage facility.

Mr. President, what I am saying is, let us strike those exemptions. All of our States, all of our sites, ought to be at risk if we decide to go this route.

The PRESIDING OFFICER. The 1 minute has expired.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I hope our colleagues will oppose the Bingaman amendment. This is not a question of "not in my backyard" run rampant. In fact, Hanford is in the State of Washington. It is not in the State of Oregon.

The reason that it is important to include Hanford in this legislation is that there is no place in the United States where nuclear materials are now stored under worse conditions than at Hanford. In fact, there is already more high-level nuclear waste stored at Hanford than at any other Federal facility in the country. I offered this in the committee with Senator SMITH of Oregon.

I hope our colleagues will reject the Bingaman amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Bingaman amendment. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Minnesota [Mr. GRAMS] and the Senator from Arkansas [Mr. HUTCHINSON] are necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] the Senator from North Dakota [Mr. DORGAN] the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent due to severe disaster condition in their States.

I further announce that the Senator from California [Ms. BOXER] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

I also announce that the Senator from California [Mrs. FEINSTEIN] is absent due to illness.

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

The result was announced—yeas 36, nays 56, as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—36

Akaka	Feingold	Lieberman
Baucus	Glenn	Mikulski
Bingaman	Graham	Moseley-Braun
Breaux	Harkin	Moynihan
Bryan	Johnson	Reed (RI)
Bumpers	Kennedy	Reid (NV)
Byrd	Kerrey	Robb
Collins	Kerry	Rockefeller
Daschle	Kohl	Santorum
Dodd	Landrieu	Sarbanes
Domenici	Lautenberg	Snowe
Durbin	Levin	Torricelli

NAYS—56

Abraham	Ford	McCain
Allard	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Murray
Biden	Grassley	Nickles
Bond	Gregg	Roberts
Brownback	Hagel	Roth
Burns	Hatch	Sessions
Campbell	Helms	Shelby
Chafee	Hollings	Smith (NH)
Cleland	Hutchison	Smith (OR)
Coats	Inhofe	Specter
Cochran	Jeffords	Stevens
Coverdell	Kempthorne	Thomas
Craig	Kyl	Thompson
D'Amato	Leahy	Thurmond
DeWine	Lott	Warner
Enzi	Lugar	Wyden
Faircloth	Mack	

NOT VOTING—8

Boxer	Feinstein	Inouye
Conrad	Grams	Wellstone
Dorgan	Hutchinson	

The amendment (No. 41) was rejected.

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

Mr. THURMOND. I move to lay it on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, I understand that a unanimous consent request has been entered into to allow the distinguished Senator from West Virginia to speak at this point. I have spoken to him, and with his permission, if he would allow me to proceed before that, I ask for that consent.

Mr. BYRD. I am delighted.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. Mr. President, I ask unanimous consent that the only remaining amendments in order to the committee substitute to S. 104 be the following, and I further ask unanimous consent that the Domenici and Wellstone amendment No. 30 is limited to relevant second-degree amendments; one Domenici amendment regarding points of order, amendment No. 38; two Wellstone amendments, amendments numbered 29 and 30; and one Bingaman amendment, numbered 31.

I further ask unanimous consent that following the disposition of the abovementioned amendments, the committee substitute be agreed to, and the bill be advanced to third reading.

I further ask unanimous consent that the votes occur in a stacked sequence, beginning at 9 a.m. on Tuesday, April 15, with 3 minutes of debate between each vote, and all votes following the first vote be limited to 10 minutes in length.

I further ask unanimous consent that all amendments must be offered and debated prior to the close of business on Monday, April 14, and limited to 1 hour each, to be equally divided in the usual form, and any second-degree amendments be limited to the same time restraints as the first-degree amendments.

I further ask unanimous consent that no amendments dealing with the storage of nuclear materials on Palymra Atoll, Wake Atoll or any other U.S. Pacific island be in order.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, through you to the distinguished majority leader, the intent I am sure of the unanimous consent agreement is to have 3 minutes prior to the first vote. It did not say that, but I am sure 3 minutes prior to debate of the first vote.

Mr. LOTT. Mr. President, I amend that request to say that we would have 3 minutes prior to the first vote and between the successive votes, yes.

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

Mr. LOTT. Mr. President, for the information of all Senators, in light of the recent agreement and the request to bring the nuclear waste bill to a conclusion on Monday morning, I want to thank first of all, the Democratic leader for his cooperation in getting us to a point where we will get the final vote. The Senate, therefore, will not be in session on Friday this week. The Senate will convene on Monday, and following morning business the Senate will resume the pending nuclear waste bill under the previous order for debate of the remaining amendments. However, no votes will occur during Monday's session of the Senate.

The Senate will convene on Tuesday, April 15, and begin a series of back-to-back votes beginning at 9 a.m. Following those votes, which would include final passage of the nuclear waste bill, the Senate will conduct morning business to discuss the significance of April 15, which is tax filing day. It is the hope of the leadership that the Senate could consider the nomination of Alexis Herman to be Secretary of Labor on Wednesday. Therefore, a vote is expected on that nomination during the day, Wednesday, April 16, session of the Senate.

Also, we are very close, I believe, to getting an agreement with regard to the nomination of Pete Peterson to be Ambassador to Vietnam. One of the Senators has had some concerns in reviewing a fax matter at this point, and immediately after we hear from Senator BYRD, we hope to be ready to proceed on that under a time limit agreement. If we could get 30 minutes equally divided on each side unless yielded back, and perhaps a voice vote, but we will determine that during the next very few minutes.

Again, Mr. President, I thank all Senators for their cooperation. I know it has been a very hard issue for the Senators from Nevada, and they have been very tenacious, but they have been reasonable in their approach. I appreciate that and I want to thank Senator MURKOWSKI and others for their good work and thank you, Senator DASCHLE for your cooperation.

AMENDMENT NO. 42

(Purpose: To ensure that budgetary discipline will apply to fees levied under this Act)

Mr. LOTT. Mr. President, I send an amendment to the desk on behalf of Senator DOMENICI.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Mississippi [Mr. LOTT] for Mr. DOMENICI, proposes an amendment numbered 42.

At the appropriate place insert the following:

Notwithstanding any other provision of this act, no points of order, which require 60 votes in order to adopt a motion to waive such point of order, shall be considered to be waived during the consideration of a joint resolution under section 401 of this Act.

Mr. LOTT. Mr. President, I ask unanimous consent that it be in order to send a second-degree amendment to the desk.

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

AMENDMENT NO. 43 TO AMENDMENT NO. 42

Mr. LOTT. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Mississippi [Mr. LOTT], for Mr. MURKOWSKI, proposes an amendment numbered 43 to amendment No. 42.

amendment no. 43

In the pending amendment, on page 1, insert at the end the following:

"Notwithstanding any other provision of this Act, except as provided in paragraph (3)(c), the level of annual fee for each civilian nuclear power reactor shall not exceed 1.0 mill per kilowatt-hour of electricity generated and sold."."

Mr. LOTT. Mr. President, I thank Senator BYRD for yielding at this time and allowing me to complete these agreements.

I yield the floor.

Mr. BYRD. Mr. President, I ask unanimous consent that following my brief remarks, the distinguished Senator from New York, Mr. MOYNIHAN, be recognized for 3 minutes, and following Mr. MOYNIHAN, I ask unanimous consent that Mr. LEVIN be recognized for 3 minutes.

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

Under the previous order, the Senator from West Virginia is recognized for 3 minutes.

COURT RULING REGARDING THE LINE-ITEM VETO ACT

Mr. BYRD. Mr. President, in March of last year, the Congress passed the Line-Item Veto Act. That law, for the first time in our Nation's history, gave the President the power to single-handedly repeal portions of appropriations or tax laws without the consent of Congress. I vigorously opposed passage of the act because of my deep concern over the effects of that act on our system of checks and balances and the separation of powers that has served this Nation so well for over 200 years.

As I have told my colleagues on many occasions, I viewed the passage of that law as one of the darkest moments in the history of the republic. On January 2 of this year, I, along with Senators MOYNIHAN and LEVIN, former Senator Hatfield, and Representatives WAXMAN and SKAGGS, filed a civil action in the U.S. District Court for the District of Columbia challenging the constitutionality of the Line-Item Veto Act.

Today, U.S. District Judge Thomas Penfield Jackson of the U.S. District Court for the District of Columbia handed down a ruling declaring the act to be unconstitutional. Among other things, Mr. President, the court held, "Where the President signs a bill but then purports to cancel parts of it, he exceeds his constitutional authority and prevents both Houses of Congress from participating in the exercise of lawmaking authority. The President's cancellation of an item unilaterally effects a repeal of statutory law, such that the bill he signed is not the law that will govern the Nation. That is precisely what the Presentment Clause was designed to prevent."

As Judge Jackson also stated, "Just as Congress could not delegate to one of its chambers the power to veto select provisions of law, it may not assign that authority to the President." For the reasons set forth in his 36-page opinion, the court adjudged and declared unconstitutional the Line-Item Veto Act.

I am very pleased with the court's decision, which I believe to be a great victory for the American people, the Constitution, and our constitutional system of checks and balances and separation of powers.

Mr. President, I express my deep appreciation to Mr. MOYNIHAN, Mr. LEVIN, Mr. WAXMAN, Mr. SKAGGS, former Senator Hatfield, for their cooperation, and to our excellent team of lawyers for their support, for their dedication, and for their active and effective participation in this case.

For the benefit of my colleagues, I ask unanimous consent that the Court's full opinion be printed in the RECORD.

Mr. President, I understand the Government Printing Office estimates that it will cost $1,916 to print this memorandum and order in the RECORD.

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

[United States District Court for the District of Columbia, Civil No. 97-0001 (TPJ)

SEN. ROBERT C. BYRD, ET AL., PLAINTIFFS *v.* FRANKLIN D. RAINES, ET AL., DEFENDANTS

MEMORANDUM AND ORDER

This action challenges the validity of legislation entitled the Line Item Veto Act, Pub. Law No. 104-130, 110 Stat. 1200 (1996) (to be codified at 2 U.S.C. §§681 note, 691 *et seq.*) ("the Act"), which empowers the President unilaterally to "cancel" certain appropriations and tax benefits after signing them into law. The Act represents an effort by Congress to enlist presidential assistance in controlling rampant federal spending by conferring upon the President what it termed a species of "enhanced rescission" power, expanding the authority he formerly possessed under the Impoundment Control Act of 1974. Plaintiffs, four Senators and two Congressmen,[1] contend that the *mechanism* chosen by Congress to its desired end contravenes the text and purpose of Article I, section 7, clause 2, known as the "Presentment Clause" of the Constitution. Rather than making expenditures of federal funds appropriated by Congress matters of presidential discretion, the Act effectively permits the President to repeal duly enacted provisions of federal law. This he cannot do. Accordingly, the Court will grant plaintiffs' motion for summary judgment, deny defendants' motion, and declare the Act unconstitutional.

I

Operation of the Line Item Veto Act

Following years of importuning by successive Presidents and vacillation by earlier Congresses, President Clinton approved the Line Item Veto Act as passed by the 104th Congress on April 9, 1996. Immediately after it became effective on January 1, 1997, the plaintiff Senators and Congressmen filed this action to declare it void. Named defendants are the Director of the Office of Management and Budget and the Secretary of the Treasury—the officials alleged, respectively, to be responsible for executing the President's "cancellations" of spending items and limited tax benefits under the Act. The United States Senate and the Bipartisan Legal Advisory Group of the United States House of Representatives have appeared jointly as *amici curiae* to defend the constitutionality of the Act.

The Act, which sunsets on January 1, 2005, allows the President, after signing a bill into law, to "cancel in whole"—

(1) any dollar amount of discretionary budget authority;

(2) any item of new direct spending; or

(3) any limited tax benefit.

2 U.S.C. §691(a). "Dollar amounts of discretionary budget authority" include any dollar amount set forth in an appropriation law, including those to be found separately in tables, charts, or explanatory text of statements or committee reports accompanying legislation. 2 U.S.C. §691e(7). Thus the President's cancellation power applies to legislative history as well as to statutory text itself. "Items of new direct spending" generally include "entitlement" payments to individuals or to state and local governments. 2 U.S.C. §691e(8); H.R. Conf. Rep. No. 491, 104th Cong., 2d Sess. at 36 (1996). "Limited tax benefits" are those revenue-losing provisions that apply to 100 or fewer beneficiaries in any fiscal year, or tax provisions that provide temporary or permanent transitional relief for 10 or fewer beneficiaries from a change in the Internal Revenue Code. 2 U.S.C. §691e(9). The Act directs the congressional Joint Committee on Taxation to identify limited tax benefits contained in bills and joint resolutions, and provides that those bills and resolutions may include a separate section in which identified tax benefits are not subject to cancellation. 2 U.S.C. §691f(a)-(c).

The most critical definition is found in §691e(4). The term "cancel" or "cancellation" means "to rescind" any dollar amount of discretionary budget authority or to prevent items of new direct spending or limited tax benefits "from having legal force or effect." *Id.*

To exercise the cancellation power the President must first determine that it will—

(i) reduce the Federal budget deficit;

(ii) not impair any essential Government functions; and

(iii) not harm the national interest. 2 U.S.C. §691(a)(A). The President effects a cancellation by transmitting a "special message" to Congress within five calendar days (excluding Sundays) after enactment of the law containing the item(s) in question. 2 U.S.C. §691(a)(B). The Act spells out the content requirements for a special message and provides that it shall be printed in the Federal Register. 2 U.S.C. §691a.

Once an item has been canceled, no further action by Congress is required; cancellation takes effect upon Congress' receipt of the special message. 2 U.S.C. §691b(a). Congress may thereafter introduce a "disapproval bill" to reenact any canceled items within five days of receiving the special message, and must pass it within 30 days.[2] 2 U.S.C. §691d(b), (c)(1). The President can, of course,

Footnotes at end.

exercise a conventional veto of any disapproval bill, but Congress can then reinstate the *status quo ante* by overriding that veto.

Historical background

The Act is best understood against the historical backdrop of the efforts of the President and Congress over the years to control government spending and, in more recent times, to reduce an ever-increasing federal budget deficit. It is a product of many years of inter-branch conflict and compromise over how to accomplish those goals. Since the outset of the 19th Century, American Presidents have labored to influence Congress' spending habits, and many have lobbied in particular for the authority to veto selected provisions of bills presented for their signature. *See* 12 Op. Off. Legal Counsel 128, 157–65 (1988). Congress has considered both amending the Constitution and enacting several alternative legislative measures to give the President the increased authority he has sought and Congress has intermittently resisted.

Although Presidents have uniformly acknowledged that the Constitution affords no inherent authority for a line-item veto[3]—indeed, as explained below, it clearly forbids anything but rejection of a bill *in toto*—they have managed to exert their will by "impounding"—or simply not spending—appropriated funds. In some instances, Presidents have refused to spend money on measures that conflicted with their foreign policy objectives, or that would advance an unconstitutional purpose. Most of the time, however, Presidents simply preferred not to spend the money for the purposes for which Congress had allocated it. *See e.g.*, David A. Martin, *Protecting the Fisc; Executive Impoundment and Congressional Power*, 82 Yale L.J. 1636, 1644–45 (1973). Some impoundments have been challenged successfully in federal court; others have either been judicially sanctioned or not contested at all. *See City of New Haven v. United States*, 634 F. Supp. 1449, 1454 (D.D.C. 1986), *aff'd* 809 F.2d 900 (D.C. Cir. 1987).

Although presidential impoundments throughout the 19th century occurred in a state of uncertainty as to their legality, Congress has in this century conferred a measure of legitimacy upon them and given some direction as to their use. In the Anti-Deficiency Acts of 1905 and 1906, requiring "apportionment" aimed at saving money for the end of a fiscal year, Congress also allowed the President to waive spending appropriations in the event of emergencies or unusual circumstances. Act of March 3, 1905, ch. 1484, §4, 33 Stat. 1257; Act of Feb. 27, 1906, ch. 510, §3, 34 Stat. 48. When Congress amended the Anti-Deficiency Act in 1950, it created a mechanism for the Executive Branch to recommend the rescission of any reserves not required to carry out the purposes underlying an appropriation. General Appropriation Act of 1951, ch. 896, §1211(c)(2), 64 Stat. 595 (current version at 31 U.S.C. §1512(c)(1)).

Congress has not, however, always been sanguine about Presidents' refusal to spend appropriated funds. During the Nixon administration, for example, the President's extensive resort to impoundment prompted many lawsuits. *See City of New Haven*, 634 F. Supp. at 1454 ("by 1974, impoundments had been vitiated in more than 50 cases and upheld in only four"). President Nixon's reluctance to spend appropriated funds also provoked passage of the Impoundment Control Act of 1974 (the "ICA"), Pub. L. No. 93-344, 88 Stat. 332, a statute critical to an understanding of the present Act.

The ICA recognized two types of impoundment: "deferral" and "rescission." Deferral affects the timing of expenditures, and is accomplished by "withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities," or any other type of Executive action or inaction accomplishing the same result. 2 U.S.C. §682(1). Deferral is permitted for contingencies, to effect savings achieved through changes or efficiency, or as specifically provided by law. 2 U.S.C. §684(b). Under the ICA, the President effects a deferral, just as he cancels an item under the Line Item Veto Act, by transmitting to Congress a special message containing statutorily required information. 2 U.S.C. §684(a). Also like cancellations under the Act, deferrals become effective upon Congress' receipt of the special message; unlike cancellations, however, they expire with the end of the fiscal year.[4] *Id.*

A rescission, under the ICA, is the cancellation of budget authority. 2 U.S.C. §682(3). In contrast to a cancellation under the Line Item Veto Act, the ICA requires the President to *propose* a rescission by transmitting a special message to Congress, which Congress may enact or not, as it chooses, within 45 days. 2 U.S.C. §683(b). The perceived deficiency of the rescission process under the ICA that inspired passage of the Line Item Veto Act was the necessity of congressional acquiescence. Whenever Congress neglected or declined to pass a bill enacting into law a proposed rescission—a most frequent occurrence—the rescission expired.

The cancellation procedure embodied in the Line Item Veto Act thus came to be known as "enhanced rescission," the enhancement consisting of elimination of the need for congressional action. Two principal alternatives to the Act considered and rejected by the 104th Congress were "expedited rescission" and "separate enrollment." The first, exemplified by S. 14 in the 104th Congress, would have preserved the recommendation process but guaranteed that Congress actually and promptly vote on the President's rescission proposals. S. Rep. No. 9, 104th Cong., 1st Sess., at 15 (1995). The second would have treated each item of spending as a separate "bill" for the President to sign or veto. Separate handling of hundreds of items appeared to present insuperable practical obstacles, however, and potential constitutional difficulties as well. *See* 141 Cong. Rec. S. 4217, S. 4224–35, S. 4244 (daily ed. Mar. 21, 1995). Both Houses of Congress also considered and rejected proposed constitutional amendments to impart line item veto authority. S.J. Res. 2, 14, 15, and 16, and H.J. Res. 4, 6, and 17, 104th Cong. (1995).

II

Before addressing the merits of the case, the Court is obliged to confront defendants' objections as to its justiciability. In a motion to dismiss the complaint defendants contend that plaintiffs lack standing to press their claim. They also assert that the case is not ripe for judicial resolution, and that the "equitable discretion" doctrine requires dismissal. None of these assertions is correct under the law of this Circuit.

Standing[5]

Defendants argue that plaintiffs fail to present a live case or controversay, first, because separation-of-powers considerations counsel against judicial intrusions into disputes between officials of the political branches and, second, because at this point no presidential cancellation has yet been attempted or threatened, and there has, thus, been no discernible injury.

The parties agree on the standard to be applied: plaintiffs must allege, as "an irreducible minimum," (1) an injury personal to them, (2) that has actually been inflicted by defendants or is certainly impending, and (3) that is redressable by judicial decree. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982). *See also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

Defendants acknowledge that, pursuant to this well-settled standard, this Circuit has repeatedly recognized Members' standing to challenge measures that affect their constitutionally prescribed lawmaking powers. *See, e.g., Michel v. Anderson*, 14 F.3d 623, 625 (D.C. Cir. 1994) (Members had standing to challenge House Rule permitting delegates to vote in Committee of the Whole based on its alleged vote-diluting effect); *Moore v. U.S. House of Representatives*, 733 F.2d 946, 950–53 (D.C. Cir. 1984) (standing to assert violation of constitutional requirement that revenue-raising bills originate in the House), *cert. denied*, 469 U.S. 1106 (1985); *Vander Jagt v. O'Neill*, 699 F.2d 1166, 1168–71 (D.C. Cir.) (standing to challenge leadership's committee-seating assignments), *cert. denied*, 464 U.S. 823 (1983). In each case the D.C. Circuit found no separation-of-powers impediments to adjudication of the merits because, as in the present case, Members' alleged injuries arose from interference with the exercise of identifiable constitutional powers. *See Moore*, 733 F.2d at 951. Although the Supreme Court has never endorsed the Circuit's analysis of standing in such cases, for this Court's purposes these precedents are controlling.

Plaintiff's claim of injury in this case, namely, that the Act dilutes their Article I voting power, is likewise of the kind that suffices to confer standing under Article III. Previously, when a Member voted for an appropriations bill containing multiple items, he or she could be certain that any variation of the package once passed would require another vote by both chambers of Congress. Under the Act, however, as plaintiffs describe it, the Member's same vote operates only to present the President with a "menu" of items from which he can select those worthy of his approval, not a legislative *fait accompli* that he must accept or reject in whole, as in the past. As one Senator characterizes it, his vote for an "A–B–C" bill might lead to the *post hoc* creation of an "A–B" law, an "A–C" law, or a "B–C" law, depending on the President's use of his newly conferred cancellation authority, for which neither he nor his colleagues would have voted so reconfigured. Thus, plaintiffs' votes mean something different from what they meant before, for good or ill, and plaintiffs who perceive it as the latter are thus "injured" in a constitutional sense whenever an appropriations bill comes up for a vote, whatever the President ultimately does with it.

Circuit precedent has recognized only interference with the "constitutionally mandated process of enacting law" as sufficient to confer standing upon Members to maintain legal action for redress. *Moore*, 733 F.2d at 951. According to plaintiffs, their right to formulate an appropriations bill that meets with the approval of a majority of both Houses alone, ignoring presidential preferences, is mandated by the Presentment Clause itself. Under the Act the dynamic of lawmaking is fundamentally altered. Compromises and trade-offs by individual lawmakers must take into account the President's item-by-item cancellation power looming over the end product. The Court

concludes that plaintiffs have standing because they allege that the Act "interferes with their 'constitutional duties to enact laws regarding federal spending' and infringes upon their lawmaking powers under Article I, Section 7." *Synar* v. *United States*, 626 F. Supp. 1374, 1382 (D.D.C. 1986), *aff'd sub nom. Browsher* v. *Synar*, 478 U.S. 714 (1986).

Ripeness

Defendants' primary justiciability contention is that plaintiffs must wait until the President cancels an item to bring this lawsuit. Their facial challenge to the Act would elicit an advisory opinion, defendants argue, because whether the President will exercise his authority at all (and whether various other consequences will follow) is entirely speculative. Indeed, courts may not exercise jurisdiction consistent with Article III where a dispute is so unformed as to fail the "case or controversy" requirement. *See Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 81 (1978); *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138 (1974). And in constitutional cases, courts must be particularly careful not to render decisions that are unnecessary. *See United States* v. *National Treasury Employees Union*, 115 S. Ct. 1003, 1019 (1995). The injury that gives shape to a dispute need not have occurred, however, so long as it is "certainly impending." *Whitmore* v. *Arkansas*, 495 U.S. 149, 158 (1990).

In focusing solely on the President's actual exercise of his cancellation power, defendants overlook plaintiffs' allegation of ongoing harm that befalls them irrespective of whether the President ever cancels an item.[7] The Supreme Court considered an analogous claim ripe in *Metropolitan Wash. Airports Auth.* v. *Citizens for the Abatement of Airport Noise, Inc.*, 501 U.S. 252 (1991), where a Board of Review composed of Members of Congress possessed an as-yet unexercised power to veto decisions of MWAA's Board of Directors. "The threat of the veto hangs over the Board of Directors like the sword over Damocles, creating a 'here-and-now subservience' to the Board of Review sufficient to raise constitutional questions," the Court held. *Id.* at 265 n.13. *See also Bowsher v. Synar*, 478 U.S. 714, 727 n.5 (1986). Because plaintiffs now find themselves in a position of unanticipated and unwelcome subservience to the President before and after they vote on appropriations bills, Article III is satisfied, and this Court may accede to Congress' directive to address the constitutional cloud over the Act as swiftly as possible.[8]

Plaintiffs' declarations make clear that the budgetary process is already underway. The President presented his budget proposal in early February, and Members will consider and vote on appropriations between now and October 1, 1997, when the new fiscal year begins. Moreover, Congress is likely to vote on supplemental appropriations for this fiscal year in the next few months. To be sure, appropriations votes are inevitable, and "certainly impending," *Whitmore*, 495 U.S. at 158.

Defendants' argument that the case is not ripe because further factual development is required is also unpersuasive. The issues in this case are legal, and thus will not be clarified by further factual development. In what context and when the President cancels an appropriation item is immaterial. The Court will be no better equipped to weigh the constitutionality of the President's cancellation of an item of spending or a limited tax benefit after the fact; the central issue is plain to see right now.[9]

Finally, defendants assert that plaintiffs' claim is not ripe because the Act might be repealed, or suspended with respect to particular appropriations; a disapproval bill might subsequently vindicate a Member's vote as he intended it; or, if not, Congress could override a presidential veto of a disapproval bill. There are two answers to this argument. First, it ignores the "sword of Damocles" effect that pervades the process irrespective of whether the President ever cancels an item. Second, just because Congress *as a whole* can suspend or repeal the Act, or pass a disapproval bill, does not mean that an *individual* Member's injury is illusory. A Member cannot procure any such relief on his own. Indeed, the possibility of relief from Congress as a whole is just the sort of speculative prospect that the Court would reject if it were instead offered in *support* of standing. Just as the NTEU plaintiffs did not have standing simply because the Act made certain injuries possible, 101 F. 3d at 1429–30, the present plaintiffs' standing is not undermined by virtue of the fact that the Act makes certain remedies conceivable.

Equitable discretion

Defendants urge the Court to exercise its equitable discretion to dismiss the complaint because of separation-of-powers concerns, which apply not only in cases involving internal rules of Congress, *see Skaggs v. Carle*, 898 F. Supp. 1, 2 (D.D.C.), appeal docketed, No. 95–5323 (D.C. Cir. Sept. 25, 1995), but also in cases involving challenges to the validity of the legislation itself, *see Riegle v. Federal Open Market Comm.*, 656 F.2d 873, 881 (D.C. Cir.), *cert. denied*, 454 U.S. 1082 (1981).

In this case, however, the Court's equitable power to abstain from taking jurisdiction has been foreclosed by Congress' own determination to invite a lawsuit. *See* 2 U.S.C. §692(a)(1). There is therefore neither reason nor occasion to exercise discretion by avoiding the case. *See Synar*, 626 F. Supp. at 1382 ("Section 274 specifically provides for [declaratory] relief to [Members of Congress], thus eliminating whatever equitable discretion might exist and leaving only the limitations of Article III.").

III

The Court now turns to the issue presented, namely, whether the Act's conferral of cancellation power upon the President violates the Presentment Clause. The Act enjoys a presumption of validity, and the Court may not undertake to evaluate its wisdom. *See INS v. Chadha*, 462 U.S. 919, 944 (1983). Even if the Act were to appear salutary—or even exigent, given the intractable (and interminable) budget controversy—that fact cannot affect the Court's inquiry. *Id.* Though a court does not lightly resolve to invalidate a law of the United States, it must nevertheless vindicate the Constitution and the governmental framework it envisions. "The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty." *Bowsher v. Synar*, 478 U.S. 714, 730 (1986). Accordingly, the Supreme Court has "not hesitated to invalidate provisions of law which violate [the separation of powers]." *Metropolitan Wash., Airports Auth. v. Citizens for the Abatement of Airport Noise, Inc.*, 501 U.S. 252, 273 (1991), and this Court can do no less.

This case is indisputably one of first impression. The issue it poses will undoubtedly be finally resolved by the Supreme Court, but at present such Supreme Court precedent as can be found only intimates what the result will be. It is by that jurisprudence, however, that this Court must be guided, and the lesson of those cases appears to be that not even the most beguiling of upgrades to the machinery of national government will be countenanced unless it comports with the constitutional design.

Shorn of its political and policy-laden implications, this case turns on the narrow and subtle question of whether the President's power under the Act is simply a present-day enlargement of his historically sanctioned impoundment power as it has existed from time to time, as defendants urge, or rather a radical transfer of the legislative power to repeal statutory law, as plaintiffs believe. As explained below, the Court agrees with plaintiffs that, even if Congress may sometimes delegate authority to impound funds, it may not confer the power permanently to rescind an appropriation or tax benefit that has become the law of the United States. That power is possessed by Congress alone, and, according to the Framers' careful design, may not be delegated at all.

The Presentment Clause

The Presentment Clause requires that any bill making or changing federal law must be first passed by both Houses of Congress and then presented to the President *in toto*, in which form he acts upon it, either to make it (or allow it to become) a law, or to return it to Congress for reconsideration.[10] U.S. Const. art. I, §7, cl. 2. Plaintiffs focus on the language of "approval;" the President's primary duty under the Presentment Clause, they say, is one of approval or disapproval. If he approves of the bill, *in toto*, his signature is but a ministerial formality. If he does not approve of it, *in toto*, his duty obliges him to return it with his "objections" to the House in which it originated, or at least to leave it be. If he signs it while disapproving of it—or parts of it—as the act purports to authorize him to do, then he does so, according to plaintiffs, in violation of the Presentment Clause.

For defendants, the operative words are, "he shall sign it." It is the bright-line act of signing alone that converts a bill into law. Approval is a highly subjective, and a temporal, concept. A President may "approve" of a bill for many reasons, not all of which import enthusiasm for its legislative consequences. A President may sign a bill of which he actually disapproves (as undoubtedly many Presidents have done) for political, diplomatic, or other purposes unrelated to his judgment of its merit.

The Court agrees with defendants that the act of signing a bill is the critical requirement of the Presentment Clause. The President's judgment of approval coincides with his decision to sign a bill; it has no independent operative significance. Whether a bill is or is not a law of the United States cannot depend on the President's state of mind when he affixes his signature. He may object to various appropriations and limited tax benefits—that is, he may *disapprove* of them—but nevertheless sign a bill and thereby remain in full compliance with the Presentment Clause. Likewise, no subsequent action by the President is capable of retroactively undermining the approval he registered with his signature. By that time the Article I approval process has run its course, and the bill indisputably has become a law of the United States. *See United States v. Will*, 449 U.S. 200, 224–25 & n.29 (1980); *La Abra Silver Mining Co. v. United States*, 175 U.S. 423, 454 (1899); *Burgess v. Salmon*, 97 U.S. 381, 384–85 (1878).

Yet, although the court agrees that statutes subject to cancellation will have been "approved" in accordance with the Presentment Clause, the Act is vulnerable to the additional charge that, following approval, a

cancellation by the President is a legislative repeal that itself must comply with Presentment Clause procedures. The Court must resolve this issue in light of the Supreme Court's admonishment that "[t]he legislative steps outlined in Art. I are not empty formalities; they were designed to assure that both Houses of Congress and the President participate in the exercise of lawmaking authority." *Chadha*, 462 U.S. at 958 n. 22. It is insufficient, therefore, for defendants to argue that, notwithstanding the resemblance between a cancellation and a statutory repeal, the Act should stand because the same result could be accomplished through clearly constitutional means. Rather, "the purposes underlying the Presentment Clauses . . . must guide resolution of the question whether a given procedure is constitutional." *Id.* at 946.

Fundamentally, the Presentment Clause enforces "bicameralism" and circumscribes the President's ability to act unilaterally. *See Field v. Clark*, 143 U.S. 649, 692–93 (1892). It embodies "the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure." *Chadha*, 462 U.S. at 951. The President's contribution to the process is his approval of (or objection to) legislation as Congress presents it to him. His is merely a qualified check on the will of the legislature. *See* 1 *The Records of the Federal Convention of 1787* at 97–105 (Max Farrand ed., 1987). The President must consider the whole of the bill presented, which, in today's world of omnibus appropriations and myriad riders, is an undeniably difficult task. Nevertheless, upon considering a bill, he must reach a final judgment: either "approve it," or "not." U.S. Const. art I, §7, cl. 2. Once he has by his signature transformed the whole bill into a law of the United States, the President's sole duty is to "take Care that the Laws be faithfully executed." U.S. Const. art. II, §3. *See also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) ("[T]he President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.").

Where the President signs a bill but then purports to cancel parts of it, he exceeds his constitutional authority and prevents both Houses of Congress from participating in the exercise of lawmaking authority. The President's cancellation of an item unilaterally effects a repeal of statutory law such that the bill he signed is not the law that will govern the Nation. That is precisely what the Presentment Clause was designed to prevent.

Delegation of spending authority vs. exercise of lawmaking power

Defendants dismiss the notion that the Act represents an abdication of Congress' Article lawmaking I power, arguing that it merely ratifies traditional impoundment authority of the President in a novel form. Defendants and *amici* both allude to a long history of presidential impoundments, many of which have been tested by courts, and as to which the issue has been confined primarily to whether Congress intended to delegate discretion to the President not to spend money it had appropriated; that is, whether its appropriations were permissive or mandatory. *See, e.g., Train v. City of New York*, 420 U.S. 35, 41 (1975); *City of New Haven v. United States*, 634 F. Supp. 1449, 1454 n.6 (D.D.C. 1986) (citing cases), *aff'd* 809 F.2d 900 (D.C. Cir. 1987). The effect of the ICA was to make all appropriations presumptively mandatory. The Line Item Veto Act merely reverses that presumption, at least for a period of five days. During that limited period, the President has the option to "cancel" any appropriation—he may not change it in any manner—after which it remains in the law as he signed it, to be faithfully executed with the remainder.[11] If he cancels it with an appropriate message to Congress, it is extinguished, as if it had never been part of the bill, unless Congress revives it with a new bill, passed like any other by both Houses of Congress and presented anew to the President. In the meantime no money can be spent for it, just as would have been the case had it been "deferred" or "rescinded" in accordance with the ICA. The Line Item Veto Act is, therefore, according to defendants, merely an advance delegation by Congress to the President of a brief period of discretion to spend or not, as his judgment dictates, subject to the broad injunctions that his decision not to spend operate to reduce the deficit, and will not impair any essential Government functions or harm the national interest. It is, they say, "evolutionary, not revolutionary," Def. Motion for Summary Judgment at 3, in the perpetual contest of will between Congress and the President in matters of the federal budget.

It has long been held that Congress may—indeed, of necessity, must—delegate vast authority to the Executive Branch of government to make and to change rules for the governance of national affairs, so long as they are in furtherance of the will of Congress. When courts have inquired into whether Congress has abdicated its legislative function in cases of allegedly overbroad delegations, their sole concern is whether Congress itself articulated "intelligible principles" by which delegated authority is to be exercised. *See Mistretta* v. *United States*, 488 U.S. 361, 372; *J.W. Hampton, Jr. & Co.* v. *United States*, 276 U.S. 394, 406, 409 (1928). Since 1935, the Supreme Court has "upheld, without exception, delegations under standards phrased in sweeping terms." *Loving* v. *United States*, 116 S. Ct. 1737, 1750 (1996). Defendants are therefore correct that, if the Act's conferral of cancellation power, at least with respect to appropriations, can be equated with a delegation of impoundment authority, their burden under the delegation standard is not "a tough one." *National Fed'n Of Fed. Employees* v. *United States*, 905 F.2d 400, 404 (D.C. Cir. 1990).[12]

But defendants are mistaken in asserting that Article I concerns disappear once the President has signed a bill into law, and, consequently, that the delegation doctrine is the only hurdle for them to surmount. Their analysis assumes that Congress conferred a delegable power. It did not; it ceded basic legislative authority. The Constitution vests "all legislative Powers" of the United States in Congress, U.S. Const. art I, §1, including the power of repeal. *Chadha*, 462 U.S. at 954. As *Chadha* made clear, there are formal aspects of the legislative process that Congress may not alter. Just as Congress could not delegate to one of its chambers the power to veto select provisions of law, it may not assign that authority to the President. Before the question of a delegation's excessiveness ever arises, then, a court must be convinced that Congress did not attempt to alienate one of its basic functions.

In no case where the Supreme Court decided that a delegation of broad authority was saved by Congress' articulation of intelligible principles was the Court faced with an equivalent of the cancellation power given to the President by the Line Item Veto Act. Cancellation under the Act is simply not the same thing as impoundment, or any other suspension of a statutory provision. Instead, cancellation is equivalent to repeal[13]—and "repeal of statutes, no less than enactment, must conform with Art. I." *Chadha*, 462 U.S. at 954. Cancellation forever renders a provision of federal law without legal force or effect, so the President who canceled an item and his successors must turn to Congress to reauthorize the foregone spending. Whereas delegated authority to impound is exercised from time to time, in light of changed circumstances or shifting executive (or legislative) priorities, cancellation occurs immediately and irreversibly in the wake of the operationalizing "approval" of the bill containing the very same measures being rescinded.

Thus the cancellation power conferred by the Act is indeed revolutionary, as plaintiffs assert. Never before has Congress attempted to give away the power to shape the content of a statute of the United States, as the Act purports to do. As expansive as its delegations of power may have been in the past, none has gone so far as to transfer the function of repealing a provision of statutory law. The power to "make" the laws of the nation is the exclusive, non-delegable power of Congress which the Line Item Veto Act purports to alienate in part for eight years. That it can be recaptured if Congress repeals the Act, or suspends it (either in general, or in particular circumstances) does not alter the fact that, until Congress does so by a separate bill which the President signs (or as to which his veto is overridden), the President has become a co-maker of the Nation's laws. The duty of the President with respect to such laws is to "take care that [they] be faithfully executed." U.S. Const. art II, §3. Canceling, *i.e.*, repealing, parts of a law cannot be considered its faithful execution.[14]

Moreover, if cancellation power could constitutionally be delegated as to appropriations and limited tax benefits, defendants have yet to show a tenable constitutional distinction between appropriation and tax laws, on the one hand, and all other laws, on the other. In fact, defendants deny any obligation to suggest such a distinction at all. At oral argument they insisted that there is virtually no limit to the express Article I powers Congress may delegate if it chooses, so long as it articulates "intelligible principles" by which its delegate is to be guided. If that is so—if Congress can delegate to the President the power to reconfigure an appropriations or tax benefit bill—why can he not also cancel provisions of an environmental protection or civil rights law he disfavors, and upon exactly the same "principles" as are to guide his exercise of cancellation authority under the Line Item Veto Act?

As authority for the proposition that it is constitutionally permissible for Congress to delegate to the President the power to render a law of the United States inoperable, defendants cite the case of *Field v. Clark*, 143 U.S. 649 (1892). Aside from the fact that the presidential action approved by the Supreme Court in *Field v. Clark* was merely the "suspension" of duly enacted tariffs, not their cancellation, the case is also distinguishable on the ground that the Supreme Court recognized the practice of "legislating in contingency;" that is, where Congress itself determines in advance when conditions yet to occur should cause the law to cease to be operate. The President is merely the instrument of its will. *Id.* at 683–92. *See also United States v. Rock Royal Co-op, Inc.*, 307 U.S. 553, 577–78 (1939); *Currin v. Wallace*, 306 U.S. 1, 15–16 (1939); *The Brig Aurora*, 11 U.S. (7 Cranch)

382, 388 (1813).[15] The Line Item Veto Act, in contrast, hands off to the President authority over fundamental legislative choices. Indeed, that is its reason for being. It spares Congress the burden of making those vexing choices of which programs to preserve and which to cut. Thus, by placing on itself the "onus" of overriding the President's cancellations, *see* H.R. Conf. Rep. No. 491, 104th Cong., 2d Sess. at 16 (1996), Congress has turned the constitutional division of responsibilities for legislating on its head.

The Court therefore agrees with plaintiffs. In those Supreme Court cases which this Court finds most instructive for its purposes, most notably *Chadha*, the Supreme Court has repeatedly counseled that when the Constitution speaks to the matter, the Constitution alone controls the way in which governmental powers shall be exercised.[16] The formalities of the constitutional framework must be respected; the several estates subject to it must function within the spheres the Constitution allots to them.

IV

In passing the Act, Congress and the President addressed the significant problem of runaway spending, striving to create a more efficient process. But "the Framers ranked other values higher than efficiency." *Chadha*, 462 U.S. at 959. As the Court elaborated: "With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution." *Id.* Various legislative alternatives remain available to give the President a more significant role in restraining government spending. For example, the "expedited rescission" model favored by many Members of the 104th Congress would retain the President's role as a recommender of rescissions, *see* U.S. Const. art. II, §3, and force Congress to vote on such proposals. And, of course, Congress remains free to attempt passage of a constitutional amendment if it determines that the President should have unilateral revisionary power.

For the foregoing reasons, it is, this 10th day of April, 1997,

ORDERED, that defendants' motion to dismiss the complaint and motion for summary judgment are denied; and it is

FURTHER ORDERED, that plaintiffs' motion for summary judgment is granted; and it is

FURTHER ORDERED, that the Line Item Veto Act, Pub. Law No. 104-130, 110 Stat. 1200 (1996), is adjudged and declared unconstitutional.

THOMAS PENFIELD JACKSON,
U.S. District Judge.

FOOTNOTES

[1] Senators Robert C. Byrd, Daniel Patrick Moynihan, Carl Levin, and Mark O. Hatfield, and Representatives David E. Skaggs and Henry A. Waxman. All but Senator Hatfield are currently sitting Members of the 105th Congress.

[2] The President has no authority to cancel items contained in an enacted disapproval bill; he must take it or leave it as presented to him.

[3] *See, e.g.*, 33 *Writings of George Washington* 96 (1940) ("From the nature of the Constitution, I must approve all the parts of a Bill, or reject it in toto."); William Howard Taft, *The Presidency: Its Duties, Its Powers, Its Opportunities and Its Limitations* 11 (1916) ("[The President] has no power to veto parts of the bill and allow the rest to become a law. He must accept it or reject it . . ."); 12 Op. Off. Legal Counsel 128, 157-65 (1988) (reviewing other Presidents' views and experience).

Although some commentators have argued that the Constitution does provide inherent authority for a line item veto, *see* Stephen Glazier, *Reagan Already Has Line-Item Veto*, Wall St. J., Dec. 4, 1987, at A14, col. 4; L. Gordon Crovitz, *The Line-Item Veto: The Best Response When Congress Passes One Spending "Bill" A Year*, 18 Pepp. L. Rev. 43 (1990), most scholars have concluded that the text of Article I, Sec. 7, unequivocally precludes such authority. *See, e.g.*, Bruce Fein & William Bradford Reynolds, *Wishful Thinking on a Line-Item Veto*, Legal Times, Nov. 13, 1989, at 30; Lawrence Tribe and Philip Kurland, Letter to Sen. Edward Kennedy, 135 Cong. Rec. S. 14,387 (daily ed. Oct. 31, 1989); 12 Op. Off. Legal Counsel 128 (1988); 9 Op. Off. Legal Counsel 28 (1985). Moreover, at least two courts have stated in dicta that the President possesses no inherent item veto. *See Lear Siegler, Inc. v. Lehman*, 842 F.2d 1102, 1124 (9th Cir.), *reh'g en banc ordered*, 863 F.2d 693 (9th Cir. 1988), *withdrawn on other grounds*, 893 F.2d 205 (9th Cir. 1989) (en banc); *Thirteenth Guam Legislature v. Bordallo*, 430 F. Supp. 405, 410 (D. Guam App. Div. 1977), *aff'd*, 588 F.2d 265 (9th Cir. 1978).

[4] Originally, deferrals were automatically effective but subject to a one-House legislative veto. 88 Stat. at 335. In light of *INS* v. *Chadha*, 462 U.S. 919 (1983), the legislative veto component of the ICA was invalidated, *City of New Haven* v. *Pierce*, 809 F.2d 900 (D.C. Cir. 1987), and Congress subsequently amended the ICA to eliminate the offending procedure.

[5] Only Article III standing, as opposed to prudential limitations, is at issue in light of Congress' creation of an express right of action in §692(a)(1) of the Act.

[6] Defendants rely on two concurring opinions by D.C. Circuit Judges in arguing that plaintiffs' injury is not sufficiently personal to create a justiciable controversy. *See Moore*, 733 F.2d at 957-61 (Scalia, J., concurring); *Vander Jagt*, 699 F.2d at 1179-82 (Bork, J., concurring). Yet, as the three-judge court, of which then-Judge Scalia was a member, recognized in *Synar* v. *United States*, 626 F. Supp. 1374, 1382 (D.D.C. 1986), *aff'd sub nom. Bowsher* v. *Synar*, 478 U.S. 714 (1986), this Circuit's cases unequivocally establish that Members have "a personal interest . . . in the exercise of their governmental powers." 626 F. Supp. at 1381 & n. 7.

[7] Even if an actual cancellation by the President were required to cause injury, Article III arguably would not require plaintiffs to wait for that event to invoke the Court's jurisdiction. *See Abbott Labs* v. *Gardner*, 387 U.S. 136, 140 (1967); *Buckley* v. *Valeo*, 424 U.S. 1, 117 (1976) (challenge was ripe in anticipation of "impending future ruling and determinations").

The President has expressed his intention to invoke his new powers under the Act *this year*. *See* 141 Cong. Rec. S. 8202-03 (daily ed. June 13, 1995) (containing letter from President to Speaker of the House).

[8] As in the case of standing, plaintiffs need only satisfy the Article III component of ripeness because Congress unmistakably declared the case fit for judicial review in §692(c) of the Act. Accordingly, this Circuit's conclusion in *National Treasury Employees Union* v. *United States*, 101 F.3d 1423, 1431 (D.C. Cir. 1996) ("*NTEU*"), that prudential (as well as constitutional) considerations made the union's challenge to the Act not ripe in inapposite.

[9] Moreover, fitness for review is a prudential component of the ripeness doctrine, an inquiry Congress obviated by calling for expedited judicial action. *See Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985); *NTEU*, 101 F. 3d at 1431. But even if the Court were to take into account prudential ripeness factors, they actually militate in plaintiffs' favor, because resolving the issue now will avert the cloud that would hang over any canceled item that Congress fails to disapprove.

[10] In the Framers' words: "Every Bill which shall have passed the House of Representatives and the Senate shall, before it become a Law, be presented to the President of the United States; If he approve it he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its return, in which Case it shall not become a Law."—U.S. Const. art. I, §7, cl. 2.

At the behest of James Madison, the Framers included the following clause to ensure that Congress could not evade the presentment requirement simply by passing legislation in forms other than bills: "Every Order, Resolution, or Vote to Which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives according to the Rules and Limitations prescribed in the Case of a Bill."—U.S. Const. art I, §7, cl. 3.

[11] Defendants cite no analog, as a species of impoundment or anything else, however, to the power to "cancel" limited tax benefits found in the Act.

[12] *See, e.g., Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212, 219 (1989) (upholding delegation of authority to establish and collect pipeline safety fees); *Lichter v. United States*, 334 U.S. 742, 778 (1948) (upholding grant of power of recover excessive wartime profits), and *Yakus v. United States*, 321 U.S. 414, 424 (1944) (upholding broad delegation of price-fixing authority).

[13] As noted *supra*, p.4, §691e(4) of the Act defines the verb "cancel" as meaning "to rescind." *Webster's Third New International Dictionary* 1924 (G.&C. Merriam Co. 1981) defines the verb "repeal" as meaning "1: to rescind or revoke (as a sentence or law) from operation or effect."

[14] Defendants suggest that, in canceling future appropriations, the President will, in fact, be faithfully executing the Line Item Veto Act to reduce the deficit. But the Act contains no mandate to the President to reduce the deficit. It merely conditions cancellations for whatever reason upon, *inter alia*, their having a deficit-reducing effect.

[15] As the Supreme Court further explained in *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 407 (1928), 30 years later: "Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an executive, or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be affected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district."

[16] *See also Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252 (1991); *Bowsher v. Synar*, 478 U.S. 714 (1986); *cf. U.S. Term Limits v. Thornton*, 115 S. Ct. 1842 (1995).

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

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I rise to state that this is a fine moment in the history of the Senate. It has come about through the leadership of Senator ROBERT C. BYRD and his devotion to the Constitution of the United States. The court today ruled in the most explicit terms. It said, "* * * the Act effectively permits the President to repeal duly enacted provisions of Federal law. This he cannot do."

Then with a grace note that I hope the Senate will appreciate, and I know our distinguished occupant of the chair will, with Senator BYRD's great attachment to the history of democratic government and theory and its glorious origins in Greece, the court referred to the sword-of-Damocles effect: Not that the President would exercise this power, but that he might do it. There is a sword still suspended in this Chamber, but soon, I cannot doubt, to be

taken down as a consequence of the judgment of the Supreme Court. I might add, sir, that there are some in Congress who are concerned that the courts interfere too much with our procedures. This is a court defending the Constitution and the U.S. Congress in its responsibilities.

Finally, sir, may I state a moment of gratitude to the attorneys, our learned counselors, who, on a pro bono basis, argued this case so effectively. I ask unanimous consent that their names be printed in the RECORD at this time.

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

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Lloyd N. Cutler, Louis R. Cohen, Lawrence A. Kasten, Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, DC 20037 (202) 663-6000.

Alan B. Morrison, Colette G. Matzzie, Public Citizen Litigation Group, 1600 20th Street, N.W., Washington, DC 20009 (202) 588-1000.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized for 3 minutes.

Mr. LOTT. Mr. President, I want to announce officially that there will be no further votes today.

Mr. LEVIN. Mr. President, I thank my friend from West Virginia. The Senator from West Virginia is the plaintiff in a historic lawsuit. This lawsuit has now taken the first step. Senator MOYNIHAN and I, Senator Hatfield, and a number of House Members are co-plaintiffs, and proudly so, with Senator BYRD. We are kind of the "et al." Robert BYRD, et al. It is a position that we are proud to be in.

This lawsuit, we should be clear, tests a particular version of the line-item veto that is in that bill. What the court held, and what our lawyers argued, and what we feel passionately is that once the President of the United States affixes his signature to a bill, that is the law of the land. Four magic words: "Law of the land." When that becomes the law of the land, it cannot be repealed unilaterally by the President or by us. It must be repealed according to the Constitution. That is the fundamental, bedrock, black letter constitutional law, which the court affirmed today. It is pleasing to us that the court did so.

I want to thank our colleagues for making it possible for us to have an expedited process in the courts. Whichever side of this dispute we were on, we agreed that we ought to resolve it promptly. The bill provided that there be an early resolution in court. I think all of our colleagues are to be thanked for making that possible.

The sword of Damocles is there, as the Senator from New York mentioned. It still hangs here until there is a final resolution, if there is going to be an appeal to the Supreme Court. We hope now that the Constitution will prevail. We think it is clear that the courts are the right people to give the final interpretation of that Constitution. Justice Marshall's vision and holding prevails today, in that a court has now ruled on the constitutionality of a law. Presumably, that will go to the Supreme Court. We hope for a prompt resolution.

We are very gratified that what we believe is so fundamental in this country has now been reaffirmed by the district court that took the first look at this law. That principle, again, is that once that moment comes when a Presidential pen is affixed to a bill, that bill binds all of us, every one of us, be it the President or any other citizen of this land, and that bill cannot be changed. The law cannot be changed by the unilateral act of either the President or the Congress, but must be repealed as laws are adopted, with the involvement of both the President and the Congress, as required by the Constitution.

Again, my thanks to Senator BYRD for the leadership he has shown in protecting the Constitution of the United States. I know Senator MOYNIHAN expressed this, and Senator Hatfield, if he were here, would say the same, that we are very, very gratified to be on the same side of a very critical lawsuit with our good friend from West Virginia.

Mr. BYRD. If the Senator will yield, I wish to thank my dear friends, Senator MOYNIHAN and Senator LEVIN, for their gracious remarks this afternoon. I also wish to thank the majority leader for his cooperation in this matter. I went to him about having a piece of legislation passed that would help to expedite this action. Although he did not agree with me in the matter itself, he was very cooperative in allowing that action by the Senate to take place. I thank him for that.

Mr. President, I join Mr. MOYNIHAN, also, in thanking counsel for their excellent services in this important matter.

EXECUTIVE SESSION

Mr. LOTT. Mr. President, in executive session, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to the consideration of Executive Calendar No. 34, the nomination of Pete Peterson to be Ambassador to Vietnam. I further ask that the nomination be considered under the following time limitation: 30 minutes equally divided between the majority leader and Democratic leader or their designees. I further ask unanimous consent that immediately following the expiration or yielding back of the time, the Senate proceed to a vote on the nomination and that, immediately following the vote, the President be notified of the Senate's action and the Senate then return to legislative session.

Mr. DASCHLE. Mr. President, reserving the right to object, is it the understanding of Senators on both sides of the aisle that this would not require a rollcall vote?

Mr. LOTT. That is my understanding at this time, Mr. President.

Mr. DASCHLE. Mr. President, I ask unanimous consent that in the unlikely event that a rollcall vote is necessary, that it would take place following the final vote on the nuclear waste bill next Tuesday.

Mr. LOTT. I hope that, after all that we have done, we can get this concluded tonight. I know that would be your preference. That is my understanding as to the parties that have been interested. I think we can get it done tonight.

Mr. DASCHLE. I make that unanimous-consent request, but I don't think it will be necessary.

Mr. LOTT. I have no objection.

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

Mr. LOTT. For clarification, there was no objection to the unanimous consent request that I made, as amended by Senator DASCHLE.

Mr. DASCHLE. I had no objection.

Mr. LOTT. Mr. President, with regard to Calendar No. 34, the nomination of Pete Peterson to be the Ambassador to Vietnam, I would like to specifically thank the Senator from New Hampshire for his cooperation and for the very serious questions that he has raised, which needed to have proper attention. I believe that we have gotten some progress made in that regard. We do have now a letter that has been sent to me, in response to our questions, from the National Security Council, Mr. Berger. Senator SMITH has had a chance to review that. I personally have had very serious concerns all along about the normalization of relations with Vietnam. I think the certification has been flawed in the way it has been handled, and I think that those points needed to be made. But I also felt that Pete Peterson was an excellent choice for this assignment. And I appreciate the cooperation of Senator SMITH in the way he handled this matter, and Senator MCCAIN for his cooperation. I know he has a personal involvement and interest in the nominee. I just wanted to thank them both for their efforts.

I would like to yield the remainder of my time to the Senator from New Hampshire.

Mr. SMITH of New Hampshire. Thank you, Mr. President. I yield 3 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The nomination will be stated.

NOMINATION OF PETE PETERSON, OF FLORIDA, TO BE AMBASSADOR TO THE SOCIALIST REPUBLIC OF VIETNAM

The assistant legislative clerk read the nomination of Pete Peterson, of Florida, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Socialist Republic of Vietnam.

The Senate proceeded to consider the nomination.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I thank the majority leader for all of his efforts in making this possible.

I also would like to especially thank my friend from New Hampshire who is a dogged, a determined, a zealous, and a committed advocate of attaining a complete and full accounting of those who are still missing in action in Vietnam.

The Senator from New Hampshire and I have had differences of view on this issue from time to time. But no one has ever questioned the absolute dedication of the Senator from New Hampshire to the commitment to those fellow Americans for whom we still have not been able to obtain an accounting.

Mr. President, I thank him because if it had not been for him this very important letter from the White House would not have come over to our leader signed by Sandy Berger, Assistant to the President for National Security Affairs. It lays out a very important set of priorities for further actions that need to be taken by the United States and by the Vietnamese so that we can finally put this very difficult chapter behind us.

I thank the Senator from New Hampshire for his efforts in that direction.

Finally, Mr. President, I would like to wish, since I am confident that Pete Peterson will be confirmed by the Senate, a dear friend, Godspeed. He is traveling back to a place that he found quite uncomfortable the last time he resided there, and I am very grateful that we have an American like Pete Peterson who is willing to go back and serve his country in a very vital and important manner. And perhaps one could argue that only Pete Peterson could do this job in the way that it needs to be done in this very difficult and very critical time in our relations with Vietnam and Asia.

So we all wish Pete Peterson every success, and we are grateful that we have someone like him who is willing to continue to serve his Nation.

Thank you, Mr. President. I yield the remainder of my time to Senator SMITH.

Mr. SMITH of New Hampshire. Mr. President, I thank the Senator from Arizona for his kind words, and also for his cooperation in working with me on this issue.

Mr. President, there were some concerns which I had raised, and they have been addressed thanks to the cooperation of Senator LOTT, Senator DASCHLE, Senator SHELBY, Senator BOB KERREY, and certainly Sandy Berger with the National Security Council of the President of the United States.

I think because of the willingness to address the concerns that I have raised we were able to resolve this matter tonight.

Let me first of all say clearly and for all the world to see and know that this issue has never been about the qualifications of Pete Peterson to be the Ambassador to Vietnam. It has been about the accounting process and how best to go about getting a fullest possible accounting for our missing.

In regard to former Congressman Pete Peterson, he was a POW in Vietnam for a number of years, suffered greatly at the hands of the Vietnamese, as did my colleague Senator McCAIN. I am sure the accommodations as Ambassador will be a little better than he had on his last trip over there as a POW. But I have worked with him on the United States-Russian Commission. I like him. I respect him. He is an honorable and decent man, and he will be I believe a good ambassador.

My concerns have been addressed in the past on this floor in terms of the problems that I believe we have with the Vietnamese. I am hopeful now, with this clarification that we have been able to receive from the White House, and with the support of Senator McCAIN, Senator SHELBY, and others, that Ambassador Pete Peterson will be able to seek this information and finally get this information from the Vietnamese.

It has always been my concern that rather than to say that the Vietnamese are fully cooperating and then we will send an Ambassador over there, I think it is more honest to say we don't have all of the information, the Vietnamese can provide more information, and let's send the Ambassador over there to get it. I think that is more honest. I believe that is what we have resolved here tonight.

Mr. Berger was kind enough to indicate by letter that the President commits to continue to press the Government of Vietnam to cooperate on full accounting, and that they have established the mechanisms to do it with the Vietnamese to provide information that the Vietnamese have only available to them. I interpret that to mean that there is a lot of information that the Vietnamese can unilaterally provide, as the League of Families has so often said under its leader, Andrew Griffiths, that we want the information whatever that may be that the Vietnamese can unilaterally provide. We all know, and I think this compromise indicates, that there is information still that the Vietnamese can unilaterally provide. I hope that the Ambassador will be able to encourage the Vietnamese, and finally hopefully persuade the Vietnamese to provide it.

I want to be specific in four areas that I believe are the major areas of information.

One, the Politburo records concerning U.S. POW's: These records are important. Vietnamese officials have not provided them. And we believe they can provide many of them. They may have lost some. But we think there are some they can provide. DOD analysts have testified under oath that access to these records has not been provided.

So I hope that Ambassador Peterson will pursue that avenue very directly with the Vietnamese. I have ever assurance that he will.

Second, North Vietnamese military records on U.S. POW's and MIA's from the country of Laos: As you know, North Vietnam occupied Laos during the war. We lost a lot of American fliers in Laos during the war, and the Vietnamese have not been forthcoming about a lot of the shootdown records pertaining to U.S. losses in Laos.

The so-called Group 559 shootdown record turned over in September 1993 contains only summary information, and the DOD analysts—not Senator SMITH—have concluded that "It is clear that this record was compiled after the fact from original records." So we need those original records. I hope that along the lines that the analysts have testified in their testimony last year that we would be able to get that information from the Vietnamese.

It is clear that the Vietnamese did have direct knowledge of these losses. We know that. Hopefully now they will provide it. We deserve to know the fate of these United States POW's who were shot down in Laos and captured by the Vietnamese, and in some cases killed by the Vietnamese in this instance. But in the province in Northern Laos which I personally visited, none of them really in that area have been accounted for at all from the Communist side. We know that they have information because some of these people were captured and filmed.

Third, the unilateral action by Vietnam in 461 cases unaccounted for: These are records that we believe based on our best information the Vietnamese could provide more data, and we have had testimony from again the intelligence community saying that they believe based on our information that they could get that information.

Finally, Mr. President, the prison camp records pertaining to U.S. POW's: I think we are not interested in what somebody did as a POW or didn't do as a POW in getting those documents. They can be screened and carefully taken care of by the intelligence community, should we get them. What we are interested in is what happened to some of these people who were in the

prison system who were not returned, who were seen on film and on tape—sometimes used for propaganda—and have never been accounted for. So we believe that the Vietnamese would know something about those people, and certainly what happened to them. We would hope that they would provide that information.

So those are the four areas that I have focused on and on which I hope the Ambassador will focus on. I think that is what is referred to in the letter here from Mr. Berger.

I think also when the Intelligence Committee—I thank Senator SHELBY for his cooperation in this regard because basically he looked into this matter for me and we have now come to a conclusion that there is further information that the intelligence community really didn't have input into the certification process, and, therefore, they need to have that information.

If you read the testimony on the House side and some other testimony where analysts have spoken, they have talked about the fact that this access is important, and there are two documents—the so-called 735 and 1205—that come out of the Russian archives which are very controversial. And we are now pursuing those in the United States-Russian Commission where Senator JOHN KERRY of Massachusetts, myself, and others were members, and Pete Peterson was a member. We are still pursuing that information.

So I want to again conclude on a couple of points and then yield to anyone else who may wish to speak on this matter.

Pete Peterson is an outstanding public servant. He served his country well. He went through hell in Vietnam, and the fact that he now is willing to go back and pursue information on POW's, on his fellow colleagues, POW's and MIA's, fellow comrades in arms, I think is a tribute to him and the type of person that he is.

I want to say again what has been distorted, as usual in the media so many times, specifically the Boston Globe, and other places where apparently untruths were hyped by the papers, they had it all wrong. I was never opposed to Pete Peterson in any way, shape, or form being the Ambassador. My concern is with what I just addressed, which is we need to try to get the fullest possible accounting. We have not gotten the fullest possible accounting, and with the Ambassador going to Vietnam he will do that. I am all for it.

Let me just also say in regard to Mr. Hoang, who I talked with who is now out of the country and is not here, I hope and believe that should Mr. Hoang come back into the country that he ought to come before the Governmental Affairs Committee and answer any and all questions put to him regarding not only Vietnam but anything else regarding these matters in terms of how policy was developed. But at this point he is not in the country to do that.

So let me again thank everyone involved in working this decision out. One of the nicest things about the Senate, even though it is frustrating if you are on the other side of something, is that you get the opportunity to work together.

I remember the first day I was on the floor in 1991. Senator Mitchell, then the majority leader, came over to me and introduced himself. He said, "Hello," and said, "Bob, welcome. It is nice to have you. I wish we could have gotten a Democrat, but we got you. But let me just say this. We will work with you over here. It is not like the House, not because we want to but because we have to." That is OK. I mean that is the way the process works here. When you have a concern, people on the other side work with you to get it resolved. You do the best you can, and sometimes it works out. And more often than not it does work out even though you take some flak.

So I am very pleased with those on all sides of this issue who worked with me to address my concerns. Especially I am grateful to Sandy Berger who I called this morning and asked to prepare a letter. I gave him the concerns that I had. He responded before the end of the day to Senator LOTT with the concerns that I raised. I can't thank him enough.

I think the fact that the nomination will go through tonight is to a large extent due to the willingness of the administration, specifically Mr. Berger to address my concerns. I am very grateful to them for that.

I wish Ambassador Peterson the best of luck. I look forward to working with him as Ambassador to Vietnam to get more information on our missing men and a few women in Vietnam.

Mr. President, I ask unanimous consent to have relevant material printed in the RECORD.

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

AREAS WHERE VIETNAM IS NOT "COOPERATING IN FULL FAITH" OR PROVIDING FULL DISCLOSURE ON UNACCOUNTED FOR AMERICANS

(1) Politburo records concerning U.S. POWs.—Vietnamese officials have not provided wartime politburo documents in which the total number of captured U.S. POWs were discussed. This is critical because of the information passed to the U.S. Government in 1993 by Russian intelligence which contained reported transcripts of two secret North Vietnamese wartime speeches in which the number of captured U.S. POWs referenced was substantially higher than those who were returned by Hanoi in 1973. U.S. Deputy Assistant Secretary of Defense for POW/MIA Affairs, James Wold, confirmed in a meeting with Senator Smith and Congressman Johnson on February 4, 1997, that he has not succeeded in convincing Hanoi to cooperate on this matter—and DoD analysts have testified under oath that access to such records has not been provided.

(2) North Vietnamese military records on U.S. POW/MIAs from Laos.—Since September, 1993, Vietnam has not provided additional documentation on a North Vietnamese shootdown record pertaining to U.S. losses in Laos. (The so-called "Group 559 Shootdown Record" turned over in September, 1993, contains only summary information, and DoD analysts have concluded that "it is clear that this Record was compiled after the fact from original records" and that "it is very difficult to believe that additional Group 559 documents could not be turned over forthwith" and that "analysis of this document makes clear that the Vietnamese have additional Group 559 records that may contain information useful to POW/MIA case resolution." DoD analysts testified under oath to Congress last year that with regard to about 253 Americans captured or lost in Laos, it was not clear that the Vietnamese had direct knowledge of these losses, and "they should have known exactly what happened to the person." U.S. intelligence also indicates that Vietnamese officials should have direct knowledge of the fate of U.S. POWs known to have been held by the Pathet Lao during the war in Sam Neua province in northern Laos—none of whom have ever been accounted for by the Communist side.

(3) Unilateral Action by Vietnam on 461 cases of unaccounted for men.—In January, 1996, the State Department indicated that Assistant Secretary Winston Lord had "expressed disappointment to Vietnamese officials in the level and quality of unilateral work they perform on cases." Last summer, General Wold passed to Vietnam 461 "unilateral cases" of unaccounted for men—cases where General Wold stated that "critical Vietnamese assistance" was needed. Such assistance has not been forthcoming in these cases, according to the comprehensive review of all cases conducted by DoD in response to Congressional legislation in 1995. It is not clear that this situation has dramatically improved over the last six months since General Campbell assumed command of Joint Task Force (Full Accounting.)

(4) Prison Camp Records Pertaining to U.S. POWs.—The U.S. has reportedly not received access to prison camp records detailing the fate of many POWs, including so-called "died-in-captivity" cases, and the prospects for final accountability for these men (ie: information on the location or disposition of remains). These records would also help resolve eyewitness accounts of reported American POWs in captivity which U.S. intelligence agencies have collected over the years.

U.S. SENATE,
Washington, DC, March 24, 1997.

Hon. RICHARD C. SHELBY,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR DICK: I am writing to request an inquiry by the staff of the Select Committee on Intelligence into certain documents pertaining to American POW/MIAs from the conflict in Southeast Asia.

As you know, Senator Bob Smith has raised questions about intelligence information on which President Clinton based his 1996 certifications required by law as a condition for the expansion of relations with Vietnam. He has specifically raised concerns relating to two documents acquired from the archives of the former Soviet Union. These

documents came to light after the Senate Select Committee on POW/MIA Affairs was disbanded in 1993.

I would appreciate your directing a staff inquiry examining the intelligence basis for the President's certifications—specifically addressing the two documents—in as expeditious a fashion as possible. Because I hope that full Senate can consider the pending nomination of former Congressman Peterson to be Ambassador to Vietnam the week of April 7th, I would appreciate receiving the results of the inquiry prior to that time.

Thank you for your consideration of my request. With best wishes, I am

Sincerely yours,

TRENT LOTT.

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, April 8, 1997.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MR. LEADER: In response to your March 24, 1997 letter, we are attaching the findings of a preliminary staff inquiry into the U.S. Intelligence Community input that formed the basis of the 1996 Presidential determinations regarding Vietnam's accounting for American POW/MIAs, including accelerating efforts to provide POW/MIA-related documents.

The President determined last year that, based upon information available to the U.S. Government at that time, the Socialist Republic of Vietnam was cooperating in full faith on the POW/MIA issue. These determinations were made by the President in response to Public Law conditioning the release of funds for U.S. diplomatic or consular post in the Socialist Republic of Vietnam on Presidential certification.

The staff inquiry has found:

1. That the Intelligence Community appears to have played no formal role in the determinations.

2. That regarding the so-called "735" and "1205" documents from the Russian archives:

They have not been the subject of a coordinated community-wide analysis. Elements of the Intelligence Community did contribute to a 1994 Department of Defense assessment and the State Department's Office of Intelligence and Research (INR) prepared several memoranda analyzing the documents;

The 1994 DoD assessment and the 1993 INR analysis identified numerous errors in the documents and raised questions about their accuracy, but could not dismiss them as fabrications; and,

Time constraints have not allowed the Committee staff to completely investigate all activities taken since 1994, but attempts by the Intelligence Community to gain additional information on the documents appear to have been limited.

We want to emphasize that this is not a comprehensive Committee review. We will explore whether the Committee should conduct further inquiry after consultation with all of the Committee Members.

Sincerely,

RICHARD C. SHELBY,
Chairman.
J. ROBERT KERREY,
Vice Chairman.

Attachment.

STAFF INQUIRY

Background.

A primary role of U.S. intelligence is to help American foreign policy makers make informed decisions. In general, U.S. Government's certification on foreign affairs matters is assumed to be based on a number of factors including input from the Intelligence Community. The process of collecting and analyzing sensitive and open-source information is complicated and subjective, but is the essence of the work done by the Intelligence Community. In most instances, the quality and source of information is such that it can be interpreted in more than one way and isolated reports of information may easily be misinterpreted. It is critical to take all information—including information derived from sensitive intelligence sources and methods, and information related to policy implementation—into account when judging the validity of information on which to base a certification or determination.

Findings.

1. The Intelligence Community appears to have played no formal analytical role in the determinations.[1]

a. Prior to the 1996 Presidential certifications, or in this case "determinations,"[2] the National Security Council did not request an Intelligence Community assessment on whether the Socialist Republic of Vietnam was cooperating in full faith on POW/MIA issues specified in Public Law 104–134 and Public Law 104–208, which included "accelerating efforts to provide documents that will help lead to the fullest possible accounting of POW/MIAs."

b. The U.S. Intelligence Community did not on its own provide an assessment on whether Vietnam was cooperating in full faith on the key POW/MIA issues.

c. The Defense POW/MIA Office (DPMO) and State East Asian & Pacific Affairs Office (EAP), two policy directorates (outside the oversight of the Intelligence Community) within the Offices of the Secretaries of Defense and State, were asked to provide input for a Presidential "Memorandum of Justification for Determination." DPMO and EAP officials indicated to Committee staff that their input did not include any Intelligence Community product but they did rely on in-country reporting from the State Department Embassy officers and the DoD personnel with the Joint Task Force—Full Accounting.[3] Apparently, collection requirements pertaining to the POW/MIA issue were in place during the 1980s and early 1990s, but were removed from the President's Decision Directive on the Intelligence Community's priority requirement list on the recommendation of the National Security Council in 1995.

d. The only formal POW/MIA issue assessments identified by the U.S. Intelligence Community was a 1987 Special National Intelligence Estimate (SNIE) and a 1996 critique paper. The SNIE was titled, *Hanoi and the POW/MIA Issue.*[4] Its term-of-reference and key judgment were:

"Resolution of the fate of the 2,413 American servicemen still unaccounted for in Indochina remains a priority humanitarian issue for the U.S. Government, which believes that it should be treated separately from other political and economic concerns. While Vietnam also publicly characterizes such an accounting as a humanitarian issue, Hanoi has used the POW/MIA issue as a means to influence public opinion in the United States and to achieve broader political objectives."

"There is a considerable body of evidence that the Vietnamese have detailed information on the fates of several hundred personnel. We estimate that the Vietnamese have already recovered and are warehousing between 400 and 600 remains. Thus, Hanoi could account quickly for several hundred U.S. personnel by returning warehoused remains and by providing material evidence that could aid in determining the fate of other personnel."

e. In response to Congressional requests in 1996 for declassification of the 1987 SNIE, Richard Bush, the National Intelligence Officer for East Asia, initiated an Intelligence Community Assessment challenging the SNIE. It concluded that "[s]ubsequent evidence does not support the Estimate's hypothesis that Hanoi held 400 to 600 sets of remains" since it was based on "limited direct evidence whose reliability was open to question."

2. That regarding the so-called "735" and "1205" documents from the Russian archives:

- they have not been the subject of a coordinated community-wide analysis. Elements of the Intelligence Community did contribute to a 1994 Department of Defense assessment and the State Department's Office of Intelligence and Research (INR) prepared several memorandum analyzing the documents;
- the 1994 DoD assessment and the 1993 INR analysis identified numerous errors in the documents and raised questions about their accuracy, but could not dismiss them as fabrications; and,
- time constraints have not allowed the Committee staff to completely investigate all activities taken since 1994, but attempts by the Intelligence Community to gain additional information on the documents appear to have been limited.

a. In the view of at least one senior Soviet official, the information contained in the "735" and "1205" documents was highly significant. They purport to be transcripts of secret wartime reports by North Vietnamese officials in which the number of American POWs captured and held in North Vietnam during the war was referenced. In the first document, dated 1971, a North Vietnam official states that "735" American POWs are being held. In the second document, dated 1972, another North Vietnamese official states that 1,205 American POWs are being held. Both numbers are significantly higher than the 591 American POWs who were actually released by Vietnam in 1973.

b. In 1993, the State Department, INR produced four memoranda analyzing the "735" and "1205" documents. These analyses were provided to State Department policymakers and distributed to other agencies interested in the POW–MIA issue. The State Department has provided these classified memoranda for Committee review. Because they are still classified, the Committee is unable to cite specific findings in the memoranda, but the conclusions were similar to those in the subsequent 1994 DOD assessment.

c. On January 24, 1994, the Department of Defense released a coordinated, interagency intelligence analysis titled, "Recent Reports on American POWs in Indochina: An Assessment." The analysis assessed the "1205" and the "735" and cast doubt on the accuracy of the numbers.[5] It Also included an assessment of the so-called "Dang Tan" reports, first surfaced to the public by the U.S. Government in 1971, which were based on a North Vietnamese defector who claimed Hanoi was holding approximately 800 Americans in the late 1960s. The assessment concludes in the case of:

The "735" document, that it "is too fragmentary to permit detailed analysis, but the numbers cited are inconsistent with our own accounting."

Footnotes follow at end of article.

The "1205" document, that it "is not what the Russian GRU claims it to be and the information suggesting that more than 600 additional POWs existed is not accurate. . . .we need more information to understand its origin and meaning."

The "Dang Tan" documents, that "the number was so much higher than the United States Government believed had been captured that it detracted from Tan's credibility on other points.

The concluding paragraph of the analysis stated, "[w]e believe there is more information in Russian, and particularly GRU, archives on this issue. There probably is also more information in Vietnamese party and military archives that could shed light on these documents. We continue to pursue information on these issues in both locations."

The Russians have persistently claimed that the "1205" and "735" documents were genuine Russian intelligence reports. The Vietnamese have dismissed the "735" and "1205" documents as fabrications.

Recently reviewed classified information in the hands of the U.S. Government provides additional germane information that was not factored into the above assessment. While this new data will contribute to a better understanding of the overall issue, to date it has not provided any definitive resolution to the outstanding questions of total numbers of American POW/MIAs known to the North Vietnamese in the early 1970s.

d. On June 19, 1996, during a House National Security Subcommittee hearing, Deputy Assistant Secretary of Defense for POW/MIA Affairs General James Wold was asked by Chairman Dornan, "General Wold, have you ever raised these Russian documents, "1205" and "735", with the Vietnamese . . . ?" General Wold responded, "I have, probably 18 months ago, with the Minister of Foreign Affairs. The response was a lot of excited rebuttal. . . We have raised it. It's still a matter of interest. I still consider it [1205] a document to pursue." With a time constraint of two weeks the staff inquiry was not able to ascertain what steps, if any, have been taken by the U.S. Government since General Wold's testimony, and the 1994 analysis which concluded that Vietnam needed to be pressed for more information from its party archives to shed light on the "735" and "1205" documents. We note that personnel from the Defense POW/Missing Personnel Office have testified that Vietnam has not provided any such access to its wartime party archives. We also note that Vietnam has apparently not yet facilitated access to the "735" report's alleged author, Hoang Anh, who is reported to be living in retirement in Vietnam.

e. Although the 1994 analysis and General Wold's 1996 testimony emphasize the need to press for more information in order to better understand these documents, the analysis appears to have been used in at least one instance to justify dismissing further investigation. On March 21, 1997, Assistant Secretary of State for Legislative Affairs Barbara Larkin signed a letter in response to a Congressional request stating that the "1205" and "735" documents had not been raised with Vietnamese officials (specifically alleged "1205" author General Tran Van Quang) by the U.S. Charge d'Affaires in Vietnam because of "the interagency intelligence analysis released by the Department of Defense on January 24, 1994, in which the U.S. Government concluded that these documents were not a reliable source of information."

[1] In response to a staff request for DCI's "input" on the President's certifications, an April 3, 1997 CIA letter to Committee staff states "[b]ecause the Defense Department's Defense POW/MIA Office (DPMO) is responsible for intelligence bearing on the POW/MIA issue, other elements of the Community were not formally involved in the certification process."

[2] In Presidential Determinations #96-28 and #97-10, the President noted his Administration's position that the related sections of Public Laws 104-134 and 104-208 are unconstitutional because they "purport to condition the execution of responsibilities—the authority to recognize, and to maintain diplomatic relations with, a foreign government—that the Constitutional commits exclusively to the President."

[3] On July 16, 1993, the Secretary of Defense consolidated four DoD offices located within the Washington, D.C. area. Each was charged with different functions of the prisoner of war/missing in action (POW/MIA) issue, but each dealt with the same mission: to obtain the fullest possible accounting for Americans missing from the nation's wars. The Intelligence Community's only POW/MIA analytical element, the Defense Intelligence Agency's Office of POW/MIAs Affairs, was transferred out of the National Foreign Intelligence Program.

[4] The 1993 Final Report of the U.S. Senate Select Committee on POW/MIA Affairs noted that the 1987 SNIE was the "only national intelligence estimate produced on this issue since the end of the war."

[5] This analysis effort and contributions from elements within the Intelligence Community, predominately from INR/State and the Defense Intelligence Agency. However, in July 1993, this 48-person Defense Intelligency Agency element was transferred in-total to the Defense POW/Missing persons Office, a policy office within the Office of the Secretary of Defense.

THE WHITE HOUSE,
Washington, April 10, 1997.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: You have requested clarification from me regarding Administration policy on POW/MIA issues with Vietnam, in view of a report recently provided to you by the Chairman and Vice-Chairman of the Senate Select Committee on Intelligence. I am happy to respond, and I realize that some Members of the Senate have linked these matters to a confirmation vote on Douglas "Pete" Peterson to be our first Ambassador to the Socialist Republic of Vietnam.

First, the President commits to continue to press the Government of Vietnam to cooperate on full accounting. We have established mechanisms through which the Vietnamese can respond to requests for information available only to them.

As you know, the President has determined that Vietnam is providing full-faith cooperation with U.S. efforts to obtain this information. We believe the President's determination is backed up by tangible assistance provided by Vietnam to the Department of Defense Joint Task Force (Full Accounting). I will direct the Intelligence Community to prepare a special National Intelligence Estimate on this matter, something that was last done in 1987. We will consult with the Chairman and Vice-Chairman of the Intelligence Committee concerning the terms of reference for this new study.

Second, we will take immediate steps to ensure that collection requirements pertaining to the POW/MIA issue remain as a high priority for the U.S. Intelligence Community, and we will stay in close contact with the Intelligence Committee on this matter.

Third, I will ask for an updated assessment from the Intelligence Community on the so-called "735" and "1205" documents from Russian archives. We will continue efforts already underway to acquire additional information on these documents from the Vietnamese Government, including access to the alleged "735" author Hoang Anh, as well as other relevant party and government archival materials.

Fourth, the President asserted when we agreed to establish diplomatic relations with Vietnam that our principal goal was to enhance the full accounting process. This issue will be Mr. Peterson's highest priority as Ambassador. This task will include pressing for additional unilateral efforts by the Government of Vietnam to provide records and remains. We, therefore, hope the full Senate will confirm Mr. Peterson at the earliest possible date.

I trust this is responsive to your concerns.

Sincerely,

SAMUEL R. BERGER,
Assistant to the President for National Security Affairs.

Mr. SMITH of New Hampshire. At this point, Mr. President, I yield the floor to anyone else who may wish to speak on the issue.

Mr. HAGEL. Mr. President, I would like to add my thoughts regarding the nomination.

The PRESIDING OFFICER. The Chair would observe that the majority has 1 minute and 20 seconds remaining, and the minority manager, the distinguished Senator from Massachusetts, has 15 minutes.

Mr. SMITH of New Hampshire. I yield whatever time I have remaining to the Senator from Nebraska, and perhaps the Senator from Massachusetts might give him another minute.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HAGEL. Thank you, Mr. President. I will be very mindful of my distinguished colleagues' time. I too want to add my thoughts and thanks to my distinguished colleague from New Hampshire and fellow Vietnam veterans.

Mr. President, I join my colleagues tonight in confirming former Congressman Pete Peterson to be our Nation's Ambassador to the socialist Republic of Vietnam. Through his integrity, hard work, and bipartisan temperament, he has earned the highest possible regard of his former colleagues in Congress on both sides of the aisle, and I think that is evident tonight.

I can think of no other American better suited to be the first United States Ambassador to Vietnam, and I know, as do my colleagues, that Congressman Peterson will bring his integrity and unique personal experiences to this extraordinarily challenging job which we all wish him well with and we all will help him with.

As a Vietnam veteran, as my colleagues here in the Chamber, I know well how the issue of Vietnam has for so long divided this country, but all the Senate Vietnam veterans agree that not only is it time for the United States to have an Ambassador to Vietnam, we also agree that Congressman Peterson, soon to be Ambassador Peterson, is an outstanding choice for this difficult assignment.

A small minority of Americans continue to question whether this is appropriate, whether it is an appropriate

time in United States-Vietnam relations to have a United States Ambassador in Hanoi, and certainly those views deserve respect. Personally, however, I believe that the time for healing has, indeed, arrived, and Congressman Peterson is the one to lead us in that direction.

Congressman Peterson will bring not only his own experience to the POW Vietnam combat veteran, but he also has been a successful businessman and respected Member of Congress, the recipient of 18 military medals including the Legion of Merit, two Purple Hearts. He is a man of great personal strength and mind with something missing for too long in this business, a quiet dignity, a quiet confidence, a respect for others.

Clearly, President Clinton has chosen well with his nomination, and I am pleased to join with my colleagues in confirming Pete Peterson to be the first United States Ambassador to a united Vietnam.

On a personal note, Mr. President, I might add I bring him greetings from his family and his friends in Nebraska. The Congressman was off to a good start early on in life; he was born in Omaha, NE, and still has many relatives and friends there. And so that gives him probably an unfair advantage to be a most unusual and a most effective Ambassador for this country, and we wish him well.

Mr. President, I thank the Chair and I thank my distinguished colleague from Massachusetts and fellow Vietnam veteran for allowing me a little of his time.

I yield the floor.

Mr. KERRY. Mr. President, if I could just clarify one thing, I am not sure we did allow any of our time.

The PRESIDING OFFICER. The Senator from Massachusetts is correct. The Senator from Nebraska ended up precisely on the time that was allowed to him by the previous order. The Senator from Massachusetts is recognized and has 15 minutes.

Mr. KERRY. I thank the Chair. I ask for the similar interpretation of time on our side. I am glad to recognize the Senator from Illinois for 5 minutes.

Mr. DURBIN. I thank my colleague from Massachusetts for yielding.

What extraordinary symmetry, what exceptional justice this evening that we consider the nomination of Pete Peterson to be our first Ambassador to Vietnam.

Thirty-one years ago as an Air Force pilot, Pete Peterson was flying his 67th combat mission over Vietnam when his plane was shot down. He told me the story when we were colleagues in the House of Representatives. I will not forget that as long as I live, what he went through as that plane came crashing down and he was parachuting out, with broken bones and beaten up, run through the streets by the crowds and pushed into a prison cell, and then to spend 6½ years—6½ years—of his life as a prisoner of war, to come home finally in 1973 with all of the deserved tribute for his service to his country, to return to his home State of Florida and his family finally and then decide once again to make a commitment to this Nation and to run and serve in the House of Representatives and after three terms to be designated by the President of the United States, President Clinton, to be America's first Ambassador to Vietnam, the same country where his plane had crashed and where he had been a prisoner of war for so many years.

I say to my colleague, the Senator from Nebraska, who really said it so well, the quiet dignity of Pete Peterson will bring a lot to this job, the kind of stature which we need in those who speak for the United States.

He served this country well for 27 years in the Air Force, 6 years in the House of Representatives, and now once again we have called Pete Peterson into service for his country. To think that he will be returning to Vietnam to speak for this great Nation, to meet some of the people who may have rescued his body and thrown him in prison and today will be greeting him is an amazing turn in history. But it is appropriate.

I know what his agenda will be—not only to service this country well with honor, as he always has, but also to work diligently for a full accounting of the POWs/MIAs who were not accounted for from that conflict and also to bring some new level of understanding between our countries.

I think Pete Peterson is clearly the person for this task. We are fortunate tonight to have this bipartisan feeling about Pete Peterson and his confirmation as Ambassador to Vietnam.

I thank Senator LOTT as the majority leader, Senator DASCHLE on the minority side, Senator SMITH, particularly Senator JOHN MCCAIN of Arizona, a man who has lived this same experience, who carries those scars, and will for the rest of his life, as a prisoner of war in Vietnam, who worked diligently to bring Pete Peterson's nomination to the floor this evening. My hat is off to JOHN MCCAIN for his extraordinary efforts.

My colleagues, Senator KERRY and Senator REED, will speak as veterans of that war. I am not a veteran of that war, but I feel I am paying tribute to one of the best veterans of that war in Pete Peterson. This is his night and I want to tell him that it is time for the speeches to come to a close and for Pete Peterson's service to his country on a full-time basis to resume as our first Ambassador to Vietnam.

I yield back the remainder of my time.

Mr. DASCHLE. Mr. President, I am very pleased to speak today in support of the nomination of Congressman Pete Peterson to be our Ambassador to Vietnam. This day has been a long time coming, and I want to thank Congressman Peterson for his patience.

Mr. President, I traveled to Vietnam in 1991 as a member of the Select Committee on POW/MIA Affairs and then again in November 1996 as part of a congressional delegation. The change that has taken place in Vietnam in those 5 years is staggering. Vietnam is a dynamic country with great potential. The United States needs a full diplomatic presence in Hanoi to represent our interests in Vietnam adequately, and I am very pleased that this is about to happen.

Congressman Peterson is an excellent choice for a wide variety of reasons, not the least of which is his deep and personal understanding of our troubled history with Vietnam. He understands firsthand the toll of the war, and, while much good work has been done on the relationship between our two countries, much more remains to be done. Representative Peterson is among the best qualified to continue that work.

He is also eminently qualified to continue the work on one of our most important national priorities—achieving a full accounting of those Americans missing in action. In each of our meetings with Vietnamese Government officials during our recent trip, our congressional delegation stressed the high priority the United States places on resolving these remaining cases. The Vietnamese pledged ongoing cooperation, and I feel fully confident that Pete Peterson will see that we get it. As he pointed out in testimony before the Foreign Relations Committee, he has a personal stake in achieving the fullest possible accounting of those still missing, since many are personal friends of his.

In addition to the POW/MIA issue, I am happy that Congressman Peterson will be in Hanoi to help shepherd our developing economic and trade relations with Vietnam. Vietnam's interest in achieving full economic relations with the United States is clear. The most recent evidence was the agreement it reached last month with the United States to repay millions of dollars of debt incurred by South Vietnam for roads, power stations, and grain shipments during the Vietnam war.

Although the United States does not yet have full economic ties with Vietnam, its dynamic economy offers great trade opportunities for United States businesses. During my recent trip to Vietnam, we met with the United States Chamber of Commerce in Ho Chi Minh City. The size of that contingent was a graphic evidence of United States businesses' interest in United States economic ties with Vietnam.

There are many issues that need to be resolved in fashioning a comprehensive bilateral trade agreement with

Vietnam that is a prerequisite to full economic relations. In particular, Vietnam remains committed to a system of central planning, which conflicts with the free market economic principles it espouses. Work has begun on an agreement to resolve these issues, but much remains to be done. This is an important priority for the United States, as Congressman Peterson is well aware.

Another important issue that merits Congressman Peterson's attention is conveying to the Vietnamese the important priority the United States attaches to Vietnam's human rights practices. Despite its economic progress, Vietnam continues to impose restrictions on political and religious freedom. We must work with the Vietnamese to address these practices.

There is another issue to which I attach great importance, a fact that I stressed to each of the Vietnamese leaders I met with during my visit last November. For more than a decade, scientists in the United States and Vietnam had been working together to attempt to understand the health effects resulting from our use of agent orange during the Vietnam war. However, nearly 2 years ago, Vietnam executed a major change in policy with regard to their support of collaborative research between United States and Vietnamese scientists.

In June 1995, Vietnamese customs officers seized without warning documents and specimens from a team of American scientists who had been on the first official scientific mission from the United States. All papers, even the most innocuous, such as curriculum vitaes, were confiscated. Newly collected specimens were also taken.

Though I find the seizure and subsequent refusal to return the materials or address the issue quite disturbing, I am even more concerned that this may be Vietnam's way of telling us that they no longer want to collaborate on this vitally important issue. To do so would be a shame, not only for our veterans and their families, but also for the Vietnamese. Just last February, the Wall Street Journal published an article that outlined the myriad of health problems and birth defects occurring among the Vietnamese who live in areas that were heavily sprayed. Here in the United States, many dioxin experts are now looking to research in Vietnam as the next step in fulfilling our commitment to conduct a comprehensive evaluation of the health effects of exposure to agent orange. Yet, without cooperation from Vietnam, our efforts to further understand these issues will fall short. We must press to obtain agreements for future cooperation on scientific issues of mutual importance, or we must have clear, rational explanations for why additional research is not warranted. The stonewalling is puzzling at best, and injurious at worst.

I received some positive signs from the Vietnamese during my trip, and corresponded with Do Muoi, General Secretary of the Communist Party, upon my return to secure an agreement to release the seized documents and specimens. Unfortunately, I have still not received a response to my inquiry. I have communicated to Congressman Peterson my concerns and interest in working with him in his new role to expeditiously resolve this issue. We owe it to American veterans and their families.

In conclusion, let me stress my belief that Congressman Peterson will be an important and valuable advocate of United States interests in Vietnam. I congratulate him and look forward to working with him in the coming years.

Mr. GRAHAM. Mr. President, I rise today in support of the nomination of my good friend Pete Peterson, and I urge his swift confirmation as our Ambassador to Vietnam. There is no better person for this job.

Just over 3 years ago I joined the majority of my Senate colleagues in encouraging President Clinton to lift the trade embargo against Vietnam. I did it because I was convinced that it would strengthen and expand joint United States-Vietnamese efforts to determine the fate of those POW's-MIA's still unaccounted for in Vietnam.

I was less certain about the establishment of full diplomatic relations with Vietnam. I feared that such a step would remove an important incentive to completing our efforts to determine the fate of every POW-MIA. But people like Pete Peterson and JOHN MCCAIN convinced me that reestablishing diplomatic relations was the best way to achieve our objectives in Vietnam—a full accounting of all POW's-MIA's; the implementation of democratic reforms and economic modernization; and respect of basic human rights and fundamental freedoms.

There is no person more qualified to achieve these noble objectives than Pete Peterson. After spending 6½ years as a prisoner of war in Vietnam—and having left so many of his friends behind—we all can take comfort in knowing that Pete will not rest until every single American POW and MIA is fully and honestly accounted for. This fact was recognized by the Veterans of Foreign Wars, who last year endorsed Pete's nomination.

Pete's qualifications as an advocate for economic freedom and U.S. business are also quite remarkable. He has served as a member of the House Small Business Committee, fighting for average Americans who are seeking the American dream by building their own businesses. Pete has demonstrated that he will be a fantastic advocate for American business in Vietnam.

Pete's experience as a prisoner of war gives him unique qualifications to speak frankly and honestly about human rights. As someone who lost every human right, every freedom, and nearly his life in Vietnamese prisons, Pete can speak from the heart on the importance of these basic human values in a way that few of us can. And I know that he will do a superb job.

And who could be more qualified to heal the wounds of the war, and to build bridges between the peoples of our two nations. Pete has often said that he "left the bitterness at the gate" when he left his prison in Vietnam. His leadership is a major reason that the United States and Vietnam are poised to begin a new era of friendly relations.

I have had the honor of working with Pete for the past 6 years. Pete represents everything that is great about our country. He is selfless—having served bravely in the Air Force, flying 67 combat missions over Vietnam, and 6½ years as a POW—Pete came home and went to work to make our country a better place. He has faced personal tragedy—losing his wife Carlotta to cancer—and moved on to make good come out of his suffering. And after 26 years in the U.S. Air Force, Pete felt compelled to continue a life of public service. Now having served for 6 years in the House of Representatives, Pete will return to Vietnam under very different circumstances than those under which he left. But he will continue his lifelong commitment to the American people, and I am honored to speak on behalf of this great American.

There is another quality that Pete possesses that I think will serve him well in his position as our Ambassador to Vietnam. That quality is patience. Pete has waited patiently for over a year for his nomination to come to the floor of the Senate. I am very pleased that Pete's long wait is about to come to an end, and I urge my colleagues to join me in voting to confirm Pete Peterson as the United States Ambassador to Vietnam.

Mr. KERRY. Mr. President, I yield 5 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. I thank the Chair.

I rise with a great deal of pride to speak to the confirmation of Pete Peterson as our Ambassador to the Republic of Vietnam.

Simply stated, Pete Peterson is a great man. He was a great man before he ever put on the uniform of the U.S. Air Force because he is a man of outstanding character and a deep devotion to his family and country. As my friend and colleague, the Senator from Nebraska, pointed out, he has that rare quality of dignity and purpose, not flamboyant, but quiet and determinative.

Pete is a remarkable person. One of the great privileges I had in my life

was to serve with him in the House of Representatives for 6 years. He brought all of this talent, this energy and this fierce patriotism to his work in every capacity. We all know the story. He was a young man, hailed from Nebraska, joined the U.S. Air Force, was in 1966 sent to Thailand, flew 66 missions in Vietnam and on his 67th mission he was shot down. He was captured. He spent 6½ grueling, arduous years in captivity in three different prison camps.

In all that time, not only did they not break his spirit but they could in no way touch that core of deep respect, regard for all people that he still maintains. He emerged from an experience, which would have seared and destroyed so many other people, unbroken, unbowed and without bitterness, a remarkable testimony to his character.

Pete could have returned in 1973 and said, I have done my duty as an Air Force officer, as a patriot. He returned, in fact, in 1973 to greet his wife, his beloved wife, who sadly passed away and will not see this triumph today but I am sure understands from where she is what a great day it is for Pete. He, in fact, saw for the first time a son he had never met.

Yet, despite all that, he still heard the call of his country, and he served with distinction the second district of Florida for 6 years.

There has been some controversy about this nomination, but it has not been about Pete Peterson because there is no one in this Chamber or in this country that I think ever doubted his capacity or commitment to serve as Ambassador to Vietnam. The controversy is about the issue of POW's and MIA's, which was articulated by the Senator from New Hampshire. Those are serious, important issues which cannot be neglected. Indeed, I believe Pete Peterson is the best person to address those issues.

He will go to Vietnam, a place where he has already spent one-tenth of his life, with the credibility of one who has served and with the vision of one who understands what went on there during the war and what we must do to bring our country and that country closer together. And he will not neglect the search for the unanswered questions of his comrades who are still missing and unaccounted for.

Pete has long been involved in this issue. He has, along with my distinguished colleague from Massachusetts, Senator KERRY, and the distinguished Senator from New Hampshire, been involved with the Vietnam working group. He has been involved with the U.S.-Russian joint commission on POW-MIA affairs. These gentlemen have committed themselves to search for the answers, and that type of commitment I know will resolve the question.

We have a great responsibility to develop a relationship, a mutually supportive relationship between the United States and the Republic of Vietnam. Pete Peterson can do that. He is not only a warrior but he is also a businessman. He understands that one of our challenges is to bring economic prosperity to both our countries, and he will be a leader in that regard also.

I believe the President has made the wisest choice possible with this nomination. We will vindicate and recognize that choice this evening, and we will send a strong message, a message of reconciliation and of progress, a message that wars will end and peace will be begun, and a message also that a life of service to your country, selfless service to your country, will be rewarded by further responsibilities commensurate with that service.

I, too, thank the majority leader and the Democratic leader, the Senator from New Hampshire, and particularly the Senator from Arizona for all his efforts to bring this nomination to the floor and, like Pete Peterson, also a heroic veteran of the war in Vietnam. As someone who served in the military for 12 years at that time but not in Vietnam, I recognize all of the tremendous contributions of the veterans of that war in this Chamber, in the other body and throughout our society. Pete Peterson will make us all proud but particularly those brave men and women who served in Vietnam.

I thank the Senator. I yield back the remainder of my time.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I yield myself such of the remaining time as I may use.

I thank the majority leader for his efforts to bring this nomination to the floor this week so that the Senate may act on it rapidly. It is a nomination that has been overdue, and it is important that we proceed.

I think it is safe to say that with this nomination and with the approval of the Senate, which I expect, we really begin the process in earnest of ceasing to treat Vietnam as a war and beginning in earnest to treat it like a country. That is an enormous transition for this country, and we have traveled a difficult journey through these years.

As a friend and one who has worked closely with Pete Peterson on the POW-MIA issue, I really cannot think of a better person to be our Ambassador to Vietnam. Pete Peterson, Senator MCCAIN, Senator SMITH, myself, and others have spent an enormous amount of time, energy, and a great deal of the taxpayers' money of this country trying to ensure that the families of American servicemen missing from the war in Vietnam get answers.

There is absolutely no doubt, Mr. President, that many families have gotten those answers in the last years as a result of the accounting process that we now have in place. But I recognize that for some whose loved ones were lost in that wrenching war questions remain. I am convinced personally that having an ambassador in the country, having an American flag again flying in Hanoi and elsewhere in the country will provide us with the opportunity to be able to leverage those answers. Having a man who himself served, as both of my colleagues so eloquently stated, 6½ years of his life as a prisoner of war in Vietnam will enhance our credibility and greatly facilitate our ability to be able to find those answers.

As a fighter pilot, as a POW, Pete Peterson has served this Nation with enormous distinction and courage. When he returned from the war, as we know, he became a successful businessman and served in Congress. During that period he served as chairman of the Vietnam working group of the United States-Russia Joint Commission On POWs. He returned to Vietnam twice already in order to meet with Vietnamese officials and travel throughout the countryside, both to find answers as well as to understand what Vietnam is like today. It is entirely appropriate that Congressman Peterson should therefore return to Vietnam as our first ambassador since the war and literally help to bridge the gap that remains between our two countries. He went once in war, and as our ambassador he would now go in peace. I cannot think of greater poetic symmetry.

I know he has the ability as well as, if not better than, anyone to understand and explain to the Vietnamese, and to others, the full breadth of the emotions that the Vietnam war has generated among us in this country for 30 years or more. His experience as a prisoner gives him the extraordinary standing and importance to represent our country in all of the ramifications of the war. No one in Vietnam could doubt his word or his intentions, because he has gone through his own personal process of resolution, and he has emerged from that process prepared to return to Vietnam and build a normal relationship between that country and the United States. No one in this country could or should doubt his desire and determination to complete the process of POW-MIA accounting or his commitment to the principles of our country, which he fought for, which are still at issue with respect to our relationship with Vietnam.

So, as Ambassador, Congressman Peterson will confront those issues that are personal, and he will confront a set of issues that are critically important to the regional and bilateral interests of the United States: Vietnam's relationships with its neighbors, particularly China; legal and political reform within Vietnam; human rights; trade. I have every confidence in his ability to deal with these issues effectively. He

has publicly expressed his willingness and enthusiasm to take on the job, and he comes in with a deep belief in our ability to build a viable and important relationship with Vietnam.

I had the privilege of traveling in Vietnam on one of those trips with Pete Peterson. I have witnessed myself his personal journey of rediscovery and his determination to keep faith with his fellow veterans. I know he will represent us extraordinarily well as the first ambassador since the war. And I say to all those who have legitimately expressed concerns—Senator SMITH has been as dogged and as determined as any person in the U.S. Senate to get these answers, and I admire that. I would say to him and to anyone else who might fear that sending an ambassador to Vietnam would lessen our ability to get answers, I say look at the record of the last few years and look at Pete Peterson. He and that record show that by having him there, I think families can rest assured that they will have the greatest connection to their past, to his past, and to our past, and to our future. That future will be a future that will sustain this POW-MIA accounting effort and also sustain the principles for which their loved ones, and Pete Peterson, fought.

So I look forward to the Senate finally accepting this moment. I thank the Senator from New Hampshire and others who have helped to bring us to this important point.

Mr. SMITH of New Hampshire. I ask unanimous consent to have three letters printed in the RECORD.

Mr. President, I ask unanimous consent that a letter to Senator LOTT from the executive director of the National League of Families, Ann Mills Griffiths, a letter from the Disabled American Veterans to Senator LOTT, and a letter from The American Legion to Senator LOTT be printed in the RECORD.

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

NATIONAL LEAGUE OF FAMILIES OF AMERICAN PRISONERS AND MISSING IN SOUTHEAST ASIA,
Washington, DC, April 9, 1997.

Hon. TRENT LOTT,
Senate Majority Leader, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LOTT: It is our understanding that an interim report on intelligence regarding the issue of our missing relatives will soon be forwarded from the Senate Select Committee on Intelligence. We further understand that this report is linked to the confirmation vote on Congressman Pete Peterson as our new US Ambassador to Vietnam.

For many years, the National League of Families has supported a policy of reciprocity; that is still our policy. Unfortunately, the Clinton Administration has not provided incentives in advance, but inaccurately justified each step on the basis of POW/MIA cooperation to include the President's certification to Congress that Vietnam is "cooperating in full faith." Official information on which we have always relied does not support this certification. We are confident that an objective oversight effort will confirm what we know.

On May 7th, a League Delegation will again travel to Laos, Vietnam and Cambodia to hold discussions with the leadership of each country. Our last such trip was in 1994. It is our sincere hope that whatever the outcome of current Senate deliberations, a clear signal will be sent to Vietnam and the Clinton Administration that further unilateral actions on the POW/MIA issue by the government of Vietnam are expected and will be a continuous subject of Senate oversight. This signal is overdue and will help not only our delegation, but reinforce Congressman Peterson when he undertakes his difficult mission.

We are grateful for the concern shown by the Senate and look forward to providing you the results of our upcoming trip.

Respectfully,

ANN MILLS GRIFFITHS,
Executive Director.

DISABLED AMERICAN VETERANS, NATIONAL SERVICE AND LEGISLATIVE HEADQUARTERS,
Washington, DC, April 7, 1997.

Hon. TRENT LOTT,
Senate Majority Leader, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LOTT: The Disabled American Veterans is deeply concerned for the thousands of American servicemen still unaccounted for in the aftermath of the Vietnam War. Since the end of that war, numerous efforts by high level American delegations, including members of Congress, have visited Southeast Asia in continuing efforts to resolve the fate of these brave men without success.

Although the Socialist Republic of Vietnam has committed to renew and increase their unilateral, as well as joint efforts, to account for America's POW/MIAs, we have seen no meaningful efforts taken by Vietnam to account for our missing service personnel.

This is particularly true with regards to the unilateral actions which Vietnam should be able to undertake to account for a large number of our POW/MIAs based on the case assessments prepared by our government last year. These case assessments showed that the Vietnamese should be able to provide information on at least 400 POW/MIAs. To date, the Vietnamese have failed to come forth with information on these individuals to any significant extent.

As a result of Vietnam's failure to provide the fullest possible accounting of our POW/MIAs, the delegates at our last National Convention in New Orleans, Louisiana, July 28–August 1, 1996, passed a resolution expressing our opposition to further economic and political relations between the United States and the Socialist Republic of Vietnam. Accordingly, it is our firm belief that the confirmation of a U.S. Ambassador to Vietnam should be postponed until there is tangible evidence of Vietnam's commitment to provide the fullest possible accounting of our POW/MIAs. Our position does not mean that the DAV is opposed in any way to the individual nominated by President Clinton.

I would appreciate learning of your views on this matter.

Sincerely,

DAVID W. GORMAN,
Executive Director, Washington Headquarters.

THE AMERICAN LEGION, WASHINGTON OFFICE,
Washington, DC, April 3, 1997.

Hon. TRENT LOTT,
Senate Majority Leader, U.S. Senate, Russell Senate Office Bldg., Washington, DC.

DEAR SENATOR LOTT: The American Legion urges you in the strongest possible terms not to proceed with Senate confirmation of a United States Ambassador to Vietnam. While the Legion does not question the personal fitness of the nominee himself, we believe it is premature to approve any nomination for an Ambassador to Vietnam at this time.

We know that many others share The American Legion's concern that Vietnam has failed to take the necessary actions to achieve the fullest possible accounting of missing Americans from the war in Southeast Asia.

This is particularly true with regard to the unilateral actions Vietnam should be able to immediately undertake to repatriate remains, which would dramatically increase accountability. In fact, the purpose of last year's Presidential Delegation to Vietnam, Laos and Cambodia, on which The American Legion was represented, was to gain commitments from the Vietnamese government to take just such unilateral actions.

However, despite the pledges by Vietnamese officials with whom the Delegation met, Vietnam has not been forthcoming to any appreciable extent. Enclosed is a copy of a letter to President Clinton expressing The American Legion's concerns about the trip report from last year's Presidential Delegation to Vietnam. This report was a basis for the President's decision to certify Vietnam's cooperation on the POW/MIA issue.

Vietnam also promised to turn over military archival and documentary evidence as well as other records which would lead to additional accountability. However, such disclosures have not been forthcoming to any significant extent.

Finally, recent reports of illegal campaign financing by Indonesian businessman Mr. Mochtar Riady of the Lippo Group (who advocated normalizing U.S. relations with Vietnam) have raised serious concerns about possible improper influence of official U.S. policy. These are disturbing reports which The American Legion takes very seriously. We firmly believe that Senate action on the confirmation of a U.S. Ambassador to Vietnam should be delayed until Congressional Hearings into these matters have concluded.

The American Legion does not support or oppose any nomination put forth by the President for any office of government. However, with respect to the process, we are adamantly opposed to moving forward with the confirmation of an Ambassador to the Socialist Republic of Vietnam until such time that Hanoi is fully forthcoming in an effort to honestly resolve the remaining cases of our missing American servicemen.

Sincerely,

JOSEPH J. FRANK,
National Commander.

Mr. BIDEN. Mr. President, I am pleased to support the nomination of former Congressman Pete Peterson for the Post of Ambassador to Vietnam. At this critical juncture in our relations with Vietnam and Southeast Asia there are many important United States interests that can be advanced only with the presence of an able Ambassador in Hanoi.

The most important of these interests is the continued accounting for

our POW/MIA's. A Vietnam veteran and former prisoner of war, Pete Peterson has both a professional and profoundly personal stake in ensuring the fullest possible accounting of his comrades-in-arms. As ambassador, he has pledged to make achieving that goal his highest priority.

In addition to enhancing cooperation on the POW/MIA issue, Peterson will be charged more broadly with encouraging and facilitating Hanoi's entry as a peaceful, cooperative member of the community of nations. Vietnam has begun working with us in the important area of counternarcotics, and this cooperation should be expanded to curtail the flow of heroin and other deadly drugs from Southeast Asia to our shores. We have also begun a dialogue on human rights which must be buttressed by expanded cultural ties and educational opportunities.

The advocacy of a strong United States Ambassador coupled with the collective efforts of the American people and numerous nongovernmental organizations can do much to foster greater Vietnamese respect for international norms in the areas of human rights, democracy, and religious freedom.

Finally, approving the nomination of Congressman Peterson as Ambassador to Hanoi will greatly assist efforts already underway to advance United States economic interests in Vietnam and throughout Southeast Asia. Vietnam has made significant progress toward transforming its inefficient centrally planned economy to a market-based economy, and it is actively seeking foreign participation in its economic development. Vietnam's efforts to rebuild its infrastructure and modernize its economy present great opportunities for United States businesses in the areas of energy, telecommunications, health, education, tourism, and environmental protection. But for United States firms to compete successfully with the numerous foreign companies already doing business in Vietnam, the administration must negotiate and Congress must approve a comprehensive bilateral trade agreement. As Ambassador, Peterson will play a central role in expediting negotiations on an agreement which will safeguard U.S. commercial interests in the fastest growing region of the world.

There are some who have speculated about the administration's motives for normalizing relations with Vietnam at this time, questioning whether officials from the Lippo Group or other United States businesses with prospective commercial interests in east Asia sought to influence the decision in exchange for their campaign contributions to the Democratic National Committee.

As our colleague, Senator MCCAIN—like Congressman Peterson a former POW—noted at Congressman Peterson's confirmation hearing, "This rumor is entirely unsubstantiated by fact." President Bush and Secretary Baker put the United States firmly on the path toward normalization in 1989 when they drafted a "road map" whose goal was the establishment of full diplomatic relations.

The pace of normalization has actually slowed during the Clinton administration. As Senator MCCAIN stated during the Foreign Relations Committee hearing, the Clinton administration was worried about the political ramifications for the President in making a decision to normalize—with the veterans organizations and others—and was not possessed with concern about helping business interests, whether domestic or foreign.

In short, we have reached the point of preparing to exchange ambassadors because of the bipartisan conviction that normalizing relations is in our best interests. It had nothing to do with foreign lobbyists or contributions to any Presidential campaign.

Peterson traveled first to Vietnam 30 years ago as an Air force fighter pilot. He served his country nobly, receiving two Silver Stars, several Bronze Stars, and two Purple Hearts. he flew 66 combat missions over Vietnam before his aircraft was downed near Hanoi on September 10, 1966. He then endured almost 7 years of unimaginable hardship as a prisoner of war, before finally returning home in March 1973.

Now he seeks to return to Vietnam, not as a warrior, but as an ambassador of peace, helping to heal old wounds and bring Vietnam into the world community after 30 years of isolation. It is a testament to Congressman Peterson's commitment to public service that he is willing to take on this difficult mission. I wish him God's speed.

The PRESIDING OFFICER. The question is on the confirmation of the nomination.

Without objection, the nomination is confirmed.

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

MORNING BUSINESS

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent the Senate now go to a period for morning business.

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

The Senator from Kentucky is recognized.

MESSAGES FROM THE HOUSE

At 12 noon, a message from the House of Representatives, delivered by Ms. Geotz, 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. 240. An act to amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes.

ENROLLED BILL SIGNED

At 12:11 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 412. An act to approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District.

The enrolled bill was signed subsequently by the President pro tempore [Mr. THURMOND].

At 2:05 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1003. An act to clarify Federal law with respect to restricting the use of Federal funds in support of assisted suicide.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 240. An act to amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes; to the Committee on Veterans' Affairs.

MEASURE PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

S. 543. A bill to provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

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-1490. A communication from the Secretary of Defense, transmitting, pursuant to law, a report on the military capabilities of the People's Republic of China; to the Committee on Armed Services.

EC-1491. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 95-12; to the Committee on Appropriations.

EC-1492. A communication from the Assistant Secretary of the Interior for Indian Affairs, transmitting, pursuant to law, a rule entitled "Indian Country Law Enforcement"

(RIN1076-AD56) received on April 4, 1997; to the Committee on Indian Affairs.

EC-1493. A communication from the Acting Director of the Office of Surface Mining (Reclamation and Enforcement), Department of the Interior, transmitting, pursuant to law, three rules including a rule entitled "The Iowa Regulatory Program" (IA-009-FOR, HO-004-FOR, AK-005-FOR); to the Committee on Energy and Natural Resources.

EC-1494. A communication from the Assistant Secretary of the Interior for Policy, Management and Budget, transmitting, pursuant to law, an acquisition regulation (RIN1090-AA60) received on April 8, 1997; to the Committee on Energy and Natural Resources.

EC-1495. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues and where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-1496. A communication from the Assistant Attorney General, transmitting, a draft of proposed legislation to include American Samoa in the Act of October 5, 1984; to the Committee on Energy and Natural Resources.

EC-1497. A communication from the Chair of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the annual report for fiscal year 1996; to the Committee on Energy and Natural Resources.

EC-1498. A communication from the Acting General Counsel of the Department of Energy, transmitting, pursuant to law, a rule entitled "Final Power Allocations of the Post-2000 Resources Pool" received on April 7, 1997; to the Committee on Energy and Natural Resources.

EC-1499. A communication from the Acting Secretary of Energy, transmitting, pursuant to law, a report entitled "District Heating, Cooling, and Cogeneration: Benefits, Constraints, and Recommendations"; to the Committee on Energy and Natural Resources.

EC-1500. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. McCAIN (for himself, Mr. DOMENICI, Mr. DORGAN, and Mr. THOMAS):

S. 545. A bill to provide for the reorganization of the Bureau of Indian Affairs, and for other purposes; to the Committee on Indian Affairs.

By Mr. LEAHY (for himself, Mr. GREGG, Mr. JEFFORDS, Ms. SNOWE, Ms. COLLINS, Mr. SMITH, Mr. MOYNIHAN, Mr. KERRY, Mr. KENNEDY, Mr. REED, and Mr. D'AMATO):

S. 546. A bill to implement the recommendations of the Northern Forest Lands Council; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. McCAIN (for himself, Mrs. HUTCHISON, Mr. LOTT, Mr. STEVENS, Mr. NICKLES, Mr. CRAIG, Mr. ASHCROFT, and Mr. WARNER):

S. 547. A bill to provide for continuing appropriations in the absence of regular appropriations for fiscal year 1998; to the Committee on Appropriations.

By Mr. ROBERTS:

S. 548. A bill to expand the availability and affordability of quality child care through the offering of incentives to businesses to support child care activities; to the Committee on Finance.

By Mr. LUGAR:

S. 549. A bill to amend the Internal Revenue Code of 1986 to provide that certain cash rentals of farmland will not cause recapture of special estate tax valuation; to the Committee on Finance.

S. 550. A bill to amend the Internal Revenue Code of 1986 to increase the gift tax exclusion to $25,000; to the Committee on Finance.

By Mr. GREGG:

S. 551. A bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions; to the Committee on Labor and Human Resources.

By Mr. GREGG (for himself, Mr. LEAHY, Mr. JEFFORDS, Ms. COLLINS, Ms. SNOWE, and Mr. SMITH):

S. 552. A bill to amend the Internal Revenue Code of 1986 to preserve family-held forest lands, and for other purposes; to the Committee on Finance.

By Mr. KERRY:

S. 553. A bill to regulate ammunition, and for other purposes; to the Committee on the Judiciary.

By Mr. HARKIN:

S. 554. A bill to inform and empower consumers in the United States through a voluntary labeling system for wearing apparel or sporting goods made without abusive and exploitative child labor, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ALLARD:

S. 555. A bill to amend the Solid Waste Disposal Act to require that at least 85 percent of funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund be distributed to States to carry out cooperative agreements for undertaking corrective action and for enforcement of subtitle I of that Act; to the Committee on Environment and Public Works.

By Mr. INHOFE (for himself, Mr. HUTCHINSON, Mr. HELMS, Mr. COCHRAN, Mr. NICKLES, and Mr. SESSIONS):

S. 556. A bill to provide for the allocation of funds from the Mass Transit Account of the Highway Trust Fund, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. McCONNELL (for himself and Mr. INHOFE):

S. 557. A bill to amend the Clean Air Act to exclude beverage alcohol compounds emitted from aging warehouses from the definition of volatile organic compounds; to the Committee on Environment and Public Works.

By Mr. BIDEN (for himself and Mr. GRASSLEY):

S. 558. A bill to provide for a study and report regarding the potential recruitment, hiring, or retention of qualified former officers of the Royal Hong Kong Police by Federal law enforcement agencies; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself and Mr. KENNEDY) (by request):

S. 559. A bill to amend the Internal Revenue Code of 1986 to provide tax relief to middle income families who are struggling to pay for college, to amend the Higher Education Act of 1965 to provide significantly increased financial aid for needy students, provide universal access to postsecondary education, reduce student loan costs while improving student loan benefits, to streamline the Federal Family Education Loan Program, and for other purposes; to the Committee on Finance.

S. 560. A bill to amend the Higher Education Act of 1965 to provide significantly increased financial aid for needy students, provide universal access to postsecondary education, reduce student loan costs while improving student loan benefits, to streamline the Federal Family Education Loan Program, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SHELBY:

S. 561. A bill to require States receiving prison construction grants to implement requirements for inmates to perform work and engage in educational activities, to eliminate certain sentencing inequities for drug-offenders, and for other purposes; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. FAIRCLOTH, Mr. BENNETT, Mr. SARBANES, Mr. DODD, Mr. KERRY, Mr. BRYAN, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. JOHNSON, and Mr. REED):

S. 562. A bill to amend section 255 of the National Housing Act to prevent the funding of unnecessary or excessive costs for obtaining a home equity conversion mortgage; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COCHRAN (for himself, Mr. HUTCHINSON, Mr. NICKLES, and Mr. SHELBY):

S.J. Res. 25. A joint resolution disapproving the rule of the Occupational Safety and Health Administration relating to occupational exposure to methylene chloride; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DASCHLE (for himself, Mr. LEAHY, Mrs. MURRAY, Mr. REID, Mr. HARKIN, Ms. LANDRIEU, Ms. MIKULSKI, Mr. DURBIN, Ms. MOSELEY-BRAUN, Mr. KENNEDY, and Mr. KERRY):

S. Res. 70. A resolution expressing the sense of the Senate regarding equal pay for equal work; to the Committee on Labor and Human Resources.

By Mr. BROWNBACK (for himself, Mr. ROBB, Mr. HELMS, and Mr. BIDEN):

S. Con. Res. 20. A concurrent resolution expressing the sense of Congress regarding the status of the investigation of the bombing of the Israeli Embassy in Buenos Aires in 1992; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McCAIN (for himself, Mr. DOMENICI, Mr. DORGAN and Mr. THOMAS):

S. 545. A bill to provide for the reorganization of the Bureau of Indian Affairs, and for other purposes; to the Committee on Indian Affairs.

THE BUREAU OF INDIAN AFFAIRS REORGANIZATION ACT

Mr. MCCAIN. Mr. President, I am pleased to introduce legislation to reorganize and restructure the Bureau of Indian Affairs. I am joined by Senators DOMENICI, DORGAN, and THOMAS as original cosponsors of this legislation.

This legislation is virtually identical to the bill that was approved by the Indian Affairs Committee and reported to the Senate on January 26, 1996. Unfortunately, the Congress did not complete action on that bill prior to the end of the 104th Congress. This legislation is intended to build on the agreements contained in last year's bill and stimulate further discussions in Congress and among the tribes about the many problems in the management and operation of the Bureau of Indian Affairs.

I will not take the time of the Senate to reiterate the long history of efforts to reform the Bureau of Indian Affairs. Suffice it to say, after more than 150 years of proposals, reports, hearings, and other efforts, the Bureau of Indian Affairs remains a hindrance, not a help, to our Native American population.

Since 1824, the Bureau of Indian Affairs has been the principal agency of the Federal Government which is responsible for meeting this Nation's trust responsibility to American Indians and Alaska Natives. Yet, based on the health, social, and economic conditions on Indian reservations, the Bureau has failed miserably in carrying out its responsibilities.

Just take a brief look at the statistics on native American quality of life.

Nearly one of every three native Americans in this Nation lives in poverty, including half of the families and half of the children under the age of 6 living on Indian reservations.

Unemployment on Indian reservations exceeds 25 percent, and the per capita income for an Indian living on the reservation is $4,478.

Approximately 90,000 Indian families are homeless or underhoused, with nearly one in five Indian families living on the reservation classified as severely overcrowded. One of every five Indian homes lacks complete plumbing facilities.

It is long past time to change the way this Nation deals with American Indians. It is time to break down the barriers to true tribal self-governance and self-determination by providing Indian tribes the authority to design both the structure and function of their trustee, the Bureau of Indian Affairs.

This bill I am introducing today will enable the Congress, the tribes, and the administration to work together to enact the basic reforms in the management and organization of the Bureau of Indian Affairs that are necessary to improve the quality of life of native Americans today. This bill will provide an opportunity for Indian tribes to participate in the reshaping and redefining of the trust relationship with the Federal Government.

For a detailed explanation of the provisions of this bill, I refer my colleagues to the text of the bill which follows, and to Senate Report 104–227 accompanying the legislation reported from the Indian Affairs Committee last year, which is the basis for this legislation.

Mr. President, the reintroduction of this bill marks only the first step in achieving meaningful reform of the Bureau of Indian Affairs. I remain committed to working with the new chairman of the Indian Affairs Committee, Senator CAMPBELL, my colleagues in both Houses of Congress, the administration, and most importantly, the Indian tribes to ensure that this legislation meets the goal of real and necessary change in the Bureau. I look forward to our discussions, and I urge my colleagues to join in sponsoring this bill to ensure prompt enactment of this important and much-needed legislation to reorganize the Bureau of Indian Affairs.

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. 545

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, PURPOSES, TABLE OF CONTENTS, AND DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the "Bureau of Indian Affairs Reorganization Act of 1997".

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure the meaningful involvement of Indian tribes as full negotiation partners with the United States in all efforts to reorganize and restructure the Bureau of Indian Affairs; and

(2) to ensure the active participation by Indian tribes in the development of the budget requests for the Bureau of Indian Affairs and the Indian Health Services which are submitted to the President by the Secretary of the Interior and the Secretary of Health and Human Services for inclusion in the annual budget request submitted by the President to the Congress pursuant to section 1108 of title 31, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title, purposes, table of contents, and definitions.
TITLE I—REORGANIZATION COMPACTS
Sec. 101. Reorganization of area offices.
Sec. 102. Reorganization of agency offices.
Sec. 103. Reorganization of central office.
Sec. 104. Authority to spend funds.
Sec. 105. Savings provisions.
Sec. 106. Additional conforming amendments.
Sec. 107. Authorization of appropriations.
Sec. 108. Effective date.
Sec. 109. Separability.
Sec. 110. Suspension of certain administrative actions.
Sec. 111. Statutory construction.
Sec. 112. Tribal authority recognized.
Sec. 113. Renegotiation authority.
Sec. 114. Disclosure of information.
TITLE II—AMENDMENT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT
Sec. 201. Budget development.
TITLE III—REFORM OF THE REGULATIONS OF THE BUREAU OF INDIAN AFFAIRS
Sec. 301. BIA Manual.
Sec. 302. Task force.
Sec. 303. Authorization of appropriations.

(d) DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

(1) AREA OFFICE.—The term "area office" means 1 of the 12 area offices of the Bureau of Indian Affairs in existence on the date of enactment of this Act.

(2) AREA OFFICE PLAN.—The term "area office plan" means a plan for the reorganization of an area office negotiated by the Secretary and Indian tribes pursuant to section 101.

(3) AGENCY OFFICE.—The term "agency office" means an agency office of the Bureau of Indian Affairs in existence on the date of enactment of this Act.

(4) AGENCY OFFICE PLAN.—The term "agency office plan" means a plan for the reorganization of an agency office negotiated by the Secretary and Indian tribes pursuant to section 102.

(5) BIA MANUAL.—The term "BIA Manual" means the most recent edition of the Bureau of Indian Affairs Manual issued by the Department of the Interior.

(6) BUREAU.—The term "Bureau" means the Bureau of Indian Affairs.

(7) CENTRAL OFFICE.—The term "central office" means the Central Office of the Bureau, and includes the offices of the Central Office that are housed in Washington, D.C. and Albuquerque, New Mexico.

(8) CENTRAL OFFICE PLAN.—The term "central office plan" means the plan for the reorganization of the central office negotiated by the Secretary and Indian tribes pursuant to section 103.

(9) DEPARTMENT.—The term "Department" means the Department of the Interior.

(10) DIRECTOR.—The term "Director" means, with respect to an area office, the Director of the area office.

(11) FUNCTION.—The term "function" means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(12) INDIAN TRIBE.—The term "Indian tribe" has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(13) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(14) SUPERINTENDENT.—The term "Superintendent" means the Superintendent of an agency office.

(15) TRIBAL PRIORITY ALLOCATION ACCOUNT.—The term "tribal priority allocation account" means an account so designated by the Bureau, with respect to which program priorities and funding levels are established by individual Indian tribes.

(16) TRIBAL RECURRING BASE FUNDING.—The term "tribal recurring base funding" means recurring base funding (as defined and determined by the Secretary) for the tribal priority allocation accounts of an Indian tribe allocated to a tribe by the Bureau.

TITLE I—REORGANIZATION COMPACTS

SEC. 101. REORGANIZATION OF AREA OFFICES.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) not later than 30 days after the date of enactment of this Act, the Secretary shall notify in writing each Indian tribe served by an area office of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations under this subsection; and

(2) not later than 150 days after the date of enactment of this Act, the Secretary shall conclude negotiations with the Indian tribes served by each area office on a reorganization plan for the area office.

(b) CONTENTS OF AREA OFFICE PLANS.—

(1) IN GENERAL.—Each area office plan that is prepared pursuant to this subsection shall provide for the organization of the area office covered under the plan. To the extent that a majority of the Indian tribes served by the area office do not exercise the option to maintain current organizational structures, functions, or funding priorities pursuant to paragraph (3), the reorganization plan shall provide, with respect to the area office covered under the plan, for—

(A) the reorganization of the administrative structure of the area office;

(B) the reallocation of personnel (including determinations of office size and functions);

(C) the delegation of authority of the Secretary to the Director, Superintendents, or Indian tribes;

(D) transfers of functions;

(E) the specification of functions—

(i) retained by the Bureau; or

(ii) transferred to Indian tribes served by the area office;

(F) the issuance of waivers or other authorities by the Secretary so that functions and other responsibilities of the Secretary may be carried out by the area office or transferred to Indian tribes;

(G) the promulgation of revised regulations relating to the functions of the area office that are performed by the area office or transferred to Indian tribes;

(H) the reordering of funding priorities; and

(I) a formula for the transfer, to the tribal recurring base funding for each Indian tribe served by the area office, of unexpended balances of appropriations and other Federal funds made available to the area office in connection with any function transferred to Indian tribes pursuant to subparagraph (E)(ii).

(2) SHARE OF FUNDING.—An area office plan shall include, for each Indian tribe served by the area office, a negotiated determination of the share of the funds used by the area office on an annual basis that is used to support functions and services of the Indian tribe (in this subsection referred to as the "tribal share").

(3) OPTION OF MAINTENANCE OF CURRENT STATUS.—At the option of a majority of the Indian tribes served by an area office, a reorganization plan may provide for the continuation of organizational structures, functions, or funding priorities of the area office that are substantially similar to those in effect at the time of the negotiation of the area office plan.

(4) APPROVAL OF AREA OFFICE PLAN BY INDIAN TRIBES.—

(A) IN GENERAL.—On the date on which the negotiation of an area office plan is concluded, the Secretary shall submit the plan to the Indian tribes served by the area office for approval.

(B) EFFECT OF FAILURE OF INDIAN TRIBE TO APPROVE PLAN.—If an Indian tribe served by an area office fails to approve an area office plan by the date that is 60 days after the Secretary submits the plan pursuant to subparagraph (A) to the Indian tribes served by that office, the plan shall be considered to have been disapproved by that Indian tribe.

(C) REORGANIZATION COMPACT.—If, by the date specified in subparagraph (B), a majority of the Indian tribes approve the area office plan by tribal resolution or other official act of the governing body of each Indian tribe involved, the Secretary shall enter into a reorganization compact pursuant to subsection (c).

(5) SINGLE TRIBE AREA OFFICE.—Not later than 30 days after the date of enactment of this Act, the Secretary shall notify in writing an Indian tribe that is served by an area office that serves only that Indian tribe of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations for an area office plan. If, by not later than 60 days after the date of enactment of this Act, an Indian tribe that is served by an area office that serves only that Indian tribe notifies the Secretary in writing that the Indian tribe elects to enter into negotiations with the Secretary to prepare a reorganization plan for the area office—

(A) not later than 150 days after the date of enactment of this Act, the Secretary shall conclude such negotiations; and

(B) if, by the date that is 60 days after the date specified in subparagraph (A), the Indian tribe approves the area office plan by tribal resolution or other official act of the governing body of the Indian tribe, the Secretary shall enter into a reorganization compact with the Indian tribe to carry out the area office plan.

(6) OPTION TO TAKE TRIBAL SHARE.—

(A) IN GENERAL.—If—

(i) by the date specified in paragraph (4)(B), a majority of the Indian tribes served by an area office fail to approve an area office plan, an Indian tribe may, not later than 60 days after the date specified in paragraph (4)(B), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share of the Indian tribe; or

(ii) by the date specified in paragraph (5)(B), the Indian tribe served by an area office fails to approve an area office plan, the Indian tribe may, not later than 60 days after the date specified in paragraph (5)(B), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share of the Indian tribe.

(B) AGREEMENT.—Not later than 30 days after the date on which the Secretary receives a notice under subparagraph (A), the Secretary shall enter into an agreement with the Indian tribe for the immediate and direct transfer to the Indian tribe of an amount equal to the tribal share (after taking into account any residual amount determined under clause (i)), or if the agreement covers a period of less than 12 months, a prorated amount of the tribal share (after taking into account any residual amount determined under clause (i)). The agreement shall include—

(i) a negotiated determination of the amount, if any, of residual Federal funds to be retained by the Secretary for the area office that are minimally necessary to carry out trustee and other functions of the Federal Government that are not delegable to the Indian tribes served by the area office; and

(ii) a negotiated description of the responsibilities to be carried out by—

(I) the area office; and

(II) the Indian tribe.

(7) SELF-DETERMINATION AND SELF-GOVERNANCE AUTHORITIES NOT AFFECTED.—If an Indian tribe exercises the option to receive a tribal share of funds in accordance with paragraph (6), the exercise of that option may not be construed to limit or restrict any right of that tribe or any other tribe to receive funds under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and funds received under that Act may be included as part of the tribal share identified in paragraph (6).

(8) SECRETARIAL AUTHORITY.—If, by the date specified in subsection (c), a majority of the Indian tribes served by an area office fail to approve the plan pursuant to paragraph (4), the organizational structure, functions, and funding priorities of the area office in effect at the time of the negotiation of the area office plan shall be determined by the Secretary, in consultation with the Indian tribes served by that area office, and in a manner consistent with the exercise by any Indian tribe of the option to receive directly the tribal share of the Indian tribe under paragraph (6).

(c) AREA OFFICE REORGANIZATION COMPACTS.—

(1) IN GENERAL.—Not later than 30 days after the date on which a majority of the Indian tribes served by the area office that is the subject of a reorganization plan have approved the plan pursuant to subsection (b)(4), the Secretary shall enter into an area office reorganization compact with the Indian tribes that have approved the plan to carry out that plan (in this subsection referred to as the "area office reorganization compact").

(2) PROHIBITION AGAINST CERTAIN LIMITATIONS.—With respect to an Indian tribe that is not a party to an area office reorganization compact entered into by the Secretary under this subsection, nothing in this section may limit or reduce the level of any service or funding that the Indian tribe would otherwise receive pursuant to applicable Federal law (including title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)).

SEC. 102. REORGANIZATION OF AGENCY OFFICES.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) not later than 30 days after the date of enactment of this Act, the Secretary shall notify each Indian tribe in writing of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations under this subsection; and

(2) not later than 150 days after the date of enactment of this Act, the Secretary, acting through the Superintendent (or a designee of the Superintendent) of each agency office, shall conclude negotiations with the Indian tribes served by each agency office on an agency office plan for each agency office.

(b) CONTENTS OF AGENCY OFFICE PLANS.—

(1) IN GENERAL.—Each agency office plan that is prepared by the Secretary pursuant to this subsection shall provide for the organization of the agency office covered under the plan. To the extent that a majority of the Indian tribes served by the agency office do not exercise the option to maintain current organizational structures, functions, or funding priorities pursuant to paragraph (3), the agency office plan shall provide, with respect to the agency office covered under the agency office plan, for—

(A) the reorganization of the administrative structure of the agency office;

(B) the reallocation of personnel (including determinations of office size and functions);

(C) the delegation of authority of the Secretary to the Superintendent or Indian tribes;

(D) transfers of functions;

(E) the specification of functions—

(i) retained by the Bureau; or

(ii) transferred to Indian tribes served by the agency office;

(F) the issuance of waivers or other authorities by the Secretary so that functions and other responsibilities of the Secretary may be carried out by the agency office or transferred to Indian tribes;

(G) the promulgation of revised regulations relating to the functions of the agency office that are carried by the agency office or transferred to Indian tribes;

(H) the reordering of funding priorities; and

(I) a formula for the transfer, to the tribal recurring base funding for each Indian tribe served by the agency office, of unexpended balances of appropriations and other Federal funds made available to the agency office in connection with any function transferred to Indian tribes pursuant to subparagraph (E)(ii).

(2) SHARE OF FUNDING.—An agency office plan shall include, for each Indian tribe served by the agency office, a negotiated determination of the share of the Indian tribe of the funds used by the agency office on an annual basis that is used to support functions and services of the Indian tribe (in this subsection referred to as the "tribal share").

(3) OPTION OF MAINTENANCE OF CURRENT STATUS.—At the option of a majority of the Indian tribes served by an agency office, an agency office plan may provide for the continuation of organizational structures, functions, or funding priorities of the agency office that are substantially similar to those in effect at the time of the development of the agency office plan.

(4) APPROVAL OF AGENCY OFFICE PLAN BY INDIAN TRIBES.—

(A) IN GENERAL.—On the date on which the negotiation of an agency office plan is concluded, the Secretary shall submit the agency office plan to the Indian tribes served by the agency office for approval.

(B) EFFECT OF FAILURE OF INDIAN TRIBE TO APPROVE PLAN.—If an Indian tribe served by an agency office fails to approve an agency office plan by the date that is 60 days after the Secretary submits the plan pursuant to subparagraph (A) to the Indian tribes served by that office, the plan shall be considered to have been disapproved by that Indian tribe.

(C) REORGANIZATION COMPACT.—If, by the date specified in subparagraph (B), a majority of the Indian tribes approve the agency office plan by a tribal resolution or other official act of the governing body of each Indian tribe involved, the Secretary shall enter into a reorganization compact pursuant to subsection (c).

(5) SINGLE TRIBE AGENCY OFFICE.—Not later than 30 days after the date of enactment of this Act, the Secretary shall notify in writing an Indian tribe that is served by an agency office that serves only that Indian tribe of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations for an agency office plan. If, by not later than 60 days after the date of enactment of this Act, an Indian tribe that is served by an agency office that serves only that Indian tribe notifies the Secretary in writing that the Indian tribe elects to enter into negotiations with the Secretary to prepare a reorganization plan for the agency office—

(A) not later than 150 days after the date of enactment of this Act, the Secretary shall conclude such negotiations; and

(B) if, by the date that is 60 days after the date specified in subparagraph (A), the Indian tribe approves the agency office plan by tribal resolution or other official act of the governing body of the Indian tribe, the Secretary shall enter into a reorganization compact with the Indian tribe to carry out the area office plan.

(6) OPTION TO TAKE TRIBAL SHARE.—

(A) IN GENERAL.—If—

(i) by the date specified in paragraph (4)(B), a majority of the Indian tribes served by an agency office fail to approve an agency office plan, an Indian tribe may, not later than 60 days after the date specified in paragraph (4)(B), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share of the Indian tribe; or

(ii) by the date specified in paragraph (5)(B), the Indian tribe served by an agency office fails to approve an agency office plan, the Indian tribe may, not later than 60 days after the date specified in paragraph (5)(B), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share of the Indian tribe.

(B) AGREEMENT.—Not later than 30 days after the date on which the Secretary receives a notice under subparagraph (A), the Secretary shall enter into an agreement with the Indian tribe for the immediate and direct transfer to the Indian tribe of an amount equal to the tribal share (after taking into account any residual amount under clause (i)), or if the agreement covers a period of less than 12 months, a prorated amount of the tribal share (after taking into account any residual amount under clause (i)). The agreement shall include—

(i) a negotiated determination of the amount, if any, of residual Federal funds to be retained by the Secretary for the agency office that are minimally necessary to carry out trustee and other functions of the Federal Government that are not delegable to the Indian tribes served by the agency office; and

(ii) a negotiated description of the responsibilities to be carried out by—

(I) the agency office; and

(II) the Indian tribe.

(7) SELF-DETERMINATION AND SELF-GOVERNANCE AUTHORITIES NOT AFFECTED.—If an Indian tribe exercises the option to receive a tribal share of funds in accordance with paragraph (6), the exercise of that option may not be construed to limit or restrict any right of that tribe or any other tribe to receive funds under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and funds received under that Act may be included as part of the tribal share identified in paragraph (6).

(8) SECRETARIAL AUTHORITY.—If, by the date specified in subsection (c), a majority of the Indian tribes served by an agency office fail to approve the plan pursuant to paragraph (4), the organizational structure, functions, and funding priorities of the agency office in effect at the time of the negotiation of the agency office plan shall be determined by the Secretary, in consultation with the Indian tribes served by that agency office, and in a manner consistent with the exercise by any Indian tribe of the option to receive directly the tribal share of the Indian tribe under paragraph (6).

(c) AGENCY OFFICE REORGANIZATION COMPACTS.—

(1) IN GENERAL.—Not later than 30 days after the date on which a majority of the Indian tribes served by an agency office that is the subject of an agency office plan have approved that plan pursuant to subsection (b)(4), the Secretary shall enter into a reorganization compact with the Indian tribes to carry out the agency office plan (in this subsection referred to as the "agency office reorganization compact").

(2) PROHIBITION AGAINST CERTAIN LIMITATIONS.—With respect to an Indian tribe that is not a party to an agency office reorganization compact entered into under this subsection, nothing in this section may limit or reduce the level of any service or funding that the Indian tribe would otherwise receive pursuant to applicable Federal law (including title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)).

SEC. 103. REORGANIZATION OF CENTRAL OFFICE.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) not later than 30 days after the date of enactment of this Act, the Secretary shall notify in writing each Indian tribe of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations under this subsection; and

(2) not later than 150 days after the date of enactment of this Act, the Secretary shall conclude negotiations with Indian tribes on a reorganization plan for the central office. The Secretary shall negotiate on an area-by-area basis with a representative from each of the Indian tribes in each area, to determine the appropriate allocation of personnel and funding made available to the central office to serve the area and agency offices and Indian tribes in each area office.

(b) CONTENT OF CENTRAL OFFICE PLAN.—

(1) IN GENERAL.—The central office plan shall provide for determinations on the basis of the negotiations described in subsection (a) concerning—

(A) which portion of the funds made available to the Secretary for the central office shall—

(i) be used to support the area and agency offices in each area; or

(ii) be considered funds that may be transferred directly to Indian tribes in each area pursuant to a formula developed pursuant to paragraph (2)(J); and

(B) the allocation of the personnel of the central office to provide support to the area and agency offices.

(2) REALLOCATION OF FUNDS AND PERSONNEL.—In developing the central office plan, to the extent that the Secretary and the Indian tribes do not exercise the option to maintain current organizational structures, functions, or funding priorities, the central office plan shall provide, to the extent necessary to accommodate the determinations made under paragraph (1), for—

(A) the reorganization of the administrative structure of the central office;

(B) the reallocation of personnel (including determinations of office size and functions);

(C) the delegation of authority of the Secretary carried out through the central office to the Directors, Superintendents, or Indian tribes;

(D) transfers of functions;

(E) the specification of functions—

(i) retained by the central office; or

(ii) transferred to area offices, agency offices or Indian tribes;

(F) the issuance of waivers or other authorities by the Secretary so that functions and other responsibilities of the Secretary may be carried out by the central office or transferred to area offices, agency offices, or Indian tribes;

(G) the promulgation of revised regulations relating to the functions of the central office that are carried by the central office or transferred to area offices, agency offices, or Indian tribes;

(H) the reordering of funding priorities;

(I) allocation formulas to provide for the remaining services to be provided to the area and agency offices and Indian tribes by the central office; and

(J) with respect to the transfer of funds to the area and agency offices and Indian tribes in each area, a formula, negotiated with the tribal representatives identified in subsection (a), for the transfer to the Indian tribes of all or a portion of the funds described in paragraph (1)(A)(ii).

(3) SHARE OF FUNDING.—The central office plan shall include, for each Indian tribe, a negotiated determination of the share of the Indian tribe (in this subsection referred to as the "tribal share") of the funds used by the central office on an annual basis (after any funds identified in paragraph (1)(A)(ii) have been allocated directly to Indian tribes) to support functions and services of the Indian tribe and to provide the personnel and services identified in subsection (a) to serve the Indian tribe.

(4) OPTION TO TAKE TRIBAL SHARE.—

(A) IN GENERAL.—An Indian tribe may, not later than 60 days after the date specified in subsection (c), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share for that Indian tribe determined under paragraph (3) if that Indian tribe—

(i) receives a tribal share of an area office under section 101(b) and also receives a tribal share of an agency office under section 102(b); or

(ii) receives a share pursuant to title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(B) AGREEMENT.—Not later than 30 days after the date on which an Indian tribe provides written notification to the Secretary under subparagraph (A), the Secretary shall enter into an agreement with the Indian tribe for the immediate and direct transfer to the Indian tribe of an amount equal to the tribal share (taking into account any residual amount determined under clause (i)), or if the period covered by the agreement is less than 12 months, a prorated amount of the tribal share (taking into account any residual amount determined under clause (i)). The agreement shall include—

(i) a negotiated determination of the amount of residual Federal funds to be retained by the Secretary for the central office that are minimally necessary to carry out trustee and other functions of the Federal Government that are not delegable to the Indian tribes served by the central office; and

(ii) a negotiated description of the responsibilities to be carried out by—

(I) the central office; and

(II) the Indian tribe.

(5) SELF-DETERMINATION AND SELF-GOVERNANCE AUTHORITIES NOT AFFECTED.—If an Indian tribe exercises the option to receive a tribal share of funds in accordance with paragraph (4), the exercise of that option may not be construed to limit or restrict any right of that tribe or any other tribe to receive funds under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and funds received under that Act may be included as part of the tribal share identified in paragraph (4).

(c) CENTRAL OFFICE REORGANIZATION COMPACTS.—

(1) IN GENERAL.—Not later than 90 days after the Secretary has concluded a negotiation of a central office plan pursuant to subsection (a), the Secretary shall, for each area office, enter into a central office reorganization compact with the Indian tribes in that area to implement the central office plan (in this subsection referred to as the "central office reorganization compact"). The Secretary may not implement the component of a central office plan relating to an area until such time as a majority of the Indian tribes in that area have entered into a central office reorganization compact. If a majority of the Indian tribes in an area do not enter into a central office reorganization compact with the Secretary pursuant to this paragraph, the organizational structure, functions, and funding priorities of the central office relating to the area and agency offices and Indian tribes in that area and in effect at the time of the negotiation of the central office plan shall be determined by the Secretary, in consultation with the Indian tribes served by each area office, and in a manner that is consistent with the exercise by any Indian tribe of the option to receive directly the tribal share of the Indian tribe under subsection (b)(4).

(2) COORDINATION WITH AREA AND AGENCY OFFICE PLANS.—Each central office reorganization compact entered into by the Secretary under this subsection shall specify that in the event the Secretary determines that a central office reorganization compact is inconsistent with a related area office reorganization compact entered into under section 101(c) or a related agency office reorganization compact entered into under section 102(c), the Secretary, in negotiation with the Indian tribes that are parties to the central office reorganization compact, shall amend the compact to make such modifications as are necessary to ensure consistency with the applicable area or agency office plan.

SEC. 104. AUTHORITY TO SPEND FUNDS.

Each Indian tribe that receives funds under this title shall administer and expend those funds in a manner consistent with the authorities provided to Indian tribes under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

SEC. 105. SAVINGS PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this title, all orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(1) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of any function that is transferred to Indian tribes pursuant to a reorganization compact that the Secretary enters into pursuant to section 101, 102, or 103; and

(2) that are in effect on the effective date of the reorganization compact, or were final before the effective date of the reorganization compact and are to become effective on or after such date;

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—

(1) IN GENERAL.—The provisions of a reorganization compact that the Secretary enters into pursuant to section 101, 102, or 103 shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Bureau at the time the reorganization compact takes effect, with respect to the functions transferred by the reorganization compact.

(2) CONTINUATION OF PROCEEDINGS.—The proceedings and applications referred to in paragraph (1) shall be continued. Orders shall be issued in such proceedings, appeals shall be taken from such orders, and payments shall be made pursuant to such orders, as if the compact had not been entered into, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Bureau or by or against any individual in the official capacity of such individual as an officer of the Bureau shall abate by reason of the enactment of this title.

SEC. 106. ADDITIONAL CONFORMING AMENDMENTS.

(a) RECOMMENDED LEGISLATION.—After consultation with Indian tribes and the appropriate committees of the Congress, the Secretary shall prepare and submit to the Congress appropriate recommendations for legislation containing technical and conforming amendments to reflect the changes made pursuant to this title.

(b) SUBMISSION TO THE CONGRESS.—Not later than 120 days after the effective date of this title, the Secretary shall submit to the Congress the recommended legislation referred to in subsection (a).

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 108. EFFECTIVE DATE.

This title shall take effect on the date of enactment of this Act.

SEC. 109. SEPARABILITY.

If a provision of this title or its application to any person or circumstance is held invalid, neither the remainder of this title nor the application of the provision to other persons or circumstances shall be affected.

SEC. 110. SUSPENSION OF CERTAIN ADMINISTRATIVE ACTIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, during the 2-year period beginning on the date of enactment of this Act, the Secretary shall suspend the implementation of all administrative activities that affect the Bureau associated with reinventing government, national performance review, or other down sizing initiatives of the executive branch of the Federal Government.

(b) CONSIDERATION OF COMPACTS.—During the period specified in subsection (a), the reorganization compacts entered into under this title shall be deemed to satisfy the goals of the initiatives referred to in subsection (a).

SEC. 111. STATUTORY CONSTRUCTION.

Nothing in this title may be construed to alter or diminish the Federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments.

SEC. 112. TRIBAL AUTHORITY RECOGNIZED.

Nothing in this title may be construed to prohibit or limit the capacity of 2 or more Indian tribes to authorize, by tribal resolution or other official act of the governing body of each Indian tribe involved, a group of Indian tribes to exercise any authority granted to an Indian tribe under this title, except that the approval of an area office or agency office reorganization plan under sections 101(b)(4) and 102(b)(4), and the entering into a central office reorganization compact under section 103(c)(1), shall be authorized by the separate tribal resolution or other official act of the governing body of each Indian tribe involved.

SEC. 113. RENEGOTIATION AUTHORITY.

The Indian tribes served by an agency or area office may annually exercise any authorities that the Indian tribes are authorized to exercise under this title during any calendar year that begins after the date of enactment of this Act, including authorities relating to the negotiation of reorganization plans and the election to receive tribal shares. In any case in which an Indian tribe exercises an authority pursuant to the preceding sentence, the timeframes set forth in this title shall be calculated from the annual anniversary date of the date of enactment of this Act.

SEC. 114. DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—Upon entering into negotiations required under sections 101, 102, and 103, and in a timely manner throughout that negotiation process, the Secretary shall provide to Indian tribes the budgetary, structural, administrative, and legal information that is necessary for the negotiated reorganization of the agency offices, area offices, and central office.

(b) TECHNICAL ASSISTANCE.—Upon the request of an Indian tribe, the Secretary shall provide such technical assistance as may be required to interpret the information provided under subsection (a).

TITLE II—AMENDMENT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 201. BUDGET DEVELOPMENT.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following new title:

"TITLE V—BUDGET DEVELOPMENT

"SEC. 501. PARTICIPATION OF INDIAN TRIBES IN THE DEVELOPMENT OF BUDGET REQUESTS.

"(a) BUDGET REQUESTS FOR THE BUREAU OF INDIAN AFFAIRS.—Notwithstanding any other provision of law, not later than 120 days after the date of enactment of this title, the Secretary of the Interior shall establish a program—

"(1) to provide information to Indian tribes concerning the development of budget requests for the Bureau of Indian Affairs that are submitted to the President by the Secretary of the Interior for inclusion in the annual budget of the President submitted to the Congress pursuant to section 1108 of title 31, United States Code; and

"(2) to ensure, to the maximum extent practicable, the participation by each Indian tribe in the development of the budget requests referred to in paragraph (1).

"(b) BUDGET REQUESTS FOR THE INDIAN HEALTH SERVICE.—Notwithstanding any other provision of law, not later than 120 days after the date of enactment of this title, the Secretary of Health and Human Services shall establish a program—

"(1) to provide information to Indian tribes concerning the development of budget requests by the Secretary of Health and Human Services for the Indian Health Service that are submitted to the President by the Secretary of Health and Human Services for inclusion in the annual budget referred to in subsection (a)(1); and

"(2) to ensure, to the maximum extent practicable, the participation by each Indian tribe in the development of the budget requests referred to in paragraph (1).

"(c) REQUIREMENTS FOR PROGRAMS.—

"(1) IN GENERAL.—Each program established under this section shall, to the maximum extent practicable—

"(A) provide for the estimation of—

"(i) the funds authorized to be appropriated on an annual basis for the benefit of Indian tribes; and

"(ii) for each Indian tribe, the portion of the funds described in clause (i) that will be provided for the benefit of the Indian tribe;

"(B) provide, for each Indian tribe—

"(i) the opportunity to establish priorities for using the estimated funds described in subparagraph (A)(ii); and

"(ii) the authority and flexibility to design tribal and Federal programs that receive Federal funds to best meet the needs of the community served by the Indian tribe; and

"(C) provide for the collection and dissemination of information that is necessary for effective planning, evaluation, and reporting by the Secretary of the Interior or the Secretary of Health and Human Services and Indian tribes concerning the comparative social and public health conditions of Indian communities (as defined and determined by the Secretary of the Interior and the Secretary of Health and Human Services) at local, regional, and national levels.

"(2) DUTIES OF THE SECRETARIES.—In carrying out the programs established under this section, the Secretary of the Interior and the Secretary of Health and Human Services shall—

"(A) use any information provided by Indian tribes concerning the priorities referred to in paragraph (1)(B);

"(B) support the creation of stable recurring base funding (as defined and determined by each such Secretary) for each Indian tribe;

"(C) seek to maintain stability in the planning and allocation of the amounts provided for in the budget of the Bureau of Indian Affairs and the Indian Health Service for Indian tribes; and

"(D) assess the Federal programs or assistance provided to each Indian tribe to determine—

"(i) the relative need for providing Federal funds to carry out each such program; and

"(ii) the amount of recurring base funding available to each Indian tribe to carry out each such program.

"(3) CONTRACTS, GRANTS, AND ANNUAL FUNDING AGREEMENTS.—To provide, to the maximum extent practicable, for the full participation by the governing bodies of Indian tribes on an effective government-to-government basis in carrying out the collection and sharing of information under this section, the Secretary of the Interior or the Secretary of Health and Human Services may—

"(A) enter into a self-determination contract with an Indian tribe or make a grant to an Indian tribe pursuant to section 102 or 103;

"(B) with respect to the Secretary of Health and Human Services, enter into a funding agreement with a participating Indian tribe pursuant to title III; and

"(C) with respect to the Secretary of the Interior, enter into a funding agreement with a participating Indian tribe pursuant to title IV.

"SEC. 502. ASSESSMENT METHODOLOGY.

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this title, the Secretary shall, in cooperation with Indian tribes, and in accordance with the negotiated rulemaking procedures under subchapter III of chapter 5 of title 5, United States Code (as in effect on the date of enactment of this title), promulgate standardized assessment methodologies to be used in carrying out any budget determination for the Bureau concerning the levels of funding that are necessary to fund each program area (as defined and determined by the Secretary) of the Bureau.

"(b) PARTICIPATION BY INDIAN TRIBES.—In carrying out subsection (a), the Secretary shall take such action as may be necessary to ensure, to the maximum extent practicable, the direct and active participation of Indian tribes at the local, regional, and national levels in the negotiated rulemaking process specified in subchapter III of chapter 5 of title 5, United States Code.

"(c) COMMITTEE.—

"(1) COMPOSITION.—The negotiated rulemaking committee established pursuant to the requirements of section 565 of title 5, United States Code (as in effect on the date of enactment of this title), to carry out subsection (a) shall only be comprised of—

"(A) individuals who represent the Federal Government; and

"(B) individuals who represent Indian tribes.

"(2) REPRESENTATION BY INDIAN TRIBES.—A majority of the members of the committee referred to in paragraph (1) shall be individuals who represent Indian tribes.

"(d) ADAPTATION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures carried out under this section in the same manner as the Secretary adapts, in accordance with section 407(c), the procedures carried out pursuant to section 407.

"SEC. 503. REPORTS TO THE CONGRESS.

"At the earliest practicable date after the date of promulgation of the regulations under section 502 on which the Secretary of the Interior submits a budget request to the President for inclusion in the annual budget of the President submitted to the Congress pursuant to section 1108 of title 31, United States Code, and annually thereafter, the Secretary shall prepare and submit to the President for inclusion in the annual budget submitted to the Congress, a report that—

"(1) describes the standardized methodologies that are the subject of the regulations promulgated pursuant to section 502; and

"(2) includes—

"(A) for each program area of the Bureau of Indian Affairs, an assessment of the level of funding that is necessary to fund the program area; and

"(B) for each Indian tribe served by a program area referred to in paragraph (2)—

"(i) an assessment of the level of funding that is necessary for each Indian tribe served by the program area;

"(ii) the total amount of funding necessary to cover all program areas with respect to which the tribe receives services (as determined by taking the aggregate of the applicable amounts determined under paragraph (3)); and

"(iii) a breakdown, for each program area with respect to which the Indian tribe receives service, of the amount determined under clause (ii).

"SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as may be necessary to carry out this title.".

TITLE III—REFORM OF THE REGULATIONS OF THE BUREAU OF INDIAN AFFAIRS

SEC. 301. BIA MANUAL.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(1) conduct a review of all provisions of the BIA Manual;

(2) promulgate as proposed regulations those provisions of the BIA Manual that the Secretary deems necessary for the efficient implementation of the Federal functions retained by the Bureau under the reorganization compacts authorized by this Act; and

(3) revoke all provisions of the BIA Manual that are not promulgated as proposed regulations under paragraph (2).

(b) CONSULTATION WITH INDIAN TRIBES.—In carrying out subsection (a), the Secretary shall, to the maximum extent practicable, consult with Indian tribes in such manner as to provide for the full participation of Indian tribes.

SEC. 302. TASK FORCE.

(a) ESTABLISHMENT OF TASK FORCE.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a task force on regulatory reform (hereafter in this section referred to as the "task force").

(2) DUTIES.—The task force shall—

(A) review the regulations under title 25, Code of Federal Regulations; and

(B) make recommendations concerning the revision of the regulations.

(3) MEMBERSHIP.—The task force shall be composed of 16 members, appointed by the Secretary, including 12 members who are representatives of Indian tribes from each of the 12 areas served by area offices.

(4) INITIAL MEETING.—Not later than 60 days after the date on which all members of the task force have been appointed, the task force shall hold its first meeting.

(5) MEETINGS.—The task force shall meet at the call of the Chairperson.

(6) QUORUM.—A majority of the members of the task force shall constitute a quorum, but a lesser number of members may hold hearings.

(7) CHAIRPERSON.—The task force shall select a Chairperson from among its members.

(b) REPORTS.—

(1) REPORTS TO SECRETARY.—The task force shall submit to the Secretary such reports as the Secretary determines to be appropriate.

(2) REPORT TO THE CONGRESS AND TO INDIAN TRIBES.—In addition to submitting the reports described in paragraph (1), not later than 120 days after its initial meeting, the task force shall prepare, and submit to the Congress and to the governing body of each Indian tribe, a report that includes—

(A) the findings of the task force concerning the review conducted pursuant to subsection (a)(2)(A); and

(B) the recommendations described in subsection (a)(2)(B).

(c) POWERS OF THE TASK FORCE.—

(1) HEARINGS.—The task force may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the task force considers advisable to carry out the duties of the task force specified in subsection (a)(2).

(2) INFORMATION FROM FEDERAL AGENCIES.—The task force may secure directly from any Federal department or agency such information as the task force considers necessary to carry out the duties of the task force specified in subsection (a)(2).

(3) POSTAL SERVICES.—The task force may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) GIFTS.—The task force may accept, use, and dispose of gifts or donations of services or property.

(d) TASK FORCE PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Members of the task force who are not officers or employees of the Federal Government shall serve without compensation, except for travel expenses, as provided under paragraph (2). Members of the task force who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) TRAVEL EXPENSES.—The members of the task force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the task force.

(3) STAFF.—

(A) IN GENERAL.—The Chairperson of the task force may, without regard to the civil service laws, appoint and terminate such personnel as may be necessary to enable the task force to perform its duties.

(B) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the task force may procure temporary and intermittent service under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed under GS–13 of the General Schedule established under section 5332 of title 5, United States Code.

(e) TERMINATION OF TASK FORCE.—The task force shall terminate 30 days after the date on which the task force submits its reports to the Congress and to Indian tribes under subsection (b)(2).

(f) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—All of the activities of the task force conducted under this title shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(g) PROHIBITION.—Beginning on the date of enactment of this Act, no provision of any internal manual or handbook or other written procedure purporting to govern the conduct of the Department in relation to Indian tribes shall be binding upon any Indian tribe unless that provision has been promulgated as a final regulation in accordance with applicable Federal law.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

By Mr. LEAHY (for himself, Mr. GREGG, Mr. JEFFORDS, Ms. SNOWE, Ms. COLLINS, Mr. SMITH of New Hampshire, Mr. MOYNIHAN, Mr. KERRY, and Mr. KENNEDY):

S. 546. A bill to implement the recommendations of the Northern Forest Lands Council; to the Committee on Agriculture, Nutrition, and Forestry.

THE NORTHERN FOREST STEWARDSHIP ACT

Mr. LEAHY. Mr. President, today I am pleased to join my colleague Senator GREGG and Senators JEFFORDS, SNOWE, COLLINS, MOYNIHAN, and SMITH in introducing the Northern Forest Stewardship Act of 1997 and the Family Forestland Preservation Tax Act. I am proud that this legislation has the entire support of the Senate delegations from the Northern Forest States of Vermont, New Hampshire, Maine, as well as Senators from other parts of the region.

Today's legislation is about empowering communities within the 26-million-acre Northern Forest—the largest contiguous forest east of the Mississippi River. This great natural resource criss crosses New York, Vermont, New Hampshire, and Maine. But as we near the end of the 20th century, growth pressures on the Northern Forest have increased. The thousands of people who live in this region have wrestled with how to maintain economies that provide jobs while preserving the environment that makes the region such a special place.

Recognizing the challenge facing these communities, Senator Warren Rudman and I sponsored the Northern Forest Lands Study in 1990. Thousands of people who live in the Northern Forest participated in the study which lasted 4 years. Upon the conclusion of the study, the Northern Forest Lands Council was established to develop specific recommendations to address the issues identified in the study.

As one might expect, the majority of these recommendations focused on local and State issues. However, some of the ideas proposed by the Northern Forest Lands Council requested changes in Federal law. Today, we are here to move forward the council recommendations that need these modifications.

Here is an example of what Congress can achieve when it heeds the public's voice. It is founded on extensive research, open discussion, consensus decisions, and visionary problem solving by the people who have a stake in the future of the forest. Legislation rarely embodies such a thorough effort by so diverse a constituency.

This legislation will reaffirm the council's vision of the Northern Forest as a working landscape of interlocking parts and pieces, reinforcing each other: small and rural communities, industrial forest land, family and individual ownerships, small woodlots, recreation land, public and private conservation land.

These bills focus on three key goals of the council: fostering stewardship of private land, building knowledge and information on forest resources, and increasing funds available for land conservation. These are goals shared by the people and representatives of the Northern Forest region and provide the foundation for the bipartisan support of this legislation in the House and the Senate.

This legislation also recognizes the extraordinary resources the 26-million-acre Northern Forest region provides to local communities and visitors

alike. The forests within the region are rich in natural resources and values cherished by residents and visitors: timber, fiber, and wood for forest products and energy supporting successful businesses and providing stable jobs for residents; lakes, ponds, rivers, and streams unspoiled by pollution or crowding human development; viable tracts of land for wildlife habitat and recreational use, and protected areas to help preserve the biological integrity of the region.

Given the nature of the council's recommendations, one piece of legislation to implement all the recommendations was not feasible, therefore we are introducing this package of bills. It is our hope that these bills will both be taken up in the appropriate committees of this Congress and will move through Congress as complementary legislation.

Passing this legislation is a priority for me personally and for Vermont. It will highlight the importance of the forest resources to our region and to the Nation. It will help State, local, and community groups draw upon Federal assistance to work toward the goals of the council. And, it will reaffirm these goals and the shared commitment to protect the environmental and economic heritage of the region.

Mr. President, I ask unanimous consent that the bill on the part of myself, and Senators GREGG, JEFFORDS, SNOWE, COLLINS, SMITH of New Hampshire, MOYNIHAN, KERRY of Massachusetts, and Mr. KENNEDY be introduced and appropriately referred.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. JEFFORDS. Mr. President, I am pleased to be an original cosponsor of the Family Forest Land Preservation Tax Act and the Northern Forest Stewardship Act and commend both Senator LEAHY and Senator GREGG for their leadership in these bills. Both bills include recommendations from the Northern Forest Lands Council that address the general consensus of the residents in the Northern Forest region.

Since the Northern Forest Lands Council's creation in 1990, hundreds of citizens have been seeking ways for Maine, New Hampshire, New York, and Vermont to maintain the traditional patterns of land ownership and use of the Northern Forest. For over 4 years the council conducted indepth research, assessed data, consulted with experts, held public meetings, and listened to thousands of people who live and work in the region. The recommendations that are incorporated in both the Stewardship Act and the Preservation Tax Act, represent the thoughtful work of many individuals who live and work in the Northern Forest region and hundreds of hours of forums and public meetings.

Mr. President, I am grateful and appreciate the dedication and vision of the members of the Northern Forest Lands Council and the thousands of people who participated in the process. I am grateful, because the 26-million-acre forest that stretches from eastern Maine through New Hampshire and Vermont and across New York provides important and valuable resources. This forest region is home to 1 million residents. The people that work and live in this region have a bond to the land. Hunting, fishing, trapping, walking, and hiking in the woods have been a way of life for generations.

Nearly 85 percent of the Northern Forest is privately owned. For years, these lands have provided a diversity of environmental and economic benefits. Families and individuals have taken care of their forests for generations providing economic viability to communities and overall economic health to the region as well as maintaining opportunities for recreation, natural beauty, and wildlife. The traditional values within the forest regions are also cherished by those who live outside the region. Seventy million people live within a day's drive of the Northern Forest. They too, realize the importance of the Northern Forest for its source of clean water, clean air, and vast diversity.

Mr. President, the Preservation Tax Act and the Stewardship Act are needed to protect and maintain the traditional and valuable uses of the Northern Forest. Complex social and economic forces, some originating outside the region, have led to competing and conflicting uses of the Northern Forest. These two bills will help keep the Northern Forest productive and protected.

The Family Forest Land Preservation Tax Act will help encourage private forest land owners to conserve their productive forests. Since well managed productive forests are such an essential element to the traditional values of the Northern Forest region, the Preservation Tax Act is vital to maintaining sound forest management. Although this bill was based on recommendation from citizens in the Northern Forest region, it will benefit forest lands in all States. It's important because it allows for post-mortem donations of conservation easements for estate tax purposes, creates an estate tax alternative for heirs who choose to maintain the property as forest land for 25 years, provides a partial inflation adjustment for timber, creates an incentive for the sale of conservation easements to public agencies, and eliminates the 100-hour passive loss rule for forest land income.

Mr. President, the Preservation Tax Act and the Stewardship Act are needed to relieve the pressure on forest land owners and provide incentives to maintain and protect the forests that so many work and enjoy. Both bills support the Northern Forest Council recommendations by promoting a sound foundation for a diversified economy and stable communities, opportunities for quality recreation, and long-term protection of the diversity of plant and animal species in the region. These bills are important steps in addressing the many interests in the Northern Forest region. Several years of participation and involvement from interested parties throughout the region have helped develop useful recommendations that recognize the diversified opportunities of one of the regions most important resources.

It is my hope that both bills will move swiftly through the Senate and House and become law. I urge my colleagues to support these bills.

By Mr. MCCAIN (for himself, Mrs. HUTCHISON, Mr. LOTT, Mr. STEVENS, Mr. NICKLES, Mr. CRAIG, Mr. ASHCROFT, and Mr. WARNER):

S. 547. A bill to provide for continuing appropriations in the absence of regular appropriations for fiscal year 1998; to the Committee on Appropriations.

THE GOVERNMENT SHUTDOWN PREVENTION ACT

Mr. MCCAIN. Mr. President, today I and Senator HUTCHISON and Senator LOTT and Senator NICKLES, Senator STEVENS, and Senator CRAIG are introducing the Government Shutdown Prevention Act. This bill creates a statutory continuing resolution as sort of a safety net CR, which would trigger only if the appropriation acts do not become law or if there is no governing continuing resolution in place.

I want to emphasize here, after a long series of negotiations with the House, with the advice and consent and leadership of the majority leader, Senator LOTT, and the active participation and leadership of Senator STEVENS especially, the chairman of the Appropriations Committee, negotiations with the Speaker, the Appropriations Committee chairman, Mr. LIVINGSTON, in the House, and also Majority Leader ARMEY, we have come up with this legislation.

Mr. President, this legislation is important. It must be done soon. I believe the lesson of the last 2 years is that we cannot allow the Government to be shut down again. Nor can we allow the threat of a Government shutdown to be so impactful that we fiscal conservatives are somehow forced to appropriate billions—in the case of last year around $8 billion—additional because of the threat of a Government shutdown. So, this is very important legislation. It is not something that I am idly throwing into the hopper.

I thank Senator HUTCHISON for her efforts and participation on this bill. What this legislation does is ensures that the Government will not shut

down and that Government shutdowns cannot be used for political games. This safety net continuing resolution basically would set spending for fiscal year 1998 at 98 percent of 1997 fiscal year levels.

In other words, the way this would work is if we could not get agreement on the appropriations bills, rather than the threat of a shutdown of Government or parts of Government because of failure to appropriate funding for their continued effort, this would be funded at 98 percent of the previous year's level. That would ensure, if any kind of standoff between the Congress and the White House occurs, that vital Government functions will continue and Government employees will continue to serve the public.

It is our intention to move this bill quickly. It is very important we act before the appropriations season begins in earnest. Therefore, it is the intent of Senator HUTCHISON and myself to move this bill as soon as possible, specifically on the emergency supplemental appropriations bill that will be before this body probably within a month or so.

We all saw the effects of gridlock in the past. No one wins when the Government shuts down. Shutdowns only confirm the American people's suspicions that we are more interested in political gain than doing the Nation's business. The American people are tired of gridlock. They want the Government to work for them, not against them. The budget process in the last Congress, in my view, was a fiasco and, more important, in the view of the American people.

Our Founding Fathers would have been ashamed of our inability to execute the power of the purse in a responsible fashion. I am sure they would have been quite shocked by the 27 days that the Government was shut down, 13 continuing resolutions, and almost $6 billion in blackmail money that was given the administration to ensure that the Government did not shut down a third time.

Although Republicans shouldered the blame for the Government shutdown, President Clinton and his colleagues were equally at fault for using it for their political gain. Republicans were outmaneuvered by President Clinton because we were not prepared for him to use the budget process for his own political purposes. We thought that by doing the right thing—passing the first balanced budget in a generation, and fiscally sound appropriations bills—that we would eventually prevail. What we did not realize was that the President was more interested in playing politics with the budget than actually balancing it. This year we have to be prepared for these games and launch a preemptive strike to ensure that basic Government operations will not be put at risk during the next budget battle.

This legislation does not erode the power of the appropriators and gives them ample opportunity to do their job. It is only if the appropriations process is not completed by the beginning of the fiscal year, as was the case in the last Congress, that the safety net continuing resolution will go into effect.

In addition, I emphasize that entitlements are fully protected in this legislation. The bill specifically states that entitlements such as Social Security—as obligated by law—will be paid regardless of what appropriations bills are passed or not passed.

According to President Clinton, the combined cost of last year's Government shutdown was $1.5 billion. However, this figure does not begin to account for the millions of dollars lost by small businesses who depend on the Government being open. In my State of Arizona, during the Government shutdown the Grand Canyon was closed for the first time in 76 years. I heard from people who work close to the Grand Canyon. These were not Government employees. These were independent small business men and women. They told me that the shutdown cost them thousands of dollars because people could not go to the park. According to a CRS report, local communities near national parks alone lost an estimated $14.2 million per day in tourism revenues as a direct result of the Government shutdown, for a total of nearly $400 million over the course of the shutdown.

The cost of the Government shutdown cannot be measured in just dollars and cents. During the shutdown millions of Americans could not get crucial social services. For example, 10,000 new Medicare applications, 212,000 Social Security card requests, 360,000 individual office visits and 800,000 toll-free calls for information and assistance were turned away each day. There were even more delays in services for some of the most vulnerable in our society, including 13 million recipients of AFDC, 273,000 foster care children, over 100,000 children receiving adoption assistance services and over 100,000 Head Start children—not to mention the new patients that were not accepted into clinical research centers, the 7 million visitors who could not attend national parks, or the 2 million visitors turned away at museums and monuments. And the list goes on and on.

In addition, our Federal employees were left in fear wondering whether they would be paid, would they have to go to work, would they be able to pay their bills on time. In my State of Arizona, for example, of the 40,383 Federal employees, over 15,000 of them were furloughed in the last Government shutdown. I do not want to put these workers at risk ever again.

A 1991 GAO report confirmed that permanent funding lapse legislation is a necessity. In their report they stated, "Shutting down the Government during temporary funding gaps is an inappropriate way to encourage compromise on the budget."

Neither party can afford another break of faith with the American people. Our constituents are tired of constantly being disappointed by the actions of Congress and the President. They are tired of our not being prepared for what appears to be the inevitable. That is why this legislation is so important. We want the American people to know that there are some of us in Congress who are thinking ahead and who do not want a replay of the last Congress.

I want to especially note the support of our good friend, Senator STEVENS, the distinguished Senator from Alaska and chairman of the Appropriations Committee. His support of this bill is crucial, and I thank him for it. I wish him well in overseeing the appropriations process.

While I am sure we will all have our differences, I am confident he will be able to do his best to ensure that the Senate enacts the appropriations bills in an efficient and expeditious manner. Let us show the American people that we have learned our lessons from the last Congress. Passing this preventive measure will go a long way to restore America's faith that politics or stalled negotiations will not stop Government operations. It will prove to our constituents that we will never again allow a Government shutdown or threat of Government shutdown to be used for political gain. I hope the Senate will act quickly on this important matter.

I thank the Senator from Texas, Senator HUTCHISON, who is on the floor, for her continued efforts on behalf of this legislation. The State of Texas is a very large State. It was very heavily impacted, as was my State. As I say, we fully intend to move this legislation onto the supplemental appropriations bill, which should be before the body either this month or sometime next month.

I want to say that this is not an idea that Senator HUTCHISON and I came up with. It was an idea that is supported throughout the Congress. We engaged in serious and sincere negotiations with the leader, Senator LOTT, whose leadership was vital in this endeavor.

Mrs. HUTCHISON. Mr. President, I thank the Senator from Arizona because he and I talked about this when we saw the debacle of the closing of the Government 2 years ago. We thought this is not the way to run a railroad or a government.

We have talked about this for a long time, but it was Senator MCCAIN who said we are going to fix this and we are going to fix it in a responsible way. The Senator from Arizona has provided great leadership, and with the Senator

from Arizona, we have gotten the other leaders of our Congress—we certainly have Senator STEVENS, the chairman of the Appropriations Committee, who deserves a lot of credit for helping on this; the majority leader, Senator LOTT; the majority whip, Senator NICKLES; Senator CRAIG; Senator ASHCROFT, and many Members have been talking about what we can do to run this Government in a responsible way. So the Senator from Arizona and I are introducing this bill together to try to provide for a good, solid, easy way to make sure that things keep going if we get bogged down in tough negotiations.

This may seem like a kind of small, inside-the-beltway-process issue. People might say, "A continuing resolution, so what, big deal, why are you doing that?" This small thing will have huge ramifications if any parts of our Government are not funded on September 30, because what happens is that when you get into the heat of negotiations, threat of Government shutdowns become a leverage point for one or the other side. It can work either way.

But the issue is the American people, the people who were mentioned by Senator MCCAIN, the Federal employees and their families not knowing for sure that they are going to get paychecks, people who have planned their family vacations for over a year and they go to the Grand Canyon and it is closed or they come to Washington, DC, to visit this Capitol and it is closed or they cannot get into the Smithsonian or the National Gallery of Art; people who are planning their vacations or business travel and they find their passport has expired and they cannot get a new passport, so their dreams go up in smoke—these are people who are affected by a shutdown of Government.

This very small process issue becomes a real quality-of-life issue for everyone in our country who is in need of regular Government service. That is why we are acting now. We are trying to provide for a smooth transition if we bog down in negotiations, hitting against the end of the fiscal year, September 30 of this year. We want to make sure that if we in Congress cannot agree with the President that we are still able to negotiate in good faith for what is right, rather than bumping up against a deadline and fearing that Government is going to shut down and cause a disruption in the lives of so many families in our country.

We wanted to do it right now. As Senator MCCAIN said, we are intending to put this bill on the supplemental resolution that will be coming before Congress probably by the end of this month. We want to do it now before the heat of battle so that we will know that this is not going to be a tool used by either side.

Some people have said, "Does this cut for Republicans or does it cut for Democrats?" It cuts for the American people. It might go either way. It might hurt Republicans, it might hurt Democrats, but who will not get hurt if we pass this are the people of America, and that is who we are here to represent.

I want to talk for a minute about the 98 percent that we are going to fund in the continuing resolution. People may say, "Well, why not 100 percent, why not 90 percent?" We wanted 98 percent because in our original budget resolution, when Congress decided to get serious about balancing the budget of this country, we set a trajectory starting at fiscal year 1995, actually and going to the year 2002 that would have a cut of about 2 percent each year in the growth rate of spending, because we felt that that was a responsible approach.

Ninety-eight percent is a 2-percent cut in the 1997 budget that we are in right now. A 2-percent cut makes sure that we are not going to go over our budget projections and hurt our ability to balance the budget if, in fact, we go into this continuing resolution. But it also funds at 98 percent, which I think is virtually full funding, programs that are ongoing and necessary.

If there is any agency in Government that cannot do with 98 percent of its present budget, then I would like to introduce them to the real people in America who have had to balance budgets and cut budgets every day of their lives. I think 98 percent is certainly something that the Government can live with, because we know that families and businesses in this country have cut much more than 2 percent in any fiscal year in their own lives. We think 98 percent covers expenses responsibly, but it keeps within our budget projections so that we have the ability to slow the rate of growth of spending, and so the Congress still has some leeway to make the decisions going into the next fiscal year of what actually needs to be cut without running, if we did go 2 or 3 months, into having to cut more because we were overspending in some areas. So that is how we came up with the number of 98 percent.

Mr. President, I think we are taking a very responsible action today. I hope that we will have 100 percent vote in the Senate. I have not really talked to anyone who is against this bill, but I think it is something if we can agree on in a bipartisan way, we will clearly make the people of America sure that we are not going to have some kind of disruption in their lives, whether it is their family vacation or business travel or going into a museum or a national park they would like to go into or, if you are a Federal employee or a veteran, we do not want you to worry that your pay or your benefits are going to be there.

This will provide for that smooth transition, and I hope Congress will take this responsible action, do this now before we even know what the issues are so that the smooth transition is there and we can negotiate on the budget in a way that is responsible, that does meet the needs of our country, but also makes sure that in the end, we are going to continue to march toward the year 2002 with a balanced budget for the United States of America.

I am very pleased to be able to cosponsor with Senator MCCAIN the McCain-Hutchison Government Shutdown Prevention Act. We are joined in the cosponsorship by Senators STEVENS, NICKLES, CRAIG, ASHCROFT, our majority leader, Senator LOTT, and I ask unanimous consent that Senator WARNER be added as a cosponsor.

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

Mrs. HUTCHISON. Those are the original cosponsors. I hope that we have 100 cosponsors by the time this bill comes to the floor. I would like for it to go on a voice vote. That may be a pipe dream, but, nevertheless, I think it would be responsible Government, and I think it would be right for the American people.

Mr. CRAIG. Mr. President, I rise to join Senators HUTCHISON of Texas and MCCAIN, Chairman STEVENS, our majority leader, Senator LOTT, and others, as an original cosponsor of the Government Shutdown Prevention Act.

Under this bill, if fiscal year 1998 starts before any of the 13 regular appropriations bills become law, no part of the Government would shut down because of the delay.

Funding would automatically continue at 98 percent of fiscal year 1997 levels.

Some of us feel 98 percent is too high. And automatic continuing appropriations may not be the perfect way to fund programs.

But this process would meet two important tests, best described by two old, familiar rules of thumb:

There is an old saying: "When you find yourself in a hole, stop digging."

And we all know the First Rule of Medicine: "Do no harm."

These two rules of thumb explain why we need the Government Shutdown Prevention Act.

This is not a long-term, structural change in the budget process. It's not a plan to balance the budget. But it is a very much-needed stopgap reform, in case of another budget impasse. Indeed, it may prevent such an impasse.

It will help us work toward a balanced budget, without disrupting the lives and work of millions of innocent bystanders, both inside and outside the Federal Government.

The first step toward balancing the budget is, stop digging.

For 36 of the last 37 years, the government has overspent. Every year, no matter what the process, no matter

what the negotiations, spending goes up.

Many times—not just last year—liberals have threatened to shut down the government if they didn't get their spending hikes.

This bill says, "No More!" to that upward spiral. If there's gridlock, at least spending will not go up as a result. It will go down, just slightly.

We also need to remind the budget doctors: Do no harm.

In the last two Government shutdowns, in Idaho—We had a VA hospital wonder if it would have critical medicines on hand from week to week; we had small businesses wonder if they should deliver goods that Government offices had ordered—and if they would ever get paid; and we had Government workers first worry about feeding their families and making their house payments, and then outraged that they were ordered not to do the jobs they and other taxpayers were paying for.

This bill says, "We will not allow these innocent Americans to be taken hostage again, by either side in a budget dispute."

Keeping the Government open at 98 percent of current spending is a responsible, fair, even generous formula. And it is consistent with the reasonable fiscal restraint that we have begun, with the last Congress, to work for.

The time to pass this reform is now.

Once the appropriations process begins in earnest, too many parties are going to look at any reform like this in terms of whether they win or lose, compared with what's in their appropriations bill, or what they might get if their allies threaten another Government shutdown.

Now is the time we are most likely to see this reform judged on it own merits, for what it is: Shutdown prevention, a level playing field, legislation for the public good.

I urge my colleagues to join as cosponsors of this bill, and to support every effort to enact this reform into law as quickly as possible.

By Mr. LUGAR:

S. 549. A bill to amend the Internal Revenue Code of 1986 to provide that certain cash rentals of farmland will not cause recapture of special estate tax valuation; to the Committee on Finance.

S. 550. A bill to amend the Internal Revenue Code of 1986 to increase the gift tax exclusion to $25,000; to the Committee on Finance.

ESTATE AND GIFT TAX LEGISLATION

Mr. LUGAR. Mr. President, I introduce two pieces of legislation aimed at minimizing the burden of the estate and gift tax on Americans. The first would provide Americans with a powerful estate tax planning tool by raising the tax-free gift limit to $25,0000 from the current $10,000. The second bill would correct a longstanding agricultural problem that effectively limits the ability of farmers to rent farmland that they have inherited to other family members.

The Senate Agriculture Committee held hearings at the end of February to study the impact of estate and gift taxes on farmers. As a farmer and chairman of the Agriculture Committee, I understand the far-reaching effect that the inheritance tax has on rural America. Testimony revealed that farmers are six times more likely to pay estate taxes than other Americans due to the capital-intensive nature of the farm business. Commercial farms, those core farms that produce 85 percent of the Nation's agricultural products, may be 15 times more likely to pay inheritance taxes than other individuals. As the average age of farmers approaches 60 years, a quarter of all farmers could confront the inheritance tax over the next 20 years.

I have already introduced three comprehensive bills on this subject—the first bill would eliminate the inheritance tax entirely; the second phases it out gradually; and the third raises the unified credit exemption to $5 million from the current $600,000 level. By raising the level of exempted property to this amount, the Federal Government would relieve 96 percent of the Americans who currently file estate tax returns from this burden.

Although repeal of this tax ultimately is the best course of action, I understand that sufficient momentum may not exist to achieve this end. In the mean time, Congress should provide Americans with estate planning alternatives that help facilitate the passing of their estates to the next generation. These two bills further this goal.

The first bill would simply raise the yearly nontaxable gift amount from the current $10,000 to $25,000. Congress unified the estate and gift titles of the Tax Code in 1976, subjecting a decedent's lifetime taxable gifts and taxable estate to one rate structure. Under current law, the first $10,000 of gifts made by a donor during a calendar year to any individual are not included in the donor's taxable gift amount for that year. Nor does this $10,000 gift lower the decedent's unified credit exemption, which allows each individual to pass on $600,000 of assets without incurring estate and gift taxes. Over the years, inflation has eroded this $10,000 amount, which has not been increased since 1982. Under my proposal, individuals could give $25,000 each year without estate and gift tax consequence. Through the current practice known as "gift splitting," a couple could give up to $50,000 tax free each year. Raising the gift exemption amount would be a positive first step for Congress to take in helping with the transfer of family businesses and farms to the next generation.

My second bill would correct a longstanding agricultural problem in the Tax Code that disqualifies farm heirs from receiving special use valuation for estate tax purposes because they cash leased the farm property to another member of the family. Section 2032A of the Tax Code provides heirs the option of valuing qualified farm property at its current use rather than valuing the property at its highest and most developed use. If the heir who inherited the property ceases to use it in its qualified use within 10 years, an additional recapture tax is imposed to regain the benefit of the special use valuation. Some tax courts have held that the cash leasing of the property to members of the decedent's family is not a qualified use, thus triggering the recapture tax provision. Congress partially fixed this problem in 1988 in regard to spouses, but other qualified heirs remain unable to cash lease the property to members of the family. My legislation would correct this wrinkle in the law by allowing qualified heirs to cash lease the inherited special use property to members of the decedent's family or members of the spouse's family without triggering the recapture tax. This bill is retroactive to December 31, 1976, when section 2032A was enacted into law.

Congress intended to grant family businesses and farms some level of protection from the estate and gift tax through section 2032A, and farmers have relied on this provision for estate planning purposes over the years. During the Senate Agriculture hearings on estate taxes, the U.S. Department of Agriculture testified that the special use valuation reduced the number of taxable estates and the total Federal estate and gift taxes for all farm estates by about one-third. The American Farmland Trust gave witness to the fact that more than half of farm production in the United States occurs in counties that are metropolitan or adjacent to metropolitan areas. Without special use valuation for estate tax purposes, much of our Nation's agricultural land would be valued as strip malls or housing developments, rather than as farmland. Lessening the gross estate through section 2032A allows the next generation of farmers to maintain this land in agricultural production and helps slow urban sprawl. My legislation would make this good provision better.

Mr. President, I am hopeful that my Senate colleagues will join me in supporting these two estate and gift tax initiatives that provide Americans with means for protecting their lifetime of savings and hard work. I ask unanimous consent that both bills be printed in the RECORD.

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

S. 549

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN CASH RENTALS OF FARMLAND NOT TO CAUSE RECAPTURE OF SPECIAL ESTATE TAX VALUATIONS.

(a) IN GENERAL.—Subsection (c) of section 2032A of the Internal Revenue Code of 1986 (relating to tax treatment of dispositions and failures to use for qualified use) is amended by adding at the end the following new paragraph:

"(8) CERTAIN CASH RENTAL NOT TO CAUSE RECAPTURE.—For purposes of this subsection, a qualified heir shall not be treated as failing to use property in a qualified use solely because such heir rents such property on a net cash basis to a member of the decedent's family or a member of the decedent's spouse's family, but only if, during the period of the lease, such member uses such property in a qualified use."

(b) CONFORMING AMENDMENT.—Section 2032A(b)(5)(A) of such Code is amended by striking the last sentence.

(c) EFFECTIVE DATE; WAIVER.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to rentals occurring after December 31, 1976.

(2) WAIVER OF STATUTE OF LIMITATION.—If on the date of enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of enactment of this Act.

S. 550

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN GIFT TAX EXCLUSION

(a) IN GENERAL.—Section 2503(b) of the Internal Revenue Code of 1986 (relating to exclusions from gifts) is amended by striking "$10,000" and inserting "$25,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to gifts made after December 31, 1997.

By Mr. GREGG:

S. 551. A bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions; to the Committee on Labor and Human Resources.

THE OSHA MODERNIZATION ACT

Mr. GREGG. Mr. President, I rise in introducing the Occupational Safety and Health Modernization Act. Let me say at the outset that in proposing and considering OSHA reform, worker safety was my first concern. I am firmly committed to ensuring a safe and healthy workplace and will not support legislation which puts that in jeopardy. I believe in this bill that I have accomplished a true modernization of OSHA without compromising the safety of our workers in any way.

Throughout my career in public office, I have worked to make government more efficient and more user and consumer friendly. Federal Government agencies have grown so large and become so bureaucratic that they are often not providing the kinds of personal services and proper oversight that was originally intended when they were created. Too often Government carries a heavy stick, but no carrot, when it interacts with individual citizens and businesses throughout our country.

I believe that it is high time we take a close look at how we can improve the way Government works and, at the same time, provide incentives for the private sector to act more responsibly. Americans will be better served in a climate where people in government, and in business, can work together to solve problems in a spirit of cooperation, rather than in an atmosphere strictly of threats, intimidation, and punitive measures.

When OSHA was enacted, its intended purpose was to make the workplace free from "recognized hazards that are causing, or likely to cause death or serious physical harm to * * * employees." As is the case with many programs established by Congress over the years, OSHA has developed a well-earned reputation for over-regulation. OSHA has moved from its original purpose of protecting workers to hindering businesses with excessive mandates.

While I feel that much of the problem within OSHA is of a cultural nature, the bill we are introducing today will concentrate on relieving OSHA's oppressive and burdensome regulations, thereby removing a feeling among American employers and employees that OSHA is the "bad cop." My legislation puts in place partnerships for assuring safety and health in the workplace.

This balanced approach will include a consultation program, voluntary compliance and third party certification, employee involvement, warnings in lieu of citations for nonserious violations, and reduced penalties for nonserious violations. This legislation will use incentives, rather than penalties, to enhance workplace safety. It will allow companies with clean safety records to implement their own health and safety programs.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 551

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 "OSHA Modernization 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. EMPLOYEE PARTICIPATION.

Section 4 (29 U.S.C. 653) is amended by adding at the end the following:

"(c) In order to carry out the purpose of this Act to encourage employers and employees in their efforts to reduce the number of occupational safety and health hazards, an employee participation program—

"(1) in which employees participate;

"(2) which exists for the purpose, in whole or in part, of dealing with employees concerning safe and healthful working conditions; and

"(3) which does not have, claim, or seek authority to negotiate or enter into collective bargaining agreements with the employer or to amend existing collective bargaining agreements between the employer and any labor organization,

shall not constitute a labor organization for purposes of section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) or a representative for purposes of sections 1 and 2 of the Railway Labor Act (45 U.S.C. 151 and 151a). Nothing in this section shall be construed to affect employer obligations under section 8(a)(5) of the National Labor Relations Act (29 U.S.C. 158(a)(5)) to deal with a certified or recognized employee representative with respect to health and safety matters to the extent otherwise required by law.".

SEC. 3. INSPECTIONS.

(a) TRAINING AND AUTHORITY OF SECRETARY.—Section 8 (29 U.S.C. 657) is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following:

"(g)(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) any person who is engaged in a farming operation that does not maintain a temporary labor camp and that employs 10 or fewer employees; or

"(B) any employer of not more than 10 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 persons who are not engaged in farming operations, paragraph (1) shall not be construed to prohibit the Secretary from—

"(A) providing consultations, technical assistance, and educational and training services and conducting surveys and studies under this Act;

"(B) conducting inspections or investigations in response to complaints of employees, issuing citations for violations of this Act found during the inspections, and assessing a penalty for the violations that are not corrected within a reasonable abatement period;

"(C) taking any action authorized by this Act with respect to imminent dangers;

"(D) 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 the hospitalization of at least 3 employees, and taking any action pursuant to an investigation conducted with respect to the report; and

"(E) taking any action authorized by this Act with respect to complaints of discrimination against employees for exercising the rights of the employees under this Act.".

(b) 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 a representative of an employee who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by providing notice of the violation or danger to the Secretary or an authorized representative of the Secretary.

"(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 whether the alleged violation or danger described in subparagraph (A) has been brought to the attention of the employer and if so, whether 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 the representative of the employee and a copy shall be provided to the employer or the agent of the employer not later than the time of arrival of an occupational safety and health agency inspector to conduct the inspection.

"(ii) Upon the request of the person providing the notice under subparagraph (A), the name of the person and the names of individual employees referred to in the notice shall not appear in the copy of the notice or on any record published, released, or made available pursuant to subsection (i).

"(D)(i) If, upon receipt of the notice under subparagraph (A), the Secretary determines that there are reasonable grounds to believe the violation or danger described in subparagraph (A) exists, the Secretary may conduct an inspection in accordance with this subsection as soon as practicable. Except as provided in clause (ii), the inspection shall be conducted for the limited purpose of determining whether the violation or danger exists.

"(ii) During an inspection described in clause (i), the Secretary may take appropriate actions with respect to health and safety violations that are not within the scope of the inspection and that are observed by the Secretary or an authorized representative of the Secretary during the inspection.

"(2) If the Secretary determines either before, or as a result of, an inspection conducted under this subsection 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 employee representative of the determination and, upon request by the employee or employee representative, shall provide a written statement of the reasons for the determination of the Secretary.

"(3) The Secretary or an authorized representative of the Secretary may, as a method of investigating an alleged violation or danger under this subsection, attempt, if feasible, to contact an employer by telephone, facsimile, or other appropriate methods to determine whether—

"(A) the employer has taken corrective actions with respect to the alleged violation or danger; or

"(B) there are reasonable grounds to believe that a hazard exists.

"(4) The Secretary is not required to conduct an inspection under this subsection if the Secretary determines that a request for an inspection was made for reasons other than the safety and health of the employees of an employer or that the employees of an employer are not at risk.".

SEC. 4. WORKSITE-BASED INITIATIVES.

(a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is amended by inserting after section 8 the following:

"SEC. 8A. HEALTH AND SAFETY MODERNIZATION INITIATIVES.

"(a) IN GENERAL.—The Secretary shall 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 for a place of employment maintained by an 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) EXEMPTION REQUIREMENTS.—To qualify for an exemption under subsection (b), an employer shall provide to the Secretary evidence that, with respect to the employer—

"(1) during the preceding year, the place of employment or conditions of employment have been reviewed or inspected under—

"(A) a consultation program provided by recipients of grants under section 7(c)(1) or 23(g);

"(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 a qualified person certified by the Secretary, for purposes of providing workplace consultations,

that includes a means of ensuring that serious hazards identified in a consultation are corrected within an appropriate time and that, where applicable, permits an employee (of the employer) who is a representative of a health and safety employee participation program to accompany a consultant during a workplace inspection; or

"(2) the place of employment has an exemplary safety and health record and the employer maintains a safety and health program for the workplace that includes—

"(A) procedures for assessing hazards to the employees of the employer that are inherent to the operations or business of the employer;

"(B) procedures for correcting or controlling the hazards in a timely manner based upon the severity of the hazards; and

"(C) an employee participation program that, at a minimum—

"(i) includes regular consultation between the employer and the nonsupervisory employees of the employer regarding safety and health issues;

"(ii) includes 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

"(iii) ensures that the participating nonsupervisory employees of the employer have training or expertise on safety and health issues consistent with the responsibilities of the employees.

"A person that conducts a review or inspection under paragraph (1)(B) shall meet standards established by the Secretary and shall be certified by the Secretary.

"(d) MODEL PROGRAM.—The Secretary shall publish and make available to employers a model safety and health program that if completed by the employer shall be considered to meet the requirements for an exemption under this section.

"(e) CERTIFICATION.—The Secretary may require that, to claim the exemption under subsection (b), an employer provides certification to the Secretary and notice to the employees of the employer of the eligibility of the employer for the exemption. The Secretary may conduct random audits of the records of employers to ensure against falsification of the records by the employers.

"(f) RECORDS.—Records of a safety and health inspection, audit, or review that is conducted by an employer and that is not conducted under a program described in subsection (a) shall not be required to be disclosed to the Secretary unless—

"(1) the Secretary is conducting an investigation involving a fatality or a serious injury of an employee of the employer; or

"(2) the employer has not taken measures to address serious hazards in the workplace of the employer identified during the inspection, audit, or review.".

(b) DEFINITION.—Section 3 (29 U.S.C. 652) is amended by adding at the end the following:

"(15) The term 'exemplary safety and health record' means a record that the Secretary shall establish annually for each industry that identifies the employers in the industry that provide safe and healthful working conditions for the employees of the employers. The record shall include employers that have had, in the most recent reporting period, 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. 5. 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) the 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 the employees by the employer and the employer has taken reasonable measures to discipline employees when violations of the work rules have been discovered;

"(3) the failure of employees to observe work rules led to the violation; and

"(4) reasonable measures have been taken by the employer to discover any such violation.

"(e) A citation issued under subsection (a) to an employer who violates the requirements of section 5, 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. 6. INSPECTION QUOTAS.

Section 9 (29 U.S.C. 658), as amended by section 5, is further amended by adding at the end the following:

"(g) The Secretary shall not establish any quota for any subordinate within the Occupational Safety and Health Administration (including any regional director, area director, supervisor, or inspector) with respect to the number of inspections conducted, citations issued, or penalties collected.".

SEC. 7. WARNINGS IN LIEU OF CITATIONS.

Subsection (a) of section 9 (29 U.S.C. 658(a)) is amended to read as follows:

"(a)(1) Except as provided in paragraph (2), if, upon an inspection or investigation, the Secretary or an authorized representative of the Secretary believes that an employer has violated a requirement of section 5, of any regulation, rule, or order promulgated pursuant to section 6, or of any regulations prescribed pursuant to this Act, the Secretary may with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of an violation, including a reference to the provision of the Act, regulation, rule, or order alleged to have been violated. The citation shall fix a reasonable time for the abatement of the violation.

"(2) The Secretary or the authorized representative of the Secretary—

"(A) may issue a warning in lieu of a citation with respect to a violation that has no significant relationship to employee safety or health; and

"(B) may issue a warning in lieu of a citation in cases in which an employer in good faith acts promptly to abate a violation if the violation is not a willful or repeated violation.

"(3) Nothing in this Act shall be construed as prohibiting the Secretary or the authorized representative of the Secretary from providing technical or compliance assistance to an employer in correcting a violation discovered during an inspection or investigation under this Act without issuing a citation.".

SEC. 8. REDUCED PENALTIES FOR NONSERIOUS VIOLATIONS AND MITIGATING CIRCUMSTANCES.

Section 17 (29 U.S.C. 666) is amended—

(1) in subsection (c), by striking "up to $7,000" and inserting "not more than $100";

(2) by striking subsection (i) and inserting the following:

"(i) Any employer who violates any of the posting or paperwork requirements, other than serious or fraudulent reporting requirement deficiencies, prescribed under this Act shall not be assessed a civil penalty for such a violation unless the Secretary determines that the employer has violated subsection (a) or (d) with respect to the posting or paperwork requirements."; and

(3) by striking subsection (j) and inserting the following:

"(j)(1) The Commission shall have authority to assess all civil penalties under this section. In assessing a penalty under this section for a violation, the Commission shall give due consideration to the appropriateness of the penalty with respect to—

"(A) the size of an employer;

"(B) the number of employees exposed to the 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;

"(G) the effect of the penalty on the ability of an employer to stay in business;

"(H) the history of previous violations by an employer; and

"(I) whether the violation is the sole result of the failure of an employer to meet a requirement under this Act, or prescribed by regulation, with respect to the posting of notices, the preparation or maintenance of occupational safety and health records, or the preparation, maintenance, or submission of any written information.

"(2)(A) A penalty assessed under this section shall be reduced by not less than 25 percent in any case in which the employer—

"(i) maintains a safety and health program described in section 8A(a) for the worksite where the violation, for which the penalty was assessed, occurred; or

"(ii) demonstrates that the worksite where the violation, for which the penalty was assessed, occurred has an exemplary safety and health record.

If the employer maintains a program described in clause (i) and has the record described in clause (ii), the penalty shall be reduced by not less than 50 percent.

"(B) A penalty assessed against an employer for a violation other than a violation that—

"(i) has been previously cited by the Secretary;

"(ii) creates an imminent danger;

"(iii) has caused death; or

"(iv) has caused a serious incident,

shall be reduced by not less than 75 percent if the worksite where the violation occurred has been reviewed or inspected under a program described in section 8A(c)(1) during the 1-year period before the date of the citation for the violation, and the employer has complied with recommendations by the Secretary to bring the employer into compliance within a reasonable period of time.".

SEC. 9. CONSULTATION SERVICES.

Section 21(c) (29 U.S.C. 670(c)) is amended—

(1) by striking "(c) The" and inserting "(c)(1) The"; and

(2) by adding at the end the following:

"(2)(A) The Secretary shall, through the authority granted under section 7(c) and paragraph (1), enter into cooperative agreements with States for the provision of consultation services by such States to employers concerning the provision of safe and healthful working conditions. A State that has a plan approved under section 18 shall be eligible to enter into a cooperative agreement under this paragraph only if the plan does not include provisions for federally funded consultation to employers.

"(B)(i) Except as provided in clause (ii), the Secretary shall reimburse a State that enters into a cooperative agreement under subparagraph (A) in an amount that equals 90 percent of the costs incurred by the State for the provision of consultation services under such agreement.

"(ii) A State shall be fully reimbursed by the Secretary for—

"(I) training approved by the Secretary for State staff operating under a cooperative agreement; and

"(II) specified out-of-State travel expenses incurred by the staff.

"(iii) A reimbursement paid to a State under this subparagraph shall be limited to costs incurred by such State for the provision of consultation services under this paragraph and the costs described in clause (ii).

"(C) Notwithstanding any other provision of law, not less than 15 percent of the total amount of funds appropriated for the Occupational Safety and Health Administration for a fiscal year shall be used for education, consultation, and outreach efforts.".

SEC. 10. VOLUNTARY PROTECTION PROGRAMS.

(a) COOPERATIVE AGREEMENTS.—The Secretary of Labor shall establish cooperative agreements with employers to encourage the establishment of comprehensive safety and health management systems that include—

(1) requirements for systematic assessment of hazards in the workplace;

(2) comprehensive hazard prevention, mitigation, and control programs;

(3) active and meaningful management and employee participation in the voluntary program described in subsection (b); and

(4) employee safety and health training.

(b) VOLUNTARY PROTECTION PROGRAM.—The Secretary of Labor shall establish a voluntary protection program to encourage the achievement of excellence in both the technical and managerial protection of employees from occupational hazards as follows:

(1) APPLICATION.—Volunteers for the program shall be required to submit an application to the Secretary of Labor demonstrating that the worksite with respect to which the application is made meets such qualifications as the Secretary of Labor may prescribe for participation in the program.

(2) ONSITE EVALUATIONS.—The representatives of the Secretary of Labor shall conduct onsite evaluations of the worksite of the participants in the program to ensure a high level of protection of employees of the participants. The onsite evaluations shall not result in enforcement citations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), unless representatives of the Secretary of Labor observe hazards for which no agreement can be made to abate the hazards within a reasonable time period.

(3) INFORMATION.—Volunteers who are approved by the Secretary of Labor for participation in the program shall assure the Secretary of Labor that information about the safety and health program of the volunteers shall be made readily available to the Secretary of Labor to share with employers.

(4) REEVALUATIONS.—Periodic reevaluations by the Secretary of Labor of the volunteers shall be required for continued participation in the program.

(5) EXEMPTIONS.—A site with respect to which a program has been approved shall, during participation of a volunteer in the program, be exempt from inspections and certain paperwork requirements to be determined by the Secretary of Labor, except that this paragraph shall not apply to inspections arising from employee complaints, fatalities, catastrophes, or significant toxic releases.

(c) ANNUAL FEE.—The Secretary of Labor may charge an annual fee to participants in a voluntary protection program described in subsection (b). The fee shall be in an amount determined by the Secretary of Labor, and amounts collected shall be deposited in the general treasury of the United States.

By Mr. GREGG (for himself, Mr. LEAHY, Mr. JEFFORDS, Ms. COLLINS, Ms. SNOWE and Mr. SMITH of New Hampshire):

S. 552. A bill to amend the Internal Revenue Code of 1986 to preserve family held forest lands, and for other purposes; to the Committee on Finance.

THE FAMILY FORESTLAND PRESERVATION TAX ACT OF 1997

Mr. GREGG. Mr. President, I introduce the Family Forestland Preservation Tax Act of 1997 on behalf of myself, Mr. LEAHY, Mr. JEFFORDS, Mr. D'AMATO, Ms. COLLINS, Ms. SNOWE, and Mr. SMITH of New Hampshire. This bill amends several key tax provisions to help landowners keep their lands in long-term private forest ownership and management. Without these changes, many landowners will continue to be forced to sell or change the use of their land.

This bill derives from four years of work by the Northern Forest Lands Council [NFLC]. The NFLC was created in 1990 to seek ways for Maine, New Hampshire, Vermont, and New York to maintain the traditional patterns of land ownership and use in the forest that covers this Nation's Northeast. The Northern Forest is a 26-million-acre stretch of land, home to 1 million residents and within a 2-hour drive of 70 million people. Nearly 85 percent of the forest is privately owned. Times have changed, however, and social and economic forces have begun to affect the traditional patterns of land use with more and more land being marketed for development.

This bill will help maintain traditional patterns and, thus, preserve the forest by adjusting several estate tax provisions. This bill would allow heirs to make postmortem donations of conservation easements on undeveloped estate land and allow the valuation of undeveloped land at current use value for estate tax purposes if the owner or heir agrees to maintain the land in its current use for a period of 25 years. This bill also would establish a partial inflation adjustment for timber sales by allowing a tax credit not to exceed 50 percent. This will encourage landowners to maintain their timberland for long-term stewardship, which is both economically and environmentally desirable. Also, the bill would eliminate the requirement that landowners generally must work 100-hours-per-year in forest management on their forest properties to be allowed to deduct normal management expenses from timber activities against nonpassive income. Currently, landowners are required to capitalize these losses until timber is harvested. This legislation, though prompted by the NFLC's work, will benefit not only the four states that make up the Northern Forest, but also all States with forest land and all who enjoy the multiple uses of forest land. I urge my colleagues to support this bill, which will not only protect the historic current use patterns, but also allow the rustic beauty of our forests to be enjoyed by all.

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. 552

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Family Forestland Preservation Tax Act of 1997".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—ESTATE TAX PROVISIONS

SEC. 101. ESTATE TAX TREATMENT OF QUALIFIED CONSERVATION EASEMENT.

(a) IN GENERAL.—Section 2031 (relating to the definition of gross estate) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) EXCLUSION OF CONSERVATION EASEMENT.—

"(1) IN GENERAL.—If an executor elects the application of this subsection, with respect to any real property included in the gross estate, there shall be excluded from the gross estate the value of a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest described in section 170(h)(2)(C) in such real property made by the decedent or a member of the decedent's family within 9 months after the date of the decedent's death.

"(2) CERTAIN CONTRIBUTIONS NOT INCLUDED.—For purposes of paragraph (1), section 170(h)(4)(A) shall be applied without regard to clause (iv) thereof in determining whether there is a qualified conservation contribution.

"(3) FAMILY MEMBER.—For purposes of paragraph (1), the term 'member of the decedent's family' has the same meaning given such term by section 2032A(e)(2).

"(4) ELECTION.—An election under paragraph (1) shall be made on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable."

(b) CARRYOVER BASIS.—Section 1014(a) (relating to basis of property acquired from a decedent) is amended by striking the period at the end of paragraph (3) and inserting ", or", and by inserting at the end the following new paragraph:

"(4) in the case of property subject to a qualified conservation easement excluded from the gross estate of the decedent under section 2031(c), the basis of the property in the hands of the decedent."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1997, which include land subject to qualified conservation easements granted after December 31, 1997.

SEC. 102. SPECIAL ESTATE TAX VALUATION OF FOREST LANDS.

(a) IN GENERAL.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2032A the following new section:

"SEC. 2032B. VALUATION OF CERTAIN FORESTLAND.

"(a) VALUE BASED ON USE OF PROPERTY AS FORESTLAND.—

"(1) GENERAL RULE.—If—

"(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

"(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified forestland shall be its value for use as a timber operation, under subsection (b), as qualified forestland.

"(2) LIMITATION ON AGGREGATE REDUCTION IN FAIR MARKET VALUE.—The aggregate decrease in the value of qualified forestland taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $1,000,000.

"(b) QUALIFIED FORESTLAND.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified forestland' means real property located in the United States which was acquired from or passed from the decedent to a qualified devisee or qualified heir and which, on the date of the decedent's death, was being used for a qualified forest use by the decedent or a member of the decedent's family, but only if—

"(A) 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of this paragraph,

"(B) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which the real property was used for a qualified forest use, and

"(C) such real property is designated in the agreement referred to in subsection (d)(2).

"(2) QUALIFIED FOREST USE.—For purposes of this section, the term 'qualified forest use' means the devotion of the property to use in timber operations.

"(c) TAX TREATMENT OF DISPOSITIONS AND FAILURES TO USE AS QUALIFIED FOREST USE.—

"(1) IMPOSITION OF ADDITIONAL ESTATE TAX (RECAPTURE).—

"(A) IN GENERAL.—If, within 25 years after the decedent's death and before the death of the qualified devisee or qualified heir—

"(i) the qualified devisee or qualified heir disposes of any interest in qualified forestland,

"(ii) the qualified devisee or qualified heir ceases to use for the qualified forest use the qualified forestland which was acquired (or passed) from the decedent for an aggregated period of 3 years out of any 8-year period, or

"(iii) any depreciable improvements are made to the property, other than those relating to a qualified forest use,

then there is hereby imposed an additional estate tax.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

"(i) a testamentary disposition that itself qualifies for special valuation under this section,

"(ii) a disposition by a qualified heir to any other person who agrees to continue devoting the heir's interest to a qualified forest use and signs the agreement in subsection (d)(2) (such person shall thereafter be treated as a qualified devisee with respect to such interest),

"(iii) a disposition by a qualified devisee to a qualified heir of such devisee who agrees to continue devoting the devisee's interest to a qualified forest use and signs the agreement in subsection (d)(2) (such heir shall thereafter be treated as a qualified devisee with respect to such interest),

"(iv) a disposition of timber used in a timber operation; and

"(v) a disposition (other than by sale) of a qualified conservation contribution (as defined in section 170(h)).

"(2) AMOUNT OF ADDITIONAL TAX.—The amount of the additional tax imposed by paragraph (1)(A) with respect to any interest shall be the amount equal to the lesser of—

"(A) the adjusted tax difference with respect to the estate (within the meaning of section 2032A(c)(2)(C), or

"(B) the amount realized from the disposition of the interest.

"(3) ONLY ONE ADDITIONAL TAX IMPOSED WITH RESPECT TO ANY ONE PORTION.—In the case of an interest acquired from (or passing from) any decedent, if a particular clause of paragraph (1)(A) applies to any portion of an interest, no other clause of such paragraph shall apply with respect to the same portion of such interest.

"(d) ELECTION; AGREEMENT.—

"(1) ELECTION.—The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

"(2) AGREEMENT.—The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

"(e) DEFINITIONS; SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED DEVISEE.—The term 'qualified devisee' means, with respect to any property, a person who acquired such property (or to whom such property passed) from the decedent and who is not a qualified heir of the decedent.

"(2) PERSON.—The term 'person' means an individual, partnership, corporation, or governmental entity.

"(3) CERTAIN REAL PROPERTY INCLUDED.—In the case of real property which meets the requirements of subparagraph (B) of subsection (b)(1), any depreciable improvements, including roads, which are related to the qualified forest use shall be treated as real property devoted to that use.

"(4) QUALIFIED FORESTLAND.—The term 'qualified forestland' means any real property which—

"(A) qualifies for a differential use value assessment program for forestland in the State in which the property is located; or

"(B) if a State has no differential use value assessment program—

"(i) is forestland,

"(ii) is a minimum of 10 acres, exclusive of a dwelling unit or other non-forest related structure and its curtilage; and

"(iii) is subject to a forest management plan.

"(5) TIMBER OPERATIONS.—The term 'timber operations' means the planting, cultivating, caring for, or harvesting of trees in the process of using and conserving renewable forest resources.

"(6) METHOD OF VALUING FORESTLAND.—The value of forestland shall be determined according to whichever of the following methods results in the least value:

"(A) Assessed land values in a State which provides a differential or use value assessment for forestland.

"(B) Comparable sales of other forestland in the same geographical area far enough removed from a metropolitan or resort area so that nonforest use is not a significant factor in the sales price.

"(C) The capitalization of income which the property can be expected to yield for timber operations over a reasonable period of time under prudent management; using traditional forest management for the area, and taking into account soil capacity, terrain configuration, and similar factors.

"(D) Any other factor which fairly values the timber value of the property.

"(7) APPLICABLE DEFINITIONS AND RULES OF SECTION 2032A.—

"(A) DEFINITIONS.—Except as otherwise provided in this section, any term used in this section which is also used in section 2032A shall have the meaning given such term by section 2032A.

"(B) RULES.—The rules in the following provisions of section 2032A shall apply to this section, by substituting 'qualified forestland' for 'qualified real property' and 'qualified forest use' for 'qualified use', and shall apply to qualified devisees as well as qualified heirs:

"(i) Paragraphs (2)(D) (by substituting 'paragraph (2)(B)' for 'subparagraph (A)(ii)' in clause (i) thereof), (4), (5), and (7)(A) (by substituting '25 years' for '10 years') of subsection (c).

"(ii) Subsection (d)(3).

"(iii) Paragraphs (9), (10), (11), and (14) (by substituting 'active management' for 'material participation') of subsection (e).

"(iv) Subsections (f) and (g).

"(f) SPECIAL RULES FOR INVOLUNTARY CONVERSIONS OF QUALIFIED FORESTLAND.—

"(1) TREATMENT OF CONVERTED PROPERTY.—

"(A) IN GENERAL.—If there is an involuntary conversion of an interest in qualified forestland—

"(i) no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion; or

"(ii) if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX WHERE THERE IS NOT COMPLETE REINVESTMENT.—The amount determined under this subparagraph with respect to any involuntary conversion is the amount of tax which (but for this subsection) would have been imposed on such conversion reduced by an amount which—

"(i) bears the same ratio to such tax, as

"(ii) the cost of the qualified replacement property bears to the amount realized on the conversion.

"(2) TREATMENT OF REPLACEMENT PROPERTY.—For purposes of subsection (c)—

"(A) any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified forestland which was involuntarily converted; except that with respect to such qualified replacement property the 25-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified devisee or qualified heir was allowed to replace the qualified forestland;

"(B) any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

"(C) subparagraph (A)(ii) of subsection (c)(1) shall be applied by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) INVOLUNTARY CONVERSION.—The term 'involuntary conversion' means a compulsory or involuntary conversion within the meaning of section 1033.

"(B) QUALIFIED REPLACEMENT PROPERTY.—The term 'qualified replacement property' means—

"(i) in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified forestland is converted, or

"(ii) in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified devisee or qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified forestland.

Such term only includes property which is to be used for the qualified forest use set forth in subsection (b)(2) under which the qualified forestland qualified under subsection (a).

"(4) CERTAIN RULES MADE APPLICABLE.—The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

"(g) EXCHANGES OF QUALIFIED FORESTLAND.—

"(1) TREATMENT OF PROPERTY EXCHANGED.—

"(A) EXCHANGES SOLELY FOR QUALIFIED EXCHANGE PROPERTY.—If an interest in qualified forestland is exchanged solely for an interest in qualified exchange property in a transaction which qualifies under section 1031, no tax shall be imposed by subsection (c) by reason of such exchange.

"(B) EXCHANGES WHERE OTHER PROPERTY RECEIVED.—If an interest in qualified forestland is exchanged for an interest in qualified exchange property and other property in a transaction which qualifies under section 1031, the amount of the tax imposed by subsection (c) by reason of such exchange shall be the amount of tax which (but for this subparagraph) would have been imposed on such exchange under subsection (c)(1), reduced by an amount which—

"(i) bears the same ratio to such tax, as

"(ii) the value of the qualified exchange property bears to the value of the qualified forestland exchanged.

For purposes of clause (ii) of the preceding sentence, value shall be determined according to subsection (e)(6).

"(2) TREATMENT OF QUALIFIED EXCHANGE PROPERTY.—For purposes of subsection (c)—

"(A) any interest in qualified exchange property shall be treated in the same manner as if it were a portion of the interest in qualified forestland which was exchanged; and

"(B) any tax imposed by subsection (c) by reason of the exchange shall be treated as a tax imposed on a partial disposition.

"(3) QUALIFIED EXCHANGE PROPERTY.—For purposes of this subsection, the term 'qualified exchange property' means real property which is to be used for a qualified forest use set forth in subsection (b)(2) under which the real property exchanged therefor originally qualified under subsection (a)."

(b) CONFORMING AMENDMENTS.—

(1) Section 1014(a)(3), as amended by section 101(b), is amended by inserting "or 2032B" after "2032A".

(2) Section 1016(c) is amended—

(A) by inserting "or 2032B(c)(1)" after "2032A(c)(1)" in paragraphs (1), (3), (4), and (5)(B),

(B) by inserting "or qualified devisee" after "qualified heir" in paragraph (1),

(C) by inserting "or 2032B(f)(3)(B)" after "2032A(h)(3)(B)" in paragraph (4), and

(D) by inserting "or 2032B(g)(3)" after "2032A(i)(3)" in paragraph (4).

(3) Section 1040 is amended—

(A) by inserting "or qualified devisee (within the meaning of section 2032B(e)(1))" before "any property" in subsection (a), and

(B) by inserting "or 2032B" after "2032A" in subsections (a) and (b).

(4) Section 1223(12)(C) is amended by inserting "or qualified devisee (within the meaning of section 2032B(e)(1))" before "with respect".

(5) Section 2013 is amended—

(A) by inserting "or 2032B" after "2032A" each place it appears in subsection (f) and the heading thereof, and

(B) by inserting "or 2032B(c)" after "2032A(c)" both places it appears in subsection (f).

(6) Section 2035(d)(3)(B) is amended by inserting "or section 2032B (relating to special valuation of certain forestland)" after "real property)".

(7) Section 2056A(b)(10)(A) is amended by inserting "2032B," after "2032A,".

(8) Section 2624(b) is amended by striking "sections 2032 and 2032A" and inserting "sections 2032, 2032A, and 2032B".

(9) Section 2663(1) is amended by striking "section 2032A(c)" and inserting "sections 2032A(c) and 2032B(c)".

(10) Section 6324B is amended—

(A) by striking subsection (a) and inserting the following new subsection:

"(a) GENERAL RULES.—

"(1) SECTION 2032A.—In the case of any interest in qualified real property (within the meaning of section 2032A(b)), an amount equal to the adjusted tax difference attributable to such interest (within the meaning of section 2032A(c)(2)(B)) shall be a lien in favor of the United States on property in which such interest exists.

"(2) SECTION 2032B.—In the case of any interest in qualified forestland (within the meaning of section 2032B(b)), an amount equal to the adjusted tax difference with respect to the estate (within the meaning of section 2032A(c)(2)(C)) shall be a lien in favor of the United States on property in which such interest exists.",

(B) by inserting "or 2032B" after "2032A" both places it appears in subsection (b),

(C) by inserting "or 2032B(c)" after "2032A(c)" in subsection (b)(2), and

(D) by adding at the end of subsection (c) the following new paragraph:

"(3) QUALIFIED FORESTLAND.—For purposes of this section, the term 'qualified forestland' includes qualified replacement property (within the meaning of section 2032B(f)(3)(B)) and qualified exchange property (within the meaning of section 2032B(g)(3))."

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by adding at the end the following new item:

"Sec. 2032B. Valuation of certain forestland."

(d) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after December 31, 1997.

TITLE II—INCOME TAX TREATMENT

SEC. 201. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by adding at the end the following new section:

"SEC. 1203. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

"(a) IN GENERAL.—At the election of any taxpayer who has qualified timber gain for any taxable year, there shall be allowed as a deduction from gross income an amount equal to the qualified percentage of such gain.

"(b) QUALIFIED TIMBER GAIN.—For purposes of this section, the term 'qualified timber gain' means the lesser of—

"(1) the net capital gain for the taxable year, or

"(2) the net capital gain for the taxable year determined by taking into account only gains and losses from timber.

"(c) QUALIFIED PERCENTAGE.—For purposes of this section, the term 'qualified percentage' means the percentage (not exceeding 50 percent) determined by multiplying—

"(1) 3 percent, by

"(2) the number of years in the holding period of the taxpayer with respect to the timber.

"(d) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under subsection (a) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets."

(b) COORDINATION WITH EXISTING LIMITATIONS.—

(1) Subsection (h) of section 1 (relating to maximum capital gains rate) is amended by inserting after "net capital gain" each place it appears the following: "(other than qualified timber gain with respect to which an election is made under section 1203)".

(2) Subsection (a) of section 1201 (relating to alternative tax for corporations) is amended by inserting after "net capital gain" each place it appears the following: "(other than qualified timber gain with respect to which an election is made under section 1203)".

(c) ALLOWANCE OF DEDUCTION IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 (relating to definition of adjusted gross income) is amended by adding after paragraph (16) the following new paragraph:

"(17) PARTIAL INFLATION ADJUSTMENT FOR TIMBER.—The deduction allowed by section 1203."

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by adding at the end the following new item:

"Sec. 1203. Partial inflation adjustment for timber."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after December 31, 1997.

SEC. 202. EXCLUSION OF GAIN FROM SALE OF INTERESTS IN FOREST LANDS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 138 as section 139 and by inserting after section 137 the following new section:

"SEC. 138. SALES OF INTERESTS IN CERTAIN FOREST LANDS.

"(a) EXCLUSION.—

"(1) IN GENERAL.—Gross income shall not include the applicable percentage of any qualified timber gain.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means—

"(A) 35 percent, or

"(B) in the case of qualified timber gain from the sale of a qualified real property interest described in section 170(h)(2)(C), 100 percent.

"(b) LIMITATION.—The total amount of gain which may be excluded from gross income under subsection (a) for any taxable year shall not exceed the sum of—

"(1) the amount of qualified timber gain described in subsection (a)(2)(B), plus

"(2) $800,000.

"(c) QUALIFIED TIMBER GAIN.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified timber gain' means gain from the sale or exchange of a qualified real property interest in real property which is used in timber operations to a governmental unit described in section 170(c)(1) for conservation purposes.

"(2) QUALIFIED REAL PROPERTY INTEREST.—The term 'qualified real property interest' has the meaning given such term by section 170(h)(2).

"(3) TIMBER OPERATIONS.—The term 'timber operations' has the meaning given such term by section 2032B(e)(5).

"(4) CONSERVATION PURPOSES.—The term 'conservation purposes' has the meaning given such term by section 170(h)(4)(A) (without regard to clause (iv) thereof).

"(d) SPECIAL RULE FOR SALES TO NONGOVERNMENTAL ENTITIES.—

"(1) IN GENERAL.—Subsection (a) shall apply to the sale or exchange to a qualified organization described in section 170(h)(3) if such interest is transferred during the 2-year period beginning on the date of the sale or exchange to a governmental unit described in section 170(c)(1).

"(2) TIME FOR EXCLUSION.—If the transfer to which paragraph (1) applies occurs in a taxable year after the taxable year in which the sale or exchange occurred—

"(A) no exclusion shall be allowed under subsection (a) for the taxable year of the sale or exchange, but

"(B) the taxpayer's tax for the taxable year of the transfer shall be reduced by the amount of the reduction in the taxpayer's tax for the taxable year of the sale or exchange which would have occurred if subparagraph (A) had not applied."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 138 and by inserting the following new items after the item relating to section 137:

"Sec. 138. Sales of interests in certain forest lands.

"Sec. 139. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 203. APPLICATION OF PASSIVE LOSS LIMITATIONS TO TIMBER ACTIVITIES.

(a) IN GENERAL.—Treasury regulations sections 1.469-5T(b)(2) (ii) and (iii) shall not apply to any closely held timber activity if the nature of such activity is such that the aggregate hours devoted to management of the activity for any year is generally less than 100 hours.

(b) DEFINITIONS.—For purposes of subsection (a)—

(1) CLOSELY HELD ACTIVITY.—An activity shall be treated as closely held if at least 80 percent of the ownership interests in the activity is held—

(A) by 5 or fewer individuals, or

(B) by individuals who are members of the same family (within the meaning of section 2032A(e)(2) of the Internal Revenue Code of 1986).

An interest in a limited partnership shall in no event be treated as a closely held activity for purposes of this section.

(2) TIMBER ACTIVITY.—The term "timber activity" means the planting, cultivating, caring, cutting, or preparation (other than milling) for market, of trees.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

By Mr. KERRY:

S. 553. A bill to regulate ammunition, and for other purposes; to the Committee on the Judiciary.

THE AMMUNITION SAFETY ACT OF 1997

Mr. KERRY. Mr. President, no gun works without a bullet. Yet for no good reason, Congress in the early 1980's—which were marked by terribly troubling increases in gun-caused fatalities and injuries—repealed laws that regulate ammunition. And while a background check is required to stop felons from purchasing guns, no such background check is required to stop them from buying ammunition for guns they already may have. In the meantime, bullets are getting meaner and more deadly. Law enforcement officers know all too well the danger they face each and every time a gun is pointed at them.

Advances in technology only promise to make matters worse. When a large percentage of gun-related deaths involve handguns, and a larger percentage of gun-related deaths is accidental, it is not sensible to allow unrestricted manufacture, sale, and use of new, more destructive bullets. In 1994, 157 police officers and State troopers were killed in this country. Five lost their lives in my home State of Massachusetts. Additionally, more than 200 people die from the accidental use of handguns every year. In 1992 alone, 233 accidental deaths occurred because of handguns. This included 6 babies, 36 children under the age of 14, and 8 senior citizens, 2 of whom were over the age of 80.

In light of these sad and disturbing facts, there is no good reason to permit ever more dangerous bullets to come on the market. And there is every good reason to keep off our streets and out of our homes bullets that supply handguns with the approximate destructive power of assault weapons.

That is why I am today reintroducing the Ammunition Safety Act that I introduced previously in the 104th Congress. The Ammunition Safety Act of 1997 does two things: it reestablishes reasonable regulations for the sale of handgun ammunition, and it outlaws all exceedingly destructive handgun ammunition by expanding and updating the ban on armor-piercing handgun ammunition. This bill would provide a weapon for law enforcement to crack down on crime and would make ordinary people safer from handgun violence and accidental shootings. The bill accomplishes these goals in three steps.

First, the bill reinstates and strengthens ammunition control language that Congress repealed during the Reagan era. The bill would require dealers of handgun ammunition to be licensed by the Federal Government and would restrict interstate sale and transportation of handgun ammunition to licenced dealers. The bill also would double the maximum penalties for sale of handgun ammunition to and possession of such ammunition by felons and persons under age 21.

Second, the bill would apply Brady Bill provisions to handgun ammunition. To prevent the sale of handgun ammunition to felons, every purchaser of ammunition would have to pass a background check before ammunition could be sold to him or her. These regulations would be a vital tool for law enforcement to use in investigating crime, and would provide equity to a system that currently monitors and restricts the flow of guns, but, inexplicably, not of ammunition.

Third, the bill expands the definition of illegal armor-piercing handgun ammunition to include any new conceivable kind of armor-piercing bullet. The bill establishes a new method to accomplish this goal. To date, no law has been able to effectively ban all armor-piercing bullets. It is impossible to ban what cannot be defined because vague laws are constitutionally void—and definitions to date have failed to cover all armor-piercing bullets. All that existing law does is ban bullets based on the materials of which they are made. Consequently, bullets made of hard metal are illegal in the hope that this definition will cover most armor-piercing bullets. But the existing composition-based definitions fail to prevent the sale of certain bullets that pierce armor like large lead bullets that are not intended for handguns but can be used in them.

This bill calls on the Treasury Department to define major armor-piercing bullets. Fulfilling this new responsibility would entail four steps:

First, within 1 year, the Treasury Department is charged to determine a standard test to ascertain the destructive capacity of any and all bullets. This will probably result in something along the lines of a system that has been employed for some testing purposes that calculates the width times the depth of the hole a projectile bores in a block of gelatin when it is shot with no extra powder from a standard handgun at a distance of 10 feet.

Second, utilizing this destructive capabilities rating test, the Treasury Department would then test and determine the destructive rating of every bullet available on the market.

Third, all manufacturers of bullets for sale in the United States would be required to cover the costs incurred by the Treasury Department in this testing.

Fourth, the bill would make it illegal to manufacture, sell, import, use, or possess any bullet—existing or newly invented—that has a destructive rating equal to or higher than the armor-piercing threshold. This would be in addition to the existing composition-based definition.

This bill contains reasonable exemptions. Those bullets exclusively manufactured for law enforcement would be exempt; so would be those bullets designed for sporting purpose that Congress specifically exempts by law; and so would be those bullets that are proven by their manufacturer at its expense to have a destructive rating below the armor-piercing threshold.

By setting the legal standard at the armor-piercing threshold, all armor-piercing bullets would be illegal. And there is an additional advantage to setting a legal threshold in this fashion: The threshold would ban more than armor-piercing bullets. It would ban any bullet invented in the future that explodes on impact, that turns to shrapnel, that does things today's technology cannot yet fathom, or that by any other means is exceptionally destructive.

Setting a legal standard this way draws a hard and fast line between those bullets currently on the market and future bullets that do more damage that we can image today. This bill says that America is satisfied that the bullets of today are dangerous enough, and America will tolerate no greater likelihood of accidental death as a result of new bullets.

This bill recognizes the fact that regulating only guns is naive. Those who want to kill or injure others will always be able to find guns, but they must purchase ammunition. When they do this, this bill will be there to stop them.

Mr. President, I recognize that there is a limit to what the Government can do to stop gun violence and accidental death. But today, our Government is shirking its responsibility. This bill is a vital step toward ensuring that our Government does what is necessary to save lives.

The law enforcement community and the public will never again have to react to advertisements like the one for the famous Rhino bullet. This ad states: "The Rhino inflicts a wound of 8 inches in diameter. Each of these fragments becomes lethal shrapnel and is hurled into vital organs, lungs, circulatory system components, the heart and other tissues. The wound channel is catastrophic. Death is nearly instantaneous."

If this bill is enacted, opportunistic manufacturers like the one who created the Rhino bullet will have nothing to gain from advertising the dramatic innovations of their bullets. If an advertisement claims that a new bullet is unusually destructive, the public will know that the advertisement is either an outright lie or that the product is illegal. Either way, the public will know in advance that no such bullet will ever hit the street, and the public will have no cause for alarm.

When this bill becomes law, no new bullets that are more dangerous than those of today will make it to market. When this bill becomes law, bullets now available for purchase end up in the wrong hands.

This bill is a solid step toward returning sanity and safety to our Nation's streets and households. The Government has no greater responsibility than to work toward this goal. I welcome the support of colleagues who share my concerns, as many do. I urge them to join me in sponsoring this legislation.

Mr. President, I ask unanimous consent that the full text of the legislation appear in the RECORD.

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

S. 553

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 "Ammunition Safety Act of 1997".

SEC. 2. DEALERS OF AMMUNITION.

(a) DEFINITION.—Section 921(a)(11)(A) of title 18, United States Code, is amended by inserting "or ammunition" after "firearms".

(b) LICENSING.—Section 923(a) of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking "or importing or manufacturing ammunition" and inserting "or importing, manufacturing, or dealing in ammunition"; and

(2) in paragraph (3)—

(A) in subparagraph (A), by striking "or" the last place it appears;

(B) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(C) by inserting the following new subparagraph:

"(C) in ammunition other than ammunition for destructive devices, $10 per year.".

(c) UNLAWFUL ACTS.—Section 922(a)(1)(A) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by inserting "or ammunition" after "firearms"; and

(ii) by inserting "or ammunition" after "firearm"; and

(B) in subparagraph (B), by striking "or licensed manufacturer" and inserting "licensed manufacturer, or licensed dealer";

(2) in paragraph (2), in the matter preceding subparagraph (A), by inserting "or ammunition" after "firearm";

(3) in paragraph (3), by inserting "or ammunition" after "firearm" the first place it appears;

(4) in paragraph (5), by inserting "or ammunition" after "firearm" the first place it appears; and

(5) in paragraph (9), by inserting "or ammunition" after "firearms".

(d) PENALTIES.—Section 924 of title 18, United States Code, is amended—

(1) in paragraph (5)—

(A) in subparagraph (A)(i), by striking "1 year" and inserting "2 years"; and

(B) in subparagraph (B)—

(i) in clause (i), by striking "1 year" and inserting "2 years"; and

(ii) in clause (ii), by striking "10 years" and inserting "20 years"; and

(2) by adding at the end the following new subsection:

"(o) Except to the extent a greater minimum sentence is otherwise provided, any person at least 18 years of age who violates section 922(g) shall be subject to—

"(1) twice the maximum punishment authorized by this subsection; and

"(2) at least twice any term of supervised release.".

(e) APPLICATION OF BRADY HANDGUN VIOLENCE PREVENTION ACT TO TRANSFER OF AMMUNITION.—Section 922(t) of title 18, United States Code, is amended by inserting "or ammunition" after "firearm" each place it appears.

SEC. 3. REGULATION OF ARMOR PIERCING AND NEW TYPES OF DESTRUCTIVE AMMUNITION.

(a) TESTING OF AMMUNITION.—Section 921(a)(17) of title 18, United States Code, is amended—

(1) by redesignating subparagraph (D), as added by section 2(e)(2), as subparagraph (E); and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D)(i) Notwithstanding subchapter II of chapter 5 of title 5, United States Code, not later than 1 year after the date of enactment of this subparagraph, the Secretary shall—

"(I) establish uniform standards for testing and rating the destructive capacity of projectiles capable of being used in handguns;

"(II) utilizing the standards established pursuant to subclause (I), establish performance-based standards to define the rating of 'armor piercing ammunition' based on the rating at which the projectiles pierce armor; and

"(III) at the expense of the ammunition manufacturer seeking to sell a particular type of ammunition, test and rate the destructive capacity of the ammunition utilizing the testing, rating, and performance-based standards established under subclauses (I) and (II).

"(ii) The term 'armor piercing ammunition' shall include any projectile determined to have a destructive capacity rating higher than the rating threshold established under subclause (II), in addition to the composition-based determination of subparagraph (B).

"(iii) The Congress may exempt specific ammunition designed for sporting purposes from the definition of 'armor piercing ammunition'.".

(b) PROHIBITION.—Section 922(a) of title 18, United States Code, is amended—

(1) in paragraph (7)—

(A) by striking "or import" and inserting ", import, possess, or use";

(B) in subparagraph (B), by striking "and";

(C) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following new subparagraph:

"(D) the manufacture, importation, or use of any projectile that has been proven, by testing performed at the expense of the manufacturer of the projectile, to have a lower rating threshold than armor piercing ammunition."; and

(2) in paragraph (8)—

(A) in subparagraph (B), by striking "and";

(B) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(D) the manufacture, importation, or use of any projectile that has been proven, by testing performed at the expense of the manufacturer of the projectile, to have a lower rating threshold than armor piercing ammunition.".

By Mr. HARKIN:

S. 554. A bill to inform and empower consumers in the United States through a voluntary labeling system for wearing apparel or sporting goods made without abusive and exploitative child labor, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE CHILD LABOR FREE CONSUMER INFORMATION ACT OF 1997

Mr. HARKIN. Mr. President, I rise to introduce legislation that will inform and empower consumers in the United States through a voluntary labeling system for wearing apparel and sporting goods made without the use of abusive and exploitative child labor. Congressman GEORGE MILLER is introducing companion legislation in the other body.

This is the second time I have come to the floor of the Senate to introduce this bill, and I will continue to introduce it until it becomes law.

I'd like to ask my colleagues to take a moment to look around. Maybe it's the shirt you have on right now. Or the silk tie or blouse. Or the soccer ball you kick around with your kids in the backyard. Or the tennis shoes you wear on weekends.

Chances are that you have purchased something—perhaps many things—made with abusive and exploitative child labor. And chances are you were completely unaware that was the case. You will find a label that tells you what size it is, how to take care for it and what it costs. But it doesn't tell you about the person who made it.

Mr. President, recently, the International Labor Organization [ILO] released a very grim report about the number of children who toil away in abhorrent conditions. The ILO estimates that over 250 million children worldwide under the age of 15 are working instead of receiving a basic education. Many of these children begin working in factories at the age of 6 or 7, some even younger. They are poor, malnourished, and often forced to work 60-hour weeks for little or no pay.

Now when I speak about child labor, I am not talking about 17-year-olds helping out on the family farm or running errands after school. I am speaking about children, often under 12 years old, who are forced to work long hours in hazardous and dangerous conditions, many as slaves, instead of going to school.

On September 23, 1993, the Senate appropriately put itself on record as expressing its principled opposition to the abhorrent practice of exploiting children for commercial gain and asserting that it should be the policy of the United States to prohibit the importation of products made through the use of abusive and exploitative child labor by passing a sense of the Senate Resolution I introduced. In my view, this was the first step toward ending child labor.

Mr. President, never has the issue of child labor in the garment industry been more prominent than today. Last year, talk show host Kathie Lee Gifford learned that some of the garments with her name on them were being produced by children. She did not bury her head in the sand. Instead, she reacted quickly and decisively to heighten awareness about the issue of abusive and exploitative child labor.

Americans in Des Moines or Dallas or Detroit may say, "What does this have to do with us?" It is quite simple. By protecting the rights of workers everywhere, we will be protecting jobs and opportunities here at home. A U.S. worker cannot compete with a 12-year-old working 12 hours a day for 12 cents.

Last year, the United States imported almost 50 percent of the wearing apparel sold in this country and the garment industry netted $34 billion. According to the Department of Commerce, last year, the United States imported 494.1 million pairs of athletic footwear and produced only 65.3 million here at home. That means that we imported enough shoes to encircle the earth five and a half times.

As I have traveled around the country and spoken with people about the issue of abusive and exploitative child labor, I have found that consumers—ordinary Americans—want to get involved. They want information. They want to know if the products they are buying are made by children.

According to a survey sponsored by Marymount University, more than three out of four Americans said they would avoid shopping at stores if they were aware that the goods sold there were made by exploitative and abusive child labor. They also said that they would be willing to pay an extra $1 on a $20 garment if it were guaranteed to be made under legitimate circumstances. I ask unanimous consent to enter this study into the RECORD.

Mr. President, it is obvious that consumers don't want to reward companies with their hard-earned dollars by buying products made with abusive and exploitative child labor.

This issue demands our attention. My legislation, the Child Labor Free Consumer Information Act 1997, will inform and empower consumers in the United States through a voluntary labeling system for wearing apparel and sporting goods made without abusive and exploitative child labor. In my view, a system of voluntary labeling holds the best promise of giving consumers the information they want—and giving the companies that manufacture these products the recognition they deserve.

The crux of this legislation is to provide the framework for members of the wearing apparel and sporting goods industry, labor organizations, consumer advocacy and human rights groups along with the Secretaries of Commerce, Treasury, and Labor to establish the labeling standard and develop a system to assure compliance that items were not made with abusive and exploitative child labor. Thus, ensuring consumers that the garment or pair of tennis shoes they purchase was made without abusive and exploitative child labor.

In my view, Congress can't do it alone through legislation. The Department of Labor can't do it alone through enforcement. It takes all of us from the private sector to labor and human rights groups to take responsibility, to come together to end abusive and exploitative child labor. And I am pleased to say there has recently been promising action to that end.

Yesterday, an article in the New York Times appeared announcing a tentative agreement between human rights and labor leaders and some members of the apparel industry to adopt a code of conduct and a promise to form an association to provide consumers with information on the items they purchase. This is a praise worthy initiative and I am glad that my discussions with President Clinton on the issue of child labor have helped lead to this development. Now, we must take the logical next step to inform and assure consumers that the goods they purchase are not made with abusive and exploitative child labor. My bill has provisions for a labeling system that will inform consumers that the wearing apparel and sporting goods they purchase are not made by the sweat and toil of children, as well as enforcement provisions to assure consumers that the label has integrity. Until an effective and reliable labeling and monitoring system is in place, consumers can never truly be sure that the goods they purchase were not made by an exploited child. I look forward to continuing my work with my colleagues and the White House on strengthening this initiative to inform and empower consumers. That is what the American consumer demands and deserves.

Mr. President, when the private sector decides to take speak up—it certainly can make a difference. Recently, in Bangladesh, the Bangladesh Garment Manufacturers and Exporters Association has agreed to work with the International Labor Organization to take children out of the garment factories and put them into school—where they belong. As of July 1996, more than 110 schools for former child workers have opened, serving nearly 2,000 children. So, if we can do it in Bangladesh, then we can do it elsewhere.

Mr. President, let me be clear, companies can choose to use the label or not to. This bill is not about the big government telling the private sector what to do. This bill is centered around this fundamental principle: Let the Buyer Be Aware. This "Truth in Labeling" initiative is based on the principle that a fully informed American consumer will make the right, and moral, choice and vote against abusive and exploitative child labor with their pocketbook.

We have seen such an approach work effectively with the Rugmark label for hand-knotted carpets from India. It is operating in some European countries. Consumers who want to buy child labor-free carpets can just look for the Rugmark label. I visited the Rugmark headquarters in New Delhi, India last week. Mr. President, this initiative is working. It has succeeded in taking children out of the factories and putting them into schools while providing consumers with the information they need.

By the end of April, half a million carpets will have received the Rugmark label and been shipped to stores in Germany. Rugmark licenses already provide 30 percent of German carpet imports from India. And I am pleased to say that there are two wholesalers in New York that offer carpets with the Rugmark label. I am hopeful that by the end of the year there will be at least 20 importers in the United States.

Mr. President, the progress that has been made on eradicating abusive and exploitative child labor is irreversible. Therefore we must continue to move forward. And I believe my bill allows us to do just that. It allows the consumer to know more about the products they buy and give companies that use the label the recognition they deserve.

Our Nation began this century by working to end abusive and exploitative child labor in America, let us close this century by ending child labor around the world. I urge my colleagues to support my bill.

I hope that we will be able to vote on this piece of legislation in the near future so that we can give consumers the information they deserve to make informed decisions.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 554

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 "Child Labor Free Consumer Information Act of 1997".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Secretary of Labor has conducted 3 detailed studies that document the fact that abusive and exploitative child labor exists worldwide;

(2) the Secretary of Labor has also determined, through the studies referred to in paragraph (1), that child laborers are often forced to work beyond their physical capacities, under conditions that threaten their

health, safety, and development, and are denied basic educational opportunities;

(3) in most instances, countries that have abusive and exploitative child labor also experience a high adult unemployment rate;

(4) the International Labor Organization (commonly known as the "ILO") estimates that—

(A) approximately 250,000,000 children between the ages of 5 and 14 are working in developing countries; and

(B) many of those children manufacture wearing apparel or sporting goods that are offered for sale in the United States;

(5) consumers in the United States spend billions of dollars each year on wearing apparel and sporting goods;

(6) consumers in the United States have the right to information on whether the articles of wearing apparel (including any section of that wearing apparel) or sporting goods that they purchase are made without abusive and exploitative child labor;

(7) the rugmark labeling and monitoring system is a successful model for eliminating abusive and exploitative child labor in the rug industry;

(8) the labeling of wearing apparel or sporting goods would provide the information referred to in paragraph (6) to consumers; and

(9) it is important to recognize United States businesses that have effective programs to ensure that products sold in the United States are not made with abusive and exploitative child labor.

TITLE I—CHILD LABOR FREE LABELING STANDARDS

SEC. 101. CHILD LABOR FREE LABELING STANDARDS.

(a) ESTABLISHMENT OF LABELING STANDARDS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor, in consultation with the Child Labor Free Commission established under section 201, shall issue regulations to ensure that a label using the terms "Not Made With Child Labor", "Child Labor Free", or any other term or symbol referring to child labor does not make a false statement or suggestion that the article or section of wearing apparel or sporting good was not made with child labor. The regulations developed under this section shall encourage the use of an easily identifiable symbol or term indicating that the article or section of wearing apparel or sporting good was not made with child labor.

(2) NOTIFICATION ON USE.—

(A) IN GENERAL.—A producer, importer, exporter, distributor, or other person intending to use any label referred to in paragraph (1) shall submit a notification to the Commission for review under subparagraph (C).

(B) NOTIFICATION.—The notification referred to in subparagraph (A) shall include information concerning the source of the article or section of wearing apparel or sporting good to which the label will be affixed, including—

(i) the country in which the article or section of wearing apparel or sporting good is manufactured;

(ii) the name and location of the manufacturer; and

(iii) information concerning any outsourcing by the manufacturer in the manufacture of the article or section of wearing apparel or sporting good.

(C) REVIEW OF NOTIFICATION.—Upon receipt of the notification, the Commission shall review the notification and inform the Secretary of Labor concerning the findings of the review. The permission of the Secretary of Labor shall be required for the use of the label. The Secretary of Labor, in consultation with the Commission, shall establish procedures for granting permission to use a label under this subparagraph.

(3) FEE.—The Secretary of Labor is authorized to charge a fee to cover the expenses of the Commission in reviewing a notification under paragraph (2). The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in reviewing a notification. Fees collected under this paragraph shall be available to the Secretary of Labor for expenses incurred in the review and response of the Commission under this subsection.

(4) APPLICABILITY.—The regulations issued under paragraph (1) shall apply to any label contained in—

(A) an article or section of wearing apparel or sporting good that is exported from or offered for sale in the United States;

(B) any packaging thereof; or

(C) any advertising for an article or section of wearing apparel or sporting good referred to in subparagraph (A).

(5) EFFECTIVE DATE.—The regulations issued under paragraph (1) shall take effect on the date that is 180 days after the date of publication as final regulations.

(b) VIOLATION OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT.—It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any article or section of wearing apparel or sporting good that is exported from or offered for sale in the United States—

(1) to falsely indicate on the label of that article or section of wearing apparel or sporting good, the packaging of the article or section of wearing apparel or sporting good, or any advertising for the article or section of wearing apparel or sporting good that the article or section of wearing apparel or sporting good was not made with child labor; or

(2) to otherwise falsely claim or suggest that the article (or section of that article of wearing apparel) or sporting good was not made with child labor.

(c) AMENDMENT TO THE FEDERAL TRADE COMMISSION ACT.—Section 5(m)(1) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)) is amended—

(1) in subparagraph (A), by striking "The Commission" and inserting "Except as provided in subparagraph (D), the Commission";

(2) in subparagraph (B), by striking "If the Commission" and inserting "Except as provided in subparagraph (D), if the Commission"; and

(3) by adding at the end the following new subparagraph:

"(D)(i)(I) In lieu of the applicable civil penalty under subparagraph (A) or (B), in any case in which the Commission commences a civil action for a violation of section 101 of the Child Labor Free Consumer Information Act of 1997 under subparagraph (A), under subparagraph (B) for an unfair or deceptive practice that is considered to be a violation of this section by reason of section 101(b) of such Act, or under subparagraph (C) for a continuing failure that is considered to be a violation of this section by reason of section 101(b) of such Act, if that violation—

"(aa) is a knowing or willful violation, the amount of a civil penalty for the violation shall be determined under clause (ii); or

"(bb) is not a knowing or willful violation, no penalty shall be assessed against the person, partnership, or corporation that committed the violation.

"(II) For purposes of this subparagraph, if in an action referred to in subclause (I), if the Commission asserts that a violation is a knowing and willful violation, the defendant shall bear the burden of proving otherwise.

"(ii) The amount of a civil penalty for a violation under clause (i)(I)(aa) that is committed shall be—

"(I) for an initial violation, an amount equal to the greater of—

"(aa) 2 times the retail value of the articles of wearing apparel or sporting goods mislabeled; or

"(bb) $200,000; and

"(II) for any subsequent violation, an amount equal to the greater of—

"(aa) 4 times the retail value of the articles of wearing apparel or sporting goods mislabeled; or

"(bb) $400,000.".

(d) SPECIAL FUND TO ASSIST CHILDREN.—

(1) CREATION OF FUND.—There is established in the United States Treasury a special fund to be known as the "Free the Children Fund".

(2) DEPOSITS INTO FUND.—An amount equal to the amount of penalties collected under this section shall be deposited into the special fund. The Secretary of the Treasury shall, upon request of the Secretary of Labor, make the amounts deposited into the special fund available to the Secretary of Labor for use by the Secretary of Labor for educational and other programs described in paragraph (3).

(3) AUTHORIZATION.—Amounts deposited into the special fund are authorized to be appropriated annually for educational and other programs with the goal of eliminating child labor.

(e) OTHER INDUSTRIES.—The Commission may, as appropriate, develop labeling standards similar to the labeling standards developed under this section for any industry that is not otherwise covered under this Act and recommend to the Secretary of Labor that those standards be promulgated. If the standards are promulgated by the Secretary of Labor—

(1) the provisions of this Act and the amendments made by this Act shall apply to the labeling covered by those standards in the same manner as they apply to any other standards promulgated by the Secretary of Labor under this section; and

(2) it shall be a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any good that is covered under the labeling standards and that is exported from or offered for sale in the United States—

(A) to falsely indicate on the label of that good, the packaging thereof, or any related advertising that the good was not made with child labor; or

(B) to otherwise falsely claim or suggest that the good was not made with child labor.

SEC. 102. REVIEW OF PETITIONS BY THE CHILD LABOR FREE COMMISSION.

(a) IN GENERAL.—In addition to the procedures established under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), the Child Labor Free Commission established under section 201 shall assist the Federal Trade Commission by reviewing petitions under this section.

(b) CONTENTS OF PETITIONS.—A petition under this section shall—

(1) be submitted in such form and in such manner as the Federal Trade Commission, in consultation with the Secretary of Labor and the Child Labor Free Commission, shall prescribe;

(2) contain the name of the—

(A) petitioner; and

(B) person or entity involved in the alleged violation of the labeling standards under section 101; and

(3) provide a detailed explanation of the alleged violation, including all available evidence.

(c) REVIEW BY COMMISSION.—

(1) IN GENERAL.—The Commission shall, to the maximum extent practicable, not later than 90 days after receiving a petition, review the petition to determine whether there appears to have been a violation of the labeling standards.

(2) ACTION BY THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—Upon completion of a review conducted under paragraph (1), the Commission shall forward the petition to the Secretary of Labor, together with a report by the Commission containing a determination by the Commission concerning the merits of the petition, including whether a violation of the labeling standards occurred and whether there appears to have been a knowing and willful (within the meaning of section 5(m)(1)(D)(i) of the Federal Trade Commission Act, as added by section 101(c) of this Act) or repeated violation of those standards.

(B) DUTIES OF THE SECRETARY OF LABOR.—Upon receipt of the petition and report, the Secretary of Labor shall—

(i) forward a copy of the petition and report to the Federal Trade Commission for review by the Federal Trade Commission; and

(ii) review the petition and report.

(3) TEMPORARY WITHDRAWAL OF PERMISSION; ORDER TO CEASE AND DESIST.—

(A) TEMPORARY WITHDRAWAL OF PERMISSION.—If the Secretary of Labor determines, on the basis of the report referred to in paragraph (2), that there is a substantial likelihood that a violation of the labeling standards promulgated under section 101 has occurred, the Secretary of Labor may temporarily withdraw the permission granted under section 101(a)(2)(C) and inform the Federal Trade Commission of the action and the reason for the action.

(B) ORDER TO CEASE AND DESIST.—If the Federal Trade Commission concurs with a determination of the Child Labor Free Commission in the report referred to in subparagraph (A) that a violation of the labeling standards has occurred, the Federal Trade Commission shall take such action as may be necessary under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) to cause the person or entity in violation of the labeling standards under section 101 to cease and desist from violating those standards immediately upon that concurrence.

TITLE II—CHILD LABOR FREE COMMISSION

SEC. 201. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the "Child Labor Free Commission".

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 17 members, of whom—

(A) 1 shall be the Secretary of Commerce or a designee of the Secretary of Commerce;

(B) 1 shall be the Secretary of the Treasury or a designee of the Secretary of the Treasury;

(C) 1 shall be the United States Trade Representative or a designee of the United States Trade Representative;

(D) 1 shall be the Secretary of Labor or a designee of the Secretary of Labor, who shall serve as the Chairperson of the Commission;

(E) 3 shall be representatives of nongovernmental organizations that work toward the eradication of abusive and exploitative child labor and in the promotion of human rights, appointed by the Secretary of Labor;

(F) 3 shall be representatives of labor organizations, appointed by the Secretary of Labor;

(G) 3 shall be representatives of the wearing apparel industry, appointed by the Secretary of Labor;

(H) 3 shall be representatives of the sporting goods industry, appointed by the Secretary of Labor; and

(I) 1 additional member shall be appointed by the Secretary of Labor.

(2) DATE.—The appointments of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(c) PERIOD OF APPOINTMENT; VACANCIES.—

(1) PERIOD OF APPOINTMENT.—Each member of the Commission shall serve for a term of 4 years, except that in appointing the initial members of the Commission, the Secretary of Labor shall stagger the terms of the non-Federal members.

(2) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) MEETINGS.—The Commission shall meet at the call of the Chairperson or at the request of a majority of the members.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings or other meetings.

SEC. 202. DUTIES OF THE COMMISSION.

The Commission shall—

(1) assist the Secretary of Labor in developing labeling standards under section 101; and

(2) assist the Secretary of Labor in developing and implementing a system to ensure compliance with the labeling standards established under section 101, including—

(A) receiving, reviewing, and making recommendations for the resolution of petitions received under section 102 that allege noncompliance with the labeling standards under section 101;

(B) making recommendations to the Secretary of Labor for the removal of labels subject to the standards under section 101 that are found to be in violation of those standards;

(C) assisting the Secretary of Labor in developing and implementing a system to promote the increased use of the labeling standards under section 101;

(D) publishing, not less frequently than annually, a list of persons and entities that have notified the Commission of their intent to use a label under section 101(a)(2); and

(E) publishing, not less frequently than annually, a list of persons and entities found to be in violation of any provision of this Act; and

(3) not later than 1 year after the date of the establishment of the Commission, commence a study into the feasibility of developing an easily identifiable labeling standard that the Secretary of Labor may issue to encourage the use of voluntary labels that ensure consumers that an article of wearing apparel or sporting good was made without the use of sweatshop or exploited adult labor.

SEC. 203. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the duties of the Commission under this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the duties of the Commission under this title. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 204. COMMISSION PERSONNEL MATTERS.

(a) NON-FEDERAL MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall serve without compensation.

(b) FEDERAL MEMBERS.—Each member of the Commission who is an officer or employee of the United States shall serve without compensation in addition to that received for that member's services as an officer or employee of the United States.

SEC. 205. ADMINISTRATIVE AND SUPPORT SERVICES.

The Secretary of Labor shall, to the extent permitted by law, provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

TITLE III—RECOGNITION OF EXEMPLARY CORPORATE EFFORTS

SEC. 301. ANNUAL REPORT.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Labor shall issue a report concerning companies that are making exemplary progress in ensuring that products made, sold, or distributed by those companies are not made with abusive and exploitative child labor.

SEC. 302. ADDITIONAL METHODS.

In addition to the reports made under section 301, the Secretary of Labor in consultation with the Commission shall develop and implement other methods of providing recognition for exemplary programs carried out by companies to ensure that products made, sold, or distributed by those companies are not made with abusive and exploitative child labor.

TITLE IV—DEFINITIONS

SEC. 401. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CHILD.—The term "child" means—

(A) an individual who has not attained the age of 15 years, as measured by the Julian calendar; or

(B) an individual who has not attained the age of 14 years, as measured by the Julian calendar, in the case of an individual who resides in a country that, by law, defines a child as such an individual.

(2) COMMISSION.—The term "Commission" means the Child Labor Free Commission established under section 201.

(3) LABEL.—The term "label" means a display of written, printed, or graphic matter on or affixed to an article of wearing apparel

or a sporting good or on the packaging of the article or a sporting good that meets the standards described in section 101(a).

(4) MADE WITH CHILD LABOR.—

(A) IN GENERAL.—A manufactured article or section of wearing apparel or a sporting good shall be considered to have been made with child labor if the article or section—

(i) was fabricated, assembled, or processed in whole or in part; or

(ii) contains any part that was fabricated assembled, or processed in whole or in part, by any child described in subparagraph (B).

(B) COVERED CHILDREN.—A child is described in this subparagraph if that child engaged in the fabrication, assembly, or processing of the article or section—

(i) under circumstances that the Secretary of Labor considers to be abusive or exploitative;

(ii) under circumstances tantamount to involuntary servitude; or

(iii) under—

(I) exposure to toxic substances or working conditions that otherwise pose serious health hazards; or

(II) working conditions that result in the child's being deprived of basic educational opportunities.

(5) PRODUCER.—The term "producer" includes a contractor or subcontractor of a manufacturer of all or part of a good.

(6) SPORTING GOOD.—The term "sporting good" shall have the meaning provided that term by the Secretary of Labor.

(7) WEARING APPAREL.—The term "wearing apparel" shall have the meaning provided that term by the Secretary of Labor.

[From Marymount University Center for Ethical Concerns, November, 1995]

NEW STUDY FINDS AMERICANS INTOLERANT OF SWEATSHOPS IN GARMENT INDUSTRY

ARLINGTON, VA.—Retailers selling clothing made in sweatshops operating in the United States could feel the ire of American consumers, suggests a new survey sponsored by Marymount University in Arlington, Virginia. The new study shows that consumers would avoid stores that sell goods made in sweatshops and be more inclined to shop at stores working actively to prevent garment worker abuses.

According to the survey, more than three-fourths of Americans would avoid shopping at stores if they were aware that the stores sold goods made in sweatshops. Consumers also are willing to pay a price for assurances that the goods they buy are not made in sweatshops. An overwhelming majority (84 percent) say they would be willing to pay up to an extra $1 on a $20 garment if it were guaranteed to be made in a legitimate shop.

The study, sponsored by Marymount's Center for Ethical Concerns and the Department of Fashion Design and Merchandising, was prompted by the recent discovery of sweatshops operating in the United States in which illegal aliens smuggled into the country were forced to produce garments under almost slave labor conditions. In one factory, raided earlier this year by U.S. officials, workers had been confined in a barbed wire-enclosed compound and forced to work between 16 and 22 hours a day. Workers were paid less than $1 an hour and essentially held captive until they had repaid the cost of their passage to the United States, a process that took years in some cases.

Since these revelations, the U.S. Department of Labor has been working with retailers to encourage greater diligence in policing the industry voluntarily and plans in the near future to release a list of companies that have agreed to cooperate in these efforts. The new study shows that a substantial majority of Americans (66 percent) would be more likely to patronize stores that they know are cooperating with law enforcement officials to prevent sweatshops. If such a list were published, more than two-thirds (69 percent) of consumers say they would take this information into account when deciding where to do their shopping this holiday season.

"It is gratifying to know that Americans condemn these sweatshop conditions and are willing to demonstrate that commitment when they shop, even if it costs them a few pennies. The industry, including retailers, has a responsibility to make sure it is not selling garments made in sweatshops, and the public is willing to hold them accountable," said Sr. Eymard Gallagher, RSHM, president of Marymount University. "Despite the competitiveness in the industry, we can't close our eyes to these kinds of conditions that we thought had disappeared years ago," she said.

The telephone survey of 1,008 randomly selected adults, was conducted by ICR Survey Research Group of Media, PA, at the request of Marymount. The survey has a margin of error of plus or minus 3 percentage points.

Marymount University's fashion design and fashion merchandising programs are among the leaders in this field in the United States. Marymount is an independent, Catholic university, emphasizing excellence in teaching, attention to the individual, and values and ethics across the curriculum. Located in Arlington, Virginia, Marymount enrolls 4,200 men and women in its 34 undergraduate and 24 master's degree programs.

STUDY BACKGROUND AND OBJECTIVES

United States officials recently discovered that workers who had been smuggled into this country were making garments in sweatshops where they were forced to work long hours under extremely poor working conditions for less than the minimum wage. As a result, this research was conducted to determine: Whether respondents would avoid shopping at retailers if aware they sold garments made in sweatshops; Whether respondents would be more inclined to shop in retail stores cooperating with law enforcement officials to prevent sweatshops; Whether respondents would be willing to pay $1 more for a $20 garment if it were guaranteed to be made in a legitimate shop, and; Whether respondents would be more likely this holiday season to shop in retail stores on a forthcoming list of retailers assisting authorities in their effort to end abuse of United States garment workers. Whether the manufacturers or the retailers should have the responsibility of preventing sweatshops.

RESEARCH METHODOLOGY

The research entailed a telephone interview insert in ICR Survey Research Group's EXCEL Omnibus. EXCEL includes a national random sample of approximately 1,000 adults (18+), half male and half female.

Interviewing was conducted from Friday, October 27 through Tuesday, October 31. A total of 1008 interviews were completed. Data has been weighted to reflect the U.S. population 18 years of age and older (188,700,000).

IN A NUTSHELL . . . HERE ARE THE FINDINGS

Retailers—beware of sweatshop garments

Americans overwhelmingly support the idea of officials publishing a list of retailers who assist law enforcement agencies in their effort to end abuse of United States garment workers. Seven-in-ten respondents indicate they would be more likely to shop at the stores this holiday season that cooperate to end garment worker abuse. Consumers are willing to pay a price for assurances that goods they buy are not made in sweatshops. 84% of consumers would pay an additional $1 on a $20 item if they knew the garment was guaranteed to be made in a legitimate shop.

Most Americans (76%) blame the existence of sweatshops on the manufacturers who employ the contractors or workers. However, if consumers knew a retailer sold garments that were made in sweatshops, nearly eight-in-ten would avoid shopping there. As the holiday season starts to kick-off, retailers would be wise to ensure their garments were in fact made in legitimate shops. Given the potential for enticing customers with legitimately made garments, and the potential for losing customers if caught selling sweatshop-made garments, promoting legitimately made garments provides a strategic business opportunity for retailers.

By Mr. ALLARD:

S. 555. A bill to amend the Solid Waste Disposal Act to require that at least 85 percent of funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund be distributed to States to carry out cooperative agreements for undertaking corrective action and for enforcement of subtitle I of that Act; to the Committee on Environment and Public Works.

THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND AMENDMENTS ACT OF 1997

Mr. ALLARD. Mr. President, today I am introducing, The Leaking Underground Storage Tank Trust Fund Amendments Act of 1997. This legislation, if enacted, would change who controls the bulk of the money from the trust fund, and the purposes for which the money can be spent. The legislation is simple, it mandates that 85 percent of the money in the trust fund must be allocated to the States. It's my view that since the States are responsible for the bulk of underground storage tank enforcement and cleanup, they should have greater control over the dollars.

This legislation also broadens the purposes for which trust fund dollars can be spent. Under this legislation States would have the authority to use the funds to meet the greater demand for cleanup.

There has been some concern expressed about how trust fund money has been targeted up to this point. For example, since inception of the program only 1 percent of the money has been used for actual cleanup of orphan tanks. The other 99 percent has gone to administration and enforcement. I think there should be some discussion on whether this money can be spent with greater environmental benefit. Instead of targeting 99 percent to administration and enforcement, perhaps it would be a better idea to help owners and operators who need financial assistance to handle their problem. Since the money for assistance would come

from a dedicated tax, and not the general fund, why not get as big an environmental bang for the buck as possible. By taking this action we may also be able to have more appropriated out of the trust fund every year. As some may be aware, only a small portion of the $1.5 billion in the trust fund is appropriated every year. If we can show that the money being appropriated is directly cleaning up tanks, we can certainly make a better claim for those dollars.

Finally, I understand that EPA and some Members have concerns with this legislation. I think that working with Chairman SMITH and Chairman CHAFEE, and their staffs, we can craft legislation that will be signed into law.

By Mr. INHOFE (for himself, Mr. HUTCHINSON, Mr. HELMS, Mr. COCHRAN, Mr. NICKLES, and Mr. SESSIONS):

S. 556. A bill to provide for the allocation of funds from the Mass Transit Account of the Highway Trust Fund, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

MASS TRANSIT LEGISLATION

Mr. INHOFE. Mr. President, I rise today to introduce legislation that attempts to level the playing field for transit donor States across the country. In addition to myself, Senators TIM HUTCHINSON, HELMS, COCHRAN, NICKLES, and SESSIONS are all original cosponsors.

Federal Transit dollars are distributed according to the Federal Transit Act as amended by the Intermodal Surface Transportation Efficiency Act [ISTEA]. Similar to highway dollars, transit dollars are collected at the gas pump and are distributed by both formula and discretionary grants.

States such as Oklahoma that do not receive back all of the revenues that they send to the Federal mass transit account are considered donor States. Unfortunately, these States are not getting nearly as much back in Federal funding as they contribute. In 1995, Oklahoma contributed about $30 million and only received back about $8 million from the mass transit account of the highway trust fund. This inequity allows for States with more urban centers to receive more dollars back than they actually contribute to the Federal account. Basically, donor States are subsidizing large metropolitan areas with the portion of the funds that we never get back. This puts smaller and rural areas at a disadvantage in trying to maintain transit systems whether it be buses or light rail. Rural areas are, too, interested in conserving fuel and contributing to better air quality.

My proposal is designed to address this critical transit problem as we move deeper into the ISTEA reauthorization debate. Under my bill, each State that contributes $50 million or less into the Federal Mass Transit Account will be guaranteed to receive back no less than 80 percent of its apportionment.

States should reasonably be able to expect that local dollars will be used for local transit needs. A large portion of Oklahoma-generated revenues should be remitted back to our State to provide for improved public transportation in Oklahoma—not urban mass transit systems in other States. My bill will put equity into the mass transit apportionment system by returning locally generated dollars home.

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. 556

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALLOCATION OF MASS TRANSIT ACCOUNT FUNDS.

(a) MINIMUM ALLOCATION.—The Secretary of Transportation shall take such actions as may be necessary to ensure that, in each fiscal year, each State's percentage of the total apportionments to all States from the Mass Transit Account of the Highway Trust Fund established by section 9503 of the Internal Revenue Code of 1986 is not less than 80 percent of the State's estimated tax payment attributable to highway users in the State paid into that Account in the most recent year for which data are available.

(b) APPLICABILITY.—Subsection (a) does not apply to any State whose contribution to the Mass Transit Account of the Highway Trust Fund established by section 9503 of the Internal Revenue Code of 1986 in the applicable fiscal year is greater than or equal to $50,000,000.

By Mr. MCCONNELL (for himself and Mr. INHOFE):

S. 557. A bill to amend the Clean Air Act to exclude beverage alcohol compounds emitted from aging warehouses from the definition of volatile organic compounds; to the Committee on Environment and Public Works.

THE CLEAN AIR ACT AMENDMENTS DISTILLED SPIRITS CLARIFICATION ACT OF 1997

Mr. MCCONNELL. Mr. President, today I rise to introduce legislation which will correct an oversight in the Clean Air Act Amendments of 1990. This legislation will clarify the treatment under the act of beverage alcohol compounds emitted from aging warehouses.

Under the current statute, EPA classifies beverage alcohol emissions (ethanol) as a volatile organic compound [VOC]. VOC's react in the atmosphere to form ozone. Ethanol, however, has been proven to play an insignificant role in ozone formation because of its low reactivity.

Despite scientific evidence proving the minimal value of these controls (at exorbitant cost) the EPA has wrongly refused repeated requests regarding removal of restrictions on beverage distillation. If control technology is implemented, this would mean process changes in the historical aging process that makes each beverage unique.

Aging is arguably one of the most important components of the production process. For example, Bourbon whisky, which is a distinctive product of the United States, and Kentucky, must be aged at least 2 years in wooden barrels according to Federal regulation. This process involves natural oxidation which requires the passage of air and ethanol vapors into and out of the barrels. Any effort to alter this natural aging process through controls on temperature, ventilation patterns, and humidity, could change the actual physical properties of Bourbon whisky, thus altering the distinguishing taste associated with certain brands.

Mr. President, I agree that we must protect the environment that we all share. However, when extremist, inflexible regulation threatens an entire industry at minimal, if any, environmental return, we must reevaluate our priorities. I urge my colleagues to join me in restoring a little sanity to our regulatory process.

I ask unanimous consent for the bill to be printed in the RECORD.

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

S. 557

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITION OF VOLATILE ORGANIC COMPOUNDS.

Section 302(s) of the Clean Air Act (42 U.S.C. 7602(s)) is amended by adding the following at the end thereof: "Such term shall not include beverage alcohol compounds (ethanol) emitted from aging warehouses.".

By Mr. BIDEN (for himself and Mr. GRASSLEY):

S. 558. A bill to provide for a study and report regarding the potential recruitment, hiring, or retention of qualified former officers of the Royal Hong Kong Police by Federal law enforcement agencies; to the Committee on the Judiciary.

THE ROYAL HONG KONG POLICE ANTICRIME STRATEGY ACT OF 1997

Mr. BIDEN. Mr. President, the forthcoming reversion of Hong Kong to Chinese control is, as a matter of diplomacy, the mere implementation of a diplomatic agreement between the United Kingdom and the government of the People's Republic of China.

But it is, of course, far more complicated, and its implications far more profound. The challenges ahead are many. Will Beijing abide by the rule of law and uphold its commitment to the United Kingdom and the people of Hong Kong to "one country, two systems?" Will America and the major

powers have the political will to challenge China should they renege on their commitments?

Nowhere are the challenges of reversion greater than for United States law enforcement—for Hong Kong has long been a center of the international criminal organizations which control the trade in Asian heroin, money laundering is on the rise, and there are a host of other law enforcement problems.

Here in the United States, we see the related problems of Asian organized crime, or Tongs, heroin trafficking from Asia through Hong Kong, alien smuggling, arms trafficking, and the use of Hong Kong as a money laundering center for criminals. Unfortunately, the capacity of U.S. law enforcement to respond to this threat is limited by the fact that we simply do not have enough agents with the language skills, intelligence background and contacts to infiltrate Asian organized crime.

This is why I am introducing today the Royal Hong Kong Police Anticrime Strategy Act of 1997. I am pleased to be joined in doing so by Senator GRASSLEY, my colleague on the Senate International Caucus on Narcotics Control.

This legislation seeks to take advantage of a potential opportunity—even in the face of all the challenges which will come with the reversion of Hong Kong. To describe in simplest terms the opportunity—as officers of the Royal Hong Kong Police leave their force, U.S. law enforcement agencies may be able to bolster our anti-drug, money laundering, alien smuggling and Asian organized crime capabilities with the unique knowledge of the former officers of the Royal Hong Kong Police.

For example, it could be of significant value to federal law enforcement to simply retain on a one-time or continuing basis former Royal Hong Kong Police personnel to use them to help build a major Asian-Crime investigative database. Such a database could form the backbone of U.S. investigations in the years to come. I offer this simply as a means to illustrate to my Senate colleagues the potential law enforcement benefits of this legislation. Of course, the best uses must be decided by the law enforcement professionals within the Justice and Treasury Departments.

I also point out that I have long worked on this issue—beginning with a hearing with the FBI on the issue of Asian organized crime way back in August, 1990. My January 1992 drug strategy also called on the Bush Administration to determine if these police officers could be of assistance. In fact, a DEA operation began in 1992 which used some retired Royal Hong Kong Police in a very limited capacity to provide translation services to support investigations of Asian heroin trafficking.

I was also pleased to include a provision offered by Senator ROTH in the 1994 Biden Crime Bill to study this issue—unfortunately, this provision was dropped from the final agreement due to opposition in the House.

But, today, with the continuing rise of the heroin trade, I am reiterating my call for us to address this issue. The legislation I offer today calls on the Attorney General and the Treasury Secretary to report to Congress on the need and potential benefits—as well as any potential security or administrative problems—of adding former officers of the Royal Hong Kong Police to our federal law enforcement agencies.

And, if the benefits exist, this legislation authorizes the addition of up to 200 former officers to assist in the investigation of international drug trafficking, alien smuggling, money laundering and organized crime undertaken by the Justice and Treasury Departments.

Mr. President, preparing for the reversion of Hong Kong primarily means preparing for the challenges ahead—but it also requires us to recognize the opportunities ahead. Taking advantage of this opportunity is what the "Royal Hong Kong Police Anticrime Act of 1997" is all about.

I ask unanimous consent that the full text of the legislation appear in the RECORD.

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

S. 558

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 "Royal Hong Kong Police Anticrime Strategy Act of 1997".

SEC. 2. ROYAL HONG KONG POLICE ANTICRIME STRATEGY.

(a) DEFINITIONS.—In this section—

(1) the term "Attorney General" means the Attorney General of the United States;

(2) the term "controlled substance" has the same meaning as in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(3) the term "Federal law enforcement agency" includes—

(A) the Drug Enforcement Administration of the Department of Justice;

(B) the Federal Bureau of Investigation of the Department of Justice;

(C) the Immigration and Naturalization Service of the Department of Justice;

(D) the Bureau of Alcohol, Tobacco, and Firearms of the Department of the Treasury; and

(E) the United States Customs Service of the Department of the Treasury;

(F) the United States Secret Service of the Department of the Treasury; and

(G) any other department or agency of the Federal Government that is authorized to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal law;

(4) the term "qualified former officer of the Royal Hong Kong Police" means any individual employed by the Royal Hong Kong Police on or before June 30, 1997, who—

(A) during that period of employment, was authorized to engage in or supervise the prevention, detection, investigation, or prosecution of criminal law;

(B) in the determination of the Attorney General and the Secretary of the Treasury, does not constitute a law enforcement, national security, or other threat to the interest of the United States; and

(C) meets such other requirements as the Attorney General and the Secretary of the Treasury may establish.

(b) STUDY AND REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General and the Secretary of the Treasury shall—

(A) conduct a study regarding the potential recruitment, hiring, or retention of qualified former officers of the Royal Hong Kong Police by Federal law enforcement agencies to assist those agencies in the prevention, detection, investigation, or prosecution of Federal criminal offenses; and

(B) submit to the Committees on the Judiciary of the Senate and the House of Representatives a report describing the results of the study under subparagraph (A).

(2) CONSULTATION.—The Attorney General and the Secretary of the Treasury—

(A) shall consult with the Director of the Office of National Drug Control Policy of the Executive office of the President in conducting the study under paragraph (1)(A); and

(B) shall include any recommendations of the Director in the report submitted under paragraph (1)(B).

(3) CONTENTS OF REPORT.—To the maximum extent practicable, in addition to such information as may be included at the discretion of the Attorney General and the Secretary of the Treasury, the report under paragraph (1)(B) shall include an analysis of—

(A) the potential benefits of recruiting, hiring, or retaining qualified former officers of the Royal Hong Kong Police by Federal law enforcement agencies to assist or otherwise support those agencies the prevention, detection, investigation, or prosecution of Federal criminal offenses, including—

(i) illegal international and domestic trafficking of controlled substances, including any violation of section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A));

(ii) illegal immigration, including the smuggling of illegal immigrants;

(iii) illegal international arms trafficking; and

(iv) any violation of section 1956 of title 18, United States Code;

(B) any special knowledge or capabilities that qualified former officers of the Royal Hong Kong Police would potentially provide to Federal law enforcement agencies, such as translation or linguistic support, including an assessment of the extent to which such knowledge and capabilities are available domestically;

(C) any legal or administrative barriers that may prevent the recruitment, hiring, or retention of qualified former officers of the Royal Hong Kong Police by Federal law enforcement agencies and, if necessary, recommendations for legislation to address those barriers; and

(D) any potential security issues that would be raised by the hiring of qualified former officers of the Royal Hong Kong Police by Federal law enforcement agencies and, if necessary, the potential for minimizing any security risks through deployment in support or other capacities.

(c) CERTIFICATION.—Not later than 30 days after the date on which the report is submitted under subsection (b)(1)(B)—

(1) if the Attorney General determines, based on the results included in that report, that the recruitment, hiring, or retention of qualified former officers of the Royal Hong Kong Police would be of significant assistance to Federal law enforcement, the Attorney General shall so certify to Congress; and

(2) if the Secretary of the Treasury determines, based on the results included in that report, that the recruitment, hiring, or retention of qualified former officers of the Royal Hong Kong Police would be of significant assistance to Federal law enforcement, the Secretary of the Treasury shall so certify to Congress.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) FISCAL YEAR 1998.—There are authorized to be appropriated for fiscal year 1998 such sums as may be necessary to carry out subsection (b)(1).

(2) SUCCEEDING FISCAL YEARS.—If—

(A) the Attorney General makes a certification under subsection (c)(1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1998, 1999, 2000, and 2001 for the purposes of recruiting, hiring, or retaining not more than 100 qualified former officers of the Royal Hong Kong Police to support the activities of the Department of Justice; and

(B) the Secretary of the Treasury makes a certification under subsection (c)(2), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1998, 1999, 2000, and 2001 for the purposes of recruiting, hiring, or retaining not more than 100 qualified former officers of the Royal Hong Kong Police to support the activities of the Department of the Treasury.

Mr. GRASSLEY. Mr. President, I am pleased to join Senator BIDEN in offering the Royal Hong Kong Police Anticrime Strategy Act of 1997. As the recent State Department report on international narcotics control makes clear, the criminal activities of major Asian organized crime groups directly affects the United States. Whether we are talking about alien smuggling, heroin trafficking, or spreading corruption, major Asian-based gangs, many operating from Hong Kong, daily affect the quality of life of many of our citizens. Their activities to launder their illegal incomes threatens the integrity of our banking and financial systems.

With the transfer of Hong Kong to China, much of the current expertise on these criminal organizations now based in the Royal Hong Kong Police will be lost. What this legislation will do, and it is only a first step, is to give us the opportunity to examine ways of retaining that expertise, of putting it to use in our efforts to stop a despicable trade in human beings and to improve our capability to stop the flow of dangerous drugs that do so much to make our neighborhoods and streets unsafe. The proposal is innovative and timely. While only authorizing a study, the present proposal will give us the opportunity to explore ways to ensure the effectiveness of our international narcotics control efforts.

By Mr. DASCHLE (for himself and Mr. KENNEDY) (by request):

S. 559. A bill to amend the Internal Revenue Code of 1986 to provide tax relief to middle-income families who are struggling to pay for college, to amend the Higher Education Act of 1965 to provide significantly increased financial aid for needy students, provide universal access to postsecondary education, reduce student loan costs while improving student loan benefits, to streamline the Federal Family Education Loan Program, and for other purposes; to the Committee on Finance.

S. 560. A bill to amend the Higher Education Act of 1965 to provide significantly increased financial aid for needy students, provide universal access to postsecondary education, reduce student loan costs while improving student loan benefits, to streamline the Federal Family Education Loan Program, and for other purposes; to the Committee on Labor and Human Resources.

THE HOPE AND OPPORTUNITY FOR POSTSECONDARY EDUCATION ACT OF 1997

Mr. DASCHLE. Mr. President, on behalf of the administration, I am introducing, with Senator KENNEDY, the Hope and Opportunity for Postsecondary Education [HOPE] Act of 1997. This legislation includes the President's higher education tax and spending proposals to help make a college education more affordable for American families.

During the last decade, college costs have soared. Federal student aid programs have been instrumental in helping many people get a good education. But aid to students has not kept pace with the cost. In the 1970's, Pell grants made up 77 percent of the cost of going to college; today they make up only about 30 percent of the cost. Many of these students, and those who don't qualify for assistance, are taking on larger and larger amounts of debt. This has many consequences both for the student and for the Nation. Concerns about high levels of indebtedness affects students' choices about where to go to school or what to study and, for some, makes it impossible to get a degree at all. This means we are not developing the talents of our people to the fullest, and that has significant costs for our Nation.

Access to higher education is clearly the key to our future. Not only do we know that those who attend college earn higher incomes, but having a well-educated work force is also important for our Nation's overall economic growth and ability to compete in the global marketplace.

I applaud the President for his initiatives in this area—his plan is a good and thoughtful one. He deserves a lot of credit for taking on this important issue and insisting that it be part of the national agenda. His bill helps people from a wide range of backgrounds who need help, from middle-class families who are struggling to make ends meet to people from low-income families who are trying to escape poverty and make decent lives for themselves. He does this by increasing the maximum Pell grant to $3,000 and he reduces student loan interest costs.

I do want to say that I have some concerns about aspects of this bill. I believe we have an important opportunity to help lower income people further by making the tax credit be refundable. We did that in S. 12, legislation introduced earlier this year by Senate Democrats. I also believe that we should allow the credit to be combined with other aid, again as we did in S. 12.

Despite these concerns, I am pleased to introduce this legislation for the administration, because I believe it helps us move forward to find ways to improve the affordability of education in this country.

This is not a partisan issue: all families worry about the cost of college. We ought to find common ground to make a college education more affordable. It's time to hold hearings so that we can examine these issues and advance the public dialog. Higher education is too important to the future of this Nation to divide us. I am committed to this goal and look forward to working with my colleagues on the other side of the aisle to find solutions to this problem.

Senator KENNEDY and I are also introducing, by request, a separate piece of legislation that includes the non-tax-related provisions of the HOPE legislation. We are doing this because, historically, these programs have been in the Labor Committee's jurisdiction, and we want to make sure the Labor Committee considers them fully.

Mr. President, I ask unanimous consent that the administration's letter of transmittal, and a section-by-section analysis of the HOPE legislation be printed in the RECORD.

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. 559

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 "Hope and Opportunity for Postsecondary Education Act of 1997".

TITLE I—TAX PROVISIONS

SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS

SEC. 101. (a) SHORT TITLE.—This title may be cited as the "Higher Education Tax Incentive Act of 1997".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title 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 Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

TITLE I—TAX PROVISIONS

Sec. 101. Short title; amendment of 1986 code; table of contents.
Sec. 102. Credit for higher education expenses.
Sec. 103. Deduction for higher education expenses.
Sec. 104. Treatment of cancellation of certain student loans.
Sec. 105. Employer-provided educational assistance programs.
Sec. 106. Small business educational assistance credit.

CREDIT FOR HIGHER EDUCATION EXPENSES

SEC. 102. (a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 24 the following new section:

"SEC. 24A. HIGHER EDUCATION TUITION AND FEES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the amount of qualified higher education expenses paid by the taxpayer during such taxable year for education furnished during any academic period beginning in such year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The amount allowed as a credit under subsection (a) for any taxable year with respect to the qualified higher education expenses of any 1 individual shall not exceed $1,500.

"(B) REDUCTION FOR OTHER NONTAXABLE FEDERAL ASSISTANCE.—

"(i) IN GENERAL.—If any nontaxable Federal assistance is allocable to any academic period, the dollar amount applicable under subparagraph (A) for the taxable year in which such period begins shall be reduced by the amount of such assistance.

"(ii) NONTAXABLE FEDERAL ASSISTANCE.—For purposes of clause (i), the term 'nontaxable Federal assistance' means any scholarship or grant provided by the Federal Government which is exempt from tax under this chapter by reason of section 117 or any other Federal law. Such term shall not include any benefit described in section 480(c)(2) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(c)(2)), as in effect on the date of enactment of this section.

"(2) CREDIT ALLOWED FOR ONLY 2 TAXABLE YEARS.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified higher education expenses of an individual unless the taxpayer elects to have this section apply with respect to such individual for such year. An election under this paragraph shall not take effect with respect to an individual for any taxable year if an election under this paragraph (by the taxpayer or any other individual) is in effect with respect to such individual for any 2 prior taxable years.

"(3) CREDIT ALLOWED FOR YEAR ONLY IF INDIVIDUAL IS AT LEAST½ TIME STUDENT FOR PORTION OF YEAR.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified higher education expenses of an individual unless such individual is an eligible student for at least one academic period which begins during such year.

"(4) CREDIT ALLOWED ONLY FOR FIRST TWO YEARS OF POSTSECONDARY EDUCATION.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified higher education expenses of an individual if the individual has completed (before the beginning of such taxable year) the first 2 years of postsecondary education at an institution of higher education.

"(c) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

"(A) the excess of—

"(i) the taxpayer's modified adjusted gross income for such taxable year, over

"(ii) $50,000 ($80,000 in the case of a joint return), bears to

"(B) $20,000.

"(3) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year—

"(A) determined without regard to section 221, and

"(B) increased by any amount excluded from gross income under section 911, 931, or 933.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an institution of higher education.

"(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the individual's degree program.

"(C) EXCEPTION FOR NONACADEMIC FEES.—Such term does not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education' means an institution—

"(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

"(B) which is eligible to participate in a program under title IV of such Act.

"(3) ELIGIBLE STUDENT.—The term 'eligible student' means, with respect to any academic period, a student who—

"(A) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1), as in effect on the date of the enactment of this section, and

"(B) is carrying at least½ the normal full-time work load for the course of study the student is pursuing.

"(4) OTHER TERMS RELATING TO THE HIGHER EDUCATION ACT.—The following terms shall have the meanings prescribed in regulations under section 481(g) of the Higher Education Act of 1965 (20 U.S.C. 1088(g)), as added by the Student Financial Aid Improvements Act of 1997:

"(A) Academic period.

"(B) Normal full-time workload.

"(C) First two-years of postsecondary education.

"(D) Qualifying grade point average.

"(E) Job skills and new job skills.

"(e) TREATMENT OF EXPENSES PAID BY DEPENDENT.—If a deduction under section 151 with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins—

"(1) no credit shall be allowed under subsection (a) to such individual for such individual's taxable year, and

"(2) qualified higher education expenses paid by such individual during such individual's taxable year shall be treated for purposes of this section as paid by such other taxpayer.

"(f) TREATMENT OF CERTAIN PREPAYMENTS.—If qualified higher education expenses are paid by the taxpayer during a taxable year for an academic period which begins during the first 3 months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.

"(g) SPECIAL RULES.—

"(1) DENIAL OF CREDIT IF INDIVIDUAL CONVICTED OF DRUG OFFENSE.—No credit shall be allowed under subsection (a) with respect to the qualified higher education expenses of an individual for any taxable year if the individual has been convicted before the end of such year of a Federal or State felony offense consisting of the possession or distribution of a controlled substance.

"(2) DENIAL OF CREDIT IF INDIVIDUAL FAILS TO SATISFY GRADE POINT AVERAGE REQUIREMENT.—If an election was in effect under this section with respect to the qualified higher education expenses of an individual for any taxable year, no credit shall be allowed under subsection (a) with respect to qualified higher education expenses of such individual for a succeeding taxable year if the individual does not have a qualifying grade point average for all courses at an institution of higher education for academic periods ending before the beginning of such succeeding taxable year. Such average shall be determined without regard to—

"(A) courses taken while attending high school, and

"(B) courses referred to in subsection (d)(1)(B).

"(3) NO DOUBLE BENEFIT.—No credit shall be allowed under subsection (a) for any taxable year for any expense—

"(A) with respect to an individual if a deduction is allowed under section 221 for the taxable year for any expense with respect to such individual, or

"(B) for which a deduction is allowed under any other provision of this chapter.

"(4) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under subsection (a) to a taxpayer with respect to the qualified higher education expenses of an individual unless the taxpayer includes the name and taxpayer identification number of such individual on the return of tax for the taxable year.

"(5) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS.—The amount of qualified higher education expenses otherwise taken into account under subsection (a) with respect to an individual for an academic period shall be reduced (before the application of subsections (b) and (c)) by the sum of—

"(A) any amounts paid for the benefit of such individual which are allocable to such period as—

"(i) a qualified scholarship which is excludable from gross income under section 117,

"(ii) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code,

"(iii) a payment which is excludable from gross income under section 127, or

"(iv) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for such individual's educational expenses, or attributable to such individual's enrollment at an institution of higher education, which is excludable from gross income under any law of the United States, and

"(B) the amount excludable from gross income under section 135 which is allocable to such expenses with respect to such individual for such period.

"(6) NO CREDIT FOR MARRIED INDIVIDUALS FILINGS SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

"(7) NONRESIDENT ALIENS.—If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

"(h) INFLATION ADJUSTMENTS.—

"(1) DOLLAR LIMITATION ON AMOUNT OF CREDIT.—

"(A) IN GENERAL.—In the case of a taxable year beginning after 1997, the $1,500 amount in subsection (b)(1)(A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1996' for 'calendar year 1992'" in subparagraph (B) thereof.

"(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

"(2) INCOME LIMITS.—

"(A) IN GENERAL.—In the case of a taxable year beginning after 2,000, the $50,000 and $80,000 amounts in subsection (c)(2) and section 221(b)(2)(B)(i)(II) shall each be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

"(i) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit."

(b) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", and", and by inserting after subparagraph (H) the following new subparagraph:

"(I) an omission of a correct TIN required under section 24A(g)(4) or under section 221(d)(2)(A) (relating to higher education tuition and fees) to be included on a return."

(c) RETURNS RELATING TO HIGHER EDUCATION EXPENSES.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by inserting after section 6050R the following new section:

"SEC. 6050S. RETURNS RELATING TO HIGHER EDUCATION EXPENSES.

"(a) IN GENERAL.—Any person—

"(1) which is an institution of higher education which receives payments for qualified higher education expenses with respect to any individual for any calendar year, or

"(2) which is engaged in a trade or business which, in the course of such trade or business makes payments during any calendar year to any individual which constitute reimbursements or refunds (or similar amounts) of qualified higher education expenses of such individual,

shall make the return described in subsection (b) with respect to the individual at such time as the Secretary may be regulations prescribe.

"(b) FORM AND MANNER OF RETURNS. A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name, address, and TIN of the individual with respect to whom payments described in subsection (a) were received from (or were paid to),

"(B) the name, address, and TIN of any individual certified by the individual described in subparagraph (A) as the taxpayer who will claim the individual as a dependent for purposes of the deduction allowable under section 151 for any taxable year ending with or within the calendar year,

"(C) the—

"(i) aggregate amount of payments for qualified higher education expenses received with respect to the individual described in subparagraph (A) during the calendar year, and

"(ii) aggregate amount of reimbursements or refunds (or similar amounts) paid to such individual during the calendar year,

"(D) the aggregate amount of nontaxable Federal assistance received respect to the individual described in subparagraph (A) during the calendar year, and

"(E) such other information as the Secretary may prescribe.

"(c) APPLICATION TO GOVERNMENT UNITS.—For purposes of this section—

"(1) a governmental unit or any agency or instrumentality thereof shall be treated as a person, and

"(2) any return required under subsection (a) by such governmental entity shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return under subparagraph (A) or (B) of subsection (b)(2) a written statement showing—

"(1) the name, address, and phone number of the information contact of the person required to make such return, and

"(2) the aggregate amounts described in subparagraphs (C) and (D) of subsection (b)(2).

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

"(e) DEFINITIONS.—For purposes of this section, the terms 'institution of higher education', 'qualified higher education expenses', and nontaxable Federal assistance' have the meanings given such terms by section 24A.

"(f) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section. No penalties shall be imposed under section 6724 with respect to any return or statement required under this section until such time as such regulations are issued."

(2) ASSESSABLE PENALTIES.—Section 6724(d) (relating to definitions) is amended—

(A) by redesignating clauses (x) through (xv) as clauses (xi) through (xvi), respectively, in paragraph (1)(B) and by inserting after clause (ix) of such paragraph the following new clause:

"(x) section 6050S (relating to returns relating to payments for qualified higher education expenses),", and

(B) by striking "or" at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting ", or", and by adding at the end the following new subparagraph:

"(Z) section 6050S(d) (relating to returns relating to qualified higher education expenses)."

(3) CLERICAL AMENDMENT.—The table of sections for Subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050R the following new item:

"Sec. 6050S. Returns relating to higher education expenses."

(d) CLERICAL AMENDMENT.—The table of sections for Subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 24 the following new item:

"Sec 24A Higher education tuition and fees."

(e) EFFECTIVE DATE; SUNSET.—(1) PURPOSE.—The President's budget produces balance in fiscal year 2002 under Office of Management and Budget assumptions, including the permanent changes in law providing tax reduction set forth in the preceding portions of this section. The President's budget also includes a mechanism to guarantee balance under Congressional Budget Office assumptions. As a part of that mechanism, the following provision sunsetting the tax reduction is included, as well as specific expedited procedures for reinstatement of the reduction to the extent that Office of Management and Budget assumptions prove correct.

(2) The amendments made by this section shall apply to expenses paid after December 31, 1996 (in taxable years ending after such date), for education furnished in academic periods beginning after June 30, 1997, except that no credit shall be allowed under section 24A of the Internal Revenue Code of 1986 for

taxable years beginning after December 31, 2000.

DEDUCTION FOR HIGHER EDUCATION EXPENSES

SEC. 103. (a) DEDUCTION ALLOWED.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. HIGHER EDUCATION TUITION AND FEES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction the amount of qualified higher education expenses paid by the taxpayer during the taxable year for education furnished to the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151, as an eligible student at an institution of higher education during any academic period beginning in such year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—

"(A) (IN GENERAL.—The amount allowed as a deduction under subsection (a) for any taxable year shall not exceed $10,000.

"(B) PHASE-IN.—In the case of taxable years beginning in 1997 or 1998, subparagraph (A) shall be applied by substituting '$5,000' for '$10,000'.

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The amount which would (but for this paragraph) be allowed as a deduction under subsection (a) shall be reduced (but not below zero) by the amount determined under subparagraph (B).

"(B) AMOUNT OF REDUCTION.—The amount determined under this subparagraph equals the amount which bears the same ratio to the deduction (determined without regard to this paragraph) as—

"(i) the excess of—

"(I) the taxpayer's modified adjusted gross income for the taxable year, over

"(II) $50,000 ($80,000 in the case of a joint return), bears to

"(ii) $20,000.

"(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (B), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year determined—

"(i) without regard to this section and sections 911, 931, and 933, and

"(ii) after the application of sections 86, 135, 219, and 469.

For purposes of sections 86, 135, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

"(D) CROSS REFERENCE.—For inflation adjustment of $50,000 and $80,000 amounts, see section 24A(h).

"(c) DEFINITIONS.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), terms used in this section which are also used in section 24A have the respective meanings given such terms in section 24A.

"(2) DEDUCTION AVAILABLE FOR EDUCATION TO ACQUIRE OF IMPROVE JOB SKILLS.—For purposes of applying this section, the requirement of section 24A(d)(3) shall be treated as met if—

"(A) the individual is enrolled in a course which enables the individual to improve the individual's job skills or to acquire new job skills, and

"(B) the individual is not enrolled in an elementary or secondary school.

"(d) SPECIAL RULES.—

"(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under subsection (a) for any expense for which a deduction is allowed to the taxpayer under any other provision of this chapter.

"(2) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (e) and (f) of section 24A, and the following rules of section 24A(g), shall apply for purposes of this section:

"(A) Paragraph (4) (relating to identification requirement).

"(B) Paragraph (5) (relating to adjustment for certain scholarships).

"(C) Paragraph (6) (relating to no benefit for married individuals filing separate returns).

"(D) Paragraph (7) (relating to nonresident aliens).

"(3) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section."

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) is amended by inserting after paragraph (16) the following new paragraph:

"(17) HIGHER EDUCATION TUITION AND FEES.—The deduction allowed by section 221."

(c) CONFORMING AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the item relating to section 221 and inserting:

"Sec. 221. Higher education tuition and fees.
"Sec. 222. Cross reference."

(d) EFFECTIVE DATE; SUNSET.—(1) PURPOSE.—The President's budget produces balance in fiscal year 2002 under Office of Management and Budget assumptions, including the permanent changes in law providing tax reduction set forth in the preceding portions of this section. The President's budget also includes a mechanism to guarantee balance under Congressional Budget Office assumptions. As a part of that mechanism, the following provision sunsetting the tax reduction is included, as well as specific expedited procedures for reinstatement of the reduction to the extent that Office of Management and Budget assumptions prove correct.

(2) The amendments made by this section shall apply to expenses paid after December 31, 1996 (in taxable years ending after such date), for education furnished in academic periods beginning after June 30, 1997, except that no deduction shall be allowed under section 221 of the Internal Revenue Code of 1986 for taxable years beginning after December 31, 2000.

TREATMENT OF CANCELLATION OF CERTAIN STUDENT LOANS

SEC. 104. (a) CERTAIN DIRECT STUDENT LOANS THE REPAYMENT OF WHICH IS INCOME CONTINGENT.—Paragraph (1) of section 108(f) is amended by striking "any student loan if" and all that follows and inserting "any student loan if—

"(A) such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers, or

"(B) in the case of a loan made under part D of title IV of the Higher Education Act of 1965 which has a repayment schedule established under section 455(e)(4) of such Act (relating to income contingent repayments), such discharge is after the maximum repayment period under such loan (as prescribed under such part)."

(b) CERTAIN LOANS BY EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Paragraph (2) of section 108(f) (defining student loan) is amended by striking "or" at the end of subparagraphs (B) and (C) and by striking subparagraph (D) and inserting the following:

"(D) any organization described in section 501(c)(3) and exempt from tax under section 501(a), or

"(E) any educational organization described in section 170(b)(1)(A)(ii) pursuant to an agreement with any entity described in subparagraph (A), (B), (C), or (D) under which the funds from which the loan was made were provided to such educational organization.

"The term 'student loan' includes any loan made by an organization described in subparagraph (D) to refinance a loan meeting the requirements of the preceding sentence."

(2) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Subsection (f) of section 108 is amended by adding at the end the following new paragraph:

"(3) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) (or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D)) if the discharge is on account of services performed for either such organization."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness after the date of the enactment of this Act.

EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE PROGRAMS

SEC. 105. (a) EXTENSION.—Subsection (d) of section 127 (relating to exclusion for educational assistance programs) is amended to read as follows:

"(d) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2000."

(b) REPEAL OF LIMITATION ON GRADUATE EDUCATION.—The last sentence of section 127(c)(1) is amended by striking ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree".

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1996.

(2) GRADUATE EDUCATION.—The amendments made by subsection (b) shall apply with respect to expenses relating to courses beginning after June 30, 1996.

(3) EXPEDITED PROCEDURES.—The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1996 or 1997 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee's signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee.

SMALL BUSINESS EDUCATIONAL ASSISTANCE CREDIT

SEC. 106. (a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45D. SMALL BUSINESS EDUCATIONAL ASSISTANCE CREDIT.

"(a) GENERAL RULE.—For purposes of section 38, the small business educational assistance credit for any taxable year is an amount equal to 10 percent of the qualified educational assistance expenses of the taxpayer for the taxable year.

"(b) QUALIFIED EDUCATIONAL ASSISTANCE EXPENSES .—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified educational assistance expenses' means any amount paid or incurred by an eligible small employer for educational assistance furnished to an employee of the employer by a person other than such employer (or an employee of such employer) under an educational assistance program described in section 127(b).

"(2) EDUCATIONAL ASSISTANCE.—The term 'educational assistance' has the meaning given such term by section 127(c)(1) (determined without regard to subparagraph (B) thereof).

"(3) LIMITATIONS.—

"(A) DOLLAR LIMITATION PER EMPLOYEE.—The aggregate amount which may be taken into account under paragraph (1) with respect to any employee for any taxable year shall not exceed $5,250.

"(B) PAYMENTS TO RELATED PERSONS.—

"(i) IN GENERAL.—No amount shall be taken into account under paragraph (1) if such amount is to be paid to a related person with respect to the employer.

"(ii) RELATED PERSON.—For purposes of this subparagraph, a person shall be related to the employer if—

"(I) such person is a 5-percent owner (within the meaning of section 416(i)(1)(B)(i)) of the employer, or

"(II) such person bears a relationship to the employer or such a 5-percent owner which is described in section 267(b) or 707(b)(1).

"(C) TRADE OR BUSINESS.—No amount shall be taken into account under paragraph (1) unless it is incurred in the active conduct of a trade or business by the taxpayer.

"(c) ELIGIBLE SMALL EMPLOYER.—For purposes of this section—

"(1) IN GENERAL.—A taxpayer shall be treated as an eligible small employer for any taxable year if the average annual gross receipts of the taxpayer for the 3-taxable year period ending with the preceding taxable year are $10,000,000 or less.

"(2) SPECIAL RULES.—Section 448(c)(3) shall apply for purposes of this subsection.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) DEFINITIONS.—The terms 'employee' and 'employer' have the meanings given such terms by paragraphs (2) and (3) of section 127(c), respectively.

"(2) AGGREGATION.—

"(A) IN GENERAL.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single employer.

"(B) ALLOCATION OF CREDIT.—The credit (if any) determined under this section with respect to each person described in subparagraph (A) shall be its proportionate share of the qualified educational assistance expenses giving rise to such credit.

"(3) SHORT TAXABLE YEARS.—For any taxable year having less than 12 months, the credit determined under this section shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

"(4) DISALLOWANCE OF DEDUCTION.—"For disallowance of deduction for expenses for which credit allowable, see section 280C(d).

"(e) TERMINATION.—This section shall not apply to qualified educational assistance expenses incurred in taxable years beginning after December 31, 2000."

(b) DISALLOWANCE OF DEDUCTIONS.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end of the following new subsection:

"(d) CREDIT FOR SMALL BUSINESS EDUCATIONAL ASSISTANCE EXPENSES.—

"(1) IN GENERAL.—No deduction shall be allowed for that portion of the qualified educational assistance expenses (as defined in section 45D(b)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45D.

"(2) ELECTION OF REDUCED CREDIT.—

"(A) IN GENERAL.—In the case of any taxable year for which an election is made under this paragraph—

"(i) paragraph (1) shall not apply, and

"(ii) the amount of the credit under section 45D(a) shall be the amount determined under subparagraph (B).

"(B) AMOUNT OF REDUCED CREDIT.—The amount of the credit determined under this subparagraph for any taxable year shall be the amount equal to the excess of—

"(i) the amount of credit determined under section 45D(a) without regard to this paragraph, over

"(ii) the product of—

"(I) the amount described in clause (i), and

"(II) the maximum rate of tax under section 11(b)(1).

"(C) ELECTION.—An election under this paragraph for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable.

"(3) CONTROLLED GROUPS.—Paragraph (3) of subsection (b) shall apply for purposes of this subsection."

(c) GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit) is amended by striking "plus" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting, "plus", and by adding at the end the following new paragraph:

"(13) the small business educational assistance credit determined under section 45D(a)."

(d) CONFORMING AMENDMENTS.—

(1) NO CARRYBACK.—Subsection (d) of section 39 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following new paragraph:

"(8) NO CARRYBACK OF SECTION 45D CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45D may be carried back to a taxable year ending before the date of the enactment of section 45D."

(2) The table of sections for Subpart D of such part IV is amended by adding at the end the following new item:

"SEC. 45D. SMALL BUSINESS EDUCATIONAL ASSISTANCE CREDIT."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to education and training furnished in taxable years beginning after December 31, 1997.

TITLE II—STUDENT FINANCIAL AID PROVISIONS

SHORT TITLE; REFERENCES

SEC. 201. (a) SHORT TITLE.—This title may be cited as the "Student Financial Aid improvements Act of 1997".

(b) REFERENCES.—References in this title to "the Act" shall refer to the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*).

PART A—PELL GRANTS

PELL GRANT MAXIMUM AWARD

SEC. 211. Section 401(b)(2)(A) of the Act is amended by adding at the end thereof the following: "Except as otherwise provided in this section, in no case shall the maximum basic grant be less than $3,000.".

PART B—STUDENT LOAN PROVISIONS

MANAGEMENT AND RECOVERY OF RESERVES

SEC. 221. (a) Section 422 of the Act is amended—

(1) by amending subsection (g)(1) to read as follows:

"(1) AUTHORITY TO RECOVERY FUNDS.—(A) Notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and any assets purchased or developed with such reserve funds, regardless of who holds or controls the reserves or assets, shall remain the property of the United States.

"(B) The Secretary may direct the guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, that the Secretary determines are required—

"(i) to pay the program expenses and contingent liabilities of the guaranty agency;

"(ii) to satisfy the guaranty agency's requirements under subsection (h); or

"(iii) for the orderly termination of the guaranty agency's operations and the liquidations of its assets.

"(C) The Secretary may direct a guaranty agency, or such agency's officers or directors, to cease any activity involving expenditure, use, or transfer of the guaranty agency's reserve funds or assets that the Secretary determines is a misapplication, misuse, or improper expenditure of such funds or assets."; and

(2) by adding after subsection (g) the following new subsections:

"(h) RECALL OF RESERVES IN FISCAL YEARS 1997 THROUGH 2002; LIMITATIONS ON USE OF RESERVE FUNDS AND ASSETS.—(1)(A) Notwithstanding any other provision of law, the Secretary shall, except as otherwise provided in this subsection, recall from the reserve funds held by guaranty agencies (which for purposes of this subsection shall include any reserve funds held by, or under the control of, any other entity) not less than—

"(i) $731,000,000 in fiscal year 1998;

"(ii) $127,000,000 in fiscal year 1999;

"(iii) $186,000,000 in each of the fiscal years 2000 and 2001; and

"(iv) $1,271,000,000 in fiscal year 2002.

"(B) Funds returned to the Secretary under this subsection shall be deposited in the Treasury.

"(C) The Secretary shall require each guaranty agency to return reserve funds under subparagraph (A) based on its proportionate share, as determined by the Secretary, of all reserve funds held by guaranty agencies as of September 30, 1996.

"(2)(A) Within 45 days of enactment of this subsection, all reserve funds held by a guaranty agency that have not yet been recalled by the Secretary under paragraph (1) shall be transferred by the guaranty agency to a restricted account (of a type specified by the Secretary) established by the guaranty agency, and be invested in United States Government securities specified by the Secretary. The manner and timeframe in which reserve funds so invested are recalled shall be specified by the Secretary, consistent with the requirements of this subsection. Except as described in subparagraph (B), the guaranty

agency shall not use the reserve funds in such account, which shall include the earnings thereon, for any purpose without the express permission of the Secretary.

"(B)(i) In order to assist guaranty agencies in meeting program expenses, the Secretary shall permit the use of not more than an aggregate of $350,000,000 of the reserve funds held in the restricted accounts described in subparagraph (A) by guaranty agencies with agreements under section 428(c), as working capital to be used for such purposes as the Secretary may specify. The Secretary shall specify the amount of reserve funds in each guaranty agency's restricted account that may be used as working capital, based on the guaranty agency's proportionate share of all borrower accounts outstanding on September 30, 1996. The guaranty agency shall repay such amount to its restricted account (or returned to the Treasury, if so directed by the Secretary) by no later than September 30, 2002, or the date on which such agency's agreement under section 428(c) ends (through resignation, expiration, or termination), whichever is earlier.

"(ii) The guaranty agency may use the earnings from its restricted account for fiscal year 1998 to assist in meeting its operational expenses for such year.

"(C) Non-liquid reserve fund assets, such as buildings and equipment purchased or developed by the guaranty agency with reserve funds, and any liquid assets remaining in a guaranty agency's restricted account after the recalls in paragraph (1)(A), shall—

"(i) remain the property of the United States;

"(ii) be used only for such purposes as the Secretary determines are appropriate; and

"(iii) be subject to recall by the Secretary no later than the date on which such agency's agreement under section 428(c) ends (through resignation, expiration, or termination, as the case may be).".

REPAYMENT TERMS

SEC. 222.(a) Section 427 of the Act is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (B), in the matter preceding clause (i), by striking "over a period" through "not more than 10 years" and inserting "in accordance with the repayment plan selected under subsection (d),";

(B) in subparagraph (C), at the end of the subparagraph, by striking out "the 10-year period described in subparagraph (B);" and inserting the following: "the length of the repayment period under a repayment plan described in subsection (d);";

(C) by striking subparagraph (F);

(D) by redesignating subparagraphs (G), (H), and (I) as subparagraphs (F), (G), and (H), respectively; and

(E) in subparagraph (G) (as redesignated by subparagraph (D)), by striking "the option" through the end of the subparagraph and inserting "the repayment options described in subsection (d); and";

(2) in subsection (c), by striking "in subsection (a)(2)(H)," and inserting the following: "by a repayment plan selected by the borrower under subparagraph (C) or (D) of subsection (d)(1),"; and

(3) by adding after subsection (c) the following new subsection:

"(d) REPAYMENT PLANS.—(1) DESIGN AND SELECTION.—In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subsection for repayment of such loan, including principal and interest thereon. No plan may require a borrower to repay a loan in less than five years. The borrower may choose from—

"(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years;

"(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with subsection (c);

"(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(D) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed ten years.

"(2) LENDER SELECTION OF OPTION IF BORROWER DOES NOT SELECT.—If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the lender shall provide the borrower with a repayment plan described in paragraph (1)(A).

"(3) CHANGES IN SELECTIONS.—The borrower of a loan made under this part may change the borrower's selection of a repayment plan under paragraph (1), or the lender's selection of a plan for the borrower under paragraph (2), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.

"(4) ACCELERATION PERMITTED.—Under any of the plans described in this subsection, the borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part.".

(b) Section 428(b) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking clauses (i) and (ii) and the clause designation "(iii)";

(B) in subparagraph (E)—

(i) in clause (i)—

(I) by striking "or section 428A," and inserting "or section 428H,"; and

(II) by striking "the option" through the end of the clause and inserting "the repayment options described in paragraph (9); and"; and

(ii) in clause (ii)—

(I) by striking "over a period" through "nor more than 10 years" and inserting "in accordance with the repayment plan selected under paragraph (9), and"; and

(II) by striking "of this subsection;" at the end of clause (ii) and inserting a semicolon; and

(C) in subparagraph (L)(i), by inserting after the clause designation the following: "except as otherwise provided by a repayment plan selected by the borrower under paragraph (9)(A)(iii) or (iv),"; and

(2) by adding after paragraph (8) the following new paragraph:

"(9) REPAYMENT PLANS.—(A) DESIGN AND SELECTION.—In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subparagraph for repayment of such loan, including principal and interest thereon. No plan may require a borrower to repay a loan in less than five years. The borrower may choose from—

"(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years;

"(ii) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (2)(L);

"(iii) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, or more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(iv) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed ten years.

"(B) LENDER SELECTION OF OPTION IF BORROWER DOES NOT SELECT.—If a borrower of a loan made under this part does not select a repayment plan described in subparagraph (A), the lender shall provide the borrower with a repayment plan described in subparagraph (A)(i).

"(C) CHANGES IN SELECTIONS.—The borrower of a loan made under this part may change the borrower's selection of a repayment plan under subparagraph (A), or the lender's selection of a plan for the borrower under subparagraph (B), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.

"(D) ACCELERATION PERMITTED.—Under any of the plans described in this paragraph, the borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part.

"(E) COMPARABLE FFEL AND DIRECT LOAN REPAYMENT PLANS.—The Secretary shall ensure that the repayment plans offered to borrowers under this part are comparable, to the extent practicable and not otherwise provided in statute, to the repayment plans offered under part D.".

(c) Section 428C of the Act is amended—

(1) in subsection (b)(3)(F), by striking "alternative"; and

(2) in subsection (c)—

(A) by amending paragraph (2) to read as follows:

"(2) REPAYMENT PLANS.—(A) DESIGN AND SELECTION.—In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this section the plans described in this paragraph for repayment of such loan, including principal and interest thereon. No plan may require a borrower to repay a loan in less than five years. The borrower may choose from—

"(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years;

"(ii) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (3);

"(iii) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(iv) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed ten years.

"(B) LENDER SELECTION OF OPTION IF BORROWER DOES NOT SELECT.—If a borrower of a

loan made under this section does not select a repayment plan described in subparagraph (A), the lender shall provide the borrower with a repayment plan described in subparagraph (A)(i).

"(C) CHANGES IN SELECTIONS.—The borrower of a loan made under this section may change the borrower's selection of a repayment plan under subparagraph (A), or the lender's selection of a plan for the borrower under subparagraph (B), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.".

(d) Section 455(d) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting after "an extended period of time," the following: "not to exceed 30 years,"; and

(B) in subparagraph (C), by striking "a fixed or extended period of time," and inserting the following: "an extended period of time, not to exceed 30 years,"; and

(2) in paragraph (2), by striking "subparagraph (A), (B), or (C) of paragraph (1)," and inserting "paragraph (1)(A),".

INTEREST RATES

SEC. 223. (a) Section 427A of the Act is amended—

(1) in subsection (g)(2)—

(A) by inserting after the paragraph heading the subparagraph designation "(A)";

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(C) by striking "paragraph (1)," and inserting "paragraph (1), and except as provided in subparagraph (B),"; and

(D) by adding after subparagraph (A) (as redesignated by subparagraph (A)) the following new subparagraph:

"(B) In the case of loans made or insured under section 428 or 428H for which the first disbursement is made on or after October 1, 1997, for purposes of paragraph (1), the rate determined under this paragraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to the bond equivalent rate of the securities with a comparable maturity, as established by the Secretary, except that such rate shall not exceed 8.25 percent.";

(2) in subsection (h)—

(A) in the heading thereof, by striking "JULY 1, 1998.—" and inserting "OCTOBER 1, 1997.—";

(B) in paragraph (1)—

(i) by striking "(f), and (g)" and inserting "and (f),"; and

(ii) by striking "July 1, 1998," and inserting "October 1, 1997,"; and

(C) in paragraph (2)—

(i) in the heading, by striking "JULY 1, 1998.—" and inserting "OCTOBER 1, 1997.—"; and

(ii) by striking "July 1, 1998," and inserting "October 1, 1997,"; and

(3) in subsection (i)(7)(B), by adding at the end the following: "Notwithstanding any other provision of law, the interest rate determined under this subparagraph shall be used solely to determine the rebate of excess interest required by this paragraph and shall not be used to calculate or pay special allowances under section 438.".

(b) Section 455(b) of the Act is amended—

(1) in paragraph (2)(B)—

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(B) by inserting after the subparagraph heading the clause designation "(i)";

(C) by striking "subparagraph (A)," and inserting "subparagraph (A) and except as provided in clause (ii),"; and

(D) by adding after clause (i) (as redesignated by subparagraph (B)) the following new clause:

"(ii) In the case of Federal Direct Stafford/Ford Loans or Federal Direct Unsubsidized Stafford/Ford Loans for which the first disbursement is made on or after October 1, 1997, for purposes of subparagraph (A), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to the bond equivalent rate of the securities with a comparable maturity, as established by the Secretary, except that such rate shall not exceed 8.25 percent.";

(2) in paragraph (3)—

(A) by striking "and (2)," and inserting ", and except as provided in paragraph (2),"; and

(B) by striking "made on or after July 1, 1998," and inserting "for which the first disbursement is made on or after October 1, 1997,"; and

(3) in paragraph (4)(B), by striking "July 1, 1998," and inserting "October 1, 1997,".

LENDER AND HOLDER RISK SHARING

SEC. 224. Section 428(b)(1)(G) of the Act is amended by striking "not less than 98 percent" and inserting "95 percent".

FEES AND INSURANCE PREMIUMS

SEC. 225. (a) Section 428(b)(1)(H) of the Act is amended—

(1) by inserting the clause designation "(i)" following the subparagraph designation;

(2) by striking "the loan," and inserting "any loan made under section 428 or 428B before July 1, 1998,"; and

(3) after clause (i) (as redesignated by paragraph (1)), by adding "and" and the following new clause:

"(ii) provides that no insurance premiums shall be charged to the borrower of any loan made under section 428 or 428B on or after July 1, 1998;".

(b) Section 428H(h) of the Act is amended—

(1) by inserting the paragraph designation "(1)" following the subsection heading;

(2) by striking "under this section" and inserting "of a loan made under this section made before July 1, 1998"; and

(3) by adding at the end of paragraph (1) (as redesignated by paragraph (1)) the following new paragraph:

"(2) No insurance premium may be charged to the borrower on any loan made under this section made on or after July 1, 1998.".

(d) Section 438(c) of the Act is amended—

(1) in paragraph (2), by striking "paragraph (6)" and inserting "paragraphs (6) and (8)"; and

(2) by adding after paragraph (7) the following new paragraph:

"(8) ORIGINATION FEE ON SUBSIDIZED LOANS ON OR AFTER JULY 1, 1998.—In the case of any loan made or insured under section 428 on or after July 1, 1998, paragraph (2) shall be applied by substituting '2.0 percent' for '3.0 percent'.".

(e) Section 455(c) of the Act is amended—

(1) by striking "The Secretary" and inserting "(1) For loans made under this part before July 1, 1998, the Secretary";

(2) by striking "of a loan made under this part"; and

(3) by adding at the end thereof the following new paragraph:

"(2) For loans made under this part on or after July 1, 1998, the Secretary shall charge the borrower an origination fee of—

"(A) 2.0 percent of the principal amount of the loan, in the case of Federal Direct Stafford/Ford Loans; or

"(B) 3.0 percent of the principal amount of the loan, in the case of Federal Direct Unsubsidized Stafford/Ford Loans or Federal Direct PLUS Loans.".

FUNCTIONS OF GUARANTY AGENCIES

SEC. 226. (a) Section 428 of the Act is further amended—

(1) in subsection (a)—

(A) in paragraph (1)(B)—

(i) in the matter preceding clause (i), by striking "which is insured" and inserting "which, before October 1, 1997, is"; and

(ii) in clause (ii), by inserting "as in effect the day before the day of enactment of this section," after "subsection (b),"; and

(B) in paragraph (3)—

(i) by striking subparagraph (B); and

(ii) in subparagraph (A)—

(I) in clause (ii), by striking "under any" through the end of the clause and inserting a period;

(II) by striking the subparagraph designation "(A)";

(III) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(IV) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively;

(2) in subsection (b)—

(A) by amending the heading to read as follows: "REQUIREMENTS TO QUALIFY LOANS FOR INSURANCE AND INTEREST SUBSIDIES.—";

(B) in paragraph (1)—

(i) by amending the heading to read as follows: "REQUIREMENTS.—";

(ii) by amending the matter preceding subparagraph (A) to read as follows: "A loan by an eligible lender shall be insurable by the Secretary, and students who receive such loans shall be entitled to have made on their behalf the payments provided for in subsection (a), under a program of student loan insurance that—";

(iii) by amending subparagraph (K) to read as follows:

"(K) provides that the holder of any such loan will be required to submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by regulation for the purpose of enabling the Secretary to determine the amount of the payment which must be made with respect to that loan;";

(iv) by amending subparagraph (O) to read as follows:

"(O) provides that, if the sale, assignment, or other transfer of a loan made under this part to another holder will result in a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loans, then—

"(i) the transferor and the transferee shall be required, not later than 45 days from the date the transferee acquires a legally enforceable right to receive payment from the borrower on such loan, either jointly or separately to provide a notice to the borrower of—

"(I) the sale, assignment, or other transfer;

"(II) the identity of the transferee;

"(III) the name and address of the party to whom subsequent payments or communications must be sent; and

"(IV) the telephone numbers of both the transferor and the transferee; and

"(ii) the transferee shall be required to notify the Secretary, and, upon the request of an institution of higher education, the Secretary shall notify the last such institution the student attended prior to the beginning of the repayment period of any loan made under this part, of—

"(I) any sale, assignment, or other transfer of the loan; and

"(II) the address and telephone number by which contact may be made with the new holder concerning repayment of the loan;

"except that this subparagraph shall apply only if the borrower is in the grace period described in section 427(a)(2)(B) or 428(b)(7) or is in repayment status";

(v) in subparagraph (Q), by striking "guarantee" and "428A" and inserting "insurance" and "428H", respectively;

(vi) by amending subparagraph (R) to read as follows:

"(R) provides for the making of such reports, in such form and containing such information, including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and protect the financial interest of the United States, and for keeping such records and for affording such access thereto as the Secretary may find necessary to ensure the correctness and verification of such reports;";

(vii) by amending subparagraph (S) to read as follows:

"(S) provides that a lender shall pay a default prevention fee in accordance with subsection (g);

(viii) in subparagraph (T)—

(I) in clause (i), by inserting ", by the guaranty agency, in accordance with regulations prescribed by the Secretary," after "limitation"; and

(II) in clause (ii)—

(aa) in the matter preceding subclause (I), by inserting ", in accordance with regulations prescribed by the Secretary," after "institution";

(bb) by striking subclauses (I) and (II); and

(cc) redesignating subclauses (III), (IV), and (V) as subclauses (I), (II), and (III), respectively;

(ix) by amending subparagraph (U) to read as follows:

"(U) provides—

"(i) for such additional criteria concerning the eligibility of lenders described in section 435(d)(1) as may be permitted by the Secretary; and

"(ii) an assurance that the guaranty agency will report to the Secretary concerning changes in criteria under clause (i), including any procedures in effect under such program to take emergency action, limit, suspend, or terminate lenders; and"; and

(x) by striking subparagraphs (V), (W), and (X);

(C) by amending paragraph (2) to read as follows:

"(2) SKIP-TRACING REQUIREMENT.—In the case of a default claim based on an inability to locate the borrower, a lender shall certify to the Secretary, at the time of submission of the default claim, that diligent attempts have been made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with regulations prescribed by the Secretary.";

(D) in paragraph (3)(B), by striking the parenthetical through the end of the subparagraph and inserting a period; and

(E) by striking out paragraph (5) and inserting in lieu thereof the following new paragraph:

"(5) COMPLIANCE AUDITS.—(A) Except as provided in subparagraph (B) or by the Single Audit Act Amendments of 1996, an eligible lender that originates or holds more than $5,000,000 in loans made under this title during an annual audit period shall submit to the Secretary a compliance audit for that audit period which is conducted by a qualified, independent organization or person in accordance with the Government Auditing Standards issued by the Comptroller General, and the regulations of the Secretary.

"(B) The Secretary may permit a lender to submit the results of an audit conducted for other purposes if the Secretary determines that such other audit results provide the same information as required under subparagraph (A).";

(3) in subsection (c)—

(A) by amending the heading to read as follows: "AGREEMENTS WITH GUARANTY AGENCIES.—";

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking "A guaranty agreement" and inserting "An agreement between the Secretary and a guaranty agency";

(ii) in the flush left language at the end of the paragraph, by striking "Guaranty agencies" and inserting "The Secretary"; and

(iii) by redesignating paragraph (3) as paragraph (11);

(C) by striking paragraphs (1), (2), (4), and (5);

(D) by inserting after the subsection heading the following new paragraphs:

"(1) AUTHORITY TO ENTER INTO AGREEMENTS.—(A)(i) The Secretary may enter into an agreement with a guaranty agency, under which the Secretary shall insure loans made under this section through the guaranty agency as the agent of the Secretary.

"(ii) Any guaranty agency that had an agreement with the Secretary under section 428(b) as of the day before the date of enactment of the Student Financial Aid Improvements Act of 1997 may enter into an initial agreement with the Secretary under this subsection.

"(iii) An agreement under this subsection shall be five years in duration, and may be renewed by the Secretary for successive five-year periods.

"(iii) The Secretary may terminate the agreement prior to its expiration in accordance with paragraph (9).

"(2) EFFECT ON PRIOR GUARANTY AGREEMENTS AND LOAN INSURANCE BY GUARANTY AGENCIES.—(A) All guaranty agreements made under this subsection as it was in effect on the day before the date of enactment of the Student Financial Aid Improvements Act of 1997 shall terminate not later than 180 days after the date of enactment of that Act.

"(B) Notwithstanding any other provision of law—

"(i) to the extent that a guaranty agency had insured loans under this part, loan insurance by such guaranty agency that is outstanding as of the date of the termination under subparagraph (A) shall be replaced on such date by loan insurance issued by the Secretary, and the guaranty agency shall be relieved of any further liability thereon;

"(ii) the Secretary's liability for any outstanding liabilities of a guaranty agency (other than outstanding loan insurance under this part), shall not exceed the fair market value of the unrestricted funds of the guaranty agency, which shall consist of—

"(I) all accumulated earnings not otherwise placed in a restricted account in accordance with section 422(h)(2)(A); and

"(II) any working capital that may be provided under section 422(h)(2)(B); and

"(iii) for the first year after the date of enactment of the Student Financial Aid Improvements Act of 1997, the Secretary may specify such interim administrative measures as the Secretary determines to be necessary for the efficient transfer of the loan insurance function, and to carry out the purposes of this part.

"(3) TERMS OF AGREEMENT.—The agreement between the Secretary and a guaranty agency shall include, but not be limited to—

"(A) provisions regarding the responsibilities of the guaranty agency for—

"(i) administering the issuance of insurance on loans made under this section on behalf of the Secretary;

"(ii) monitoring insurance commitments made under this section;

"(iii) default prevention activities;

"(iv) review of default claims made by lenders;

"(v) payment of default claims;

"(vi) collection of defaulted loans;

"(vii) adoption of internal systems of accounting and auditing that are acceptable to the Secretary, and reporting the result thereof to the Secretary on a timely, accurate, and auditable basis;

"(viii) timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the programs under this title;

"(ix) monitoring of institutions and lenders participating in the program under this part; and

"(x) such other program functions as the Secretary may require of the guaranty agency;

"(B) provisions regarding the fees the Secretary shall pay to the guaranty agency under the agreement, and other revenues that the guaranty agency may receive thereunder, as described in paragraphs (4) and (6);

"(C) provisions requiring the guaranty agency to carry out its responsibilities under the agreement in accordance with paragraph (5);

"(D) provisions regarding the use, in accordance with paragraph (10), of net revenues in excess of the guaranty agency's need for working capital, as determined after compliance with section 422(h), for such other activities in support of postsecondary education as may be agreed to by the Secretary and the guaranty agency;

"(E) provisions regarding such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage (as determined on a case-by-case basis);

"(F) provisions setting forth such administrative and fiscal procedures as may be necessary to protect the United States from the risk of unreasonable loss thereunder, and to ensure proper and efficient administration of the loan insurance program;

"(G) provisions regarding the submission of the results of audits of the guaranty agency that are conducted—

"(i) at least annually;

"(ii) by a qualified, independent organization or person in accordance with the standards established by the Comptroller General for the audit of governmental organizations, programs, and functions; and

"(iii) in accordance with the regulations of the Secretary;

"(H) provisions requiring the making of such reports, in such form and containing such information, including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and to protect the Federal fiscal interest, and for keeping such records and for affording such access thereto as the Secretary may find necessary or appropriate to ensure the correctness and verification of such reports;

"(I) adequate assurances that the guaranty agency will not engage in any pattern or practice which may result in a denial of a borrower's access to loans under this part because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution, length of the borrower's educational program, or the borrower's academic year in school;

"(J) assurances that—

"(i) upon the request of an eligible institution, the guaranty agency shall, subject to clauses (ii) and (iii), furnish to the institution information with respect to students (including the names and addresses of such students) who received loans made or insured under this part for attendance at the eligible institution and for whom preclaims assistance activities have been requested under subsection (l);

"(ii) the guaranty agency shall require the payment by the institution of a reasonable fee (as determined in accordance with regulations prescribed by the Secretary) for such information; and

"(iii) the institution may use such information only to remind students of their obligation to repay student loans and may not disseminate the information for any other purpose; and

"(K) such other provisions as the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of this part.

"(4) FEES AND OTHER REVENUES.—(A)(i) The Secretary shall pay to a guaranty agency with an agreement under this subsection the following uniform fees:

"(I) a one-time issuance fee for each new loan made under this part that is insured by the Secretary through the guaranty agency; and

"(II) an annual maintenance fee for each active borrower account.

"(ii) The fees described in clause (i) shall be paid on a quarterly basis, from the funds available under section 458(a), in such amount as the Secretary determines, for all guaranty agencies with agreements under this subsection.

"(B) A guaranty agency with an agreement under this subsection also may receive revenues derived from—

"(i) a default prevention fee paid by lenders in accordance with subsection (g);

"(ii) the collection retention allowance under paragraph (6);

"(iii) the interest earned on working capital provided under section 422(h);

"(iv) such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage (as determined on a case-by-case basis); and

"(v) such other fees as may be authorized under this part.

"(5) PERFORMANCE REQUIREMENT.—(A) A guaranty agency with an agreement under this subsection shall carry out its responsibilities thereunder in accordance with such measurable performance-based standards as the Secretary may specify; and shall submit timely and accurate data to the Secretary in support of its performance.

"(B) The Secretary shall apply the performance standards uniformly to guaranty agencies with agreements under this subsection.

"(C) The Secretary shall assess the performance of each guaranty agency on the basis of the audits required under paragraph (3)(G), and shall compare such guaranty agency's performance against the performance of other such guaranty agencies and publicly disseminate such comparison.

"(D) The Secretary may impose a fine, in accordance with the terms of the agreement, on a guaranty agency that fails to achieve a specified level of performance on one or more performance standards. If the guaranty agency's failure to achieve such performance level results in a financial loss to the United States, the guaranty agency shall indemnify the Secretary for such loss.";

(E) by amending paragraph (6) to read as follows:

"(6) COLLECTION RETENTION ALLOWANCE.—(A) If, after the Secretary has paid a claim on a loan made under this title, any payments are made in discharge of the obligation incurred by the borrower with respect to such loan (including any payments of interest accruing on such loan after the payment of the default claim by the Secretary), there shall be paid over to the Secretary that portion of the payments remaining after the guaranty agency with which the Secretary has an agreement under this subsection has deducted from such payments an amount for costs related to the student loan insurance program that—

"(i) shall be specified by the Secretary on the basis of the Secretary's review of payments for similar services in a competitive environment; and

"(ii) in no case shall exceed 18.5 percent of such payments (subject to subparagraph (B)).

"(B) If, after the Secretary has paid a claim on a loan made under this title, and the liability on such loan is discharged by payment of the proceeds of a consolidation loan under this part or under part D, the guaranty agency may not deduct the amount specified in subparagraph (A), but may charge the borrower an amount specified by the Secretary and not to exceed 18.5% of the principal amount of the defaulted loan at the time of consolidation, to defray the guaranty agency's collection costs on the defaulted loan to be consolidated.";

(F) by amending paragraph (7) to read as follows:

"(7) SECRETARY AUTHORIZED TO RENEW OR MAKE ALTERNATE AGREEMENTS.—Notwithstanding any other provision of law, once the initial agreement with a guaranty agency entered into after the date of enactment of the Student Financial Aid Improvements Act of 1997 has ended (through its expiration, the termination of the guaranty agency agreement by the Secretary in accordance with paragraph (9), or the resignation of the guaranty agency, as the case may be), the Secretary, in his discretion, may enter into—

"(A) another agreement with the guaranty agency;

"(B) an alternate agreement under which the functions previously performed by the guaranty agency shall be performed by another State or private nonprofit agency with which the Secretary has an agreement under this subsection; or

"(C) a contract under section 428E.";

(G) by amending paragraph (9) to read as follows:

"(9) TERMINATION OF GUARANTY AGENCY AGREEMENTS.—(A) A guaranty agency's agreement under this subsection may be ended in advance of its expiration date in accordance with subparagraph (B), or (C). If its agreement is so ended, the guaranty agency shall immediately—

"(i) cease to be an agent of the Secretary for purposes of the program under this part; and

"(ii) surrender all remaining liquid and non-liquid reserve funds, and assets purchased or developed with reserve funds, still held by the guaranty agency (including reserves held by, or under the control of, any other entity) to the Secretary or the Secretary's designated agent.

(B) A guaranty agency's agreement under this subsection shall be void, and the Secretary shall immediately so notify such guaranty agency, if—

"(i) the guaranty agency fails to comply in a timely manner with the recall of reserve requirements of section 422(h);

"(ii) the guaranty agency fails to increase the amount of funds in its unrestricted account (as measured by comparing the amount of funds in such account at the beginning and end of a year) for each of two years (that may or may not be consecutive) in the five year period of the agreement under this subsection;

"(iii) any other agreement that the guaranty agency has with the Secretary is terminated;

"(iv) the guaranty agency becomes insolvent or declares bankruptcy; or

"(v) there is any legal impediment to the guaranty agency substantially performing its responsibilities under the agreement.

"(C) The Secretary shall, after notice and opportunity for a hearing, terminate a guaranty agency that has substantially failed to achieve an acceptable level of performance under its agreement with the Secretary. A substantial performance failure under this subparagraph may include the existence of material internal control weaknesses relating to data quality in the guaranty agency's audits for each of two years (that may or may not be consecutive) in the five year period of the agreement under this subsection.

"(D) Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement in advance of its expiration date—

"(i) no State court may issue any order affecting the Secretary's actions with respect to such guaranty agency;

"(ii) any contract with respect to the administration of reserve funds held by a guaranty agency, or the administration of any assets purchased or developed with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after the date of enactment of the Student Financial Aid Improvements Act of 1997 shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section; and

"(iii) no provision of State law shall apply to the actions of the Secretary in terminating the operations of a guaranty agency."; and

(H) by adding after paragraph (9) the following new paragraph:

"(10) USE OF SURPLUS FUNDS.—(A) A guaranty agency with an agreement under this subsection may retain the amount determined in accordance with subparagraph (B) for activities in support of postsecondary education that are approved by the Secretary.

"(B)(i) A guaranty agency may retain 50 percent of its net revenues for fiscal year 1998 in excess of the guaranty agency's need for working capital for such year, as determined after compliance with section 422(h), for approved activities.

"(ii) A guaranty agency may retain for approved activities for fiscal year 1999 and succeeding fiscal years the lesser of—

"(I) 50 percent of its net revenues for such year in excess of its need for working capital, as determined after compliance with section 422(h); or

"(II) the amount of its net revenues for such year in excess of its need for working capital, as determined after compliance with section 422(h), that is equal to a uniform percentage, established annually by the Secretary, of federal revenues received by the guaranty agency for the preceding year. In determining such percentage, the Secretary shall take into account all guaranty agencies' revenues and costs for the preceding year to determine an adequate level of economic incentive for guaranty agencies to maximize their efficiency.";

(4) by amending subsection (g) to read as follows:

"(g) DEFAULT PREVENTION FEE PAID BY LENDERS.—(1) An eligible lender shall pay a guaranty agency, to which such lender referred a delinquent loan, a default prevention fee of not to exceed $100 per borrower account if the guaranty agency succeeds in bringing such loan into current repayment status.

"(2) The Secretary shall prescribe in regulations the circumstances in which a lender may obtain a refund of a default prevention fee if the borrower of a loan on which such fee was paid subsequently defaults on such loan."; and

(5) in subsection (l)—

(A) in paragraph (1), by striking the paragraph designation and the paragraph heading; and

(B) by striking paragraph (2).

(b) Section 435(j) of the Act is amended by striking "section 428(b)." and inserting "section 428(c)."

REPEAL OF STATE SHARE OF DEFAULT COSTS

SEC. 227. Section 428 of the Act is further amended by striking subsection (n).

CONSOLIDATION LOANS

SEC. 228. (a) Section 428C of the Act is further amended—

(1) in subsection (a)(3)—

(A) in subparagraph (A), by inserting "in an in-school period," after "for consolidation loan is"; and

(B) in subparagraph (B), by amending clause (i) to read as follows:

"(i) Eligible student loans received by the eligible borrower may be added to a consolidation loan during the 180-day period following the making of such consolidation loan.";

(2) in subsection (b)(4)(C), by amending clause (ii) to read as follows:

"(ii) provides that interest shall accrue and be paid—

"(I) by the Secretary, in the case of a consolidation loan made before October 1, 1997 that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 428;

"(II) by the Secretary, in the case of a consolidation loan made on or after October 1, 1997, except that the Secretary shall pay such interest only on that portion of the loan that repays Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; and

"(III) by the borrower, or capitalized, in the case of a consolidation loan, or portion thereof, other than one described in subclause (I) or (II);"; and

(3) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "subparagraph (B) or (C)." and inserting "subparagraph (B), (C), (D), or (E), and subject to subparagraph (F).";

(ii) in subparagraph (C), by striking "after July 1, 1994," and inserting "after July 1, 1994 and before October 1, 1997,"; and

(iii) by adding after subparagraph (C) the following new subparagraphs:

"(D) A consolidation loan made on or after October 1, 1997, that repays loans made under section 428 or 428H, or a combination thereof, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to—

"(i) the rate specified in section 427A(g), in the case of a borrower in an in-school or grace period; or

"(ii) the rate specified in section 427A(h)(1) in all other cases.

"(E) A consolidation loan made on or after October 1, 1997, that repays loans made under section 428B shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the rate specified in section 427A(h)(2).

"(F) Notwithstanding any other provision of this section, the Secretary may prescribe in regulation such procedures as may be necessary to ensure that—

"(i) a borrower of a consolidation loan that repays a combination of loans eligible to be consolidated under this section, shall continue to receive, after consolidation, any interest subsidy benefits associated with a loan, without extending such benefits to any other loans consolidated that do not have interest subsidy benefits;

"(ii) in the case of a consolidation loan that repays a combination of loans described in subparagraphs (D) and (E), the interest rate on such consolidation loan shall be calculated in a manner that reflects the interest rate applicable to loans made under each such subparagraph; and

"(iii) in the case of a consolidation loan that repays a loan eligible to be consolidated under this section other than those described in subparagraphs (D) and (E), the interest rate applicable to such other loan shall be the interest rate described in subparagraph (D) if such other loan is considered by the Secretary to be subsidized, and the interest rate described in subparagraph (E) if such other loan is considered by the Secretary to be unsubsidized."; and

(B) in paragraph (4)—

(i) by striking "Repayment" and inserting "(A) Except as provided in subparagraph (B), repayment"; and

(ii) by adding after subparagraph (A) (as redesignated by clause (i)) the following new subparagraph:

"(B) In the case of a consolidation loan that repays a loan made under this part for which the borrower is in an in-school period at the time the consolidation application is received, the repayment period for such consolidation loan shall commence after the completion of a grace period, as described in section 428(b)(7)(i).".

CONTRACTS WITH OTHER ENTITIES

SEC. 229. Part B of title IV of the Act is amended by inserting after section 428D the following new section:

"CONTRACT AUTHORITY

"SEC. 428E. The Secretary may enter into one or more contracts to carry out any of the functions that otherwise would be carried out by a guaranty agency with an agreement under section 428(c).".

ELIGIBLE LENDER

SEC. 230. Section 435(d) of the Act is amended—

(1) in paragraph (1), by striking "(6)," and inserting "(7),"; and

(2) by adding after paragraph (6) the following new paragraph:

"(7) UNIFORM TERMS AND CONDITIONS. Subject to such exceptions as the Secretary may prescribe in regulations, the term 'eligible lender' shall not include any lender that offers different terms and conditions to different borrowers of the same type of loan made or insured under this part.".

SPECIAL ALLOWANCE

SEC. 231. Section 438 of the Act is amended—

(1) in subsection (a)(3), by striking "quarterly rate" each place it appears and inserting "rate"; and

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by striking "subparagraphs (B), (C), (D), (E), and (F)" and inserting "subparagraphs (B), (C), (D), (E), (F), and (G)"; and

(ii) by adding after subparagraph (F) the following new subparagraph:

"(G)(i) Notwithstanding any other provision of this section, in the case of loans made or insured under this part for which the first disbursement is made on or after October 1, 1997, the special allowance paid pursuant to this subsection shall be computed for any 12-month period beginning on July 1 and ending on June 30 by—

"(I) determining the bond equivalent rate on the preceding June 1 of the securities with a comparable maturity, as established by the Secretary; and

"(II) subtracting the applicable interest rate on such loans from such amount.

"(ii) The amount of special allowance computed under clause (i) shall be paid in quarterly increments for the 3-month periods described in paragraph (1)."; and

(B) in paragraph (3), in the second sentence, by striking "determined for any such 3-month period shall be paid promptly after the close of such period," and inserting "calculated under this subsection shall be paid promptly after the close of the 3-month period for which such special allowance payment is due,".

STUDENT LOAN MARKETING ASSOCIATION OFFSET FEE

SEC. 232. Section 439(h)(7) of the Act is amended by adding after subparagraph (C) the following new subparagraph:

"(D) The calculation of the fee required under subparagraph (A) or (B), as the case may be, shall be determined on the basis of the principal amount of all loans (except for loans made under sections 428C, 439(o) or 439(q)—

"(i) owned, in whole or in part, by the Association, any subsidiary of the Association, or any company, trust or other entity owned by, or controlled by, the Association; or

"(ii) held by a trust (including by a trustee on behalf of a trust), or by any other entity in which the Association, or any subsidiary, holds more than a minimal beneficial interest (as determined by the Secretary).".

DIRECT LOAN TRANSITION FEE

SEC. 233. Section 452(b) of the Act is amended to read as follows:

"(b) TRANSITION FEES.—The Secretary shall pay fees to institutions of higher education (or a consortium of those institutions) with agreements under section 454(b), in the first year of their participation in the program authorized by this part, in order to compensate for costs associated with their transition to the program. The fees shall not exceed an average of $10 per borrower at all institutions receiving the fees.".

FUNDS FOR ADMINISTRATIVE EXPENSES

SEC. 234. Section 458(a) of the Act is amended, in the first sentence, by striking $260,000,000" through the end of the sentence and inserting the following: "$532,000,000 in

fiscal year 1998, $610,000,000 in fiscal year 1999, $705,000,000 in fiscal year 2000, $806,000,000 in fiscal year 2001, and $904,000,000 in fiscal year 2002.".

PART C—NEED ANALYSIS AND GENERAL PROVISIONS

HOPE SCHOLARSHIP NEED ANALYSIS AMENDMENTS

SEC. 241. (a) CALCULATION OF AVAILABLE INCOME.—(1) Section 475 of the Act is amended—

(A) by amending subsection (c)(1)(A) to read as follows:

"(A) the sum of—

"(i) Federal income taxes;

"(iii) the amount of any tax credit taken under section 24A of the Internal Revenue Code of 1986; and

"(iii) the amount by which tax liability determined without regard to the deduction provided under section 221 of the Internal Revenue Code exceeds the amount of tax liability determined after taking such deduction into account;"; and

(B) by amending subsection (g)(2)(A) to read as follows:

"(A) the sum of—

"(i) Federal income taxes;

"(ii) the amount of any tax credit taken by the student under section 24A of the Internal Revenue Code of 1986; and

"(iii) the amount by which tax liability determined without regard to the deduction provided under section 221 of the Internal Revenue Code exceeds the amount of tax liability determined after taking such deduction into account;".

(2) Section 476(b)(1)(A)(i) of the Act is amended to read as follows:

"(A) the sum of—

"(i) Federal income taxes;

"(ii) the amount of any tax credit taken under section 24A of the Internal Revenue Code of 1986; and

"(iii) the amount by which tax liability determined without regard to the deduction provided under section 221 of the Internal Revenue Code exceeds the amount of tax liability determined after taking such deduction into account;".

(3) Section 477(b)(1)(A) of the Act is amended to read as follows:

"(A) the sum of—

"(i) Federal income taxes;

"(ii) the amount of any tax credit taken under section 24A of the Internal Revenue Code of 1986; and

"(iii) the amount by which tax liability determined without regard to the deduction provided under section 221 of the Internal Revenue Code exceeds the amount of tax liability determined after taking such deduction into account;".

(b) DEFINITIONS.—Section 480 of the Act is amended—

(1) in subsection (a)(2)—

(A) by striking "and no portion" and inserting "no portion"; and

(B) by inserting after "(42 U.S.C. 12571 *et seq.*)," the following: "and no portion of any tax credit taken under section 24A of the Internal Revenue Code of 1986,";

(2) in subsection (b)—

(A) in paragraph (13), by striking "and" at the end of the paragraph;

(B) by redesignating paragraph (14) as paragraph (15); and

(C) by inserting after paragraph (13) the following new paragraph:

"(14) any tax deduction taken under section 221 of the Internal Revenue Code of 1986; and";

(3) in subsection (e)—

(A) in paragraph (3), by striking "and" at the end of the paragraph;

(B) in paragraph (4), by striking the period at the end of the paragraph and inserting "; and"; and

(C) by adding after paragraph (4) the following new paragraph:

"(5) any tax credit taken under section 24A of the Internal Revenue Code of 1986; and";

(4) in subsection (j), by adding after paragraph (3) the following new paragraph:

"(4) Notwithstanding paragraph (1), a tax credit taken under section 24A of the Internal Revenue Code of 1986 shall not be treated as estimated financial assistance for purposes of section 471(3).".

INCOME PROTECTION ALLOWANCE FOR INDEPENDENT STUDENTS WITHOUT DEPENDENTS

SEC. 242. (a) Section 476(b) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by amending clause (iv) to read as follows:

"(iv) an income protection allowance, determined in accordance with paragraph (4);"; and

(ii) in clause (v), by striking "paragraph (4);" and inserting "paragraph (5);"; and

(B) in subparagraph (B), by striking "paragraph (5)." and inserting "paragraph (6).";

(2) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) INCOME PROTECTION ALLOWANCE.—The income protection allowance is determined by the following table (or a successor table prescribed by the Secretary under section 478):

"INCOME PROTECTION ALLOWANCE

Family size (including student)	Number in college	
	1	2
1	8,000	
2	10,520	8,720".

(b) Section 478(b) of the Act is amended by striking "sections 475(c)(4) and 477(b)(4)." and inserting "sections 475(c)(4), 476(b)(4), and 477(b)(4).".

HOPE SCHOLARSHIP DEFINITIONS

SEC. 243. Section 481 of the Act is amended by adding after subsection (f) the following new subsection:

"(g) HOPE SCHOLARSHIP DEFINITIONS.—(1) As necessary for purposes of the tax credit provided under section 24A of the Internal Revenue Code of 1986, and the deduction provided under section 221 of such Code, the Secretary of Education shall define in regulation the following terms:

"(A) academic period;

"(B) normal full-time workload;

"(C) first two years of postsecondary education;

"(D) qualifying grade point average;

"(E) job skills; and

"(F) new job skills.

"(2) Notwithstanding any other provision of law, the regulations described in paragraph (1) shall not be subject to section 482(c).".

EXTENSION OF STUDENT AID PROGRAMS

SEC. 244. Title IV of the Act is amended—

(1) in section 401(a)(1), by striking "September 30, 1998," and inserting "September 30, 1999,";

(2) in section 424(a), by striking "1998." and "2002." and inserting "2002." and "2006.", respectively;

(3) in section 428(a)(5), by striking "1998," and "2002." and inserting "2002," and "2006.", respectively;

(4) in section 428C(e), by striking "1998." and inserting "2002."; and

(5) in section 466—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking "September 30, 1996," and March 31, 1997," and inserting "September 30, 1998," and March 31, 1999", respectively; and

(ii) in paragraph (1), by striking "September 30, 1996," and inserting "September 30, 1998,";

(B) in subsection (b), by striking "September 30, 1996," and inserting "September 30, 1998,"; and

(C) in subsection (c), by striking out "October 1, 1997," and inserting "October 1, 1998,".

PART D—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 251. (a) Except as otherwise provided in this section, the amendments made by this title shall take effect on the date of enactment of this Act.

(b) Section 211 is effective for the calculation of Pell Grant awards for award years beginning on or after July 1, 1998.

(c) Section 222 is effective for a loan made under part B or part D of title IV of the Act for which the first disbursement is made on or after October 1, 1997.

(d) Section 223(a)(3) and section 428(b)(5)(C) of the Act (as added by section 226(a)(2)(E)) are effective as if they were enacted on July 23, 1992.

(e) Sections 224, 229, and 230 take effect on October 1, 1997.

(f) Section 231 is effective for a loan made or insured under part B of title IV of the Act for which the first disbursement is made on or after October 1, 1997.

(g) Section 232 is effective as if it were enacted on August 10, 1993, but does not apply to the privatized entity that may be created as a result of the Student Loan Marketing Association Reorganization Act of 1996 (Title VI of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997, as enacted by section 101(e) of Division A of Pub. L. No. 104-208).

(h) Section 242 is effective for determinations of need for academic years beginning on or after July 1, 1998.

S. 560

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—STUDENT FINANCIAL AID PROVISIONS

SHORT TITLE; REFERENCES

SEC. 101. (a) SHORT TITLE.—This title may be cited as the "Student Financial Aid Improvements Act of 1997".

(b) REFERENCES.—References in this title to "the Act" shall refer to the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*).

PART A—PELL GRANTS

PELL GRANT MAXIMUM AWARD

SEC. 111. Section 401(b)(2)(A) of the Act is amended by adding at the end thereof the following: "Except as otherwise provided in this section, in no case shall the maximum basic grant be less than $3,000.".

PART B—STUDENT LOAN PROVISIONS

MANAGEMENT AND RECOVERY OF RESERVES

SEC. 121. (a) Section 422 of the Act is amended—

(1) by amending subsection (g)(1) to read as follows:

"(1) AUTHORITY TO RECOVER FUNDS.—(A) Notwithstanding any other provision of law,

the reserve funds of the guaranty agencies, and any assets purchased or developed with such reserve funds, regardless of who holds or controls the reserves or assets, shall remain the property of the United States.

"(B) The Secretary may direct the guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, that the Secretary determines are required—

"(i) to pay the program expenses and contingent liabilities of the guaranty agency;

"(ii) to satisfy the guaranty agency's requirements under subsection (h); or

"(iii) for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

"(C) The Secretary may direct a guaranty agency, or such agency's officers or directors, to cease any activity involving expenditure, use, or transfer of the guaranty agency's reserve funds or assets that the Secretary determines is a misapplication, misuse, or improper expenditure of such funds or assets."; and

(2) by adding after subsection (g) the following new subsections:

"(h) RECALL OF RESERVES IN FISCAL YEARS 1997 THROUGH 2002; LIMITATIONS ON USE OF RESERVE FUNDS AND ASSETS.—(1)(A) Notwithstanding any other provision of law, the Secretary shall, except as otherwise provided in this subsection, recall from the reserve funds held by guaranty agencies (which for purposes of this subsection shall include any reserve funds held by, or under the control of, any other entity) not less than—

"(i) $731,000,000 in fiscal year 1998;

"(ii) $127,000,000 in fiscal year 1999;

"(iii) $186,000,000 in each of the fiscal years 2000 and 2001; and

"(iv) $1,271,000,000 in fiscal year 2002.

"(B) Funds returned to the Secretary under this subsection shall be deposited in the Treasury.

"(C) The Secretary shall require each guaranty agency to return reserve funds under subparagraph (A) based on its proportionate share, as determined by the Secretary, of all reserve funds held by guaranty agencies as of September 30, 1996.

"(2)(A) Within 45 days of enactment of this subsection, all reserve funds held by a guaranty agency that have not yet been recalled by the Secretary under paragraph (1) shall be transferred by the guaranty agency to a restricted account (of a type specified by the Secretary) established by the guaranty agency, and be invested in United States Government securities specified by the Secretary. The manner and timeframe in which reserve funds so invested are recalled shall be specified by the Secretary, consistent with the requirements of this subsection. Except as described in subparagraph (B), the guaranty agency shall not use the reserve funds in such account, which shall include the earnings thereon, for any purpose without the express permission of the Secretary.

"(B)(i) In order to assist guaranty agencies in meeting program expenses, the Secretary shall permit the use of not more than an aggregate of $350,000,000 of the reserve funds held in the restricted accounts described in subparagraph (A) by guaranty agencies with agreements under section 428(c), as working capital to be used for such purposes as the Secretary may specify. The Secretary shall specify the amount of reserve funds in each guaranty agency's restricted account that may be used as working capital, based on the guaranty agency's proportionate share of all borrower accounts outstanding on September 30, 1996. The guaranty agency shall repay such amount to its restricted account (or returned to the Treasury, if so directed by the Secretary) by not later than September 30, 2002, or the date on which such agency's agreement under section 428(c) ends (through resignation, expiration, or termination), whichever is earlier.

"(ii) The guaranty agency may use the earnings from its restricted account for fiscal year 1998 to assist in meeting its operational expenses for such year.

"(C) Non-liquid reserve fund assets, such as buildings and equipment purchased or developed by the guaranty agency with reserve funds, and any liquid assets remaining in a guaranty agency's restricted account after the recalls in paragraph (1)(A), shall—

"(i) remain the property of the United States;

"(ii) be used only for such purposes as the Secretary determines are appropriate; and

"(iii) be subject to recall by the Secretary no later than the date on which such agency's agreement under section 428(c) ends (through resignation, expiration, or termination, as the case may be).".

REPAYMENT TERMS

SEC. 122. (a) Section 427 of the Act is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (B), in the matter preceding clause (i), by striking "over a period" through "nor more than 10 years" and inserting "in accordance with the repayment plan selected under subsection (d),";

(B) in subparagraph (C), at the end of the subparagraph, by striking out "the 10-year period described in subparagraph (B);" and inserting the following: "the length of the repayment period under a repayment plan described in subsection (d);";

(C) by striking subparagraph (F);

(D) by redesignating subparagraphs (G), (H), and (I) as subparagraphs (F), (G), and (H), respectively; and

(E) in subparagraph (G) (as redesignated by subparagraph (D)), by striking "the option" through the end of the subparagraph and inserting "the repayment options described in subsection (d); and";

(2) in subsection (c), by striking "in subsection (a)(2)(H)," and inserting the following: "by a repayment plan selected by the borrower under subparagraph (C) or (D) of subsection (d)(1),"; and

(3) by adding after subsection (c) the following new subsection:

"(d) REPAYMENT PLANS.—(1) DESIGN AND SELECTION.—In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subsection for repayment of such loan, including principal and interest thereon. No plan may require a borrower to repay a loan in less than five years. The borrower may choose from—

"(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years;

"(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with subsection (c);

"(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(D) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed ten years.

"(2) LENDER SELECTION OF OPTION IF BORROWER DOES NOT SELECT.—If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the lender shall provide the borrower with a repayment plan described in paragraph (1)(A).

"(3) CHANGES IN SELECTIONS.—The borrower of a loan made under this part may change the borrower's selection of a repayment plan under paragraph (1), or the lender's selection of a plan for the borrower under paragraph (2), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.

"(4) ACCELERATION PERMITTED.—Under any of the plans described in this subsection, the borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part.".

(b) Section 428(b) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking clauses (i) and (ii) and the clause designation "(iii)";

(B) in subparagraph (E)—

(i) in clause (i)—

(I) by striking "or section 428A," and inserting "or section 428H,"; and

(II) by striking "the option" through the end of the clause and inserting "the repayment options described in paragraph (9); and"; and

(ii) in clause (ii)—

(I) by striking "over a period" through "nor more than 10 years" and inserting "in accordance with the repayment plan selected under paragraph (9), and"; and

(II) by striking "of this subsection;" at the end of clause (ii) and inserting a semicolon; and

(C) in subparagraph (L)(i), by inserting after the clause designation the following: "except as otherwise provided by a repayment plan selected by the borrower under paragraph (9)(A) (iii) or (iv),"; and

(2) by adding after paragraph (8) the following new paragraph:

"(9) REPAYMENT PLANS.—(A) DESIGN AND SELECTION.—In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subparagraph for repayment of such loan, including principal and interest thereon. No plan may require a borrower to repay a loan in less than five years. The borrower may choose from—

"(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years;

"(ii) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (2)(L);

"(iii) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(iv) an income-sensitive repayment plan, with income-sensitive repayment amounts

paid over a fixed period of time, not to exceed ten years.

"(B) LENDER SELECTION OF OPTION IF BORROWER DOES NOT SELECT.—If a borrower of a loan made under this part does not select a repayment plan described in subparagraph (A), the lender shall provide the borrower with a repayment plan described in subparagraph (A)(i).

"(C) CHANGES IN SELECTION.—The borrower of a loan made under this part may change the borrower's selection of a repayment plan under subparagraph (A), or the lender's selection of a plan for the borrower under subparagraph (B), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.

"(D) ACCELERATION PERMITTED.—Under any of the plans described in this paragraph, the borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part.

"(E) COMPARABLE FFEL AND DIRECT LOAN REPAYMENT PLANS.—The Secretary shall ensure that the repayment plans offered to borrowers under this part are comparable, to the extent practicable and not otherwise provided in statute, to the repayment plans offered under part D.".

(c) Section 428C of the Act is amended—

(1) in subsection (b)(3)(F), by striking "alternative"; and

(2) in subsection (c)—

(A) by amending paragraph (2) to read as follows:

"(2) REPAYMENT PLANS.—(A) DESIGN AND SELECTION.—In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this section the plans described in this paragraph for repayment of such loan, including principal and interest thereof. No plan may require a borrower to repay a loan in less than five years. The borrower may choose from—

"(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years.

"(ii) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (3);

"(iii) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(iv) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed ten years.

"(B) LENDER SELECTION OF OPTION IF BORROWER DOES NOT SELECT.—If a borrower of a loan made under this section does not select a repayment plan described in subparagraph (A), the lender shall provide the borrower with a repayment plan described in subparagraph (A)(i).

"(C) CHANGES IN SELECTIONS.—The borrower of a loan made under this section may change the borrower's selection of a repayment plan under subparagraph (A), or the lender's selection of a plan for the borrower under subparagraph (B), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.".

(d) Section 455(d) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting after "an extended period of time," the following: "not to exceed 30 years,"; and

(B) in subparagraph (C), by striking "a fixed or extended period of time," and inserting the following: "an extended period of time, not to exceed 30 years,"; and

(2) in paragraph (2), by striking "subparagraph (A), (B), or (C) of paragraph (1)," and inserting "paragraph 91)(A).".

INTEREST RATES

SEC. 123. (a) Section 427A of the Act is amended—

(1) in subsection (g)(2)—

(A) by inserting after the paragraph heading the subparagraph designation "(A)";

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(C) by striking "paragraph (1)," and inserting "paragraph (1), and except as provided in subparagraph (B),"; and

(D) by adding after subparagraph (A) (as redesignated by subparagraph (A)) the following new subparagraph:

"(B) In the case of loans made or insured under section 428 or 428H for which the first disbursement is made on or after October 1, 1997, for purposes of paragraph (1), the rate determined under this paragraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to the bond equivalent rate of the securities with a comparable maturity, as established by the Secretary, except that such rate shall not exceed 8.25 percent.";

(2) in subsection (h)—

(A) in the heading thereof, by striking "July 1, 1998.—" and inserting "October 1, 1997.—";

(B) in paragraph (1)—

(i) by striking "(f), and (g)" and inserting "and (f),"; and

(ii) by striking "July 1, 1998," and inserting "October 1, 1997,"; and

(C) in paragraph (2)—

(i) in the heading, by striking "*JULY 1, 1998.*—" and inserting "*OCTOBER 1, 1997.*—"; and

(ii) by striking "July 1, 1998," and inserting "October 1, 1997,"; and

(3) in subsection (i)(7)(B), by adding at the end the following: "Notwithstanding any other provision of law, the interest rate determined under this subparagraph shall be used solely to determine the rebate of excess interest required by this paragraph and shall not be used to calculate or pay special allowances under section 438.".

(b) Section 455(b) of the Act is amended—

(1) in paragraph (2)(B)—

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(B) by inserting after the subparagraph heading the clause designation "(i)";

(C) by striking "subparagraph (A)," and inserting "subparagraph (A) and except as provided in clause (ii),"; and

(D) by adding after clause (i) (as redesignated by subparagraph (B)) the following new clause:

"(ii) In the case of Federal Direct Stafford/Ford Loans or Federal Direct Unsubsidized Stafford/Ford Loans for which the first disbursement is made on or after October 1, 1997, for purposes of subparagraph (A), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to the bond equivalent rate of the securities with comparable maturity, as established by the Secretary, except that such rate shall not exceed 8.25 percent.";

(2) in paragraph (3)—

(A) by striking "and (2)," and inserting ", and except as provided in paragraph (2),"; and

(B) by striking "made on or after July 1, 1998," and inserting "for which the first disbursement is made on or after October 1, 1997,"; and

(3) in paragraph (4)(B), by striking "July 1, 1998," and inserting "October 1, 1997,".

LENDER AND HOLDER RISK SHARING

SEC. 124. Section 428(b)(1)(G) of the Act is amended by striking "not less than 98 percent" and inserting "95 percent".

FEES AND INSURANCE PREMIUMS

SEC. 125. (a) Section 428(b)(1)(H) of the act is amended—

(1) by inserting the clause designation "(i)" following the subparagraph designation;

(2) by striking "the loan," and inserting "any loan made under section 428 or 428B before July 1, 1998,"; and

(3) after clause (i) (as redesignated by paragraph (1)), by adding "and" and the following new clause:

"(ii) provides that no insurance premiums shall be charged to the borrower of any loan made under section 428 or 428B on or after July 1, 1998;".

(b) Section 428H(h) of the Act is amended—

(1) by inserting the paragraph designation "(1)" following the subsection heading;

(2) by striking "under this section" and inserting "of a loan made under this section made before July 1, 1998"; and

(3) by adding at the end of paragraph (1) (as redesignated by paragraph (1)) the following new paragraph:

"(2) No insurance premium may be charged to the borrower on any loan made under this section made on or after July 1, 1998.".

(d) Section 438(c) of the Act is amended—

(1) in paragraph (2), by striking "paragraph (6)" and inserting "paragraphs (6) and (8)"; and

(2) by adding after paragraph (7) the following new paragraph:

"(8) ORIGINATION FEE ON SUBSIDIZED LOANS ON OR AFTER JULY 1, 1998.—In the case of any loan made or insured under section 428 on or after July 1, 1998, paragraph (2) shall be applied by substituting '2.0 percent' for '3.0 percent'.".

(e) Section 455(c) of the Act is amended—

(1) by striking "The Secretary" and inserting "(1) For loans made under this part before July 1, 1998, the Secretary";

(2) by striking "of a loan made under this part"; and

(3) by adding at the end thereof the following new paragraph:

"(2) For loans made under this part on or after July 1, 1998, the Secretary shall charge the borrower an origination fee of—

"(A) 2.0 percent of the principal amount of the loan, in the case of Federal Direct Stafford/Ford Loans; or

"(B) 3.0 percent of the principal amount of the loan, in the case of Federal Direct Unsubsidized Stafford/Ford Loans or Federal Direct PLUS Loans.".

FUNCTIONS OF GUARANTY AGENCIES

SEC. 126. (a) Section 428 of the Act is further amended—

(1) in subsection (a)—

(A) in paragraph (1)(B)—

(i) in the matter preceding clause (i), by striking "which is insured" and inserting "which, before October 1, 1997, is"; and

(ii) in clause (ii), by inserting "as in effect the day before the day of enactment of this section," after "subsection (b),"; and

(B) in paragraph (3)—

(i) by striking subparagraph (B); and

(ii) in subparagraph (A)—

(I) in clause (ii), by striking "under any" through the end of the clause and inserting a period;

(II) by striking the subparagraph designation "(A)";

(III) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(IV) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively;

(2) in subsection (b)—

(A) by amending the heading to read as follows: "REQUIREMENTS TO QUALIFY LOANS FOR INSURANCE AND INTEREST SUBSIDIES.—",

(B) in paragraph (1)—

(i) by amending the heading to read as follows: REQUIREMENTS.—";

(ii) by amending the matter preceding subparagraph (A) to read as follows: "A loan by an eligible lender shall be insurable by the Secretary, and students who receive such loans shall be entitled to have made on their behalf the payments provided for in subsection (a), under a program of student loan insurance that—";

(iii) by amending subparagraph (K) to read as follows:

"(K) provides that the holder of any such loan will be required to submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by regulation for the purpose of enabling the Secretary to determine the amount of the payment which must be made with respect to that loan;";

(iv) by amending subparagraph (O) to read as follows:

"(O) provides that, if the sale, assignment, or other transfer of a loan made under this part to another holder will result in a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loans, then—

"(i) the transferor and the transferee shall be required, not later than 45 days from the date the transferee acquires a legally enforceable right to receive payment from the borrower on such loan, either jointly or separately to provide a notice to the borrower of—

"(I) the sale, assignment, or other transfer;

"(II) the identity of the transferee;

"(III) the name and address of the party to whom subsequent payments or communications must be sent; and

"(IV) the telephone numbers of both the transferor and the transferee; and

"(ii) the transferee shall be required to notify the Secretary, and, upon the request of an institution of higher education, the Secretary shall notify the last such institution the student attended prior to the beginning of the repayment period of any loan made under this part, of—

"(I) any sale, assignment, or other transfer of the loan; and

"(II) the address and telephone number by which contact may be made with the new holder concerning repayment of the loan;

"except that this subparagraph shall apply only if the borrower is in the grace period described in section 427(a)(2)(B) or 428(b)(7) or is in repayment status.";

(v) in subparagraph (Q), by striking "guarantee" and "428A" and inserting "insurance" and "428H", respectively;

(vi) by amending subparagraph (R) to read as follows:

"(R) provides for the making of such reports, in such form and containing such information, including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and protect the financial interest of the United States, and for keeping such records and for affording such access thereto as the Secretary may find necessary to ensure the correctness and verification of such reports;";

(vii) by amending subparagraph (S) to read as follows:

"(S) provides that a lender shall pay a default prevention fee in accordance with subsection (g);

(viii) in subparagraph (T)—

(I) in clause (i), by inserting ", by the guaranty agency, in accordance with regulations prescribed by the Secretary," after "limitation"; and

(II) in clause (ii)—

(aa) in the matter preceding subclause (I), by inserting ", in accordance with regulations prescribed by the Secretary," after "institution";

(bb) by striking subclauses (I) and (II); and

(cc) redesignating subclauses (III), (IV), and (V) as subclauses (I), (II), and (III), respectively;

(ix) by amending subparagraph (U) to read as follows:

"(U) provides—

"(i) for such additional criteria concerning the eligibility of lenders described in section 435(d)(1) as may be permitted by the Secretary; and

"(ii) an assurance that the guaranty agency will report to the Secretary concerning changes in criteria under clause (i), including any procedures in effect under such program to take emergency action, limit, suspend, or terminate lenders; and"; and

(x) by striking subparagraphs (V), (W), and (X);

(C) by amending paragraph (2) to read as follows:

"(2) SKIP-TRACING REQUIREMENT.—In the case of a default claim based on an inability to locate the borrower, a lender shall certify to the Secretary, at the time of submission of the default claim, that diligent attempts have been made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with regulations prescribed by the Secretary.";

(D) in paragraph (3)(B), by striking the parenthetical through the end of the subparagraph and inserting a period; and

(E) by striking out paragraph (5) and inserting in lieu thereof the following new paragraph:

"(5) COMPLIANCE AUDITS.—(A) Except as provided in subparagraph (B) or by the Single Audit Act Amendments of 1996, an eligible lender that originates or holds more than $5,000,000 in loans made under this title during an annual audit period shall submit to the Secretary a compliance audit for that audit period which is conducted by a qualified, independent organization or person in accordance with the Government Auditing Standards issued by the Comptroller General, and the regulations of the Secretary.

"(B) The Secretary may permit a lender to submit the results of an audit conducted for other purposes if the Secretary determines that such other audit results provide the same information as required under subparagraph (A).";

(3) in subsection (c)—

(A) by amending the heading to read as follows: "AGREEMENTS WITH GUARANTY AGENCIES.—";

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking "A guaranty agreement" and inserting "An agreement between the Secretary and a guaranty agency"

(ii) in the flush left language at the end of the paragraph, by striking "Guaranty agencies" and inserting "The Secretary"; and

(iii) by redesignating paragraph (3) as paragraph (11);

(C) by striking paragraphs (1), (2), (4), and (5);

(D) by inserting after the subsection heading the following new paragraphs:

"(1) AUTHORITY TO ENTER INTO AGREEMENTS.—(A)(i) The Secretary may enter into an agreement with a guaranty agency, under which the Secretary shall insure loans made under this section through the guaranty agency as the agent of the Secretary.

"(ii) Any guaranty agency that had an agreement with the Secretary under section 428(b) as of the day before the date of enactment of the Student Financial Aid Improvements Act of 1997 may enter into an initial agreement with the Secretary under this subsection.

"(iii) An agreement under this subsection shall be five years in duration, and may be renewed by the Secretary for successive five-year periods.

"(iii) The Secretary may terminate the agreement prior to its expiration in accordance with paragraph (9).

"(2) EFFECT ON PRIOR GUARANTY AGREEMENTS AND LOAN INSURANCE BY GUARANTY AGENCIES.—(A) All guaranty agreements made under this subsection as it was in effect on the day before the date of enactment of the Student Financial Aid Improvements Act of 1997 shall terminate not later than 180 days after the date of enactment of that Act.

"(B) Notwithstanding any other provision of law—outstanding as of the date of the termination under subparagraph (A) shall be replaced on such date by loan insurance issued by the Secretary, and the guaranty agency shall be relieved of any further liability thereon;

"(ii) the Secretary's liability for any outstanding liabilities of a guaranty agency (other than outstanding loan insurance under this part), shall not exceed the fair market value of the unrestricted funds of the guaranty agency, which shall consist of—

"(I) all accumulated earnings not otherwise placed in a restricted account in accordance with section 422(h)(2)(A); and

"(II) any working capital that may be provided under section 422(h)(2)(B); and

"(iii) for the first year after the date of enactment of the Student Financial Aid Improvements Act of 1997, the Secretary may specify such interim administrative measures as the Secretary determines to be necessary for the efficient transfer of the loan insurance function, and to carry out the purposes of this part.

"(3) TERMS OF AGREEMENT.—The agreement between the Secretary and a guaranty agency shall include, but not be limited to—

"(A) provisions regarding the responsibilities of the guaranty agency for—

"(i) administering the issuance of insurance on loans made under this section on behalf of the Secretary;

"(ii) monitoring insurance commitments made under this section;

"(iii) default prevention activities;

"(iv) review of default claims made by lenders;

"(v) payment of default claims;

"(vi) collection of defaulted loans;

"(vii) adoption of internal systems of accounting and auditing that are acceptable to the Secretary, and reporting the result thereof to the Secretary on a timely, accurate, and auditable basis;

"(viii) timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the programs under this title;

"(ix) monitoring of institutions and lenders participating in the program under this part; and

"(x) such other program functions as the Secretary may require of the guaranty agency;

"(B) provisions regarding the fees the Secretary shall pay to the guaranty agency under the agreement, and other revenues that the guaranty agency may receive thereunder, as described in paragraphs (4) and (6);

"(C) provisions requiring the guaranty agency to carry out its responsibilities under the agreement in accordance with paragraph (5);

"(D) provisions regarding the use, in accordance with paragraph (10), of net revenues in excess of the guaranty agency's need for working capital, as determined after compliance with section 422(h), for such other activities in support of postsecondary education as may be agreed to by the Secretary and the guaranty agency;

"(E) provisions regarding such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage (as determined on a case-by-case basis);

"(F) provisions setting forth such administrative and fiscal procedures as may be necessary to protect the United States from the risk of unreasonable loss thereunder, and to ensure proper and efficient administration of the loan insurance program;

"(G) provisions regarding the submission of the results of audits of the guaranty agency that are conducted—

"(i) at least annually;

"(ii) by a qualified, independent organization or person in accordance with the standards established by the Comptroller General for the audit of governmental organizations, programs, and functions; and

"(iii) in accordance with the regulations of the Secretary;

"(H) provisions requiring the making of such reports, in such form and containing such information, including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and to protect the Federal fiscal interest, and for keeping such records and for affording such access thereto as the Secretary may find necessary or appropriate to ensure the correctness and verification of such reports;

"(I) adequate assurances that the guaranty agency will not engage in any pattern or practice which may result in a denial of a borrower's access to loans under this part because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution, length of the borrower's educational program, or the borrower's academic year in school;

"(J) assurances that—

"(i) upon the request of an eligible institution, the guaranty agency shall, subject to clauses (ii) and (iii), furnish to the institution information with respect to students (including the names and addresses of such students) who received loans made or insured under this part for attendance at the eligible institution and for whom preclaims assistance activities have been requested under subsection (l);

"(ii) the guaranty agency shall require the payment by the institution of a reasonable fee (as determined in accordance with regulations prescribed by the Secretary) for such information; and

"(iii) the institution may use such information only to remind students of their obligation to repay student loans and may not disseminate the information for any other purpose; and

"(K) such other provisions as the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of this part.

"(4) FEES AND OTHER REVENUES.—(A)(i) The Secretary shall pay to a guaranty agency with an agreement under this subsection the following uniform fees:

"(I) a one-time issuance fee for each new loan made under this part that is insured by the Secretary through the guaranty agency; and

"(II) an annual maintenance fee for each active borrower account.

"(ii) The fees described in clause (i) shall be paid on a quarterly basis, from the funds available under section 458(a), in such amount as the Secretary determines, for all guaranty agencies with agreement under this subsection.

"(B) A guaranty agency with an agreement under this subsection also may receive revenues derived from—

"(i) a default prevention fee paid by lenders in accordance with subsection (g);

"(ii) the collection retention allowance under paragraph (6);

"(iii) the interest earned on working capital provided under section 422(h);

"(iv) such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage (as determined on a case-by-case basis); and

"(v) such other fees as may be authorized under this part.

"(5) PERFORMANCE REQUIREMENTS.—(A) A guaranty agency with an agreement under this subsection shall carry out its responsibilities thereunder in accordance with such measurable performance-based standards as the Secretary may specify, and shall submit timely and accurate data to the Secretary in support of its performance.

"(B) The Secretary shall apply the performance standards uniformly to guaranty agencies with agreements under this subsection.

"(C) The Secretary shall assess the performance of each guaranty agency on the basis of the audits required under paragraph (3)(G), and shall compare such guaranty agency's performance against the performance of other such guaranty agencies and publicly disseminate such comparison.

"(D) The Secretary may impose a fine, in accordance with the terms of the agreement, on a guaranty agency that fails to achieve a specified level of performance on one or more performance standards. If the guaranty agency's failure to achieve such performance level results in a financial loss to the United States, the guaranty agency shall indemnify the Secretary for such loss.";

(E) by amending paragraph (6) to read as follows:

"(6) COLLECTION RETENTION ALLOWANCE.—(A) If, after the Secretary has paid a claim on a loan made under this title, any payments are made in discharge of the obligation incurred by the borrower with respect to such loan (including any payments of interest accruing on such loan after the payment of the default claim by the Secretary), there shall be paid over to the Secretary that portion of the payments remaining after the guaranty agency with which the Secretary has an agreement under this subsection has deducted from such payments an amount for costs related to the student loan insurance program that—

"(i) shall be specified by the Secretary on the basis of the Secretary's review of payments for similar services in a competitive environment; and

"(ii) in no case shall exceed 18.5 percent of such payments (subject to subparagraph (B)).

"(B) If, after the Secretary has paid a claim on a loan made under this title, and the liability on such loan is discharged by payment of the proceeds of a consolidation loan under this part or under part D, the guaranty agency may not deduct the amount specified in subparagraph (A), but may charge the borrower an amount specified by the Secretary and not to exceed 18.5% of the principal amount of the defaulted loan at the time of consolidation, to defray the guaranty agency's collection costs on the defaulted loan to be consolidated.";

(F) by amending paragraph (7) to read as follows:

"(7) SECRETARY AUTHORIZED TO RENEW OR MAKE ALTERNATE AGREEMENTS.—Notwithstanding any other provision of law, once the initial agreement with a guaranty agency entered into after the date of enactment of the Student Financial Aid Improvements Act of 1997 has ended (through its expiration, the termination of the guaranty agency agreement by the Secretary in accordance with paragraph (9), or the resignation of the guaranty agency, as the case may be), the Secretary, in his discretion, may enter into—

"(A) another agreement with the guaranty agency;

"(B) an alternate agreement under which the functions previously performed by the guaranty agency shall be performed by another State or private nonprofit agency with which the Secretary has an agreement under this subsection; or

"(C) a contract under section 428E.";

(G) by amending paragraph (9) to read as follows:

"(9) TERMINATION OF GUARANTY AGENCY AGREEMENTS.—(A) A guaranty agency's agreement under this subsection may be ended in advance of its expiration date in accordance with subparagraph (B), or (C). If its agreement is so ended, the guaranty agency shall immediately—

"(i) cease to be an agent of the Secretary for purposes of the program under this part; and

"(ii) surrender all remaining liquid and non-liquid reserve funds, and assets purchased or developed with reserve funds, still held by the guaranty agency (including reserves held by, or under the control of, any other entity) to the Secretary or the Secretary's designated agent.

(B) A guaranty agency's agreement under this subsection shall be void, and the Secretary shall immediately so notify such guaranty agency, if—

"(i) the guaranty agency fails to comply in a timely manner with the recall of reserve requirements of section 422(h);

"(ii) the guaranty agency fails to increase the amount of funds in its unrestricted account (as measured by comparing the amount of funds in such account at the beginning and end of a year) for each of two years (that may or may not be consecutive) in the five year period of the agreement under this subsection;

"(iii) any other agreement that the guaranty agency has with the Secretary is terminated;

"(iv) the guaranty agency becomes insolvent or declares bankruptcy; or

"(v) there is any legal impediment to the guaranty agency substantially preforming its responsibilities under the agreement.

"(C) The Secretary shall, after notice and opportunity for a hearing, terminate a guaranty agency that has substantially failed to achieve an acceptable level of performance under its agreement with the Secretary. A substantial performance failure under this subparagraph may include the existence of material internal control weaknesses relating to data quality in the guaranty agency's audits for each of two years (that may or may not be consecutive) in the five year period of the agreement under this subsection.

"(D) Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement in advance of its expiration date—

"(i) no State court may issue any order affecting the Secretary's actions with respect to such guaranty agency;

"(ii) any contract with respect to the administration of reserve funds held by a guaranty agency, or the administration of any assets purchased or developed with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after the date of enactment of the Student Financial Aid Improvements Act of 1997 shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section; and

"(iii) no provision of State law shall apply to the actions of the Secretary in terminating the operations of a guaranty agency."; and

(H) by adding after paragraph (9) the following new paragraph:

"(10) USE OF SURPLUS FUNDS.—(A) A guaranty agency with an agreement under this subsection may retain the amount determined in accordance with subparagraph (B) for activities in support of postsecondary education that are approved by the Secretary.

"(B)(i) A guaranty agency may retain 50 percent of its net revenues for fiscal year 1998 in excess of the guaranty agency's need for working capital for such year, as determined after compliance with section 422(h), for approved activities.

"(ii) A guaranty agency may retain for approved activities for fiscal year 1999 and succeeding fiscal years the lesser of—

"(I) 50 percent of its net revenues for such year in excess of its need for working capital, as determined after compliance with section 422(h); or

"(ii) the amount of its net revenues for such year in excess of its need for working capital, as determined after compliance with section 422(h), that is equal to a uniform percentage, established annually by the Secretary, of federal revenues received by the guaranty agency for the preceding year. In determining such percentage, the Secretary shall take into account all guaranty agencies' revenues and costs for the preceding year to determine an adequate level of economic incentive for guaranty agencies to maximize their efficiency.";

(4) by amending subsection (g) to read as follows:

"(g) DEFAULT PREVENTION FEE PAID BY LENDERS.—(1) An eligible lender shall pay a guaranty agency, to which such lender referred a delinquent loan, a default prevention fee of not to exceed $100 per borrower account if the guaranty agency succeeds in bringing such loan into current repayment status.

"(2) The Secretary shall prescribe in regulations the circumstances in which a lender may obtain a refund of a default prevention fee if the borrower of a loan on which such fee was paid subsequently defaults on such loan."; and

(5) in subsection (l)—

(A) in paragraph (1), by striking the paragraph designation and the paragraph heading; and

(B) by striking paragraph (2).

(b) Section 435(j) of the Act is amended by striking "section 428(b)." and inserting "section 428(c)."

REPEAL OF STATE SHARE OF DEFAULT COSTS

SEC. 127. Section 428 of the Act is further amended by striking subsection (n).

CONSOLIDATION LOANS

SEC. 128. (a) Section 428C of the Act is further amended—

(1) in subsection (a)(3)—

(A) in subparagraph (A), by inserting "in an in-school period," after "for a consolidation loan is"; and

(B) in subparagraph (B), by amending clause (i) to read as follows:

"(i) Eligible student loans received by the eligible borrower may be added to a consolidation loan during the 180-day period following the making of such consolidation loan.";

(2) in subsection (b)(4)(C), by amending clause (ii) to read as follows:

"(ii) provides that interest shall accrue and be paid—

"(I) by the Secretary, in the case of a consolidation loan made before October 1, 1997 that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 428;

"(II) by the Secretary, in the case of a consolidation loan made on or after October 1, 1997, except that the Secretary shall pay such interest only on that portion of the loan that repays Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; and

"(III) by the borrower, or capitalized, in the case of a consolidation loan, or portion thereof, other than one described in subclause (I) or (II);"; and

(3) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "subparagraph (B) or (C)." and inserting "subparagraph (B), (C), (D), or (E), and subject to subparagraph (F).";

(ii) in subparagraph (C), by striking "after July 1, 1994," and inserting "after July 1, 1994 and before October 1, 1997,"; and

(iii) by adding after subparagraph (C) the following new subparagraphs:

"(D) A consolidation loan made on or after October 1, 1997, that repays loans made under section 428 or 428H, or a combination thereof, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to—

"(i) the rate specified in section 427A(g), in the case of a borrower in an in-school or grace period; or

"(ii) the rate specified in section 427A(h)(1) in all other cases.

"(E) A consolidation loan made on or after October 1, 1997, that repays loans made under section 428B shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the rate specified in section 427A(h)(2).

"(F) Notwithstanding any other provision of this section, the Secretary may prescribe in regulation such procedures as may be necessary to ensure that—

"(i) a borrower of a consolidation loan that repays a combination of loans eligible to be consolidated under this section, shall continue to receive, after consolidation, any interest subsidy benefits associated with a loan, without extending such benefits to any other loans consolidated that do not have interest subsidy benefits;

"(ii) in the case of a consolidation loan that repays a combination of loans described in subparagraphs (D) and (E), the interest rate on such consolidation loan shall be calculated in a manner that reflects the interest rate applicable to loans made under each such subparagraph; and

"(iii) in the case of a consolidation loan that repays a loan eligible to be consolidated under this section other than those described in subparagraphs (D) and (E), the interest rate applicable to such other loan shall be the interest rate described in subparagraph (D) if such other loan is considered by the Secretary to be subsidized, and the interest rate described in subparagraph (E) if such other loan is considered by the Secretary to be unsubsidized."; and

(B) in paragraph (4)—

(i) by striking "Repayment" and inserting "(A) Except as provided in subparagraph (B), repayment"; and

(ii) by adding after subparagraph (A) (as redesignated by clause (i)) the following new subparagraph:

"(B) In the case of a consolidation loan that repays a loan made under this part for which the borrower is in an in-school period at the time the consolidation application is received, the repayment period for such consolidation loan shall commence after the completion of a grace period, as described in section 428(b)(7)(i).".

CONTRACTS WITH OTHER ENTITIES

SEC. 129. Part B of title IV of the Act is amended by inserting after section 428D the following new section:

"CONTRACT AUTHORITY

"SEC. 428E. The Secretary may enter into one or more contracts to carry out any of the functions that otherwise would be carried out by a guaranty agency with an agreement under section 428(c).".

ELIGIBLE LENDER

SEC. 130. Section 435(d) of the Act is amended—

(1) in paragraph (1), by striking "(6)," and inserting "(7),"; and

(2) by adding after paragraph (6) the following new paragraph:

"(7) UNIFORM TERMS AND CONDITIONS.—Subject to such exceptions as the Secretary may prescribe in regulations, the term 'eligible lender' shall not include any lender that offers different terms and conditions to different borrowers of the same type of loan made or insured under this part.".

SPECIAL ALLOWANCE

SEC. 131. Section 438 of the Act is amended—

(1) in subsection (a)(3), by striking "quarterly rate" each place it appears and inserting "rate"; and

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by striking "subparagraphs (B), (C), (D), (E), and (F)" and inserting "subparagraphs (B), (C), (D), (E), (F), and (G)"; and

(ii) by adding after subparagraph (F) the following new subparagraph:

"(G)(i) Notwithstanding any other provision of this section, in the case of loans made or insured under this part for which the first disbursement is made on or after October 1, 1997, the special allowance paid pursuant to this subsection shall be computed for any 12-month period beginning on July 1 and ending on June 30 by—

"(I) determining the bond equivalent rate on the preceding June 1 of the securities with a comparable maturity, as established by the Secretary; and

"(II) subtracting the applicable interest rate on such loans from such amount.

"(ii) The amount of special allowance computed under clause (i) shall be paid in quarterly increments for the 3-month periods described in paragraph (1).''; and

(B) in paragraph (3), in the second sentence, by striking "determined for any such 3-month period shall be paid promptly after the close of such period," and inserting "calculated under this subsection shall be paid promptly after the close of the 3-month period for which such special allowance payment is due.".

STUDENT LOAN MARKETING ASSOCIATION OFFSET FREE

SEC. 132. Section 439(h)(7) of the Act is amended by adding after subparagraph (C) the following new subparagraph:

"(D) The calculation of the fee required under subparagraph (A) or (B), as the case may be, shall be determined on the basis of the principal amount of all loans (except for loans made under section 428C, 430(o) or 430(q))—

"(i) owned, in whole or in part, by the Association, any subsidiary of the Association, or any company, trust or other entity owned by, or controlled by, the Association; or

"(ii) held by a trust (including a trustee on behalf of a trust), or by any other entity in which the Association, or any subsidiary, holds more than a minimal beneficial interest (as determined by the Secretary).".

DIRECT LOAN TRANSITION FEE

SEC. 133. Section 452(b) of the Act is amended to read as follows:

"(b) TRANSITIION FEES.—The Secretary shall pay fees to institutions of higher education (or a consortium of those institutions) with agreements under section 454(b), in the first year of their participation in the program authorized by this part, in order to compensate for costs associated with their transition to the program. The fees shall not exceed an average of $10 per borrower at all institutions receiving the fees.".

FUNDS FOR ADMINISTRATIVE EXPENSES

SEC. 134. Section 458(a) of the Act is amended, in the first sentence, by striking "$260,000,000" through the end of the sentence and inserting the following: "$532,000,000 in fiscal year 1998, $610,000,000 in fiscal year 1999, $705,000,000 in fiscal year 2000, $806,000,000 in fiscal year 2001, and $904,000,000 in fiscal year 2002.".

PART C—NEED ANALYSIS AND GENERAL PROVISIONS

HOPE SCHOLARSHIP NEED ANALYSIS AMENDMENTS

SEC. 141.(a) CALCULATION OF AVAILABLE INCOME.—(1) Section 475 of the Act is amended—

(A) by amending subsection (c)(1)(A) to read as follows:

"(A) the sum of—

"(i) Federal income taxes;

"(ii) the amount of any tax credit taken under section 24A of the Internal Revenue Code of 1986; and

"(iii) the amount by which tax liability determined without regard to the deduction provided under section 221 of the Internal Revenue Code exceeds the amount of tax liability determined after taking such deduction into account;"; and

(B) by amending subsection (g)(2)(A) to read as follows:

"(A) the sum of—

"(i) Federal income taxes;

"(ii) the amount of any tax credit taken by the student under section 24A of the Internal Revenue Code of 1986; and

"(iii) the amount by which tax liability determined without regard to the deduction provided under section 221 of the Internal Revenue Code exceeds the amount of tax liability determined after taking such deduction into account;".

(2) Section 476(b)(1)(A)(i) of the Act is amended to read as follows:

"(A) the sum of—

"(i) Federal income taxes;

"(ii) the amount of any tax credit taken under section 24A of the Internal Revenue Code of 1986; and

"(iii) the amount by which tax liability determined without regard to the deduction provided under section 221 of the Internal Revenue Code exceeds the amount of tax liability determined after taking such deduction into account;".

(3) Section 477(b)(1)(A) of the Act is amended to read as follows:

"(A) the sum of—

"(i) Federal income taxes;

"(ii) the amount of any tax credit taken under section 24A of the Internal Revenue Code of 1986; and

"(iii) the amount by which tax liability determined without regard to the deduction provided under section 221 of the Internal Revenue Code exceeds the amount of tax liability determined after taking such deduction into account;".

(b) DEFINITIONS.—Section 480 of the Act is amended—

(1) in subsection (a)(2)—

(A) by striking "and no portion" and inserting "no portion"; and

(B) by inserting after "(42 U.S.C. 12571 et seq.)," the following: "and no portion of any tax credit taken under section 24A of the Internal Revenue Code of 1986,";

(2) in subsection (b)—

(A) in paragraph (13), by striking "and" at the end of the paragraph;

(B) by redesignating paragraph (14) as paragraph (15); and

(C) by inserting after paragraph (13) the following new paragraph:

"(14) any tax deduction taken under section 221 of the Internal Revenue Code of 1986; and";

(3) in subsection (e)—

(A) in paragraph (3), by striking "and" at the end of the paragraph;

(B) in paragraph (4), by striking the period at the end of the paragraph and inserting "; and"; and

(C) by adding after paragraph (4) the following new paragraph:

"(5) any tax credit taken under section 24A of the Internal Revenue Code of 1986; and";

(4) in subsection (j), by adding after paragraph (3) the following new paragraph:

"(4) Notwithstanding paragraph (1), a tax credit taken under section 24A of the Internal Revenue Code of 1986 shall not be treated as estimated financial assistance for purposes of section 471(3).".

INCOME PROTECTION ALLOWANCE FOR INDEPENDENT STUDENTS WITHOUT DEPENDENTS

SEC. 142. (a) Section 476(b) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by amending clause (iv) to read as follows:

"(iv) an income protection allowance, determined in accordance with paragraph (4);"; and

(ii) in clause (v), by striking "paragraph (4);" and inserting "paragraph (5);"; and

(B) in subparagraph (B), by striking "paragraph (5)." and inserting "paragraph (6).";

(2) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) INCOME PROTECTION ALLOWANCE.—The income protection allowance is determined by the following table (or a successor table prescribed by the Secretary under section 478):

"INCOME PROTECTION ALLOWANCE

Family Size (including student)	Number in College	
	1	2
1	8,000	
2	10,250	8,720".

(b) Section 478(b) of the Act is amended by striking "sections 475(c)(4) and 477(b)(4)." and inserting "sections 475(c)(4), 476(b)(4), and 477(b)(4).".

HOPE SCHOLARSHIP DEFINITIONS

SEC. 143. Section 481 of the Act is amended by adding after subsection (f) the following new subsection:

"(g) HOPE SCHOLARSHIP DEFINITIONS.—(1) As necessary for purposes of the tax credit provided under section 24A of the Internal Revenue Code of 1986, and the deduction provided under section 221 of such Code, the Secretary of Education shall define in regulation the following terms:

"(A) academic period;

"(B) normal full-time workload;

"(C) first two years of postsecondary education;

"(D) qualifying grade point average;

"(E) job skills; and

"(F) new job skills.

"(2) Notwithstanding any other provision of law, the regulations described in paragraph (1) shall not be subject to section 482(c).".

EXTENSION OF STUDENT AID PROGRAMS

SEC. 144. Title IV of the Act is amended—

(1) in section 401(a)(1), by striking "September 30, 1998," and inserting "September 30, 1999,";

(2) in section 424(a), by striking "1998." and "2002." and inserting "2002." and "2006.", respectively;

(3) in section 428(a)(5), by striking "1998," and "2002." and inserting "2002," and "2006.", respectively;

(4) in section 428C(e), by striking "1998." and inserting "2002."; and

(5) in section 466—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking "September 30, 1996," and "March 31, 1997," and inserting "September 30, 1998," and "March 31, 1999", respectively; and

(ii) in paragraph (1), by striking "September 30, 1996," and inserting "September 30, 1998,";

(B) in subsection (b), by striking "September 30, 1996," and inserting "September 30, 1998,"; and

(C) in subsection (c), by striking out "October 1, 1997," and inserting "October 1, 1998,".

PART D—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 151. (a) Except as otherwise provided in this section, the amendments made by this title shall take effect on the date of enactment of this Act.

(b) Section 211 is effective for the calculation of Pell Grant awards for award years beginning on or after July 1, 1998.

(c) Section 222 is effective for a loan made under part B or part D of title IV of the Act for which the first disbursement is made on or after October 1, 1997.

(d) Section 223(a)(3) and section 428(b)(5)(C) of the Act (as added by section 226(a)(2)(E)) are effective as if they were enacted on July 23, 1992.

(e) Sections 224, 229, and 230 take effect on October 1, 1997.

(f) Section 231 is effective for a loan made or insured under part B of title IV of the Act for which the first disbursement is made on or after October 1, 1997.

(g) Section 232 is effective as if it were enacted on August 10, 1993, but does not apply to the privatized entity that may be created as a result of the Student Loan Marketing Association Reorganization Act of 1996 (Title VI of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997, as enacted by section 101(e) of Division A of Pub. L. No. 104-208).

(h) Section 242 is effective for determinations of need for academic years beginning on or after July 1, 1998.

U.S. DEPARTMENT OF EDUCATION,
Washington, DC, March 20, 1997.

Hon. ALBERT GORE, Jr.,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: We are enclosing for the consideration of the Congress the Administration's legislative proposal entitled "The Hope and Opportunity for Postsecondary Education (HOPE) Act of 1997." This bill, which includes higher education tax and spending proposals, would promote access to college for low- and middle-income students and provide tax relief to middle-income families struggling to pay for college. These proposals are fully paid for in the President's fiscal year 1998 budget proposal. An identical letter is being sent to the Speaker of the House.

The need for higher education—both for the individual and the Nation—has never been greater. Economic prosperity in the next century will come through productivity gains and technological advances that require an adaptable and highly-skilled work force. Those nations that provide their citizens with opportunities to gain higher level skills and to learn throughout a lifetime will thrive.

The Federal student aid programs have already opened the doors to college for millions of Americans. Despite making tremendous gains in access to college, students from lower-income families still are far less likely to attend college or earn a degree than are students from higher-income families. Even students from middle-income families are only one-half as likely to earn a college degree as those from upper-income families. This gap shows that we must do more to make higher education readily available to all.

To enable all of our citizens, young and old, to gain access to higher education and training, and to strengthen the Nation's ability to compete in the global economy, the Administration proposes a set of integrated grant, loan and tax relief measures that would: create HOPE Scholarships, higher education tax deductions and other tax benefits worth $38.6 billion between fiscal years 1997 and 2002; create strong incentives for saving to help families pay for postsecondary education costs; significantly increase the amount of grant aid available to needy students through the Pell Grant program; and reduce up-front fees in the loan programs to put an additional $2.6 billion over five years in the hands of students. These targeted financing proposals would help our citizens acquire and maintain the knowledge and skills they need to be productive throughout their lives.

TITLE I—TAX PROVISIONS

This section of the bill would create a HOPE Scholarship tax credit to help make 14 years of education the standard for all Americans. A taxpayer could claim a $1,500 per-student nonrefundable tax credit for tuition and required fees for enrollment of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent in a postsecondary degree or certificate program.

The credit would be available for payments made after December 31, 1996 with respect to education commencing on or after July 1, 1997. The amount of the credit would be reduced by other non-taxable Federal educational grants, such as Pell Grants, received by the student. The student could claim the credit for two different years, so long as he or she is enrolled on at least a half-time basis in each of those years. The HOPE Scholarship would be available for a second year only if the student had obtained at least a B-minus average for all prior postsecondary course work completed before the beginning of the second taxable year. A credit would not be available in any year for a student who had been convicted of a drug-related felony. The maximum credit amount would be indexed for inflation beginning in 1998.

In addition to the HOPE Scholarship tax credit, an annual tax deduction of up to $5,000 per family ($10,000 after 1998) would be permitted for the tuition costs of college, graduate study, job training, or retraining for the taxpayer, or the taxpayer's spouse or dependents. The deduction would be available to all taxpayers, whether or not they itemized deductions. Because the deduction would be available for students enrolled in as little as one course at a time if the course is career-enhancing, it would be especially valuable for working adults seeking to improve their job skills.

A taxpayer could claim either the HOPE Scholarship tax credit or the tax deduction but not both, for a student's expenses in the same tax year. In addition, both the credit and deduction would be phased out for taxpayers filing a joint return with adjusted gross income (AGI) between $80,000 and $10,000. For taxpayers filing a head-of-household or single return, the credit and deduction would be phased out for those with AGI between $50,000 and $70,000. The phase-out ranges would be indexed for inflation beginning in 2001. Education expenses qualifying for the credit and deduction include tuition and fees paid to institutions eligible to participate in Federal student aid programs under the Higher Education Act (HEA).

This bill would exempt from taxation up to $5,250 annually in employer-provided educational assistance and restore this benefit for graduate level education. In addition, beginning in 1998, small businesses would be eligible for a new credit equal to 10 percent of amounts spent on worker training provided by third parties. The bill also would provide tax relief for loan forgiveness so that students whose loans are forgiven by charitable or educational institutions in return for community service, and borrowers whose Direct Loans are forgiven after 25 years in the Income Contingent Repayment plan, are not taxed on the forgiven amount.

As you know, in addition to the tax proposals contained in the HOPE Act, the President has also proposed targeted tax cuts to help middle-income Americans raise their young children and save for the future. Under the economic and technical assumptions of the Office of Management and Budget (OMB), which we stand behind, all of these tax cuts could be made permanent, and the President's budget would still reach balance in 2002.

At the same time, the President has committed to reach balance in 2002 under the assumptions of the Congressional Budget Office (CBO) as well. For the sole purpose of ensuring that CBO continues to score the President's budget as balanced in 2002, we have included in this proposal, and elsewhere, sunset dates that would end most of our tax cuts after the year 2000. However, the President's budget also includes a fast-track procedure for the Congress to extend the tax cuts if, as we believe, OMB's assumptions prove more accurate than CBO's, and we can still reach balance in 2002.

TITLE II—STUDENT AID PROVISIONS

The Administration is proposing funding sufficient to establish the maximum Pell Grant award at $3,000 in its fiscal year 1998 appropriation request, up from $2,700 in fiscal year 1997. The HOPE Act contains language that would reinforce this funding request by requiring that the Pell Grant maximum award be at least $3,000, a level that is needed to help restore the value of the grant and to provide a meaningful level of support.

This bill also proposes substantial improvements in the way financial need is determined for disadvantaged independent students who do not have dependents (other than a spouse). The bill would set the income protection allowances for independent students who do not have dependents in the same way as the allowances used for other students. The Administration has included an amendment in the 1998 appropriation language for the 1998-99 award year. This bill would make a permanent change to the HEA for later years.

The proposed bill would amend the HEA to reduce loan fees for students by $2.6 billion over five years and lower interest rates for Unsubsidized Stafford Loan borrowers by one percentage point, thereby saving students an additional $1 billion over five years. The bill also would standardize benefits for students, to the extent practicable, across the Direct Loan and Federal Family Education Loan (FFEL) programs, and address a number of structural problems and inefficiencies in the FFEL program.

Under this bill, borrowers would realize substantial benefits as loan origination fees are cut in half for the neediest students and by 25 percent for others. Interest rates on Unsubsidized Stafford loans would be lowered by one percentage point while borrowers are in school. Lenders would be required to offer the same terms to all borrowers for the

same type of loan—just as the government is required to do under the Direct Loan program. Borrowers who consolidate loans within FFEL would receive the same interest rates and comparable benefits to those who consolidate in Direct Loans.

This bill proposes a number of changes to the FFEL guaranty agency system in recognition that these State and private nonprofit entities are not the ultimate guarantors of FFEL and act only as administrative agents of the Federal government. Because the Federal government is the sole insurer of FFEL loans, the Secretary would undertake the obligation to pay lenders directly using his agents and recall guaranty agency reserves over the next five years, saving some $2.5 billion.

To address structural deficiencies that hamper default prevention activities, guaranty agencies would be authorized to retain no more than 18.5 percent of default collections—comparable to the Department's cost of collections—not the arbitrary 27 percent guaranty agencies retain under current law. Guaranty agencies would receive a default prevention fee from lenders when delinquent loans are brought current. To further encourage default prevention, lender risk-sharing would be increased to 5 percent from 2 percent, and lenders would be required to offer borrowers certain additional flexible repayment options now offered under the Direct Loan program.

A more complete summary of the bill's provisions is contained in the Section-By-Section Analysis enclosed with this letter.

This bill is part of an ambitious national agenda—an agenda for the next century that places education at the center and recognizes that all workers need to possess ever higher levels of skills throughout their lifetime. Provisions in this bill reflect the Administration's strong belief that we must raise educational expectations and make 14 years of education the standard for every American. At the same time, this bill offers substantial increases in benefits to needy students, significant, targeted education tax relief to working and middle-income families, and lifelong learning opportunities for all Americans.

The HOPE Act creates a powerful new way for the Nation to invest in its citizens and the economy. I urge you to join me in supporting this legislation. The Office of Management and Budget advises that there is no objection to the submission of this legislation to the Congress and that its enactment would be in accord with the program of the President.

Pay-As-You-Go Requirement

The Omnibus Budget Reconciliation Act of 1990 requires that all revenue and direct spending legislation meet a pay-as-you-go requirement. That is, no such bill should result in an increase in the deficit; and if it does, it will trigger a sequester if not fully offset.

EDUCATION TAX INCENTIVES—CHANGE IN FEDERAL REVENUES

[Millions of dollars]

	1997	1998	1999	2000	2001	2002	97–02
PAYGO—on-budget	138	4,479	6,662	8,372	8,819	9,349	37,819
Non-PAYGO—off-budget	28	210	207	234	60	0	739
Total Receipts—Effects	166	4,689	6,869	8,606	8,879	9,349	38,558

STUDENT LOAN PROVISIONS—CHANGE IN BUDGET AUTHORITY AND OUTLAYS

[Millions of dollars]

	1997	1998	1999	2000	2001	2002	97–02
Loans: Budget Authority	340	1,304	154	190	193	1,287	3,468
Loans: Outlays	340	1,050	347	225	210	1,294	3,466

Sincerely,

RICHARD W. RILEY,
Secretary of Education.
ROBERT RUBIN,
Secretary of the Treasury.

THE HOPE AND OPPORTUNITY FOR POSTSECONDARY EDUCATION ACT OF 1997

SECTION-BY-SECTION ANALYSIS

TITLE I—EDUCATION AND TRAINING TAX INCENTIVES

HOPE SCHOLARSHIP TUITION TAX CREDIT AND EDUCATION AND JOB TRAINING TAX DEDUCTION

Current Law

Taxpayers generally may not deduct the expenses of higher education and training. There are, however, special circumstances in which deductions for higher education expenses are allowed, or in which the payment of higher education expenses by others is excluded from income.

Higher education expenses may be deductible, but only if the taxpayer itemizes deductions, and only to the extent that the expenses, along with other miscellaneous itemized deductions, exceed two percent of adjusted gross income (AGI). A deduction for educational purposes is allowed only if the education maintains or improves a skill required in the individual's employment or other trade or business, or is required by the individual's employer, or by law or regulation for the individual to retain his or her current job.

The interest from qualified U.S. savings bonds is excluded from a taxpayer's gross income to the extent the proceeds of the bonds are used to pay qualified educational expenses. To be qualified, the savings bonds must be purchased after December 31, 1989, by a person who has attained the age of 24. The interest exclusion is phased out for taxpayers with AGI over certain amounts. For 1996, the exclusion was phased out for taxpayers with modified AGI between $49,450 and $64,450 ($74,200 and $104,200 for joint returns). Qualified educational expenses consist of tuition and fees for enrollment of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent at a public or non-profit institution of higher education, including two-year colleges and vocational schools.

Reasons for Change

Well-educated workers are essential to an economy experiencing technological change and facing global competition. The Administration believes that reducing the after-tax cost of education for individuals and families through tax credits and deductions will encourage investment in education and training while lowering tax burdens for middle-income taxpayers.

The expenses of higher education place a significant burden on many middle-class families. Grants and subsidized loans are available to students from low- and moderate-income families; high-income families can afford the cost of higher education. The combination of Federal grants and a tax credit reduces the after-tax cost of higher education, creating a Federal guarantee of a specified amount of assistance for higher education expenses by reducing the after-tax cost of higher education. This guarantee will help make 14 years of education the norm in America.

Proposal

As described in detail below, taxpayers would be able to claim a non-refundable tax credit or a tax deduction for qualified higher education expenses incurred for themselves, their spouses or their dependents during their first two years of postsecondary education in a degree or certificate program. If the requirements for both the credit and the deduction were met with respect to a particular student's expenses, the taxpayer would be free to choose either the credit or the deduction for those expenses. The deduction, but not the credit, would be available for qualified higher education expenses incurred after the first two years of postsecondary education or at any time for courses that enable the taxpayer, the taxpayer's spouse or dependent to acquire or improve job skills.

HOPE Scholarship Tuition Credit

A taxpayer would be allowed a non-refundable credit against Federal income tax for qualified higher education expenses paid during the taxable year for the education of the taxpayer, the taxpayer's spouse, or the taxpayer's dependents. The credit would be available with respect to an individual student for two taxable years, provided the student has not completed the first two years of postsecondary education.

A credit for qualified higher education expenses would be available in the taxable year the expenses are paid, subject to the requirement that the education commence or continue during that year or during the first three months of the next year, and provided the student is enrolled during the year (or in the first three months of the next year) at least half-time in a degree or certificate program. Qualified higher education expenses paid with the proceeds of a loan generally would be eligible for the credit (rather than repayment of the loan itself). The credit would be recaptured where a student or the taxpayer received a refund (or reimbursement through insurance) of tuition and fees for which a credit had been claimed in a prior year.

With respect to an individual student, a taxpayer is limited to a tuition tax credit of

the lesser of the taxpayer's qualified higher education expenses and the maximum credit amount. The maximum credit for a taxable year would be $1500, reduced by any Federal educational grants, such as Pell Grants, awarded for that year (or for education beginning in the first three months of the next year, if credits are claimed based on payments for that education). Beginning in 1998, the maximum credit amount would be indexed for inflation, rounded down to the closest multiple of $50.

The maximum credit amount would be phased out ratably for taxpayers with modified AGI between $50,000 and $70,000 ($80,000 and $100,000 for joint returns). Modified AGI would include taxable Social Security benefits and amounts otherwise excluded with respect to income earned abroad (or income from Puerto Rico or U.S. possessions), and would be determined before the deduction for education expenses contained in this proposal. Beginning in 2001, the income phase-out ranges would be indexed for inflation, rounded down to the closest multiple of $5000.[1]

Qualified higher education expenses would be defined as tuition and fees charged by an institution of higher education that are directly related to an eligible student's course of study (e.g., registration fees, laboratory fees, and extra charges for particular courses). Charges and expenses associated with meals, lodging, student activities, athletics, health care, transportation, books and similar personal, living or family expenses would not be included. The expenses of education involving sports, games or hobbies would not be qualified higher education expenses unless this education is required as part of a degree program.

Qualified higher education expenses generally would include only out-of-pocket tuition and fees. Qualified higher education expenses would not include expenses covered by educational assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total tuition and required fees would be reduced by scholarship or fellowship grants excludable from gross income under section 117 of the Internal Revenue Code (scholarships and fellowships that pay for tuition, required fees, books and equipment) and any educational assistance received as veterans' benefits. However, assistance with expenses other than tuition, required fees and books, such as expenses associated with meals, lodging, student activities, athletics, health care and transportation, could be received without a reduction of creditable higher education expenses. In addition, qualified higher education expenses would be reduced by the interest from qualified U.S. savings bonds that is excluded from a taxpayer's gross income for the taxable year. However, no reduction would be required for a gift, bequest, devise, or inheritance within the meaning of section 102(a).

An eligible student would be one who is enrolled or accepted for enrollment during the taxable year in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution at which such student is enrolled) leading to a recognized educational credential at an eligible institution. The student must pursue a course of study on at least a half-time basis. In addition, for a student's qualified higher education expenses to be eligible for the credit, the student must not have been convicted of a Federal or state felony consisting of the possession or distribution of certain drugs, and generally cannot be a nonresident alien. Furthermore, a taxpayer would not be entitled to a credit for a second taxable year unless the student obtained a qualifying grade point average for all previous postsecondary education. Generally, this would be an average of at least 2.75 on a 4-point scale, or a substantially similar measure of achievement. This provision would allow institutions that do not use a 4-point grading scale to retain their own system while still allowing their students to qualify for the credit: these institutions will determine what measure under the system they use reasonably approximates a B- grade point average.

An "institution of higher education" is defined by reference to section 481 of the Higher Education Act. Such institutions generally would be accredited postsecondary educational institutions offering credit toward a bachelor's degree, an associate's degree, or another recognized postsecondary credential. They could also be proprietary institutions or postsecondary vocational institutions. The institution must be eligible to participate in Department of Education student aid programs.

This proposed credit would not affect deductions claimed under any other section of the Code, except that if a student's qualified higher education expenses for a taxable year are deducted under another section of the Code (including the proposed deduction for education expenses) no credit would be available. If a taxpayer is eligible to claim either the credit or the deduction for qualified higher education expenses with regard to a single student, the taxpayer may choose between the credit and the deduction, but may not claim both. In addition, a taxpayer may claim the credit for some students and the deduction for others. An eligible student would not be entitled to claim a credit under this provision if that student is claimed as a dependent for tax purposes by another taxpayer. If a parent claims a student as a dependent, any education expenses paid by the student would be treated as paid by the parent for purposes of this proposal.

The Secretary of the Treasury and the Secretary of Education, operating in close consultation, will have authority to issue regulations to implement the provisions. The Secretary of the Treasury generally would be authorized to issue regulations to implement this section of the Internal Revenue Code. For example, the Secretary of the Treasury would have authority to issue regulations providing appropriate rules for recordkeeping and information of reporting. These regulations would address the information reports institutions of higher education would file to assist students and the IRS in determining whether a student meets the eligibility requirements for the credit and calculating the amount of the credit that is potentially available. However, certain terms would be defined by reference to the Higher Education Act of 1965. The Secretary of Education would have the authority to issue regulations under those provisions as well as authority to define other education terms as necessary. The Secretary of the Treasury and the Secretary of Education would coordinate their work in developing their respective regulations.

The proposal would be effective for payments made on or after January 1, 1997, for education commencing on or after July 1, 1997.

Education and Job Training Tax Deduction

A taxpayer would be allowed a deduction for qualified higher education expenses paid during the taxable year for the education or training of the taxpayer, the taxpayer's spouse, or the taxpayer's dependents. The deduction would be allowed in determining AGI. Therefore, taxpayer's could claim the deduction even if they do not itemize their deductions and even if they do not meet the two-percent of AGI floor on miscellaneous itemized deductions.

The term "eligible student" generally is defined in the same way for the proposed deduction as it is for the proposed tuition credit, that is, to include students enrolled at least half-time in a degree or certificate program at an institution of higher education. However, a student taking a course to improve or acquire jobs skills would also be an eligible student for purposes of the deduction. Qualified higher education expenses would also be defined in the same way for the deduction proposal as they are for the tuition credit proposal, that is, tuition and required fees that are directly related to an eligible student's course of study.

"Institution of higher education" is defined the same way for purposes of this proposal as it is in the tuition credit proposal.

Qualified higher education expenses would be deductible in the taxable year the expenses are paid, subject to the requirement that the education commences or continues during that year or during the first three months of the next year. Deductible educational expenses paid with the proceeds of a loan generally would be deductible (rather the repayment of the loan itself). Normal tax benefits rules would apply to refunds (and reimbursement through insurance) of previously deducted tuition and fees, making such refunds includable in income in the year received.

In 1997 and 1998 the maximum deduction for a taxpayer would be $5,000. In 1999 and thereafter, this maximum would increase to $10,000. The deduction would be phased out ratably over an income range in the same way as the credit. The maximum deduction would not vary with the number of students in a family.

This proposal would not affect deductions claimed under any other section of the Code, except that any amount deducted under another section of the Code could not also be deducted under this provision. In addition, a taxpayer who claimed a deduction for a student's qualified higher education expenses for a particular taxable year could not also claim a tuition tax credit for any of the student's qualified higher education expenses for the year. A student would not be eligible to claim a deduction under this provision if that student is claimed as a dependent for tax purposes by another taxpayer. If a parent claims a student as a dependent, any education expenses paid by the student will be treated as paid by the parent for purposes of this proposal.

The proposal would grant the Secretary of the Treasury authority to issue regulations under this section, including rules requiring record keeping and information reporting.

This proposal would be effective for payments made on or after January 1, 1997, for education commencing on or after July 1, 1997.

TAX INCENTIVES FOR EXPANSION OF STUDENT LOAN FORGIVENESS

Current Law

Generally, a taxpayer has income when all or part of a loan made to the taxpayer is forgiven. However, an exception is provided in

[1] This description of the proposal reflects a modification of the indexing date contained in the OMB analytical materials relating to this proposal.

section 108(f) for the forgiveness of certain student loans. If the United States, a State or local government, or a public benefit corporation with control over a state, county, or municipal hospital makes a loan to a student to support the student's attendance at an educational institution and subsequently forgives all or part of the loan, the income resulting from the cancellation of indebtedness is excluded from the student's income, provided the loan forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers.

Reasons for Change

The Administration believes in encouraging Americans to use their education and training in community service. Providing tax relief in connection with the forgiveness of certain student loans will help make it possible for students with valuable professional skills to accept lower-paying jobs that serve the public.

Proposal

The income exclusion for student loan forgiveness would be expanded to cover forgiveness of loans extended by nonprofit tax-exempt charitable or educational institutions to their students or graduates when the proceeds are to be used to repay outstanding student loans, provided the loan forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers. The income exclusion would not be available where a loan is extended and then forgiven by an institution that employs the borrower. The exclusion would also be expanded to cover forgiveness of direct student loans made through the William D. Ford Federal Direct Loan Program where loan repayment and forgiveness are contingent on the borrower's income level.

The proposal would be effective with respect to amounts otherwise includable in income after the date of enactment.

EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

Current Law

Section 127 provides that an employee's gross income and wages do not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts are paid or incurred pursuant to a qualified educational assistance program. This exclusion is limited to $5,250 of educational assistance with respect to an individual during a calendar year. The exclusion applies whether or not the education is job-related. In the absence of this exclusion, educational assistance is excludable from income only if it is related to the employee's current job.

The exclusion for undergraduate education expires in mid-1997. The exclusion does not apply to graduate level courses beginning after mid-1996.

Reason for Change

Well-educated workers are essential to an economy experiencing technological change and facing global competition. Extension of section 127, including reinstatement of its application to graduate courses, will expand educational opportunity and increase productivity. In addition, these provisions will encourage the retraining of current and former employees to reflect the changing needs of the workplace. The extension of section 127 also will simplify the rules for employers and workers by eliminating the need to distinguish between job-related expenses and other employer-provided educational assistance.

Proposal

The section 127 exclusion would be extended through December 31, 2000 and reinstated for graduate education.

SMALL BUSINESS TAX CREDIT FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

Current Law

Under current law, job-related training and education expenses, as well as amounts paid or incurred by an employer for educational assistance provided to employees pursuant to a qualified educational assistance program, are deductible by the employer. Employer payments for job-related training and amounts paid under a qualified educational assistance program up to $5,250 annually are excluded from the gross income and wages of the employee. No special incentive is provided to assist small businesses in promoting employee education.

Reason for Change

Education and training builds skills and increases the productivity of the American workforce. Well-educated workers are better able to adapt to changes in the workforce and the demands of technological challenges and global competition. An additional incentive is needed to foster increased educational opportunities and workforce training for employees of small businesses that otherwise may be unable to devote sufficient resources to their employees' skill development.

Proposal

Small businesses would be allowed a 10 percent income tax credit for payments made in taxable years beginning after December 31, 1997, and before January 1, 2001, with respect to expenses incurred during those taxable years for education of employees by third parties under an employer-provided educational assistance program. The credit would be available to employers with average annual gross receipts of $10 million or less for the prior three years.

TITLE II—STUDENT FINANCIAL AID PROVISIONS

Section 201.—Section 201 of the bill sets out the short title for Title II of the bill, the "Student Financial Aid Improvements Act of 1997".

PART A—PELL GRANTS

Section 211.—Section 211 of the bill would amend section 401 (b)(2)(A) of the Higher Education Act of 1965 (hereinafter referred to as "the Act") to provide that, subject to the award rules in section 401(b) of the Act, the Pell Grant maximum award may not be less than $3,000. This increase from the $2,700 maximum for FY 1997, which was in turn a significant increase in the Pell Grant maximum award over previous years, further restores the eroded buying power of Pell Grants. By providing more aid to students at the lowest income levels, this increase would complement the tax proposals in Title I of the bill, which are focused more on middle class students and their families. Together, these proposals would significantly enhance the affordability of postsecondary education.

PART B—STUDENT LOAN PROVISIONS

Section 221.—Section 221 of the bill would add a new subsection (h) to section 422 of the Act, and make conforming changes to subsection (g) of that section. Under new section 422(h), the Secretary would recall from the reserve funds held by guaranty agencies at least $731,000,000 in fiscal year 1998; $127,000,000 in fiscal year 1999; $186,000,000 in each of the fiscal years 2000 and 2001; and $1,271,000,000 in fiscal year 2002. The amounts recalled from each guaranty agency each year would be in proportion to its share of the total reserve funds held by guaranty agencies as of September 30, 1996, and recalled funds would be deposited in the Treasury.

Each guaranty agency would be required, within 45 days of the date of enactment of this provision, to transfer all reserve funds that it holds (that have not yet been recalled) to a restricted account and invest those funds in United States Government securities specified by the Secretary. Except under the working capital provisions described below, the guaranty agency could not use any restricted account funds for any purpose without the express permission of the Secretary.

A guaranty agency would be permitted to use the FY 1998 earnings on its restricted account to assist in meeting its operational expenses. In addition, the Secretary would permit the use of up to $350,000,000 in the aggregate of restricted account funds to be used as working capital to assist with guaranty agency operating expenses. A guaranty agency's share of working capital would be based on its proportionate share of all borrower accounts outstanding on September 30, 1006. Working capital provided to the guaranty agency must be repaid by no later than September 30, 2002, or the date on which the guaranty agency's agreement under section 428(c) ends (through resignation, expiration, or termination), whichever is earlier.

Finally, new subsection 422(h) would specify that non-liquid reserve fund assets, such as buildings and equipment purchased or developed by the guaranty agency with reserve funds, as well as any liquid assets remaining in a guaranty agency's restricted account after the recalls, would remain the property of the United States, could only be used for purposes that the Secretary determines are appropriate, and would be subject to recall by the Secretary no later than the date on which the guaranty agency's agreement under section 428(c) ends.

The proposed recall of reserves is consistent with the legal status of those reserves as Federal property, as well as the current role of the guaranty agency in the Federal Family Education Loan (FFEL) program, as well as the changes proposed in section 226 of the bill, described below. Section 432(o) of the Act, which was added by the Higher Education Amendments of 1992 (P.L. 102-325), clarified that the Secretary is the ultimate insurer of all FFEL guarantees. Thus, guaranty agencies function more like loan servicers than guarantors, and their need for reserve funds is currently limited to their 2 percent risk-sharing requirement, which also comes from Federal funds. The changes proposed in section 226 of the bill would eliminate any need for a guaranty agency to hold capital excess of their working capital requirements.

Section 222.—Section 222 of the bill would amend sections 427, 428(b), 428C, and 455(d) of the bill to provide FFEL borrowers with the extended and graduated repayment options currently available only to Direct Loan borrowers. These new options would be in addition to the standard and income sensitive repayment plans currently available to FFEL borrowers (a more limited form of graduated repayment is also currently available to FFEL borrowers), and would provide far greater flexibility to FFEL borrowers in managing their loan obligations, and therefore may avoid defaults. As with Direct Loan repayment, a FFEL borrower would also have the ability to change repayment plans. The Secretary would also be required to ensure that, to the extent practicable and not

otherwise provided in statute, the repayment plans offered to FFEL borrowers are comparable to Direct Loan repayment plans.

Section 223.—Section 223 of the bill would amend sections 427A and 455 of the Act to reduce the applicable interest rate on all subsidized and unsubsidized FFEL and Direct Loans during in-school, grace, and deferment periods to the same rate as the Department of Education's own borrowing rate, although the interest rates would be capped at the same levels as in current law. This change would reduce Federal costs by reducing excess profits to lenders during times when there are few servicing costs associated with subsidized loans, but the highest profit margins. It would also provide lower interest rates to borrowers of unsubsidized loans while they are in in-school, grace, or deferment periods. Finally, these amendments would standardize interest subsidy costs for the FFEL and Direct Loan programs.

In addition, section 223 of the bill would clarify that the interest rate used to determine the rebate of excess interest under section 427A(i)(7)(B) of the Act was not intended to be used to change special allowance payments for the period affected by the rebate. This change would correct a recent contrary court decision.

Section 224.—Section 224 of the bill would amend section 428(b)(1)(G) of the Act by reducing lenders' insurance rate from 98 to 95 percent. This change would give lenders a greater economic incentive to prevent loan defaults.

Section 225.—Section 225 of the bill would amend sections 428(b)(1)(H), 428H(h), 438(c), and 455(c) of the Act to eliminate the one percent insurance premium that may be charged to a FFEL borrower at the time his or her loan is originated, to reduce FFEL origination fees on subsidized FFELs by one percent (*i.e.*, from three percent to two percent), and to reduce comparably the loan fee charged on Direct Loans. The loan fee for Direct Loans is currently four percent, and is designed to be the equivalent of the FFEL insurance premium plus the FFEL origination fee. Thus, the Direct Loan loan fee would be reduced from four percent to three percent for unsubsidized Direct Loans, and from four percent to two percent for subsidized Direct Loans.

These reductions in fees will provide significant benefits to all students, and will provide additional funds to borrowers up front, at the time that the loan funds are needed to pay for costs of attendance. The proposed changes would also assist in standardizing borrower benefits within the FFEL program as well as between the FFEL and Direct Loan programs, because lenders and guaranty agencies will no longer be able to selectively reduce costs for certain FFEL borrowers by waiving or paying the insurance premium on the borrower's behalf. The Secretary is not authorized to waive or lower loan fees under the Direct Loan program.

The additional reduction in fees for subsidized FFEL and Direct Loans would also complement the HOPE Scholarship and tax deduction proposals in Title I of the bill by significantly reducing loan costs for the neediest students and providing them with additional resources when the loan is originated.

Section 226.—Section 226 of the bill would substantially revise section 428 of the Act to reflect more accurately the current role of the guaranty agency in the FFEL program, and to affirmatively recognize that the Secretary is the sole guarantor of FFELs. Section 432(o) of the Act, which was added by the Higher Education Amendments of 1992 (P.L. 102-325), clarified that the Secretary is the ultimate insurer of all FFEL guarantees. Thus, in practice, guaranty agencies actually function more like loan servicers than guarantors. The changes proposed in section 226 of the bill would treat guaranty agencies in a manner more consistent with their current program functions.

Subsections (a) and (b) of section 428 would be modified and reorganized to reflect the substantive changes proposed primarily to section 428(c) of the Act. Under these changes, the Secretary would be authorized to enter into an agreement with a guaranty agency, under which the Secretary would insure loans with the guaranty agency acting as the agent of the Secretary. Any guaranty agency that had an agreement with the Secretary under section 428(b) on the day before the date of enactment of this bill could enter into an initial agreement with the Secretary, and all existing guaranty agency agreements would expire within 180 days of the date of enactment. Outstanding loan insurance issued by the guaranty agency would be replaced by loan insurance issued by the Secretary, and the guaranty agency would, in general, be relieved of any further liability on the loans. To help ensure a smooth transition, for the first year after the date of enactment the Secretary could specify interim administration measures necessary for the efficient transfer of the loan insurance function.

The new guaranty agreements would be for five years, renewable by the Secretary for successive five-year periods, although the Secretary could terminate the agreements prior to expiration of certain circumstances. After the initial agreement with a guaranty agency entered into after the date of enactment has ended (through its expiration, the termination of the guaranty agency agreement by the Secretary, or the resignation of the guaranty agency), the Secretary, in his discretion, may enter into another agreement with that guaranty agency, an alternate agreement under with a different guaranty agency, or one or more contracts under section 428E (as added by section 229 of the bill) under which contractors would carry out one or more of the functions formerly performed by the guaranty agency.

The agreement between the Secretary and a guaranty agency would specify the responsibilities of the guaranty agency, if any, for: administering the issuance of insurance on FFELs on behalf of the Secretary; monitoring insurance commitments made under this section; default prevention activities; review of default claims made by lenders; payment of default claims, collection of defaulted loans; adoption of internal systems of accounting and auditing that are acceptable to the Secretary; reporting requirements; and monitoring or participating institutions and lenders. The Secretary could also permit the guaranty agency, on a case-by-case basis, to engage in such other businesses, previously purchased or developed with reserve funds, that relate to the FFEL program.

Under the agreement, guaranty agencies would receive the following fees and revenues: a one-time issuance fee for each new FFEL insured by the Secretary through the guaranty agency; and annual maintenance fee for each active borrower account; a default prevention fee, paid by lenders, of not to exceed $100 per borrower account if the guaranty agency succeeds in bringing a loan into current repayment status; a collection retention allowance of not to exceed 18.5 percent, determined on the basis of the Secretary's review of payments for similar services in a competitive environment; the interest earned on working capital provided under section 422(h) (as added by section 221 of the bill); and revenues derived from other FFEL-related businesses in which the Secretary permits the guaranty agency to engage.

In addition to restructuring guaranty agency agreements, the changes proposed in section 226 of the bill would provide guaranty agencies with an incentive to improve their efficiency by permitting them to retain a share of their net revenues for activities, approved by the Secretary, in support of postsecondary education. The share that guaranty agencies may retain and use for this purpose would be calculated by the Secretary after determining an adequate level of economic incentive for guaranty agencies to maximize their efficiency, in an amount not to exceed 50 percent of guaranty agency net revenues.

A guaranty agency would be required to carry out its responsibilities under the agreement in accordance with performance standards specified by the Secretary, which would be uniformly applied to all guaranty agencies. The Secretary would compare the performance of the guaranty agencies with one another, and publicly disseminate the comparison. A guaranty agency that fails to achieve a specified level of performance on one or more performance standards could be fined, and if its failure resulted in a financial loss to the United States, the guaranty agency would be required to indemnify the Secretary for that loss.

A guaranty agency's agreement could be ended in advance of its expiration date, either because its agreement becomes automatically void under certain circumstances, or because the Secretary, after notice and opportunity for a hearing, terminates the guaranty agency for substantially failing to achieve an acceptable level of performance under its agreement.

Finally, while most of the changes proposed in this section of the bill pertain to guaranty agencies and their functions, section 226(a)(2)(E) of the bill would require only eligible lenders that originates or holds more than $5,000,000 in FFELs during an annual audit period to submit to the Secretary a compliance audit for that audit period. This change is similar to exemptions provided in recent Appropriation Acts, and would alleviate the burden and disproportionate expense that annual compliance audits impose on lenders with small FFEL portfolios.

Section 227.—Section 227 of the bill would repeal section 428(n) of the Act, which requires a State to pay to the Secretary an annual amount that represents the State's share of risk for high default rates at institutions within the State. This provision has never been implemented.

Section 228.—Section 228 of the bill would make a number of changes to section 428C of the Act pertaining to FFEL consolidation loans that would make the terms of these loans more comparable to Direct consolidation loans. (Changes to repayment terms for FFEL consolidation loans are proposed in section 222 of the bill.) Section 228 would permit borrowers to obtain a FFEL consolidation loan while they are in "in-school" status, and to consolidate FFEL consolidation loans into new FFEL consolidation loans. Lenders would also retain the interest subsidy on the portion of a FFEL consolidation loan that repays subsidized loans, and the interest rate on FFEL consolidation loans

would be changed to a variable rate comparable to the rate applicable to Direct consolidation loans. By extending favorable terms currently available only to borrowers of Direct consolidation loans to borrowers of FFEL consolidation loans, these amendments would reduce costs for, and provide greater flexibility to, these FFEL borrowers, particularly those FFEL borrowers with loans from multiple lenders who have not consolidated these loans because they would lose the benefits associated with the separate loans.

Section 229.—Section 229 of the bill would add a new section 428E to part B of Title IV of the Act that would authorize the Secretary to enter into one or more contracts to carry out any of the functions that otherwise would be carried out by a guaranty agency. This amendment is consistent with the changes to guaranty agency functions that are proposed in section 226 of the bill.

Section 230.—Section 230 of the bill would amend the definition of an "eligible lender" in section 435(d) of the Act to require lenders to offer uniform terms and conditions to all borrowers taking out the same type of FFEL loans (for example, Unsubsidized or Consolidation Loans). The Secretary would be authorized to prescribe regulatory exceptions to this requirement.

Section 231.—Section 231 of the bill would amend section 438 of the Act to provide for the computation of special allowance rates at the same time and in the same manner as student loan interest rates (annually rather than quarterly), to eliminate the potential for special allowance payments merely because the rates are calculated on a different cycle.

Section 232.—Section 232 of the bill would amend section 439(h)(7) of the Act to reflect congressional intent that the Student Loan Marketing Association (Sallie Mae) not be able to circumvent the requirement that it pay an offset fee on loans it holds by "securitizing" loans upon which it would otherwise be required to pay the offset fee. This provision would also remedy a recent, partially adverse, court decision and would be effective retroactively to August 10, 1993, the date of enactment of the Sallie Mae offset fee requirement, but would not apply to the privatized entity that may be created as a result of the Student Loan Marketing Association Reorganization Act of 1996.

Section 233.—Section 233 of the bill would amend section 452(b) of the Act to replace the statutory requirement (currently overridden by the FY 1997 Appropriation Act) to pay all participating institutions that originate Direct Loans a fee to assist in meeting the costs of loan origination with a fee to be paid only to institutions (or consortia of institutions) in their first year of participation in the Direct Loan program, in order to compensate for costs associated with their transition to the program. The new, more targeted transition fee could not exceed an average of $10 per borrower at the institutions receiving the fee.

Section 234. Section 234 of the bill would amend section 458(a) to specify funding levels through FY 2002 for mandatory administrative expenses for the student financial aid programs, including the Direct Loan program, at levels lower than the current baseline.

PART C—NEED ANALYSIS AND GENERAL PROVISIONS

Section 241.—Section 241 of the bill would make a series of changes to the calculation of a postsecondary student's need for assistance under Title IV of the Act that complement the HOPE Scholarship and deduction proposals in Title I of the bill. These changes are intended to ensure that a student's future eligibility for Title IV assistance is not affected by his or her family's use of the HOPE Scholarship tax credit or the education and training tax deduction. These amendments would: 1) prevent the HOPE Scholarship tax credit from being treated as part of the family's total income by treating the credit amount as "excludable income" and making clear that it is not to be treated as "untaxed income and benefits"; 2) prevent the education and training tax deduction from reducing the family's total income by treating the amount deducted as "untaxed income and benefits"; 3) ensure that the family's available income is accurately reflected by taking account of federal taxes that would be owed if neither the HOPE Scholarship tax credit nor the education and training tax deduction were available; and 4) prevent the HOPE Scholarship tax credit from substituting for other forms of student aid by making clear that the amount of the credit is not to be treated as "financial assistance."

Section 242.—Section 242 of the bill would amend section 476(b) of the bill to make the income protection allowance (IPA) (one factor used in the calculation of a student's need assistance) for independent students without dependents (other than a spouse) comparable to the IPAs used for parents of dependent students and for independent students with dependents. This change would increase the Pell Grant and other need-based aid available to low- and moderate-income students in this category. A conforming change would also be made to section 478(b) of the Act to permit the updating of the numbers used in the IPA calculation to reflect inflation, consistent with the IPA calculations for the other categories of students.

Section 243.—Section 243 of the bill would add a new subsection (g) to section 481 of the Act that would require the Secretary to define in regulations certain education-related terms for purposes of the HOPE Scholarship tax credit and the deduction proposed in Title I of the bill. Section 482(c) of the Act, which requires that regulations must be published in final form by December 1 in order to be effective for the award year beginning the following July 1, shall not apply to these regulations, which pertain to the administration of the tax provisions, not the student aid programs under Title IV.

Section 244.—Section 244 of the bill would amend several provisions of Title IV of the Act primarily to extend the FFEL program and section 458 of the Act through FY 2002. These extensions are necessary in order to make the other changes proposed in this Title for years after FY 1998.

PART D—EFFECTIVE DATES

Section 251.—Section 251 sets out the effective dates for the amendments proposed in this Title of the bill.

Mr. KENNEDY. Mr. President, I give my strong support to President Clinton's HOPE and Opportunity for Postsecondary Education Act of 1997, introduced today by Senator DASCHLE and myself.

Education must continue to be a top priority in Congress. We need to do more to make college accessible and affordable for all students. It is not enough to maintain current spending levels for education. Targeted increases are essential to help students, and also to help colleges deal with increasing enrollments.

Today, college is priced out of reach for many families. From 1980 to 1990, the cost of college rose by 126 percent, while family income increased by only 73 percent. To meet that rising cost, students are going deeper and deeper into debt. In 1993 alone, students borrowed $30 billion—a 65-percent increase since 1993. Since 1988, borrowing in the Federal student loan program has increased by more than 100 percent, while starting salaries for college graduates have failed to increase at all. Many students and their families are fearful of the mounting debt burdens that await college graduates.

The President's bill will help students pay for college in two ways: through tax relief and through increased direct financial aid. With the tax relief, students and their families will be able to choose between a $1,500 HOPE tax credit and a $10,000 tax deduction to pay annual tuition expenses for the first 2 years of postsecondary education, including graduate school The tax deduction is also available to help reduce the cost of further years of education, including graduate school. These two changes will make a college education more affordable for thousands of middle and lower income families.

The bill also provides tax relief for students whose loans are forgiven in return for community service or for low-income wage earners under the income-contingent repayment plan. In addition, the bill provides tax incentives to encourage employers to pay for the further education of their employees.

In the area of direct financial aid, the bill broadens the reach of Pell grants to help the neediest students pay for higher education. It increases the maximum Pell grant from $2,700 to $3,000. It also changes the needs analysis for some independent students by increasing the income protection allowance to make it comparable with that allowance for other categories of students.

The bill also decreases the cost of student loans by reducing interest rates, and by lowering the initial fees charged to students. Borrowing has become an essential part of financing education for millions of students. These provisions will benefit them while they are in college by reducing the initial fees, and after college by lowering the interest rates on the amount they owe.

It is fitting that this bill is being introduced today, because many members of the United States Student Association are here on Capitol Hill this week to urge Congress to give education the high priority it deserves. These students want a better education. They know they need it. And they are worried about how to pay for

it. They want Congress to work together to provide the financial assistance they need to pursue their dreams. The presence of these intelligent and committed students reminds us that the future of our country depends on the education they receive. This Congress can open the door of higher education for many more of them.

The President's proposal deserves broad bipartisan support. It is vital for the country that higher education be truly open to all qualified students, without monetary barriers. 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 renew and extend our commitment to higher education.

By Mr. D'AMATO (for himself, Mr. FAIRCLOTH, Mr. BENNETT, Mr. SARBANES, Mr. DODD, Mr. KERRY, Mr. BRYAN, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. JOHNSON and Mr. REED):

S. 562. A bill to amend section 255 of the National Housing Act to prevent the funding of unnecessary or excessive costs for obtaining a home equity conversion mortgage; to the Committee on Banking, Housing, and Urban Affairs.

THE SENIOR CITIZEN HOME EQUITY PROTECTION ACT

Mr. D'AMATO. Mr. President, I rise today to introduce legislation which will protect our Nation's senior citizens from exploitation by fraudulent operators who are manipulating the Department of Housing and Urban Development's [HUD] Federal Housing Administration [FHA] home equity conversion mortgage program.

I commend the cosponsors of this legislation and thank them for their support of this essential initiative: Senator LAUCH FAIRCLOTH; Senator ROBERT BENNETT; Senator PAUL SARBANES; Senator CHRISTOPHER DODD; Senator JOHN KERRY; Senator RICHARD BRYAN; Senator BARBARA BOXER; Senator MOSELEY-BRAUN; Senator TIM JOHNSON; and Senator JACK REED.

I am pleased to announce a bicameral, bipartisan response to this injustice. Identical companion legislation is being introduced today by Representative RICK LAZIO, chairman of the House Banking Subcommittee on Housing and Community Opportunity. I salute Congressman LAZIO for his swift response in condemning this outrageous practice and for proposing a legislative solution. I pledge to work side-by-side with him on this important issue until our companion bills become law.

This legislation has been endorsed by the administration. I would like to commend HUD Secretary Andrew Cuomo for recognizing this serious problem, bringing these abuses to our attention, and acting courageously to prohibit their continued occurrence.

The FHA home equity conversion mortgage program offers elderly homeowners the opportunity to borrow against the equity in their homes. This effective program assists our senior citizens who have substantial equity in their property but have incomes too low to meet ordinary or extraordinary living expenses. A program recipient can receive cash through this reverse mortgage in the following ways: a lifetime guaranteed monthly payment; a line of credit; a combination of monthly payment and line-of-credit options; or a lump sum. These mortgages are originated by FHA-approved lenders, insured by the FHA and purchased by the secondary mortgage market.

Since the program's inception, approximately 20,000 loans have been made. The median age of borrowers is 76 years old and the median income is $10,400. This reverse mortgage program represents an ideal public/private partnership in which needy, very-low income Americans are aided without cost to the Federal Government.

Unfortunately, unscrupulous middlemen, posing as service providers or estate planners have taken advantage of seniors by charging unnecessary and excessive fees to assist them in obtaining a home equity conversion mortgage. These predators have charged elderly homeowners fees ranging from 6 to 12 percent of the loan amount. In hundreds of cases, very low-income seniors have been manipulated into paying several thousand dollars in return for ministerial and often meaningless services. The Department of Housing and Urban Development provides information on applying for a reverse mortgage at no cost.

These abuses must be stopped at once. Such exploitation is absolutely unconscionable. The elderly who are being preyed upon are some of the most vulnerable in our society. Reverse mortgage proceeds are generally used by the homeowner to maintain a decent standard of living and pay for essentials like property taxes, medical bills, and groceries.

The legislation we are introducing today will assist HUD with its efforts to ensure that our senior citizens are protected. We must ensure that not even one recipient of a HUD reverse mortgage is charged any unnecessary or excessive costs for obtaining that mortgage.

The bill provides two important safeguards to achieve this purpose. First, it provides a requirement that the mortgagor has received a full disclosure of all costs of obtaining the mortgage, including any costs of estate planning, financial advice or other related services. Second, it clarifies that the HUD Secretary has authority to impose restrictions to ensure that the mortgagor is not charged any unnecessary or excessive costs for obtaining a reverse mortgage.

The legislation requires the HUD Secretary to implement the above described safeguards in an expeditious manner by interim notice. Within 90 days of the date of enactment of this Act, the Secretary shall issue final regulations after providing notice and opportunity for public comment. The terms of the interim notice shall not be effective after the final regulations are in place.

I urge all my colleagues to support this vital legislation and look forward to its speedy passage by the Senate. The Senate, the House of Representatives and the administration must work together quickly to ensure that our Nation's most vulnerable homeowners are no longer victimized.

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. 562

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 "Senior Citizen Home Equity Protection Act".

SEC. 2. DISCLOSURE REQUIREMENTS; PROHIBITION OF FUNDING OF UNNECESSARY OR EXCESSIVE COSTS.

Section 255(d) of the National Housing Act (12 U.S.C. 1715z-20(d)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking "and" at the end;

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following:

"(C) has received full disclosure of all costs to the mortgagor for obtaining the mortgage, including any costs of estate planning, financial advice, or other related services, and";

(2) in paragraph (9)(F), by striking "and";

(3) in paragraph (10), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(11) have been made with such restrictions as the Secretary determines to be appropriate to ensure that the mortgagor does not fund any unnecessary or excessive costs for obtaining the mortgage, including any costs of estate planning, financial advice, or other related services.".

SEC. 3. IMPLEMENTATION.

(a) NOTICE.—The Secretary of Housing and Urban Development shall, by interim notice, implement the amendments made by section 2 in an expeditious manner, as determined by the Secretary. Such notice shall not be effective after the date of the effectiveness of the final regulations issued under subsection (b).

(b) REGULATIONS.—The Secretary shall, not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, issue final regulations to implement the amendments made by section 2. Such regulations shall be issued only after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2) and (b)(B) of such section).

ADDITIONAL COSPONSORS

S. 197

At the request of Mr. ROTH, the name of the Senator from Kansas [Mr. BROWNBACK] was added as a cosponsor of S. 197, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 257

At the request of Mr. LUGAR, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN] and the Senator from Illinois [Mr. DURBIN] were added as cosponsors of S. 257, a bill to amend the Commodity Exchange Act to improve the Act, and for other purposes.

S. 302

At the request of Mr. CHAFEE, the name of the Seantor from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 302, a bill to amend title XVIII of the Social Security Act to provide additional consumer protections for Medicare supplemental insurance.

S. 318

At the request of Mr. D'AMATO, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 318, a bill to amend the Truth in Lending Act to require automatic cancellation and notice of cancellation rights with respect to private mortgage insurance which is required by a creditor as a condition for entering into a residential mortgage transaction, and for other purposes.

S. 356

At the request of Mr. GRAHAM, the names of the Senator from Iowa [Mr. GRASSLEY] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 356, a bill to amend the Internal Revenue Code of 1986, the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the title XVIII and XIX of the Social Security Act to assure access to emergency medical services under group health plans, health insurance coverage, and the Medicare and Medicaid Programs.

S. 370

At the request of Mr. GRASSLEY, the name of the Senator from Arkanas [Mr. BUMPERS] was added as a cosponsor of S. 370, a bill to amend title XVIII of the Socil Security Act to provide for increased Medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 371

At the request of Mr. GRASSLEY, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 371, a bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for physician assists, to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 492

At the request of Mr. SARBANES, the names of the Senator from Washington [Mrs. MURRAY], the Senator from Maryland [Ms. MIKULSKI], the Senator from Hawaii [Mr. INOUYE], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 492, a bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes.

S. 494

At the request of Mr. KYL, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 494, a bill to combat the overutilization of prison health care services and control rising prisoner health care costs.

S. 509

At the request of Mr. BURNS, the name of the Senator from Wyoming [Mr. ENZI] was added as a cosponsor of S. 509, a bill to provide for the return of certain program and activity funds rejected by States to the Treasury to reduce the Federal deficit, and for other purposes.

S. 511

At the request of Mr. CHAFEE, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 511, a bill to require that the health and safety of a child be considered in any foster care or adoption placement, to eliminate barriers to the termination of parental rights in appropriate cases, to promote the adoption of children with special needs, and for other purposes.

S. 525

At the request of Mr. KENNEDY, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 525, a bill to amend the Public Health Service Act to provide access to health care insurance coverage for children.

At the request of Mr. BENNETT, his name was withdrawn as a cosponsor of S. 525, supra.

S. 528

At the request of Mr. CAMPBELL, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 528, a bill to require the display of the POW/MIA flag on various occasions and in various locations.

S. 536

At the request of Mr. GRASSLEY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 536, a bill to amend the National Narcotics Leadership Act of 1988 to establish a program to support and encourage local communities that first demonstrate a comprehensive, long-term commitment to reduce substance abuse among youth, and for other purposes.

S. 537

At the request of Ms. MIKULSKI, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 537, a bill to amend title III of the Public Health Service Act to revise and extend the mammography quality standards program.

SENATE JOINT RESOLUTION 11

At the request of Mr. LOTT, the name of the Senator from Michigan [Mr. ABRAHAM], the Senator from Missouri [Mr. ASHCROFT], the Senator from Mississippi [Mr. COCHRAN], the Senator from Texas [Mrs. HUTCHISON], and the Senator from Florida [Mr. MACK] were added as cosponsors of Senate Joint Resolution 11, a joint resolution commemorating "Juneteenth Independence Day," June 19, 1865, the day on which slavery finally came to an end in the United States.

At the request of Mr. KOHL, his name was added as a cosponsor of Senate Joint Resolution 11, supra.

SENATE CONCURRENT RESOLUTION 13

At the request of Mr. SESSIONS, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of Senate Concurrent Resolution 13, a concurrent resolution expressing the sense of Congress regarding the display of the Ten Commandments by Judge Roy S. Moore, a judge on the circuit court of the State of Alabama.

SENATE RESOLUTION 69

At the request of Mr. MCCAIN, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of Senate Resolution 69, a resolution expressing the sense of the Senate regarding the March 30, 1997, terrorist grenade attack in Cambodia.

AMENDMENT NO. 27

At the request of Mr. COVERDELL his name was added as a cosponsor of Amendment No. 27 proposed to S. 104, a bill to amend the Nuclear Waste Policy Act of 1982.

SENATE CONCURRENT RESOLUTION 20—RELATIVE TO THE INVESTIGATION OF THE BOMBING OF THE ISRAELI EMBASSY IN BUENOS AIRES IN 1992

Mr. BROWNBACK (for himself, Mr. ROBB, Mr. HELMS, and Mr. BIDEN) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 20

Whereas on March 17, 1992, the Israeli Embassy in Buenos Aires, Argentina, a school, and several nearby buildings were destroyed by a powerful suicide car bomb blast in which 29 innocent children, women, and men lost their lives and an additional 252 innocent people were injured;

Whereas the victims of this terrorist attack included employees of the Israeli embassy and their families, children from a

nearby Roman Catholic primary school, women and men from a nearby Roman Catholic church shelter, a Roman Catholic priest, and people from across the spectrum of Argentine society;

Whereas Argentina's Jewish community, which numbers 300,000 and is the largest Jewish community in Latin America, has suffered severe anti-Semitism during periods of military rule and feels particularly vulnerable to assault from certain radical Islamic groups and from indigenous far right extremists in Argentina;

Whereas Islamic Jihad claimed responsibility for the bombing of the Israeli Embassy and praised the name of the alleged suicide bomber, Abu Yasser, by calling him a "martyr struggler";

Whereas Islamic Jihad is a terrorist organization that is supported by Iran and, according to Department of State officials, Iranian diplomats collected information to plan the bombing;

Whereas the failure of Argentine and international efforts to bring the perpetrators of the embassy bombing to justice made Argentina a prime target for a second devastating terrorist attack on July 18, 1994;

Whereas the second bombing destroyed the Asociacion Mutual Israelita Argentina (AMIA) Jewish Community Center, killing 86 people and injuring over 200 people; and

Whereas the investigation of the Israeli Embassy bombing has been hampered by the inefficiency of having the entire membership of the Supreme Court of Argentina in charge of the investigation: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) notes that as of March 17, 1997, 5 years after the bombing of the Israeli Embassy and 2½ years after the bombing of the AMIA Jewish Community Center, Argentinean police and judicial authorities have not identified and initiated prosecution of the perpetrators of these 2 barbarous acts of terrorism;

(2) urges the Supreme Court of Argentina to designate a single investigative judge to conduct the investigation of the terrorist bombing of the Israeli Embassy in order to improve the efficiency of the inquiry;

(3) urges Argentinean judicial authorities to aggressively investigate the bombing of the AMIA Jewish Community Center and the possible connection between that bombing and the bombing of the Israeli Embassy in Buenos Aires;

(4) urges Argentinean authorities to acknowledge publicly the reports submitted by Argentinean, United States, and Israeli experts, that the explosion at the Israeli Embassy took place outside the walls of the embassy;

(5) urges the President and appropriate executive agencies to provide whatever assistance is requested by Argentinean Government authorities in order to help that Government investigate these 2 acts of terrorism; and

(6) directs the Secretary of the Senate to transmit a copy of this resolution to the Government of Argentina.

SENATE RESOLUTION 70—REGARDING EQUAL PAY FOR EQUAL WORK

Mr. DASCHLE (for himself, Mr. LEAHY, Mrs. MURRAY, Mr. REID, Mr. HARKIN, Ms. LANDRIEU, Ms. MIKULSKI, Mr. DURBIN, Ms. MOSELEY-BRAUN, Mr. KENNEDY, and Mr. KERRY) submitted the following resolution; which was referred to the Committee on Labor and Human Resources.

S. RES. 70

Whereas, in recent years, the participation of women in the workforce has increased dramatically, with women now making up almost half of the workforce;

Whereas families in which both parents must work are the norm;

Whereas in 1995, 72 percent of all 2-parent families with children, or 18,000,000 such families, were supported by a working mother and father;

Whereas many families depend on the pay of working women;

Whereas some families depend wholly on women's pay, with 22 percent of all families with children, or 7,600,000 such families, being headed by single mothers;

Whereas the inability to earn adequate pay is a burden for an entire family and sometimes forces women onto public assistance to provide for their families;

Whereas unfair pay disparities lead to inadequate savings for retirement and lower pensions for women;

Whereas on average, during the period between 1995 and 1981, a woman earned only 60 cents for each dollar earned by a man;

Whereas on average a woman earned 63.9 cents for each dollar earned by a man in 1955, a figure that improved only to 71.4 cents for each such dollar in 1997, with a woman of color earning even less;

Whereas this improvement equals an average annual increase of only 0.28 percent from 1955 to 1997;

Whereas much of this improvement has resulted from a decline in men's real pay and, if men's real pay had not declined, there would have been a much smaller increase in women's pay relative to men's pay;

Whereas working women have benefited the United States economy enormously;

Whereas the provision of equal pay helps business by improving productivity and reducing employee turnover;

Whereas the pay disparities cost the economy $130,000,000,000 in lost purchasing power per year;

Whereas ensuring equal pay is a high priority for working women and their families;

Whereas it took a woman, on average, from January 1, 1996, to April 11, 1997, to receive as much pay as a man received in 1996 alone; and

Whereas April 11 is being recognized as National Pay Inequity Awareness Day: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) women have made great contributions to the United States workforce and the United States economy and should be paid fairly and have the same access to education and training as men;

(2) all employers, in the public and private sectors, should comply with Federal and State law requiring equal pay for equal work;

(3) many employers have made serious efforts to provide equal pay and should be commended for those efforts; and

(4) all employers should address unequal pay in their workplaces and ensure that working families can prosper.

Mr. DASCHLE. Mr. President, this Friday, April 11, is National Pay Inequity Awareness Day, the day on which an average woman's salary, when combined with her salary from last year, will equal the salary earned by an average man in 1996 alone. It is a day that challenges us to meet our goal of providing equal pay for equal work. Today I want to take another step toward this goal by introducing Senate Resolution 70, a resolution recognizing the important role that women play in the work force and in supporting their families and how far we have yet to go before they will be fairly paid for their efforts.

This is an issue of fairness and of families. In 1995, 72 percent of all two-parent families with children—18 million in total—were supported by a working father and a working mother. An additional 7.6 million families were dependent entirely on the income of a working mother. The burden of unfair pay falls directly on these families, and makes an immediate difference in their lives. For example, an average female secretary makes $2,000 less than a male secretary. Think of the difference that $2,000 can make in the life of a family—it can pay for bags of groceries, check-ups for the children, or rent. Unfair pay is more than a slogan, it means less security for families struggling to meet the needs of their everyday lives.

There is no dispute about the facts. On average, women earn 71 cents for every dollar earned by a man. And even professional women earn less than men, even when women have the same duties, experience, and educational level. On average, female lawyers earn $11,000 less than male lawyers. Female computer programmers earn $4,000 less than their male counterparts. The discrepancies are equally great for women who work for hourly wages. Over her lifetime, the average woman will earn $420,000 less than a man. This leaves retired women with smaller pensions and leads to a high rate of poverty among elderly women.

Mr. President, I look forward to the time when we no longer need to recognize National Pay Inequity Awareness Day. It is my hope that as women's wages increase, this day will fall earlier and earlier in the year, and that, someday soon, when women are finally paid what they deserve, we won't need to commemorate this day at all. One important step toward that goal would be the enactment of S. 71, the Paycheck Fairness Act. It would provide important new tools to remedy this problem of unfair wages, and I urge my colleagues to give it their full support.

I also urge my colleagues to show their support for the principle of fair pay by joining me in support of this resolution recognizing National Pay Inequity Awareness Day. It calls for all women to be paid fairly, for women to have the same access to education and training as men, for all employers to comply with State and Federal laws requiring equal pay for equal work, and it commends employers who have made progress in this important area. It is a

small but important way to demonstrate our support for working women, and to participate in the activities taking place in more than 30 States around the Nation to highlight the wage gap. Raising women's salaries presents us with formidable challenges, but, together, I am convinced that we will be successful.

AMENDMENTS SUBMITTED

THE NUCLEAR WASTE POLICY ACT OF 1997

REID (AND BRYAN) AMENDMENT NO. 28

Mr. REID (for himself and Mr. BRYAN) proposed an amendment to amendment No. 27 proposed by Mr. THURMOND to the bill (S. 104) to amend the Nuclear Waste Policy Act of 1982; as follows:

At the end of the matter proposed to be inserted, add:

Notwithstanding any other provision of this bill, transportation of spent nuclear fuel or high-level radioactive waste under the provisions of this bill to a centralized interim storage site or to a permanent repository shall not cross any state line without the express written consent of the governor of the State of entry.

WELLSTONE AMENDMENTS NOS. 29–30

Mr. REID (for Mr. WELLSTONE) proposed two amendments to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

AMENDMENT NO. 29

On page 22 of the substitute, line 5, after "(3)(B)" insert "until the Secretary has made a determination that personnel in all State, local, and tribal jurisdictions on primary and alternative shipping routes have met acceptable standards of training for emergency responses to accidents involving spent nuclear fuel and high-level nuclear waste, as established by the Secretary, and".

AMENDMENT NO. 30

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE REGARDING FEDERAL ASSISTANCE FOR ELDERLY AND DISABLED LEGAL IMMIGRANTS.

It is the sense of the Senate that Congress should take steps to ensure that elderly and disabled legal immigrants who are unable to work, will not be left without Federal assistance essential to their well-being.

BINGAMAN AMENDMENTS NOS. 31–32

(Ordered to lie on the table.)

Mr. BINGAMAN submitted two amendments intended to be proposed by him to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

AMENDMENT NO. 31

On page 28, line 17, strike "If the President" and all that follows through page 29, line 1 and insert the following:

"(3) If the Secretary makes a determination under section 206(c)(3) that the Yucca Mountain site is not suitable or cannot satisfy the Commission's regulations applicable to the licensing of a repository, the Secretary shall—

"(A) terminate all activities (except necessary termination activities) related to construction of an interim storage facility at any site designated under paragraph (1); and

"(B) no later than 24 months after such determination, make a preliminary designation of one or more alternative sites for construction of an interim storage facility.

"(4) If the Commission, after review of the Secretary's application for construction authorization for the repository or after review of the Secretary's application for a license to receive and possess spent nuclear fuel or high-level radioactive waste at the repository, determines that it is not possible to license a repository at Yucca Mountain under section 206—

"(A) the Commission shall promptly notify the Secretary, the Congress, and the State of Nevada of its determination and the reasons therefore; and

"(B) the Secretary shall—

"(i) promptly take the actions described in paragraphs (1) and (2) of section 204(b);

"(ii) suspend all activities (except for necessary surveillance and maintenance) related to construction or operation of an interim storage facility at any site designated under section 204(c)(1);

"(iii) no later than 24 months after being notified by the Commission of its determination, make a preliminary designation of one or more alternative sites for construction of an interim storage facility; and

"(iv) at the time of the designation under clause (iii), transmit recommendations to Congress with respect to further construction or operation of an interim storage facility at any site designated under section 204(c)(1).".

AMENDMENT NO. 32

On page 28, strike section 204(c)(2) of the amendment and insert the following:

"(2) No later than 18 months after a determination by the President under subsection (b) that the Yucca Mountain site is unsuitable for development as a repository, the President shall designate a site for the construction of an interim storage facility.".

BUMPERS AMENDMENT NO. 33

Mr. BUMPERS proposed an amendment to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

On page 75, strike lines 4 through 8 and insert:

"It is the sense of the Senate that—

"(1) the Department of Energy has entered into contracts with utilities for the disposal of spent nuclear fuel or high-level radioactive waste, under section 302(a) of the Nuclear Waste Policy Act of 1982, based on the standard contract in subpart B of 961 of title 10, Code of Federal Regulations;

"(2) the U.S. Court of Appeals for the District of Columbia Circuit, in Indiana Michigan Power Company v. DOE, has interpreted the Nuclear Waste Policy Act of 1982 to require the Department of Energy to start disposing of the utilities' spent nuclear fuel no later than January 31, 1998;

"(3) the Department of Energy cannot begin to receive and transport significant amounts of spent nuclear fuel by January 31, 1998, because of delays arising out of causes beyond the control and without the fault or negligence of the Department of Energy, including the following acts of Government in its sovereign capacity—

"(A) the failure of Congress to appropriate funds requested by the Department in order to proceed expeditiously with—

"(i) the characterization and development of the Yucca Mountain site, and

"(ii) the design and development of associated systems required to transport spent nuclear fuel;

"(B) the enactment by Congress, since 1982, of additional environmental statutes affecting the process of designing and licensing the repository;

"(C) the failure of the Environmental Protection Agency to meet statutory deadlines in section 801 of the Energy Policy Act of 1992 for the promulgation of radiation standards for the Yucca Mountain site; and

"(D) delays on the part of the State of Nevada in issuing permits necessary for the Department to initiate exploratory activities at the Yucca Mountain site;

"(4) the enactment of this Act is intended by the Congress to address the Department's inability to meet the January 31, 1998, deadline and to provide an adequate remedy to contract holders by ensuring that the Department meets its obligations under the contracts in paragraph (1) at the earliest practicable time, consistent with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and applicable Commission regulations; and

"(5) in any action alleging failure by the Department to perform its obligation to start disposing of spent nuclear fuel by January 31, 1998, under a contract based on the standard contract in subpart B of part 961 of title 10, Code of Federal Regulations, the court should take due account of article IX(A) of such standard contract.".

DOMENICI AMENDMENTS NOS. 34–35

(Ordered to lie on the table.)

Mr. DOMENICI submitted two amendments intended to be proposed by him to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

AMENDMENT NO. 34

In the pending amendment, on page 54 line 10 after the period insert the following:

"Notwithstanding the language of section 802(d) of title 5 of the United States Code, no points of order under the Congressional Budget and Impoundment Control Act of 1974 or any Concurrent Resolution on the Budget shall be considered to be waived during the consideration of a joint resolution under subparagraph (A)."

AMENDMENT NO. 35

In the pending amendment, beginning on page 49 line 11 strike all through page 53 line 11 and insert the following:

"(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

"(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annual level of appropriations for expenditures on those activities consistent with subsection (9) for each fiscal year in the offsetting collection period, minus—

"the percentage of such appropriation required to be funded by the Federal government pursuant to section 403.

"(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

"(C) For purposes of this paragraph, the term 'offsetting collection period' means—

"(i) the period beginning on October 1, 1999 and ending on September 30, 2003; and

"(ii) the period on and after October 1, 2006.

"(3) NUCLEAR WASTE MANDATORY FEE.—

"(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

"(i) 1.0 mill per kilowatt-hour generated and sold, minus

"(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

"Provided, that if the amount under clause (ii) is greater than the amount under clause (i) the fee under this paragraph shall be equal to zero.

"(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal government that are specified in subsection (c)(2). In making this determination the Secretary shall—

"(i) rely on the 'Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program,' dated September 1995, or on a total system life-cycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the government under subsection (c)(2);

"(ii) rely on projections from the Energy Information Administration, consistent with the projects contained in the reference case in the most recent 'Annual Energy Outlook' published by such Administration, in making any estimate of future nuclear power generation; and

"(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

"(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

"(D) The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(4) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2002. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the full amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

"(4) EXPENDITURES IF SHORTFALL.—If, during any fiscal year on or after October 1, 1997, the aggregate amount of fees assessed under this subsection is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—

The percentage of such appropriations required to be funded by the Federal Government pursuant to section 403—

The Secretary may make expenditures from the Nuclear Waste Fund up to the level equal to the difference between the amount appropriated and the amount of fees assessed under this subsection.

MURKOWSKI AMENDMENT NO. 36

Mr. MURKOWSKI proposed an amendment to amendment No. 26 proposed by him to the bill, S. 104, supra; as follows:

Beginning on page 49, strike line 11 and all that follows through line 21 on page 52 and insert the following:

"(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

"(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annual level of appropriations for expenditures on those activities consistent with subsection (d) for each fiscal year in the offsetting collection period, minus—

"(i) any unobligated balance collected pursuant to this paragraph during the previous fiscal year; and

"(ii) the percentage of such appropriation required to be funded by the Federal government pursuant to section 403.

"(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

"(C) For purposes of this paragraph, the term 'offsetting collection period' means—

"(i) the period beginning on October 1, 1998 and ending on September 30, 2001; and

"(ii) the period on and after October 1, 2006.

"(3) NUCLEAR WASTE MANDATORY FEE.—

"(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

"(i) 1.0 mill per kilowatt-hour generated and sold, minus

"(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

"Provided, that if the amount under clause (ii) is greater than the amount under clause (i) the fee under this paragraph shall be equal to zero.

"(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal government that are specified in subsection (c)(2). In making this determination the Secretary shall—

"(i) rely on the 'Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program,' dated September 1995, or on a total system life-cycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the government under subsection (c)(2);

"(ii) rely on projections from the Energy Information Administration, consistent with the projections contained in the reference case in the most recent 'Annual Energy Outlook' published by such Administration, in making any estimate of future nuclear power generation; and

"(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

"(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

"(D) The secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(4) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2001. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the full amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983."

FRIST (AND THOMPSON) AMENDMENT NO. 37

Mr. THOMPSON (for Mr. FRIST, for himself and Mr. THOMPSON) proposed

an amendment to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

On page 28, line 16, after "Washington" insert "or the Oak Ridge Reservation in the State of Tennessee".

DOMENICI AMENDMENTS NOS. 38–39

(Ordered to lie on the table.)

Mr. DOMENICI submitted two amendments intended to be proposed by him to the amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

AMENDMENT NO. 38

At the appropriate place insert the following:

"Notwithstanding any other provision of this act, no points of order, which require 60 votes in order to adopt a motion to waive such point of order, shall be considered to be waived during the consideration of a joint resolution under section 401 of this Act."

AMENDMENT NO. 39

In the pending amendment No. 26, beginning on page 49 line 11 strike all through page 53 line 11 and insert the following:

"(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

"(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annual level of appropriations for expenditures on those activities consistent with subsection (d) for each fiscal year in the offsetting collection period, minus—

the percentage of such appropriation required to be funded by the Federal government pursuant to section 403.

"(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

"(C) For purposes of this paragraph, the term 'offsetting collection period' means—

"(i) the period beginning on October 1, 1998 and ending on September 30, 2001; and

"(ii) the period on and after October 1, 2006.

"(3) NUCLEAR WASTE MANDATORY FEE.—

"(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

"(i) 1.0 mill per kilowatt-hour generated and sold, minus

"(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

"Provided, that if the amount under clause (ii) is greater than the amount under clause (i) the fee under this paragraph shall be equal to zero.

"(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal government that are specified in subsection (c)(2). In making this determination the Secretary shall—

"(i) rely on the 'Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program,' dated September 1995, or on a total system life-cycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the government under subsection (c)(2);

"(ii) rely on projections from the Energy Information Administration, consistent with the projections contained in the reference case in the most recent 'Annual Energy Outlook' published by such Administration, in making any estimate of future nuclear power generation; and

"(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

"(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

"(D) The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(4) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2001. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the full amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

"(4) EXPENDITURES IF SHORTFALL.—If, during any fiscal year on or after October 1, 1997, the aggregate amount of fees assessed under this subsection is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus the percentage of such appropriations required to be funded by the Federal Government pursuant to section 403, the Secretary may make expenditures from the Nuclear Waste Fund up to the level equal to the difference between the amount appropriated and the amount of fees assessed under this subsection.

DOMENICI AMENDMENT NO. 40

Mr. DOMENICI proposed an amendment to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

In the pending amendment, beginning on page 49 line 11 strike all through page 53 line 11 and insert the following:

"(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

"(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annual level of appropriations for expenditures on those activities consistent with subsection (d) for each fiscal year in the offsetting collection period, minus the percentage of such appropriation required to be funded by the Federal government pursuant to section 403.

"(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

"(C) For purposes of this paragraph, the term 'offsetting collection period' means—

"(i) the period beginning on October 1, 1998 and ending on September 30, 2001; and

"(ii) the period on and after October 1, 2006.

"(3) NUCLEAR WASTE MANDATORY FEE.—

"(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

"(i) 1.0 mill per kilowatt-hour generated sold, minus

"(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

"Provided, that if the amount under clause (ii) is greater than the amount under clause (i) the fee under this paragraph shall be equal to zero.

"(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal government that are specified in subsection (c)(2). In making this determination the Secretary shall—

"(i) rely on the 'Analysis of the Total System Life Cost of the Civilian Radioactive Waste Management Program,' dated September 1995, or on a total system life-cycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the government under subsection (c)(2);

"(ii) rely on projections from the Energy Information Administration, consistent with the projections contained in the reference case in the most recent 'Annual Energy Outlook' published by such Administration, in making any estimate of future nuclear power generation; and

"(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

"(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

"(D) The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(4) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was

used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2001. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the fund amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

"(4) EXPENDITURES IF SHORTFALL.—If, during fiscal year on or after October 1, 1997, the aggregate amount of fees assessed under this subsection is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—the percentage of such appropriations required to be funded by the Federal Government pursuant to section 403—the Secretary may make expenditures from the Nuclear Waste Fund up to the level equal to the difference between the amount appropriated and the amount of fees assessed under this subsection.

BINGAMAN AMENDMENT NO. 41

Mr. BINGAMAN proposed an amendment to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

On page 28, strike the second sentence of section 204(c)(2).

DOMENICI AMENDMENT NO. 42

Mr. LOTT (for Mr. DOMENICI) proposed an amendment to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

At the appropriate place insert the following

"Notwithstanding any other provision of this act, no points of order, which require 60 votes in order to adopt a motion to waive such point of order, shall be considered to be waived during the consideration of a joint resolution under section 401 of this Act."

MURKOWSKI AMENDMENT NO. 43

Mr. LOTT (for Mr. MURKOWSKI) proposed an amendment to amendment No. 26 proposed by Mr. MURKOWSKI to the bill, S. 104, supra; as follows:

In the pending amendment, on page 1, insert at the end the following:

"Notwithstanding any other provision of this act, except as provided in paragraph (3)(c), the level of annual fee for each civilian nuclear power reactor shall not exceed 1.0 mill per kilowatt-hour of electricity generated and sold.".."

NOTICE OF HEARING

COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Tuesday, April 15, 1997 at 9:30 a.m. to receive testimony from Senator MARY L. LANDRIEU, Louis "Woody" Jenkins, and/or their counsels in connection with petitions filed in connection with a contested U.S. Senate election held in Louisiana in November 1996.

For further information concerning this hearing, please contact Bruce Kasold of the Rules Committee staff.

SUBCOMMITTEE ON EMPLOYMENT AND TRAINING

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a hearing of the Subcommittee on Employment and Training, Senate Committee on Labor and Human Resources will be held on Tuesday, April 16, 1997, 9:30 a.m., in SD-430 of the Senate Dirksen Building. The subject of the hearing is Innovations in Adult Training. For further information, please call the committee.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Thursday, April 17, 1997 at 9:30 a.m. to consider the committee's course of action regarding petitions filed in connection with a contested U.S. Senate election held in Louisiana in November 1996.

For further information concerning this hearing, please contact Bruce Kasold of the Rules Committee staff.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. MURKOWSKI. 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 Thursday, April 10, 1997 at 2:30 p.m. in SR-328A to consider the nominations of Lowell Lee Junkins, of Iowa, to be a member of the board of directors of the Federal Agricultural Mortgage Corporation, Vice Edward Charles Williamson; and Velma Ann Jorgensen, of Iowa, to be a member of the Farm Credit Administration Board for the term expiring May 21, 2002, Gary C. Byrne, resigned.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, April 10, 1997, at 10:30 a.m. multi-channel video competition.

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

COMMITTEE ON FINANCE

Mr. MURKOWSKI. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Thursday, April 10, 1997, beginning at 10 a.m. in room 215 Dirksen.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, April 10, 1997, at 10 a.m. to hold a hearing.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, April 10, 1997, at 2 p.m. to hold a hearing.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, April 10, at 10 a.m. for a hearing on IRS and the Taxpayer at Risk.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Thursday, April 10, 1997 beginning at 10:30 a.m. to receive testimony from outside counsel concerning petitions filed in connection with a contested U.S. Senate election held in Louisiana in November 1996.

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

COMMITTEE ON SMALL BUSINESS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for a hearing on S. 208, the HUBZone Act of 1997 on Thursday, April 10, 1997, which will begin at 9:30 a.m. in room 428A of the Russell Senate Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, April 10, 1997 at 2 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON ACQUISITION AND TECHNOLOGY

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Subcommittee on Acquisition and Technology of the Committee on Armed Services be authorized to meet at 10 a.m. on Thursday, April 10, 1997, in open session, to receive testimony on science and technology research in review of S. 450, the National Defense Authorization Act for Fiscal Years 1998 and 1999.

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

SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION, AND FEDERAL SERVICES

Mr. MURKOWSKI. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services to meet on Thursday, April 10, at 2 p.m. for a hearing on "Proliferation: Chinese Case Studies".

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

SUBCOMMITTEE ON READINESS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the subcommittee on Readiness of the Committee on Armed Services be authorized to meet at 9:30 a.m. on Thursday, April 10, 1997 in open session, to receive testimony on Department of Defense Depot Maintenance privatization initiatives in review of S. 450, the National Defense Act for Fiscal Years 1998 and 1999.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology and Space of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, April 10, 1997, at 2 p.m. earthquake hazard reduction.

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

ADDITIONAL STATEMENTS

WITHDRAWAL OF COSPONSORSHIP OF S. 525

• Mr. BENNETT. Mr. President, today I withdraw as a cosponsor of S. 525.

I recognize the need to address the challenge represented by millions of uninsured children. In addition, I am in favor of any effort to discourage tobacco use, which is our Nation's No. 1 health problem. For these reasons, I initially agreed to assist Senator HATCH.

However, after a complete review of the actual language of the bill, I find that it moves in the wrong direction. Accordingly, with great regret for any problems this may pose for my colleague and friend, I have taken my name off the bill as a cosponsor.•

NEW MEXICO'S OUTSTANDING WOMEN BUSINESSOWNERS

• Mr. BINGAMAN. Mr. President, I rise to recognize the outstanding achievements of the "Top 25" women-owned businesses in New Mexico that are being honored by Albuquerque Woman magazine. These businesses—small-, medium-, and large-sized—are all contributing to the economic well-being of our State.

It is not easy to start up a new business venture, and it is even more difficult to become a prosperous enterprise. Economic success requires the dedication, hard work and know how that all of the winners of the "Top 25" awards have shown. But successful businesses operated by caring individuals generate more than economic growth, they also build our communities. If you look at the list of the businessowners that I will include later in my statement, you will notice many familiar names. These names are familiar because these women are contributing their energy and insight to improving our communities in New Mexico every day.

We face many challenges in my home State of New Mexico, not the least of which is to create jobs that pay good wages and provide retirement security. The contributions these women businessowners have made represent real progress in building both the human and capital infrastructure of private enterprise in New Mexico. I congratulate them on their accomplishments and wish them well on the further growth of their businesses.

The list of those businessowners being honored by Albuquerque Woman magazine are: Teresa McBride, Jo Summers, Dorothy Queen, Melissa Deaver, Barbara Trythall, Kathleen Olson, Shirley Jones, Judy Roberts, Carole Petranovich, Sandra Bundy, Judi Friday, several doctors from Women's Specialists of New Mexico Ltd., Ching-Ching Ganley, Caroline Roberts, Laurie Steinberg, Elizabeth Pohl, Joan Rosley-Griffin, Ella Leeper, Mary Severns, Sandra Levinson, Annique Torres, Brenda Kilmer, Sally C. Olinger, Jan Pfeiffer, and Renee Budagher.•

MUSEUM OF AFRICAN-AMERICAN HISTORY

• Mr. LEVIN. Mr. President, I would like to make my colleagues aware of an important event taking place in my home city of Detroit, Michigan—the opening of the new Museum of African American History. The Museum is unique in its size, scope and mission.

Located in Detroit's Cultural Center, the 120,000 square foot Museum of African American History is the largest museum in the nation dedicated to documenting and celebrating the African American experience. It is led by Kimberley Camp, who was the first African American gallery director in the history of the Smithsonian Institute. Under Dr. Camp's leadership, the Museum is poised to become a destination for tourists and researchers from around the country.

The Museum was designed by prominent Detroit architects Howard Sims and Harold Varner, of Sims-Varner and Associates, Inc. Using contemporary building materials, Mr. Sims and Mr. Varner created a building thoroughly American in design, but with significant accents which evoke African culture and traditions. Two Detroit artists, Richard Bennett and Hubert Massey, created some of the most striking of these accents. Mr. Bennett's massive African-style masks adorn the facade above the bronze front doors, which he also created. Mr. Massey's terrazzo tile mosaic, "Genealogy," is interwoven with the floor in the rotunda. Crowning the rotunda is a glass and steel dome, the largest dome in southeastern Michigan.

The central display in the Museum will be the core exhibition, "Of the people: An African American experience." This exhibition will use historical artifacts, audio recordings, documents, and three-dimensional displays to take visitors through the totality of the African American experience, from the first slave ships through the present day. Displays will also put into context the importance of African traditions in historical and modern American culture. Two additional galleries will be used for new and changing exhibits.

The men and women of the new Museum of African American History are committed to creating an institution which is truly a partner in the community. To that end, the Museum will offer a lecture series, after-school programs for Detroit children, weekend workshops for children and adults and theatrical arts programs.

The Museum never would have been built without the leadership of Mayors Coleman Young and Dennis Archer, and without the financial support of the residents of Detroit and the corporate community. All of them came together and pledged their support for what will be the finest institution of its kind in the country.

At the Museum's grand opening on April 12, the United States Postal Service will unveil the winning design for the first stamp celebrating Kwanzaa. The Kwanzaa stamp, which has been designed by the internationally acclaimed artist Synthia Saint James, will highlight the importance of African traditions in the lives of so many Americans. Ms. Saint James is an accomplished author, poet, and award-

winning illustrator of books for children and adults. She has previously been commissioned to create works of art for organizations like UNICEF, Dance Africa and the Girl Scouts of America.

Mr. President, it is important that we recognize the contributions African Americans have made to our nation's cultural heritage. People of all races will learn and be touched by their experience at Detroit's Museum of African American History. On the occasion of the Museum's grand opening, I know my colleagues join me in congratulating the men and women who helped make this remarkable institution a reality.●

UNANIMOUS-CONSENT REQUEST—SENATE RESOLUTION 70

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Senate Resolution 70, submitted earlier today by Senator DASCHLE and others, that the resolution and preamble be agreed to, and the motion to reconsider be laid upon the table en bloc. Further, that any statements relating thereto be placed in the RECORD at the appropriate place.

The PRESIDING OFFICER. Is there objection?

Mr. SMITH of New Hampshire. Mr. President, I object at this time on behalf of some Members on our side of the aisle.

The PRESIDING OFFICER. Objection is heard.

REGARDING THE STATUS OF THE INVESTIGATION OF THE BOMBING OF THE ISRAELI EMBASSY IN BUENOS AIRES IN 1992

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Concurrent Resolution 20, submitted earlier today by Senators BROWNBACK, ROBB, HELMS, and BIDEN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 20) expressing the sense of Congress regarding the status of the investigation of the bombing of the Israeli Embassy in Buenos Aires in 1992.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at this point in the RECORD.

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

The concurrent resolution (S. Con. Res. 20) was considered and agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 20

Whereas on March 17, 1992, the Israeli Embassy in Buenos Aires, Argentina, a school, and several nearby buildings were destroyed by a powerful suicide car bomb blast in which 29 innocent children, women, and men lost their lives and an additional 252 innocent people were injured;

Whereas the victims of this terrorist attack included employees of the Israeli Embassy and their families, children from a nearby Roman Catholic primary school, women and men from a nearby Roman Catholic church shelter, a Roman Catholic priest, and people from across the spectrum of Argentine society;

Whereas Argentina's Jewish community, which numbers 300,000 and is the largest Jewish community in Latin American, has suffered severe anti-Semitism during periods of military rule and feels particularly vulnerable to assault from certain radical Islamic groups and from indigenous far right extremists in Argentina;

Whereas Islamic Jihad claimed responsibility for the bombing of the Israeli Embassy and praised the name of the alleged suicide bomber, Abu Yasser, by calling him a "martyr struggler";

Whereas Islamic Jihad is a terrorist organization that is supported by Iran and, according to Department of State officials, Iranian diplomats collected information to plan the bombing;

Whereas the failure of Argentine and international efforts to bring the perpetrators of the embassy bombing to justice made Argentina a prime target for a second devastating terrorist attack on July 18, 1994;

Whereas the second bombing destroyed the Asociacion Mutual Israelita Argentina (AMIA) Jewish Community Center, killing 86 people and injuring over 200 people; and

Whereas the investigation of the Israeli Embassy bombing has been hampered by the inefficiency of having the entire membership of the Supreme Court of Argentina in charge of the investigation: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) notes that as of March 17, 1997, 5 years after the bombing of the Israeli Embassy and 2½ years after the bombing of the AMIA Jewish Community Center, Argentinean police and judicial authorities have not identified and initiated prosecution of the perpetrators of these 2 barbarous acts of terrorism;

(2) urges the Supreme Court of Argentina to designate a single investigative judge to conduct the investigation of the terrorist bombing of the Israeli Embassy in order to improve the efficiency of the inquiry;

(3) urges Argentinean judicial authorities to aggressively investigate the bombing of the AMIA Jewish Community Center and the possible connection between that bombing and the bombing of the Israeli Embassy in Buenos Aires;

(4) urges Argentinean authorities to acknowledge publicly the reports submitted by Argentinean, United States, and Israeli experts, that the explosion at the Israeli Embassy took place outside the walls of the embassy;

(5) urges the President and appropriate executive agencies to provide whatever assistance is requested by Argentinean Government authorities in order to help that Government investigate these 2 acts of terrorism; and

(6) directs the Secretary of the Senate to transmit a copy of this resolution to the Government of Argentina.

DESIGNATING THE J. PHIL CAMPBELL, SENIOR, NATURAL RESOURCE CONSERVATION CENTER

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 785, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 785) to designate the J. Phil Campbell, Senior, Natural Resource Conservation Center.

The Senate proceeded to consider the bill.

JAMES PHILANDER CAMPBELL

Mr. COVERDELL. Mr. President, James Philander Campbell made significant contributions to the State of Georgia and the Nation during his lifetime, especially in the area of agriculture. J. Phil Campbell was born in Dallas, GA, just northeast of Atlanta, on March 28, 1878. He grew up on a farm and at an early age helped enact legislation to authorize agriculture instruction in Georgia's rural schools. Mr. Campbell was a true visionary who saw the importance of agriculture to our Nation and the need to establish a comprehensive national strategy.

Between 1908 and 1910, Mr. Campbell served as the first farm extension supervisor to the southeast region. This was done before passage of the Smith-Lever Act in 1915, which created the Federal extension service. In 1910, he began a career as the Georgia State agent for the U.S. Department of Agriculture, as well as serving on the staff of Georgia State University's College of Agriculture.

Mr. Campbell was the director of extension work in agriculture and home economics. In 1933, he helped assist the Agriculture Adjustment Administration with its cotton belt crop replenishment division. Shortly thereafter, he was named as Assistant Chief of the Soil Conservation Service in the U.S. Department of Agriculture. He remained at that post until his death in December 1944.

The legislation we have before us today, H.R. 785, sponsored by Representative CHARLIE NORWOOD, recognizes the lifetime accomplishments of Mr. Campbell by renaming a building which he was substantially responsible for creating, the Southern Piedmont Conservation Research Center, in his honor. H.R. 785 is similar to legislation which I introduced earlier this year, S. 338, which renames this center in Mr. Campbell's honor. I would like to thank my colleague in the House, Representative NORWOOD, for his work on

this legislation, as well as Senator CLELAND for his cosponsorship of S. 338 and help in facilitating the passage of H.R. 785. I would also like to thank Chairman LUGAR, the staff of the Senate Agriculture Committee, the majority leader, and the minority leader for their help in enacting this legislation.

The Southern Piedmont Conservation Research Center is located on Experimental Station Road in Watkinsville, GA. This legislation would redesignate this facility as the "J. Phil Campbell, Senior Natural Resource Conservation Center." I would like to point out that the Congressional Budget Office [CBO] has stated that enactment of this legislation will result in no significant cost to the Federal Government or taxpayers. In addition, Secretary of Agriculture Dan Glickman has no objections to this legislation.

I urge my colleagues to join me in recognizing Mr. Campbell's contributions to agriculture and our Nation by supporting this legislation.

Mr. SMITH of New Hampshire. I ask unanimous consent the bill be considered, read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The bill (H.R. 785) was passed.

JUNETEENTH INDEPENDENCE DAY

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S.J. Res. 11 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 11) commemorating "Juneteenth Independence Day," the day on which slavery finally came to an end in the United States.

The Senate proceeded to consider the joint resolution.

Mr. DASCHLE. Mr. President, today we recognize the date upon which slavery finally came to an end in the United States, June 19, 1865, also known as "Juneteenth Independence Day." It was only on this day that slaves in the Southwest finally learned of the end of slavery. Since that time, for over 130 years, the descendants of slaves have celebrated this day in honor of the many unfortunate people who lived and suffered under slavery. Their suffering can never be repaired, but their memory can serve to ensure that no such inhumanity is ever perpetrated again on American soil. We commemorate Juneteenth Independence Day to honor the struggles of these slaves and former slaves, to acknowledge their suffering and so that we may never forget even the worst aspects of our Nation's history.

But this day and this resolution in honor of the end of slavery should also make us feel proud, proud that we as a nation have come so far toward advancing the goals of freedom and justice for all of our citizens. While we must continue ever forward in the search for justice, we should be thankful that the tireless efforts of vigilant Americans have enabled us to achieve a society built on Democratic principles and the recognition that all men and women are created equal.

Ms. MOSELEY-BRAUN. Mr. President, today, April 11, is national pay inequity awareness day. Today we recognize that women are still earning less than 75 cents for every dollar that a man earns and that this pay differential has a long-lasting negative impact on women and on the Nation.

Women earn less than men. In 1981, a woman earned just 60 cents for every dollar a man earned. We have made progress and today women are earning about 71 cents on the dollar. In Illinois that number is just 66 cents for every dollar, but even this is progress. Nonetheless the remaining inequity is unacceptable.

Besides the basic equity issue, the fact that women earn less than men is unacceptable for three reasons: women comprise over half the population, women contribute to family income in over half of all American families, and women live longer than men.

Women make up over half the population and that means that pay inequities affect the majority of the American people. Employers continue routinely to pay lower wages on jobs that women dominate and in many cases women receive less pay for performing the same work as men. Women in the American work force are not only met with the challenge of breaking through a glass ceiling, but also a glass wall.

Women are breadwinners in over half of all American families. The fact that over a lifetime, this difference in pay can equal over a quarter of a million dollars has a direct impact on America's families—families struggling to send their children to school, to pay their mortgages, to save for retirement. Women who receive 71 cents on the dollar in wages are not able to pay 71 cents on the dollar for groceries or child care. Equal pay is a survival issue for America's families.

Women live longer than men. Women are going to spend more years in retirement and will have to make their fixed incomes stretch even further. The impact of lower lifetime earnings mean that only a third of female retirees today earn private pension benefits and the median pension benefit for women is half that of men's. In addition, while Social Security covers most female retirees, women's benefits are lower than men's. Even with full benefits, Social Security was never meant to provide for a secure retirement, it is only a floor. Today, women make up three-quarters of the elderly poor because they continue to earn less in retirement.

Women make up the majority of the population, are breadwinners in the majority of families and live longer than men. These facts combined with the reality of women's lower earnings result in a system of inequity that hurts America's families.

It is for these reasons that I joined my colleagues in sponsoring a sense-of-the-Senate amendment recognizing the important contributions women make to our country, recognizing the strides that employers have made in the area, and calling on all employers to address the issue of equal pay in their workplaces so that America's families can prosper. This is a resolution I believe we can all support.

I am also the cosponsor of legislation in this Congress that will make it easier for women to challenge unfair pay practices and for the Equal Employment Opportunity Commission to pursue cases of unequal compensation. This legislation is a basic remedy for a problem we all agree should not exist. I urge my colleagues to join me in sponsoring S. 71.

Mr. SMITH of New Hampshire. I ask unanimous consent the resolution be considered read a third time and passed, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at this point in the RECORD.

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

The joint resolution (S.J. Res. 11) was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. RES. 11

Whereas news of the end of slavery came late to frontier areas of the country, especially in the American Southwest;

Whereas the African-Americans who had been slaves in the Southwest thereafter celebrated June 19 as the anniversary of their emancipation;

Whereas their descendants handed down that tradition from generation to generation as an inspiration and encouragement for future generations;

Whereas Juneteenth celebrations have thus been held for 130 years to honor the memory of all those who endured slavery and especially those who moved from slavery to freedom; and

Whereas their example of faith and strength of character remains a lesson for all Americans today, regardless of background or region or race: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the annual observance of June 19 as Juneteenth Independence

Day is an important and enriching part of our country's history and heritage.

That the celebration of Juneteenth provides an opportunity for all Americans to learn more about our common past and to better understand the experiences that have shaped our Nation.

That a copy of this resolution be transmitted to the National Association of Juneteenth Lineage as an expression of appreciation for its role in promoting the observance of Juneteenth Independence Day.

PERMITTING THE USE OF THE ROTUNDA OF THE CAPITOL FOR A CEREMONY AS PART OF THE COMMEMORATION OF THE DAYS OF REMEMBRANCE OF VICTIMS OF THE HOLOCAUST

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent the Senate proceed to the consideration of House Concurrent Resolution 11, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 11) permitting the use of the rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust.

Mr. SMITH of New Hampshire. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at this point in the RECORD.

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

The concurrent resolution (H. Con. Res. 11) was considered and agreed to.

UNANIMOUS-CONSENT AGREEMENT—INSPECTORS GENERAL NOMINATIONS

Mr. SMITH of New Hampshire. Mr. President, as in executive session, I ask unanimous consent that nominations to the Office of Inspector General, excepting the Office of Inspector General for the Central Intelligence Agency, be referred during the 105th Congress in each case to the committee having substantive jurisdiction over the department, agency or entity, and if and when reported in each case, then to the Committee on Governmental Affairs for not to exceed 20 calendar days.

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

ORDERS FOR MONDAY, APRIL 14, 1997

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 a.m. on Monday, April 14. I further ask unanimous consent that on Monday, immediately following the prayer, the routine requests through the morning hour be granted, and there then be a period for the transaction of morning business until the hour of 12 noon, with Senators to speak for up to 5 minutes each, with the following exceptions: Senator COVERDELL, or his designee, 60 minutes; Senator DASCHLE, or his designee, 30 minutes; Senator DURBIN, 10 minutes; Senator CONRAD, 20 minutes; Senator HAGEL, 20 minutes.

I further ask unanimous consent that at 12 noon on Monday, the Senate resume consideration of S. 104, the Nuclear Waste Policy Act.

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

PROGRAM

Mr. SMITH of New Hampshire. Mr. President, the leader has asked me to state for the information of all Senators that the Senate will not be in session on Friday and will reconvene on Monday. As announced earlier, there will be no rollcall votes occurring during Monday's session of the Senate. All Senators should be aware that rollcall votes will occur early on Tuesday, April 15, beginning at 9 a.m.

ADJOURNMENT UNTIL MONDAY, APRIL 14, 1997, AT 10 A.M.

Mr. SMITH of New Hampshire. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:11 p.m., adjourned until Monday, April 14, 1997, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate April 10, 1997:

DEPARTMENT OF STATE

PETE PETERSON, OF FLORIDA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SOCIALIST REPUBLIC OF VIETNAM.

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.