SENATE—*Thursday, September 14, 1989*

(Legislative day of Wednesday, September 6, 1989)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado.

Mr. WIRTH. Today's prayer will be offered by guest chaplain, the Reverend Leon Kelly, assistant pastor, Maranatha, Denver, CO.

The Reverend Leon Kelly, assistant pastor, Maranatha, Denver, CO, offered the following prayer:

PRAYER

Let us pray:

Opening Scripture, 1 Timothy 2:1-3:

I exhort, therefore, that, first of all, supplications, prayers, intercessions, and giving of thanks be made for all men; for kings, and for all that are in authority; that we may lead a quiet and peaceable life in all godliness and honesty. For this is good and acceptable in the sight of God, our Savior.

Heavenly Father, we thank Thee for life and the joy of living. For it is life that brings us to the point of decision. Thou hast bestowed upon us the privilege of choice. Some choices are made with very little thought, and there are times when our choices demand much thought and consideration and are made with greater care.

Father, remind us of the fact that we cannot sidestep our responsibility nor the results of our choices, for many will have eternal consequences. Let us learn from those of the past who have made carnal choices which ended in their destruction.

Father, our land is being plagued with drugs and violence. Give us the wisdom to deal with our future, the courage to ovecome our opposition, and continual strength to give direction to our young.

Father, we thank You for the victory because we are claiming it done in Your name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 14, 1989.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WIRTH thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of proceedings be approved to date.

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

SCHEDULE

Mr. MITCHELL. Mr. President, this morning, following the time for the two leaders, there will be a period for morning business until 10 a.m. in which Senators may speak for up to 5 minutes each.

At 10 a.m. the Senate will consider the conference report on the energy and water appropriations bill under a 25-minute time limitation, with a vote occurring on the conference report at 10:25 a.m.

Immediately following that vote, and after waiving the mandatory live quorum, the Senate will proceed to vote on the motion to invoke cloture on the committee amendment to the transportation bill. Therefore, Mr. President, the Senate will conduct two rollcall votes beginning at 10:25 this morning. Senators are alerted to the possibility of other votes today, and that votes could occur—indeed, are likely to occur—well after 7 o'clock this evening.

THE PRAYER OF THE REVEREND LEON KELLY

Mr. MITCHELL. Mr. President, I want to extend my thanks to the Reverend Kelly for his opening prayer.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the balance of my leader time, and I reserve the full leader time of the distinguished Republican leader.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Colorado is recognized.

Mr. WIRTH. I thank the majority leader. I thank you very much, Mr. President.

THE PRAYER OF THE REVEREND LEON KELLY

Mr. WIRTH. I am proud that today's invocation was given by the Reverend Leon Kelly of Denver, CO. Reverend Kelly is the director of Open Door Young Gang Alternatives. In his role at the Open Door, the reverend has built a reputation—a well deserved reputation—for turning gang members from their life of crime to productive and positive lifestyles.

I had the opportunity to spend an afternoon with Reverend Kelly last weekend. We toured neighborhoods that have suffered the scourge of drugs and seen the devastation brought by rival gangs. Even in the midst of neighborhoods long neglected, there is an obvious sense of hope—hope brought by the work of Reverend Kelly. He is someone who instills a real sense of self-worth and self-esteem in persons too many times forgotten by the rest of society.

I believe Denver, and all of us, owe Reverend Kelly a great deal of thanks for the work he does with disadvantaged youth. Because of the dedication and commitment of Reverend Kelly, I know the youth of Denver, and Colorado, has a better future ahead of it.

In addition, Mr. President, it is very appropriate for Reverend Kelly to be with us today. The timing is extraordinary—at a time when this body, the Congress of the United States, and the country overall, is wound up in the debate and discussion about the drug program, working with the executive branch to see if we can work out not only an appropriate kind of budget support for this but the kind of alternative, the kind of depth of program that we are going to need across the board, treatment to education, to work with gangs, to interdiction—the whole overall package that has to be done. It is very appropriate that Reverend Kelly's words be with us as we embark upon that today, and I want to thank him particularly on behalf of my colleagues for joining us today.

I thank you very much, Mr. President.

I yield the floor.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Mr. WIRTH. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Wisconsin is recognized.

Mr. KASTEN. I thank the Chair.

(The remarks of Mr. KASTEN pertaining to the submission of Senate Concurrent Resolution 69 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

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

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

REMARKS OF HOWARD H. BAKER, JR., UPON RECEIVING THE AMERICAN LEGION DISTINGUISHED SERVICE MEDAL

Mr. DOLE. Mr. President, recently my good friend, and our former colleague, Senator Baker, received the American Legion's Distinguished Service Medal. I commend the remarks he made on that occasion to the Members of the Senate. They provide timely advice that American foreign and military policy needs to exhibit patience and maintain a long-run view of world events. We should not rush to judgment and declare momentary trends as major historical watersheds.

I ask unanimous consent that Senator Baker's speech be printed in the RECORD.

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

REMARKS OF HOWARD H. BAKER, JR., ON RECEIVING THE AMERICAN LEGION DISTINGUISHED SERVICE MEDAL, SEPTEMBER 6, 1989, BALTIMORE, MD

Thank you, Commander Gierke.

Let me say first of all that it's a pleasure to be with my friends in the American Legion once agian, and I am most grateful and deeply honored that you have chosen me to receive your Distinguished Service Medal.

I must also say that while I'm proud of my military service in World War II, I believe I've had just about enough reminders lately that I'm old enough to have fought in a war that started fifty years ago.

And I will say further that when I look at the extraordinary success of modern Germany and Japan, it's sometimes hard to remember who won the war.

But when I look at Poland, and Hungary, and the Baltic States, and even the Soviet Union today, I cannot help thinking that not only did we win the war in the 1940's, but we're still winning it in the 1980's.

Indeed, the current intellectual fashion in Washington is an essay in which a bright young man at the State Department argues that we may be witnessing "not just the end of the cold war, or the passing of a particular period of postwar history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government."

I think it goes a bit far to say that we have reached "the end of history," or even that western-style democracy is about to be universally accepted.

But it is certainly true that the student protests in Beijing, the victory of Solidarity in Poland, the growing reform movement in Hungary, the independence movements in the Baltic states of Estonia, Latvia and Lithuania—and even the creation of a marvelously rambunctious people's parliament in Moscow—are dramatic manifestations of what is truly a universal "yearning to breathe free."

And it is increasingly obvious that, as Franklin Roosevelt once said, "the democratic aspiration is not a recent phase of human history. It is human history."

Even so, I believe we declare victory in "the long twilight struggle," of which President Kennedy spoke, at our peril.

For a while we are clearly dealing with a new kind of Soviet leader—one of the most impressive men I have ever met, and surely one of the most revolutionary—we must also deal with the fact that he leads an enormously powerful country which may not always wish to follow where he wishes to lead.

We must deal with the fact that while democracy is the idea whose time has come in Europe today, it is as vulnerable in much of Asia, Latin America and the Middle East as the young man who stood down a column of Chinese tanks.

And we must deal with the fact that even in those countries where the passion for democracy is strongest today, the political leadership is generally ill prepared to meet democracy's demands for economic and civil liberty, or with the revolution in expectations which has seized their citizenry.

The response of these leaders has ranged from wariness in Warsaw to tanks in Tiananmen Square. The question we must ask ourselves is, how should we respond?

I believe, first of all, that we should take the good advice of the Secretary of Defense, Dick Cheney, who has quite rightly urged us not to give away our overcoats on the first sunny day in January.

We must remain fully prepared to defend ourselves, our interests and our values in a world that remains full of danger.

I believe Secretary Cheney has submitted the most honest and well-reasoned defense budget ever to emerge from the Pentagon.

And I would urge my former colleagues in the Congress to endorse that budget for what it is: a serious effort to defend this country with maximum strength and minimum waste in a time of severe budgetary constraint.

Second, I think it is important that we understand the nature of the leaders—and the led—in the countries vying for our attention today.

To this end, I am going to Warsaw later this month with a group of present and former American politicians to talk about democracy with the leaders and the people of Poland.

They want to know how a political process as cumbersome and boisterous and self-satisfying as ours produces the kind of economic and social progress the United States has generally enjoyed, and I have about two weeks to figure it out myself.

This is really a bigger problem than it may at first seem, because in most of the countries where democracy is pushing its fragile flower through the concrete today, there is little experience with political or social freedom to guide them.

In China, where a political state has existed for 4,000 years, officials still say their citizenry isn't "ready" for democracy, that the peasant class is illiterate, that there isn't the innate respect for law that exists in our country, and that government by the consent of the governed simply won't work in a country of a billion people—even though it has worked relatively well for India's 800 millions.

The Chinese seem to prefer a system in which Ronald Reagan would be considered a promising young man, a system in which being well-born is all but essential to membership in the Communist Party, a system which favors the few at the expense of the many more thoroughly and systematically than the coldest capitalist ever dreamed possible.

And in the Soviet Union, where one-man rule has been a fact of life for over a thousand years, the notion of pluralism may take some time to really catch on.

It will not necessarily please you to know that the man who rules the Soviet Union today, Mikhail Gorbachev, is one of the most impressive men I have ever met.

I have seen him "up close and personal" several times since I first met him at the funeral of his mentor Yuri Andropov in 1984. During his summit meetings with President Reagan while I was White House chief of staff, I found him to be the most well-prepared foreign leader I encountered.

At several points in conversations with the President, Mr. Gorbachev would bring out a notebook full of facts and figures written in his own hand, look briskly at his notes, and press a point based on the information he had summoned from this "briefing book" of his own devising.

He knows when to charm and when to menace, and how to do both very well. A leader as experienced and unsentimental as Margaret Thatcher declares appreciatively that she can "do business" with this man, and I will stipulate that if he wanted to, he could be the best businessman in America.

But as Richard Nixon reminds us, you don't get to be general secretary of the Communist Party if your commitment to Communism is in doubt. Gorbachev's isn't, and it's important that we all remember that.

We may say that communism has failed, that we've won the Cold War, that democracy is the wave of the future. But Gorvachev, who says many extraordinary things, isn't saying that, and until he says it—and several of his successors say it—I say we had

better keep our guard up and our defenses strong.

This is surely an exhilirating and hopeful time, especially in eastern Europe. But it was a hopeful time in China, too, until June 4, and the world has brutal ways of mocking our hopes.

Hemingway said, "the world breaks everyone, and afterward many are strong at the broken places." Poland is strong today, and we must help her grow stronger. And so it must be with her neighbors in Europe, in Asia, in Africa, in Latin America, wherever there are people yearning to breathe free.

I am encouraged by much of what I see in the world today. I am worried about much that I cannot see. I hope that we will stay as well prepared as Gorbachev always is, for I believe this is the only way to keep the peace and the freedom we have won at great price.

I know you share that hope and that commitment, and I am honored to be in your company.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the time for morning business has expired.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1990—CONFERENCE REPORT

The PRESIDING OFFICER. The hour of 10 a.m. having arrived, the Senate will now proceed to the consideration of the conference report on H.R. 2696, which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2696) making appropriations for energy and water development for the fiscal year ending September 30, 1990, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 7, 1989.)

The PRESIDING OFFICER. All time for debate will be controlled in the following manner: Mr. JOHNSTON, 3½ minutes; Mr. HATFIELD, 3½ minutes; Mr. GARN, 3 minutes; and Mr. BRADLEY, 15 minutes.

Who yields time?

Mr. JOHNSTON. Mr. President, I am pleased to submit the conference report on the disagreeing votes of the House and Senate on the bill H.R. 2696, making appropriations for energy and water development for the fiscal year ending September 30, 1990, and for other purposes.

This is the first conference report of the 13 annual appropriation bills to be presented to the Senate for its consideration. The conference report has been printed and appeared in the CONGRESSIONAL RECORD of Thursday, September 7. The conference report and the accompanying statement of the managers is self-explanatory and I will not undertake a detailed statement on the conference report.

At the outset, let me express my warm appreciation to the Senator from Oregon [Mr. HATFIELD], the ranking minority member of our committee, for his unfailing cooperation and assistance. I also want to thank the distinguished chairman of the Senate Appropriations Committee, Senator BYRD, who is also a member of our subcommittee, whose leadership has been very important in all appropriations measures this year; and all of the Senate conferees for their work on this measure.

A special word of commendation to our House colleagues led by the distinguished chairman of the House committee, Mr. BEVILL, and the distinguished gentleman from Indiana [Mr. MYERS], the ranking minority member. Our House friends are always fair and considerate. They represent the House position, of course, but we are always glad to meet with them and to work out the differences between the two bodies of this appropriation measure each year. It is always difficult to settle complex matters but it is a pleasure to work with our House colleagues, who always exhibit a spirit of cooperation and fairness in working out these matters for the good of the country.

Mr. President, the conference totals on this bill are within the 302(b) allocation for both budget authority and outlays. The total amount of new budget obligational authority is $18,555,427,000. This is over the Senate-passed bill by almost $105.9 million. Most of this is due to the splitting of the allocations on the Defense 050—atomic energy defense activities appropriations. The House had a higher allocation and appropriation than we did in the Senate. This has been increased by splitting the allocation by about $94 million in budget authority and $58 million in outlays.

Mr. President, this is a fine conference report. I am proud of the work of our committee under such budget constraints. I do not plan to go into any further detail on the bill amounts and unless a Member has a question or comment, I plan to move the adoption of the conference report.

Mr. President, I reserve the remainder of my time.

I suggest the absence of a quorum and ask unanimous consent that that run proportionately against all to whom time has been allocated.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. JOHNSTON. Mr. President, I want also to commend the excellent staff work which we have had on the bill on the majority staff: Proctor Jones, the long-time veteran and expert on this committee; Dave Gwaltney, who has done the real work on this bill; Gloria Butland, who is a great veteran and a strong right arm; and also on the minority side, who act in a very bipartisan manner working together with us; Gary Barbor and Dorothy Pastis, who have done such excellent work. I think the Senate ought to know what good work they do. We can all rely upon them to be fair as well as to be experts in this field. I certainly appreciate it, and I know my colleagues do as well.

I reserve the remainder of my time. I suggest the absence of a quorum with the same stipulation as last time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CENTRAL UTAH WATER PROJECT

Mr. BRADLEY. Mr. President, last year in the final days of the last Congress, the Senate passed Public Law 100-563. Section 4 of that bill was never considered by the committee with jurisdiction, the Energy and Natural Resources Committee. When the full details of that section were brought to my attention this summer, I asked the General Accounting Office to conduct an independent appraisal of the legal character and fair market value of all the property, contractual and other interests that are granted or exchanged or somehow dealt with in the bill—again, a bill that never got a hearing in the authorizing committee. I received GAO's preliminary report last Wednesday evening and it was made available to the Utah delegation and other members on Thursday. It was available to the Appropriations Committee conference. Senator Johnston announced his opposition to Amendment 44 of title II of the conference report as a result of the GAO study but the conference approved it anyway. I think the approval was a mistake and I state my opposition to it now in the clearest terms possible.

Mr. President, I ask unanimous consent that the entire GAO study be printed in the RECORD.

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

GENERAL ACCOUNTING OFFICE,
Washington, DC, September 6, 1989.

Hon. BILL BRADLEY,
Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, U.S. Senate.

DEAR MR. CHAIRMAN: As requested, this letter provides information in response to your July 10, 1989, letter and subsequent discussions with your office on the compensation provided to the Strawberry Water Users Association (SWUA) under P.L. 100-563. SWUA is currently operating the Bureau of Reclamation's Strawberry Valley Project. Specifically, you asked us to determine the legal character and economic value of SWUA's rights and interests to be acquired or transferred under Section 4 of the act, including all properties and improvements, and about the land rehabilitation costs covered by Section 4. To meet your needs, this letter contains what information we were able to gather through early September 1989.

We reviewed the legislative history of the Strawberry Valley Project and a 1979 Court of Claims decision, and met with solicitors from the Bureau's Salt Lake City, Utah, Regional Office and Department of the Interior in Washington, D.C. In addition, we reviewed records, documentation, and reports at the Bureau's Salt Lake City Regional and Provo, Utah, projects offices, met with officials from the Bureau, the Forest Service's Uinta National Forest, and the Strawberry Water Users Association. We also visited the Strawberry Valley Project. Because of time constraints, we did not review SWUA's grazing and recreation contracts nor the Bureau's procedures for approving such contracts. Also, we did not discuss this letter with Bureau officials and others.

In summary, based on information we obtained, SWUA does not have title to the project lands. It does, however, have the limited right to obtain revenues from the surface and subsurface uses of these lands. If the United States were to remove such rights, SWUA would be entitled to compensation. In our opinion, this compensation should be limited to the revenues lost because existing contracts were not completed. On this basis, lost revenues are negligible. The $2.884 million already paid to SWUA in 1986, plus the benefits the act provides to SWUA—a $15 million authorization for its contractual surface rights, title to potentially valuable commercial land, future grazing privileges, and retention of its contractual subsurface rights—substantially exceed the economic value of such contracts. Moreover, the act does not hold SWUA liable for costs to rehabilitate project lands which have deteriorated as a result of SWUA's poor management practices.

BACKGROUND

The Strawberry Valley Project was one of the earliest Bureau projects. Authorized by the Secretary of the Interior on December 15, 1905, under the provisions of Section 6 of the Reclamation Act of 1902, the Bureau began construction of the Strawberry Valley Project in 1906. The Strawberry Reservoir was substantially completed by 1915, and the first water was delivered in 1916.

The Act of April 4, 1910, authorized that approximately 56,870 acres be acquired from the Uinta Indians for the Strawberry Valley Project. The act further provided that the purchase price for these lands be included in project construction costs, which would be paid by the owners of the lands irrigated. The acreage could also be used to generate revenues in the form of rental payments, which would be credited on the owners behalf to the construction costs. The title, management, and control of these lands would transfer to the owners when they paid the major portion of the project's construction costs.

The Fact Finder's Act of 1924 provided for transfer of operation and maintenance of a water project to a water users association whenever two-thirds of the irrigated area was covered by water rights contracts with the Department of the Interior. Net profits derived from leasing of project lands for grazing and farming, operation powerplants, and other activities were to be applied first to project construction cost, then to operation and maintenance, and finally as the water users directed.

SWUA was organized in 1922 as a Utah nonprofit corporation to, among other purposes, contract with the Bureau to operate and maintain the project and repay outstanding construction costs. Pursuant to the Fact Finder's Act, SWUA entered into a contract with the Bureau in 1926, which was modified in 1928, to manage and operate most of the Strawberry Project.

The Bureau retained project oversight responsibility. The contracts specifically provided that title to project lands would not pass to SWUA. In 1940, the association entered into its current contract, which also provided that title to project lands remained with the United States. In 1974, SWUA completed repayment of the projected construction costs, which included the cost of the 56,870 acres of project lands acquired from the Uinta Indians.

SWUA has obtained revenues principally through fees received under agreements with its members who graze their cattle and sheep on allocated acreage, from recreational use, and under timber and oil gas development leases. SWUA members had constructed camping sites, small cabins, and other recreational facilities on lands adjacent to their reservoir.

The Colorado River Storage Project Act of 1956 authorized construction of the Central Utah Project which is comprised of six units, the largest being the Bonneville Unit Soldier Creek Dam, part of the Bonneville Unit, is located 7 miles downstream of the original Strawberry Dam, and was completed in 1973. When it is completely filled in the 1990s the Strawberry Reservoir will be enlarged from 8,400 to 17,120 surface acres.

As part of this enlargement, the Bureau transferred management of 25,990 acres, which included both the management of recreation on the reservoir and the surrounding lands, from SWUA to the Department of Agriculture's Forest Service under an Interim Management Agreement dated February 2, 1982. The Bureau also built SWUA new grazing and recreational facilities on higher lands adjacent to the enlarged reservoir. In June 1984, the Forest Service assumed operation of the 25,990 acres. SWUA believed they should be compensated for lost revenues from this acreage, and in 1986, the Bureau paid SWUA $2.884 million for revenue losses from recreation and grazing

As early as the mid-1960s, recreation and fish and wildlife interests alleged that SWUA was poorly managing project lands. To address growing concerns over the condition of the lands, an ad hoc committee was formed in June 1987, consisting of SWUA, the Bureau, the Forest Service, a state of Utah wildlife resource agency, and the Utah Wildlife Leadership Coalition, a special interest group. After a year of deliberating ownership and management issues regarding the future of the project lands, the committee concluded that it would be in the best interest of all to by out SWUA's contractual surface rights at fair market value, excluding 95 acres to which SWUA would acquire title.[1]

P.L. 100-563, enacted October 31, 1988, generally incorporated the agreements reached by the ad hoc committee. Section 4 of the Act authorized the transfer of administrative jurisdiction of 56,775 acres of project lands to the Forest Service within 15 days of payment of compensation to SWUA for its contractual surface rights and interests, including sand and gravel, on this land. Compensation and other benefits under section 4 include:

Authorization for appropriation of $15 million to SWUA for relinguishing its contractual surface rights and interests, including sand and gravel, in the 56,775 acres of project lands;

Fee title (ownership) to 95 acres, together with improvements, in a northwest section of the project lands (the Bureau deeded this land to SWUA on May 4, 1989);

SWUA's first right of refusal for grazing privileges on 30,785 acres of project lands, and if permitted under the grazing rehabilitation plan, on the remaining 25,990 acres;

Retention of SWUA's contractual rights to issue oil, gas, coal, and mineral leases, excluding sand and gravel, on project lands; and

Assumption by the Forest Service of responsibility for project land rehabilitation. The act authorized a total appropriation of $3 million over 5 years. SWUA will not be liable for any costs associated with this rehabilitation.

LEGAL CHARACTER AND VALUE OF SWUA RIGHTS

On the basis of documents we reviewed and discussions with Department of the Interior solicitors, we have concluded that the United States, not SWUA, owns the project lands. In *Strawberry Water Users Association v. United States*, 611 F.2d 838 (1979), the Court of Claims held that as result of its 1928 and 1940 contracts with the Department of the Interior, SWUA conveyed or relinguished to the United States any legal or equitable property interest in project lands. Consequently, SWUA was not entitled to compensation under the Fifth Amendment of the United States Constitution for the value of project lands taken to be used as part of the Central Utah Project.

Under the 1940 contract—which implements the 1910 and 1924 acts—SWUA may obtain revenue from the use of project lands through leasing and other activities approved by the Department of the Interior. SWUA has received revenues paid under annual contracts for livestock grazing and recreation, and for timber and oil and gas development activities under lease. We are presently unaware of any other understanding or arrangement between the Department and SWUA providing prior approval or authorization for SWUA to contract or lease project lands for any project compatible purpose. Because SWUA does not appear to have an unrestricted right to

[1] The original 56,870 acres of Strawberry Valley Project lands include 95 acres to which SWUA acquired title in 1989, plus 56,775 acres composed of 25,990 acres of recreation lands and the remaining 30,785 acres.

obtain future revenues from project lands, it is not entitled to compensation for the loss of such revenues. Therefore, the value of SWUA's rights would be limited to the revenues that SWUA lost because existing contracts were not completed.

On this basis, SWUA's compensation in 1986 should have been negligible. Although we did not review the grazing and recreation contracts, it is nevertheless reasonable to assume that net revenues generated in 1986 closely approximated the value of the annual contracts. According to SWUA's financial statement for the year ending September 30, 1986, SWUA had net revenues of $3,615 for grazing on all project lands and suffered a $13,140 loss from recreation activities.

It also appears that compensation for the remainder of SWUA's contractual rights would be negligible. SWUA's financial statement for the year ending September 30, 1988, showed that net grazing revenues were about $1,100.

COMPENSATION IN 1986 NOT BASED ON REVENUE LOSS FROM EXISTING CONTRACTS

In 1986 the Bureau paid SWUA $2,883,000—$1,895,900 for relocating grazing and $987,900 for recreation revenue losses on 25,990 acres of project lands. These amounts, however, represent potential revenues that SWUA could have received from the lands if it held the lands in perpetuity. Instead, we believe the compensation should have been limited to revenues that SWUA lost because existing contracts were not completed.

Our preliminary analyses of Bureau records indicated that in setting compensation, the Bureau selected factors resulting in the highest amount of compensation to SWUA. For example, the Bureau used SWUA's $54 relocation cost per animal unit for the 4.5 month grazing season as the basis for compensation; it had also considered (1) $40, which SWUA described as the grazing fair market value and (2) $17-$20, which SWUA was charging its members for the 1981 grazing season.[2] The Forest Service charged $5.98 for the 1986 grazing season.

The documentation we obtained did not explain the reasons for the Bureau's decisions in determining compensation for grazing and recreation. A Bureau official told us that the $54 cost it used to calculate the 1986 compensation was negotiated with SWUA.

COMPENSATION FOR SWUA'S CONTRACTUAL SURFACE RIGHTS UNDER P.L. 100-563

The June 1988 appraisal, prepared by an independent appraiser for SWUA, does not support the $15 million compensation authorized for SWUA's contractual surface rights and interests in the 56,775 acres of project lands. The appraisal valued SWUA's remaining surface rights on the basis of the fair market value of the fee-simple interests at $11.5 million, after reducing the appraisal by the $2.884 million SWUA had recieved in 1986. However, because the title is held by the United States, we believe that an appraisal based on the fee title cannot be used to estimate the value of SWUA's contractual surface rights.

An appropriation of $15 million would have the effect of paying SWUA twice for its right to generate revenues from grazing and recreation on the 25,990 acres.

SWUA testified in June 1988 before the Senate Subcommittee on Water and Power that the $15 million compensation was based on the 1988 appraisal. In August 1989 SWUA officials advised us that the $15 million was derived from a negotiated settlement. They said the funds were needed to retire the outstanding debt of $9.5 million on Bureau bonds, whose proceeds SWUA used to rehabilitate project facilities; the $5.5 million would be used to pay the federal and state taxes on the compensation.

NON-MONETARY COMPENSATION IN P.L. 100-563

SWUA received title to a 95-acre parcel

As part of the compensation provided in P.L. 100-563, SWUA received title to 95 acres of project lands traversing U.S. Highway 40, the most direct major route from Salt Lake City. Neither the Bureau nor SWUA appraised the value of the 95 acres.

Located on the 80-acre parcel situated north of the highway are SWUA's site office and herder facilities, including several cabins and corrals. The Bureau relocated these facilities in 1986 as part of the enlargement of the Strawberry Reservoir. The 15-acre parcel south of the highway adjoins the existing Forest Service visitors center and is zoned commercial. It is the future site of SWUA's motel and convenience store facility, which have already been approved by Wasatch County. A Forest Service and a Bureau official told us that once the Strawberry Reservoir is filled, the 15-acre parcel will be adjacent to the shoreline.

First right of refusal

P.L. 100-563 entitles SWUA to retain the first right of refusal to grazing privileges on 30,785 acres of project lands, and if permitted under the grazing rehabilitation plan established by the Forest Service, on the remaining 25,990 acres.

When Forest Service reopens the project lands to grazing after rehabilitation, SWUA will be able to resume grazing by exercising its first right of refusal. If it does so, SWUA would benefit financially because the 1986 compensation provided SWUA $54 per animal unit grazing season, whereas the Forest Service charged only $8.37 per animal unit for the 1989 grazing season. Conceivably, all Forest Service grazing leases on these lands could be assigned to SWUA. SWUA would also benefit from the Forest Service rehabilitation program in that the improved grazing conditions would most likely allow SWUA to graze more animals.

Subsurface rights

SWUA retained its contractual rights to issue oil, gas, coal, and mineral leases, excluding sand and gravel, on project lands. Neither the SWUA appraisal nor the Bureau have determined the value of the subsurface rights. SWUA has entered into mineral leases in the past, but Bureau officials advised us that no subsurface leases currently exist.

SWUA NOT LIABLE FOR LAND REHABILITATION COSTS

According to Bureau and Forest Service officials, the Strawberry Valley Project lands need extensive rehabilitation. The poor condition of the land was documented in a July 1984 Forest Service report by a fisheries biologist for the Uinta National Forest (entitled Aquatic Habitat Management/Rehabilitation on Strawberry Reservoir Tributary Streams), and in the August 1986 draft Strawberry Valley Project Land Management Plan by the Bureau's Utah Projects Office. The 1986 report noted that historically, SWUA practiced season-long (June through October) grazing of Strawberry Valley pastures, which resulted in the overall deterioration of the range and general environment.

The combination of overgrazing and herbicide treatments had a detrimental impact on riparian areas—the thin strips of vegetation bordering the reservoir and streams—that are important habitat for wildlife. Eroding stream banks contributed significantly to the silt load of streams, reduced water quality, and increased the nutrient loading of the reservoir, which added to the general degradation of the fishery resource.

The 1984 Forest Service report provided an action plan to rehabilitate project streams at a 10-year cost of $1.025 million. The plan included the reintroduction of riparian vegetation and bank stabilization. The Forest Service also prepared a preliminary 5-year $2.8 million estimate used to suport the $3 million authorization in P.L. 100-563. This estimate included $2.2 million for stream channel and riparian rehabilitation, and $0.6 million for a range development plan. Forest Service officials told us that a detailed rehabilitation plan with related costs will be developed once funds are appropriated.

We hope this information is useful to your Subcommittee. If you would like to discuss any of these matters further, please call me on (202) 275-7756.

Sincerely yours,

JAMES DUFFUS III,
Director, Natural Resources Management Issues.

Mr. BRADLEY. To summarize, the GAO concluded that the package of compensation substantially exceeds the fair market value of the Water Users Association's interests, which the GAO described as "negligible." The GAO analysis confirms that last year's bill provides the Water Users Association with a taxpayer-funded windfall.

In light of this understanding of the situation, I have asked GAO to continue their analysis and produce a final report for congressional review. I intend to pursue other legislative options based on the information we have in hand and will receive from GAO and other sources.

Moreover, this highly questionable arrangement has raised my concerned that other elements of the central Utah project may not be designed or administered in the public interest. I am advised, in fact, that proposed project features would grant additional taxpayer-subsidized benefits to the Strawberry Water Users Association. I intend to apply the most exacting degree of scrutiny to any—and I underline any—future proposals for central Utah project construction and funding, if such proposals are made. I urge my colleagues to read the GAO report and join with me in future reviews of the central Utah project.

The PRESIDING OFFICER. Who yields time? If no Senator yields time, time will continue to run.

Mr. HATFIELD addressed the chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon, Mr. HATFIELD.

[2] An animal unit is generally defined as a 1,000 pound cow, a horse, or 5 sheep.

Mr. HATFIELD. Mr. President, I want to be very brief in my remarks and simply congratulate our subcommittee chairman, Chairman JOHNSTON, and Senator BYRD and the full committee for their leadership and cooperation in the energy and water development appropriations bill for fiscal year 1990, H.R. 2696.

As with all the appropriation measures in this bill, we had to make some very difficult choices between funding for the needs of today, such as with drought and flood assistance, and the needs for tomorrow, such as energy and scientific research.

I believe, with the indulgence of all the members of the committee and the entire Senate, we have been able to achieve an appropriate balance in these urgent requirements.

Mr. President, another constant balance we seek, and we have been, I feel, failures on this part of our subcommittee activity, is a balance between the nuclear weapons program which is not in the defense budget but in this energy and water budget, and the natural resource and other activities and programs under the jurisdiction of this subcommittee.

We have seen over the last 9 years a constant ratcheting down of the domestic needs in the fields of resource management, water development, port programs, the infrastructure of this country whose maintenance we are charged with through the Corps of Engineers. All of these other activities have been ratcheted down, ratcheted down in our distorted fashion, reaching a point of almost reaching a question of morality of the priorities in this country.

Constantly the nuclear weapon program escalates and escalates and escalates. Would that we could put E equals MC squared as a genie back into the bottle, but we cannot do that. But certainly I think we are going to have to find some very definite strategy to learn to control our lust for weapons, the insatiable appetite of the Pentagon for more and more deadly weapons that we have to fund out of the hard-earned money of our taxpayers at the same time we see the diminution of the human resource needs, the natural resource needs, the infrastructure needs of this country.

I want to take any and every occasion that I have given to me to raise this issue. One of these days, this Senate will have a debate. And that debate will be: What are our stewardship responsibilities over the resources that we have under our responsibility? And we will debate that issue and that will be known as the great debate. It will come upon us, even if we do not want it to come upon us, because as we see the deficit rising, we see the demands for programs like drug wars to meet the challenge of these metastasized cancers in our country today.

As we meet today in a joint effort between the Democrats and Republicans to find ways to fund the drug programs, we are ultimately going to have to come back to the fundamental, underlying issue: Is it a shortage of resources or is it the misappropriation of resources that cause us these financial deficit problems, and problems to fund the important, necessary programs?

The PRESIDING OFFICER. The time allocated to the Senator from Oregon has expired.

Mr. HATFIELD. I thank the Chair. We have allotted more dollars for waste cleanup in weapons facilities but we never should have gotten into this problem to begin with, from my perspective. I thank the chairman, again, of our subcommittee for his extraordinary leadership and our outstanding staff as well.

Mr. HATFIELD. Who yields time?

The Senator from Utah [Mr. GARN].

Mr. GARN. Mr. President, an issue has been brought up in this bill concerning the Strawberry Water Users, and particularly the issue of the payment of $15 million. I do not intend to take more than a couple of minutes to explain this, only to say that this has been a longstanding dispute, of more than two decades, of the management of some 36,000 acres of land by Strawberry Water Users.

It is the desire of everyone concerned to see this land transferred to the management of the Forest Service, feeling it would have much better stewardship and be much better taken care of. Over 2 years of negotiations, the agreement was worked out by all the parties concerned—environmentalists, sportsmen, the Bureau of Reclamation, the Forest Service, Strawberry Water Users.

In my 15 years in the Senate, there has never been a time when I have seen a controversial issue worked out in a more satisfactory manner, simply because everyone has agreed. So I have been puzzled that it has been attacked by some as being excessive.

There is a GAO report that indicated that they felt the $15 million was too much for the contractual rights involved. They may be right. It is difficult to assess the value of contractual rights, grazing rights. But the GAO cannot possibly assess the difficulty of this problem and the controversy and place any dollar value on it.

I submit that settling this type of controversy to the satisfaction of all of the very disparate groups interested in this is well worth it, particularly when it has not been mentioned that the $15 million is taxable; $5.5 million of that will immediately come back to the Federal Treasury.

Second, by law, the $9.5 million certainly does not go to anybody's personal profit. It goes back to the Strawberry Water Users Association. That has some 1,500 stockholders and by law it must be utilized for the improvment of their system.

We make grants-in-aid all the time for water districts, sewer districts, that are direct grants to various local entities that are far more than this amount of money.

I feel this is an extremely good compromise, a good deal for the taxpayes, a good deal for all of the parties concerned in Utah. So I will continue to insist that it stay in the bill as a solution to a very difficult and long-standing controversial problem.

I also would ask unanimous consent at this point that a response to the GAO report dated Septebmer 6, 1989, be printed in the RECORD, as well as a press release from the Utah Wildlife Coalition, saying Strawberry is critical to CUP's fish and wildlife plan and to environmental mitigating in this particular project.

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

RESPONSE TO GAO REPORT DATED SEPTEMBER 6, 1989

Page 1, Para. 3—In summary, based on information we obtained, SWUA does not have title to the project lands. It does, however, have the limited right to obtain revenues from the surface and subsurface uses of these lands. If the United States were to remove such rights, SWUA would be entitled to compensation. In our opinion, this compensation should be limited to the revenues lost because existing contracts were not completed. On this basis, lost revenues are negligible.

Response: SWUA is entitled in perpetuity to the use, possession, management and control of the SVP Lands. The 1940 contract is in perpetuity and such possessory and use rights will continue into the future unless and until title is transferred to SWUA by Congress as intended under the 1910 Act, at which time SWUA would obtain complete ownership. The United States has retained legal title to the SVP lands and under Article 14(f) of the 1940 contract, all contracts by SWUA affecting the project require the approval of the Secretary of the Interior, i.e., Reclamation. The SVP lands are not held by SWUA at the whim of Reclamation. Any decision by Reclamation to approve or disapprove SWUA's proposed use of the SVP lands is reviewable by the courts under the Administrative Procedures Act (5 U.S.C. §704). The administrative decision to approve or disapprove will be set aside if it is found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law (5 U.S.C. §706). Article 14(f) further provides that

"So far as permitted by law and not otherwise herein provided, the Association shall have all of the rights and privileges, under any and all such contracts, that the United States now has or would have if this contract were not in effect."

Accordingly, SWUA is entitled to near fee surface value as compensation for the relinquishment of its surface rights and interests. Furthermore, by its July 12, 1989 Resolution, SWUA resolved that SWUA will not, under any circumstances, relinquish its contractual surface rights and interests in the 56,775 acres of SVP lands until payment of

the entire $15,000,000 is made in accordance with Section 4(e)(2) of Public Law 100-563. The foregoing position of SWUA is supported by the following:

(a) *Act of April 4, 1910,* provided that "all right, title and interest of the Indians in the said (SVP Lands) are hereby extinguished, and the title, management and control thereof shall pass to the owners of the lands irrigated from said project whenever the management and operation of the irrigation works shall so pass under the terms of the Reclamation Act.

(b) *Senator Sutherland's Letter 12/31/1915* to SWUA stated—"I went over the provisions of the law with Assistant-Secretary Jones and he assured me that the Interior Department had not the remotest idea of interfering with the rights which the law grants you and he agreed with me that the law gave you a vested right in these lands. I drew it myself with great care with the intention to accomplish this result. * * * Under this law there is no doubt that the Interior Department has no power to interfere with the status of these lands and my opinion is that even Congress itself could not deprive you of the rights conferred because those rights have become vested by payment."

Note: In the 1979 Court of Claims decision it admonished that "Statements made by a bill's author 5 years after enactment form a hazard base for inferring the intent of an earlier Congress." (p.p. 847, 848)

(c) *1926 Repayment Contract*—

(i) Article 11 provides "* * * there is hereby transferred to the Association (SWUA) under the conditions herein stated, the care, operation and maintenance of the entire Strawberry Valley project in Utah and all appurtenances thereunto belonging, except the Mapleton and Springville lateral and the High Line Canal."

(ii) Article 22 (watershed lands) provides that (net) receipts from watershed lands shall be collected by the Association under subsection I of Section 4 of said Act of December 5, 1924 (Fact Finders Act). The 1910 Act is quoted in part and provision is made that the title, management and control of said purchased land is not to pass to the Association under the Act unless and until at least 51 percent of the Project construction cost is paid to the United States.

(d) *1928 Repayment Contract*—Article 10 provides that "the 1926 Contract is modified to the extent that the care, operation and maintenance (management and control but not the title) of the SVP lands is transferred to the Association and "may collect and use the receipts from any contracts now existing or which may hereafter be made by the Association provided said receipts shall be distributed as specified in Article 22 of said contract dated September 28, 1926 * * *."

(e) *1940 Repayment Contract*—Article 20 provides that notwithstanding the 1910 Act, title to the SVP lands, redesignated as grazing lands, shall be retained by the United States until otherwise provided by Congress and that the management and control of the SVP lands shall remain with SWUA subject to the default provisions of Article 34.

(f) *Solicitors Opinion (M-36051) dated December 7, 1950*—Concluded on page 7 that the history of the SVP lands "* * * seems to demonstrate unequivocally that it was the intent of Congress to provide in the 1910 Act for an immediate transfer of the beneficial interest in the watershed lands to the landowners of the Strawberry Valley project and for the ultimate transfer to the landowners of legal title to the watershed lands." He concluded on page 8 thereof

"* * * I believe that, although legal title to the watershed lands is still in the United States, the beneficial interest in these lands is vested in the owners of the lands irrigated from the Strawberry Valley project."

(g) *Associate Solicitors Opinion dated November 14, 1968*—Concluded that it would be legally appropriate for the United States to take possession of that portion of the SVP lands for the enlargement of Strawberry Reservoir (another Reclamation project as distinguished from non-Reclamation purposes), but that such resumption of possession could be viewed as a partial breach or modification of the 1940 contract (p. 3).

(h) *Solicitors Opinion M-36863 (dated August 8, 1972)*—Concluded that SWUA was entitled to compensation for the loss of revenues from the SVP lands resulting from the enlargement of Strawberry Reservoir. The solicitor noted

"The lands formerly designated as "watershed" lands were thereafter to be called "grazing" lands. Management and control of said lands, as well as care, operation and maintenance of the project were to remain in the Association, but title to the grazing lands * * * was to be retained by the United States until otherwise provided by Congress." (p. 516)

"The 1940 contract also provided that the Secretary would retain supervisory authority over the project." (p. 517)

"* * * the 1940 contract was effective to modify the rights that the water users might have under the 1910 Act." (p. 517)

"By the same token, the 1940 contract was effective to bind the Secretary to the bargain he had made with the water users" (p. 517)

In modifying the December 7, 1950 opinion, the Solicitor (1972) stated

"Although the water users clearly have an interest in these lands they do not, in our opinion, have a "beneficial" interest * * * in the classical law-of-trusts sense. Whatever its rights might have been under the 1910 Act, those rights were redefined in the 1940 contract" (p. 522)

Note: As to the above Solicitor's opinions, the 1979 Opinion of the Court of Claims stated "These memoranda (opinions) demonstrate the continuing intermixture of concepts related to the right to a current credit for net profits provided by the 1910 act with concepts that involve a future transfer of title to the watershed lands." (p. 852)

(i) *Regional Solicitors Opinion dated October 9, 1981*—On compensation to be paid to SWUA resulting from the enlargement of Strawberry Reservoir states

"3. The Association would be entitled to be made whole for loss of revenues from the lands used for the Central Utah Project, however, it would not be entitled to compensation for any loss of revenues for uses of project lands that the secretary determined are incompatible with project uses.

"6. The revenues from grazing lands would include recreation uses, timber sales, grazing leases and oil and gas revenues and are subject to the above limitation."

(j) *Acting Regional Solicitors Opinion dated July 30, 1986*—Concluded that under the 1940 Repayment Contract, the United States transferred to SWUA all obligations imposed upon the United States in all (existing) project contracts and all rights and privileges under any and all such contracts that the United States now has or would have if the contract were not in effect. It also notes that a decision by Reclamation to approve or disapprove is reviewable by the courts under the Administrative Procedures Act (5 U.S.C. § 704) and the administrative decision to approve or disapprove will be set aside if it is found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law (5 U.S.C. § 706).

Pages 3, Para. 1—The contracts specifically provided that title to the project lands would not pass to SWUA.

Response: The contracts provide that title to the SVP lands shall be retained by the United States until otherwise provided by Congress (Art. 20, 1940 Contract).

Page 5, Para. 1—the Court of Claims held that as a result of the 1928 and 1940 contracts * * * SWUA conveyed or relinquished to the United States any legal or equitable property interest in the project lands.

Response: The underlying issue was whether the self-executing provisions of the 1910 Act transferring title to the SVP lands to SWUA had occurred, thereby vesting legal or equitable title in SWUA. The Court of Claims concluded that such had not occurred since SWUA had not paid a major part of the construction charges by 1940 and under the 1940 Contract SWUA had waived its right to have title to the SVP lands so transferred. Accordingly, it held that under the 1940 Contract SWUA conveyed or relinquished and was divested of its legal or equitable title and could not recover for taking of the SVP lands under the Fifth Amendment by reason of the enlargement of Strawberry Reservoir. However, the Court refused to rule on SWUA's rights to future revenues or distribution of profits since SWUA was not suing to recover damages for a breach of any contractual right.

Page 5, Para. 4—Because SWUA does not appear to have an unrestricted right to obtain future revenues from project lands, it is not entitled to compensation for the loss of such revenues. Therefore, the value of SWUA's rights would be limited to the revenues that SWUA lost because existing contracts were not completed.

Response: Article 14(f) of the 1940 Contract specifically provides that "the Association shall have all of the rights and privileges under any and all such contracts, that the United States now has or would have if this contract were not in effect." Article 10 of the 1928 Contract specifically provided that SWUA "may collect and use receipts from any contracts now existing or which hereafter be made by the Association, provided said receipts shall be distributed as specified in the 1926 contract." While the same language was not specifically incorporated into the 1940 Contract, it has been so construed since the 1986 settlement was based in part on loss of the future revenues for grazing and recreation. Likewise, the August 8, 1972 Solicitors Opinion concluded that

"Since there is no contradictory direction under either the 1940 contract or subsection I, the revenues from the grazing lands and the Governments investment in the power system would continue to be credited after repayment of project construction costs in the same was as they had been credited before." (p.p. 518, 519)

Under footnote 1, the November 14, 1968 Associates Solicitors Opinion to the extent inconsistent with the foregoing conclusions was superseded. (p. 519)

Page 5, Para. 3, 4—On this basis, SWUA's compensation in 1986 should have been negligible . . . It also appears that compensation for the remainder of SWUA's contractual rights would be neglible.

Response: Both are premised on the erroneous conclusion that SWUA is not entitled to future revenues. The foregoing is contrary to the Solicitor's opinions as noted above. The 1940 contract transferred the possession, use, management and control of the SVP lands to SWUA in perpetuity and the only basis on which the United States could resume possession short of breaching the contract would be for SWUA to default in its payments or to manage the SVP lands in violation of the contract under Article 34.

Page 6, Para. 3—The June, 1988 Appraisal, prepared by an independent appraiser for SWUA, does not support the $15,000,000 compensation * * *

Response: The $15 M equates to $9.15 M after payment of $5.85 M in federal taxes ($5.1 M) and state taxes ($.75 M). It does not compensate SWUA for $1.491 M in taxes on the 1986 settlement as the 2/2/88 Strawberry Valley Agreement outline provides. Effectively, the $15 M would net SWUA only 80% ($9.15 M divided by $11.5 M) of fee value of the lands and only 70% ($15 M divided by $21.3 M) of the compensation provided for in the 2/2/88 Agreement Outline.

Page 6, Para. 1—Instead, we believe the compensation should have been limited to revenues that SWUA lost because existing contracts were not completed.

Response: The foregoing is predicated on the erroneous conclusion, as noted above, that SWUA is not entitled to future revenues.

Page 6, Para. 4—An appropriation of $15 Million would have the effect of paying SWUA twice for its right to generate revenues from grazing and recreation on the $25,990 acres.

Response: The $11.5 M appraisal was the net value after subtracting the $2.884 M 1986 settlement. The $15 M (which should have been $21.3 M) was needed for SWUA to pay federal and state taxes which were to be exempt under the 2/2/88 Agreement Outline. Accordingly, the foregoing GAO conclusion is clearly erroneous.

Page 7, Para. 2—A Forest Service and Bureau official told us that once the Strawberry Reservoir is filled, the 15-acre parcel will be adjacent to the shoreline.

Response: The 15 acres will not be shoreline property, but will be at least 1/4 mile from the shoreline of the enlarged Strawberry Reservoir when filled to capacity.

Page 8, Para. 3—The 1986 report noted that historically, SWUA practiced season-long (June through October) grazing of Strawberry Valley pastures, which resulted in the overall deterioration of the range and general environment.

Response: The Strawberry Valley Project is and has been managed by SWUA with the supervision of Reclamation. Historically, the SVP lands have been inspected annually by Reclamation and SWUA and any deficiencies reported by Reclamation have been corrected by SWUA. At no tme did Reclamation advise SWUA that the SVP lands were being mismanaged. The SWUA Grazing Committee is comprised of ranchers and their very livelihoods depend on the productivity of the lands. Their many years of experience has taught them good land management for productivity. SWUA emphatically denies any mismanagement. Accordingly, the Ad Hoc Committee agreed that SWUA should be held harmless for any rehabilitation costs in the 2/2/88 Agreement Outline which is incorporated into PL 100-563.

STRAWBERRY CRITICAL TO CUP FISH & WILDLIFE PLAN

The chairman of Utah's largest sportsmen/conservation group said today that the transfer of Strawberry Valley lands from the Strawberry Water User's Association to the U.S. Forest Service is essential to the improvement of critical fish and wildlife habitat in the area and to wildlife mitigation components of the Central Utah Project funding authorization.

Bob Nelson, of the Utah Wildlife Leadership Coalition said the objectives of the CUP fish and wildlife program rest heavily on the elimination of the Strawberry Water User's Association claims in Strawberry Valley.

Nelson stated that Rep. Wayne Owens' recent amendment to the CUP funding legislation, which would change the timing of the $15 million payment to the water users, and the resultant dispute which has developed between Owens and Senator Jake Garn has cast doubt on the future of the agreement which would eliminate water user claims to the Strawberry lands. But Nelson says a solution may be available to satisfy Rep. Owens' concerns while keeping the water users committed to the buyout agreement. Nelson has spoken with officials of the Bureau of Reclamation, the Forest Service, the Utah Division of Wildlife Resources, and the Strawberry Water User's Association about a funding compromise which could resolve the problem.

The original agreement between the Utah Wildlife Leadership Coalition, which represents 48 sportsmen and conservation groups statewide, and the Bureau of Reclamation, the Forest Service, the Division of Wildlife Resources and the water user's called for the transfer of the Strawberry Valley lands to the Forest Service after the water user's were compensated by an undetermined amount for their claims in the valley. A subsequent agreement between the water user's association and federal government officials set the amount at $15 million and provided that the funds come from the first-available CUP fish and wildlife mitigation money in 1990.

Rep Owens is concerned that putting the $15 million compensation package first on the mitigation list would jeopardize other fish and wildlife projects for which committments have been made. The Owens House amendment would delay the land transfer for at least one year. The water users have made it clear that they will not relinquish their interests in Strawberry Valley until payment of the entire $15,000,000, is made. Senator Garn and Rep Howard Nielson insist that the agreements with the water users must be met before the dispute over strawberry lands can be settled.

Nelson said the compromise solution would provide sufficient funding for both the buyout of the water user's claims and for previously scheduled 1990 fish and wildlife mitigation projects for CUP. He says officials have agreed, in concept, with a package which would derive funds from unused mitigation dollars from 1989, from unspent 1990 construction funds and from excess 1990 mitigation funds which will not be spent due to cancelled construction. The net cost from the funds which concerns Owens would be approximately $6 million instead of the original $15 million in 1990. Nelson said the compromise suggests clearly that real flexibility exists among the players and that cooperation among members of the Utah congressional delegation and the Bureau of Reclamation can produce a solution.

Nelson said he believes that other concerns registered by sportsmen and conservation groups about ensuring that any settlement produce a public benefit comensurate with the amount being paid to the water users can be dealt with more easily than the more thorny funding source problem. The surface management issues which have also caused concern among outdoorsmen will certainly be dealt with by the Forest Service management plan.

Nelson stated that honest people can disagree over the amount of compensation for the water users but his proposed compromise which reduces by nearly two-thirds the impact on 1990 wildlife mitigation funds should be supported. Two years of intense negotiations between conservation and sportsmen groups and the Strawberry Water User's Association have produced the first real opportunity to resolve a very serious public lands management issue. Every effort should be made to take advantage of the opportunity because failure to do so would only make the problem much worse. The proximity of the Strawberry Valley to the population of the Wasatch Front makes it the most important fish and wildlife resource in Utah. The Uinta National Forest is prepared to rehabilitate and manage the land for it's outdoor values. It is a resource of incredible importance to future generations of Utahns and should be managed with that fact in mind.

Nelson stated that the fish and wildlife initiatives by Rep Owens during the last two years, support of recent migitation alternatives by Senator Garn and the increasing willingness of the Bureau of Reclamation and Congress to resource fish and wildlife requirements has created an environment within which the Strawberry land dispute can finally be solved. Sportsmen and conservationists are finally seeing a serious effort to repair the incredible damage done to public lands by construction of the Central Utah Project. The Strawberry issue should be resolved as soon as possible so we can move forward with other important fish & wildlife mitigation issues.

COLLABORATIVE UNIVERSITY PROJECTS IN NUCLEAR MEDICINE

Mr. SASSER. Mr. President, my good friend, the senior Senator from Alabama, and I rise to discuss with the manager of the bill the language in the conference report which directs the Department of Energy to support universities working collaboratively in the development of two advanced medical technologies, NMR spectroscopy and positron emission tomography, or PET. I would note that the Institute of Biomedical Imaging at the University of Tennessee Medical Center in Knoxville has already initiated such a collaborative effort with a comparable center at the university of the two technologies referenced in the conference report.

Mr. HEFLIN. I want to join with my good friend from Tennessee in discussing this matter with the distinguished chairman. The center at UAB which the Senator referenced is the Center for Nuclear Imaging Research. This center is currently being developed with support from DOE, and when

fully operational it will contain the most powerful whole-body NMR instrument at any medical center in the world. I also know personally the center's director, Dr. Gerald Pohost, who is one of the world's leading authorities in this important and exciting new technology. Dr. Pohost is enthusiastic about the mutual benefits to both centers growing out of this collaboration.

Mr. SASSER. I thank my good friend from Alabama, and I would like to inquire of the distinguished chairman whether the conferees had in mind the kind of collaboration which the Senator and I have discussed very briefly here today?

Mr. JOHNSTON. I appreciate the remarks of my two good friends. The collaborative project they have described fits exactly with the intent of the conferees. By supporting this kind of collaboration, the Department of Energy cannot only speed the development of these new technologies, but can also strengthen both research centers and thereby broaden our Nation's capacity in these critical fields of medical science.

REHABILITATION OF THE ST. GEORGE'S BRIDGE

Mr. ROTH. Mr. President, I rise today to ask for clarification of certain report language relating to repairing the bridge at St. George's, DE.

Mr. JOHNSTON. I will be happy to do so.

Mr. HATFIELD. I understand the importance of this issue to the State of Delaware, and am prepared to address the Senator's concerns.

Mr. ROTH. Mr. President, I would like to briefly describe the cause of my concerns. The State of Delaware is transected by the Chesapeake and Delaware Canal. The canal is more an inconvenience than a benefit to the State of Delaware. The canal was built in 1827, and was acquired by the Federal Government in 1919. Three highway bridges and a railroad bridge cross the canal in Delaware. The three highway bridges were built, and are owned, operated, and maintained by the Corps of Engineers.

The Army Corps of Engineers asserts that the bridge which crosses the canal at St. George's, DE, is in need of major repair. However, the State of Delaware's transportation engineers and those of the Federal Highway Administration disagree with the corps on the type of repair that this bridge requires. The Corps of Engineers believes that a major rehabilitation is necessary. The State of Delaware believes that a less costly repair of the bridge will be sufficient. This is because the State of Delaware believes that a new bridge must be built across the canal at St. George's, DE. The State and the FHWA believe that less dramatic repairs to the existing bridge can maintain high safety standards and minimize traffic disruptions until either the replacement bridge is opened or an adequate detour route is available.

The Senate Appropriations Committee included in its committee report accompanying the energy and water appropriations bill for fiscal year 1990, language which directed the corps to undertake two initiatives. The first action the committee took was to make the funds available for the rehabilitation of the bridge on the condition that the corps, in conjunction with the State and the Federal Highway Administration develop a plan of action to minimize the traffic disruptions over the bridge, and review the timing of the rehabilitation effort.

Mr. President, I wish to indicate to the distinguished manager of this bill that the State has attempted to get the corps' cooperation in this effort without success. The report language is important to finally gain the corps' cooperation on this issue. This determination would be made pursuant to the recommendation of a joint review team which would assess whether a full rehabilitation or a less costly version is needed.

Our second initiative was to make funds available for review of the design the State has prepared for the new bridge, from the rehabilitation funds because of our expectation that a major disruptive repair can be avoided. However, these funds would not be available for the design review if the corps, the State, and the FHWA determined that all of the funds were necessary for the rehabilitation.

Mr. President, the conference report language is different from what is contained in the Senate committee report. Would the chairman explain to the Senate what effect, if any, the conference report language will have on our two initiatives addressed in the Senate committee report?

Mr. JOHNSTON. The conference report is not intended to change what was stated in the Senate committee report.

I will say to my friend from Delaware, that I know everyone is concerned about safety including the Federal Government and the State of Delaware.

I understand that the State of Delaware may disagree with the Corps of Engineers on the type of repairs needed to be made to the bridge. While the corps has the ultimate responsibility in determining both the condition of the bridge and the repairs necessary to make the bridge safe for traffic, we as the appropriation committee feel strongly that the corps would not spend dollars unnecessarily for a major rehabilitation when lesser funds would ensure safety to the traffic, and not greatly disrupt Delaware transportation. While the committee is not qualified to make a judgment or determination as it relates to the safety of the bridge, we expect the corps to defer action on the major rehabilitation until a joint review or an independent review of the safety and engineering issues can occur. I am informed that the corps cannot possibly begin the project for at least 60 days because of needed preparation. This is ample time for such review.

However, since this is a major route through Delaware, we expect the corps to work with and to consult with the State of Delaware to determine what repairs are needed and to minimize the disruption of traffic using the bridge.

The question of authority or obligation to construct a new bridge is an issue which will have to be addressed in the future.

Mr. ROTH. I thank the Senator for his answer. While I, too, cannot make a decision on the safety requirements of the current bridge, I would hope that the corps would not opt for a major rehabilitation to prejudice the State's quest for a new bridge. The conference report also states—

> That the corps should undertake a review of the design developed by the State of Delaware for a new bridge when the Federal Government's role in the construction of a replacement bridge has been clarified.

Should the corps interpret that to mean that it can only review the design of a new bridge after the authorization issue has been settled? I may add that we had previously authorized the corps to review the design however, up to now the corps has taken no action to review the design.

Mr. JOHNSTON. The sentence the Senator quotes would be ineffective if 100 percent of the funds available for rehabilitation were spent, leaving nothing to spend on the review. Obviously, it is the intention of the conferees that both the design review and the rehabilitation decisions be made concurrently. They both bear on one another, and they both draw on the same appropriation. The review should not be delayed in as much as the conferees expressly stated in the conference report their view that, indeed, a new bridge is needed at St. George's, DE.

Mr. ROTH. I thank the distinguished manager of this bill for his clarifications.

Mr. HATFIELD. I have listened to the remarks of the chairman, and I concur with his explanation.

Mr. BIDEN. I thank my friend from Louisiana for his explanation.

Mr. President, I would like to ask the distinguished chairman of the Environment and Public Works Committee a few questions on language contained in the conference report on H.R. 2696 with regard to the St. George's Bridge. Since the question of the obligation of the Federal Government to construct a new bridge at St. George's is still under review, and the

authorizing committee obviously has an interest in this issue, the chairman's thoughts should be available for the record.

Mr. President, the report states—

The conferees are aware of the need to construct a replacement bridge for the St. George's bridge in Delaware.

Does the authorizing committee agree with that assessment?

Mr. BURDICK. Yes. Traffic over the St. George's Bridge has increased to the level that the existing bridge is no longer sufficient. The design of the existing bridge precludes expanding the number of lanes. That is why a new bridge is needed, to provide an adequate crossing over the canal.

Mr. BIDEN. That brings me to my second question. The conference report also directs the corps to—

Undertake a review of the legislative authority and alternative proposals for Federal participation.

This question may be partly resolved as part of the obligation issue, but without prejudging that outcome, I would like to ask the chairman if the conference report allows for the possibility that the Federal Government may be obligated to fully fund construction of the replacement bridge.

Mr. BURDICK. I agree that no one should prejudge the outcome of this issue. This situation appears to be unique, and questions have been asked which are not yet answered. While federally assisted bridge replacements in recent years have been funded at 50 percent, it is certainly possible that the special circumstances of this case may warrant a greater Federal participation. The Corps of Engineers should certainly study all options, including full Federal funding.

By the same measure, there is also the possibility that the corps may not be responsible for the full cost of the bridge. If that proves to be the case, and I would note that no one is absolutely sure how all this will work out, a different funding schedule must be developed.

The report language is intended to help find an answer to these questions since it is fairly evident that we will be addressing this situation in the upcoming year.

Mr. BIDEN. If I could ask one final question of the chairman. Is it his understanding that the corps actions on the rehabilitation of the existing bridge shall have no effect on corps role in the replacement bridge? In other words, no actions the corps takes on repairs to the existing bridge will affect their responsibility with regard to the replacement bridge.

Mr. BURDICK. The Senator is correct. The corps responsibility with regard to the replacement bridge will not be altered by any repairs, or the schedule of them, on the existing bridge at St. Georges.

Mr. BIDEN. I thank the chairman. As he may know, the counsel to the Senate Judiciary Committee has prepared a response to the corps memorandum. I, quite frankly, believe the corps has an obligation to build the replacement bridge, but I do recognize that it is an unusual situation. I thank the chairman for his clarification of the report language.

Mr. ROTH. I thank the distinguished chairman of the Environment and Public Works Committee for his comments. I am pleased to have the chairman's cooperation in clarifying how the committee views the situation with regard to the St. George's Bridge.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, in accordance with the unanimous-consent agreement, I move that the Senate concur in the amendments of the House to the amendments of the Senate Nos. 2, 7, 9, 10, 12, 22, 24, 25, 31, 37, 38, 39, 40, 41, 42, 44, and 56.

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

The motion was agreed to.

The amendments of the House to the amendments of the Senate are as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 2 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

Rillito River, Arizona, $350,000;

Antelope Creek, Lincoln, Nebraska, $100,000;

Elm Creek, Nebraska, $75,000;

Jeffersonville, Indiana, $125,000;

Red River Waterway, Shreveport, Louisiana, to Dangerfield, Texas, $750,000;

Sainte Genevieve, Missouri, $50,000;

Missouri River Fish and Wildlife Mitigation, Iowa, Nebraska, Kansas, and Missouri, $300,000;

Lake George, Hobart, Indiana, $100,000

: *Provided further,* That not to exceed $25,500,000 shall be available for obligation for research and development activities

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 7 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to utilize funds previously appropriated under the Flood Control, Mississippi River and Tributaries account to prepare the most cost effective plan to provide the authorized level of protection for flood damage reduction for the entire city of West Memphis, Arkansas, and vicinity, without regard to frequency of flooding, drainage area, and amount of runoff: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to utilize previously appropriated funds together with funds appropriated herein to complete in fiscal year 1990 the engineering and design on the Port Sutton Channel, Tampa Harbor, Florida, project: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $500,000 of the funds appropriated herein for preconstruction engineering and design of structures to restore the riverbed gradient in the vicinity of Mile 206 of the Sacramento River, California, in accordance with the plan contained in a Final Feasibility Report, dated 1989, by the Glenn Colusa Irrigation District and the California Department of Fish and Game, on Fish Protection and Gradient Control Facilities

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 9 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert "$997,400,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 10 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

Beaver Lake, Arkansas (Water Quality Enhancement), $1,100,000;

Red River Emergency Protection, Arkansas and Louisiana, $2,000,000;

Manatee County, Florida, $5,000,000;

Maalaea Small Boat Harbor, Hawaii, $600,000;

Little Calumet River, Indiana, $2,400,000;

Ouachita River Levees, including Bawcomville Levee, Louisiana, $400,000;

Westwego to Harvey Canal, Louisiana, Hurricane Protection, $1,100,000;

Atlantic Coast of Maryland, Maryland, $8,200,000;

Cape Girardeau-Jackson, Missouri, $500,000;

Missouri National Recreation River, Nebraska and South Dakota, $620,000;

Papillion Creek and Tributaries, Nebraska, $2,500,000;

Great Egg Harbor Inlet and Peck Beach, New Jersey, $250,000;

Shinnecock Inlet, New York, $5,300,000;

Roanoke River Upper Basin, Virginia, $200,000;

Kissimmee River, Florida, $4,000,000;

Sarasota County, Florida, $2,000,000;

Roseau River (Duxby Levee), Minnesota, $200,000;

Trimble Wildlife Area, Smithville Lake, Little Platte River, Missouri, $1,570,000;

Acequias Irrigation System, New Mexico, $2,000,000;

Grays Harbor, Washington, $13,000,000;

Small Boat Harbor, Buffalo Harbor, New York, $1,000,000:

Provided further, That notwithstanding section 902 of the Water Resources Development Act of 1986, the Secretary of the Army, acting through the Chief of Engineers, is directed to construct the Guadalupe River flood control project in the San Jose area using $750,000 of the funds herein appropriated.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 12 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert "$17,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 22 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

: *Provided further,* That with $1,000,000 of the funds herein appropriated the Secretary of the Army, acting through the Chief of Engineers, is directed to initiate and complete the one-time repair and rehabilitation of the Maeystown Creek gravity drainage structure through the project levee of the Harrisonville and Ivy Landing Drainage and Levee District, Number 2, Illinois, subject to the cost-sharing provisions of Public Law 99-662: *Provided further,* That with $4,000,000 of the funds herein appropriated the Secretary of the Army, acting through the Chief of Engineers, is directed to resume construction on the Wallisville Lake project in Texas, and to award continuing contracts until construction is complete under the terms and conditions signed in 1967 between the Trinity River Authority of Texas, the city of Houston, the Chambers-Liberty Counties Navigation District, and the Corps of Engineers, and as provided for in Public Law 98-63: *Provided further,* That with $5,000,000 heretofore or herein appropriated for the Cooper Lake and Channels project in Texas, the Secretary of the Army, acting through the Chief of Engineers, is directed to award continuing contracts, in fiscal year 1990 at full Federal expense for additional recreation facilities at an estimated cost of $17,000,000 not exclusive to South Sulphur and Doctors Creek Parks, as is acceptable to the State of Texas: *Provided further,* That the Secretary of the Army is authorized and directed to immediately begin a reconnaissance study of the Cuyahoga River in accordance with the provisions of Public Law 99-662 using funds previously appropriated for the Cleveland Harbor, Ohio, project: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, shall use $300,000 of the funds appropriated under this heading for a flood control project on Loves Park Creek, Loves Park and vicinity, Illinois, as authorized by Public Law 99-662; Sec. 401; and, in addition, $101,800,000, to remain available until expended, is hereby appropriated for construction of the Red River Waterway, Mississippi River to Shreveport, Louisiana, project and for compliance with the directions given to the Secretary of the Army in the fiscal year 1988 and 1989 Energy and Water Development Acts, Public Laws 100-202 and 100-371, respectively, regarding the construction of this project, and the Secretary is directed to use $2,000,000 to award continuing contracts in fiscal year 1990 for construction and completion of Lock and Dam 4, Phase I, and Lock and Dam 5, Phase I; and of which $2,500,000 shall be used to acquire up to five thousand acres of land in the vicinity of the Stumpy Lake/Swan Lake/Loggy Bayou Wildlife Management area as part of the lands for the Red River Waterway project; and with funds provided in this title or previously appropriated to the Corps of Engineers, the Secretary further is directed to fund previously awarded and directed construction contracts and to award continuing contracts in fiscal year 1990 for construction and completion of each of the following features of the Red River Waterway: in Pool 1, Vick Revetment Extension; Saline Bend Dikes, Blakewood, Pump Bayou, and Grand Lakes Reinforcement and Dikes. The Federal cost for construction of the Louisiana and Arkansas Railway Bridge near Alexandria, Louisiana, authorized in Public Law 98-181 shall be increased to a limitation of $25,770,000 (July 1, 1983, price levels) in order to avoid disruption of the Colfax Creosoting Company

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 24 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to proceed with design and construction of a replacement for the Motor Vessel MISSISSIPPI using funds available under this appropriation in order to complete construction of the replacement vessel by the end of calendar year 1991: *Provided further,* That using previously appropriated funds, the Secretary of the Army, acting through the Chief of Engineers, is directed to reimburse the local interests for the Federal share of the cost of relocation of U.S. Highway 71 bridge in St. Landry Parish, Louisiana, carried out by local interests as authorized by section 824 of Public Law 99-662: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to utilize $2,500,000 of previously appropriated funds to initiate and complete construction of a land side seepage berm to correct a project deficiency at the Mississippi River, Memphis Harbor, Tennessee

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 25 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert "$1,377,504,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 31 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

SEC. 101. The project for flood control, Wyoming Valley, Pennsylvania, authorized by Section 401(a) of the Water Resources Development Act of 1986, is modified to direct the Secretary of the Army, using $1,300,000 appropriated herein under the General Investigations account and funds appropriated hereafter, to complete the design of the project so as to provide flood protection to the area protected by the existing projects from flood conditions which would occur as a result of the recurrence of Tropical Storm Agnes of 1972.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 37 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number named in said amendment, insert "110".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 38 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number named in said amendment, insert "111".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 39 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number named in said amendment, insert "112".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 40 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number named in said amendment, insert "113".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 41 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number named in said amendment, insert "114".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 42 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert "$11,530,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 44 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

: *Provided further,* That in accordance with P.L. 100-563, there is authorized to be appropriated under Section 8, of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620g), $15,000,000 as compensation to the Strawberry Water Users Association which shall be available only for such compensation and must be used for Strawberry Valley Reclamation Project purposes. Of the amounts appropriated hereafter (including funds previously appropriated for FY 1989) under section 8 of such Act, the first $15,000,000 shall be paid to the Association. Upon receipt of such compensation, the Association shall relinquish all of its contractual surface rights and interests, including sand and gravel, in the 56,775 acres of Project Lands.

Nothing in this Act shall delay the transfer of Strawberry Valley Project lands under the terms and conditions of Section 4 of P.L. 100-563.

During the Fiscal Year 1990, the Bureau is authorized to utilize funds surplus to construction needs under Section 5 of the Act of April 11, 1956 (70 Stat. 107; 43 U.S.C. 620d), if available, (Bonneville Unit only), to accomplish the purposes and objectives of Sections 3 and 4 of P.L. 100-563.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 56 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $346,000,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury: *Provided,* That any proceeds resulting from the sale of assets purchased from the Nuclear Waste Fund shall be returned to the Nuclear Waste Fund: *Provided further,* That of the amount herein appropriated not to exceed $5,000,000, may be provided to the State of Nevada, for the conduct of its oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended, of which $1,000,000 is to be available for the University of Nevada-Reno to carry out infrastructure studies related to nuclear waste, and of which not more than $1,000,000 may be expended for geology and

hydrology studies carried out by the University of Nevada system and not more than $1,000,000 may be expended for socioeconomic and transportation studies: *Provided further*, That not more than $6,000,000, may be provided to the State of Nevada, at the discretion of the Secretary of Energy, to conduct appropriate activities pursuant to the Act: *Provided further*, That not more than $5,000,000, may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: *Provided further*, That none of the funds herein appropriated may be used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in 18 U.S.C. 1913: *Provided further*, That of the amount appropriated herein, up to $10,000,000 shall be made available to the University of Nevada, Las Vegas (UNLV), to provide computing resource to the State of Nevada to carry out its independent analyses and oversight responsibilities under the Nuclear Waste Policy Act of 1982 and for use by UNLV. The funds shall be made available by direct payment to UNLV in the amount of the purchase price of a supercomputer or coupled minisupercomputers. UNLV shall take title to and assume ownership of the computer hardware and software that are purchased with these funds.

Mr. JOHNSTON. I move to reconsider the vote by which the motion was agreed to and move to lay that motion on the table.

The motion to lay on the table was agreed to.

MODIFICATION TO SENATE REPORT 101-75

Mr. BYRD. Mr. President, in order to expedite the final action on the conference report on the fiscal year 1990 energy and water development appropriations bill, the Committee has allocated $58 million in outlays from savings to be made in the Defense appropriations bill. The final conference outcome increased outlays for atomic energy defense activities by that amount.

On behalf of the Committee on Appropriations I submit the following modification to Senate Report 101-75 and ask unanimous consent that it be printed in the RECORD.

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

MODIFIED ALLOCATIONS TO SUBCOMMITTEES (MODIFICATION TO SENATE REPORT 101-75)

The Committee on Appropriations submits the following modification to its report, Allocation to Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 1990, Senate Report 101-75, in compliance with section 302(b)(1) and section 302(e) of the Congressional Budget Act of 1974, as amended.

The discretionary and total outlay allocation of the Energy and Water Development subcommittee is increased by $58 million.

The discretionary and total outlay allocation of the Defense subcommittee is reduced by $58 million.

Mr. BRYAN. Mr. President, although I did not object to this measure being agreed to without a rollcall vote, there is an aspect of the legislation that I feel compelled to address. As my colleagues know from my prior statements on this issue, this bill contains funding for a Federal program that has gone far astray, and which is eminently unfair to Nevada.

Every Member of the Senate is familiar with the decision made in the closing days of Congress in 1987 to single out Yucca Mountain in Nevada as the only candidate site for the Nation's high level waste dump. That action, unfair as it was toward my State, was a last, desperate attempt to rescue a DOE program with a more than 30-year history of false starts and failures.

Now, in the legislation before us, the State of Nevada's independent funding to review DOE's program has been placed under the control of the Secretary of Energy. In light of the mismanagement of so many DOE programs that has recently been exposed, to restrict the independent oversight of a program charged with disposing of the most toxic and lethal waste products ever created by mankind is absurd.

The State of Nevada has long suspected that the technical flaws at Yucca Mountain would eventually disqualify that site from consideration as a deep geologic dump for high level radioactive wastes. After years of detailed scientific study, the state's claims, one by one, have been validated—by independent scientific experts.

The fact that we as policymakers have to face, now or later, is that the geology, hydrology, and volcanic characteristics of the Yucca Mountain site will eventually cause Yucca Mountain to be abandoned from consideration as a high level waste dump.

If that decision is made soon, we can chart an alternate course for the disposal of the Nation's high level waste, and restore scientific credibility to the process. We can also save billions of dollars for the taxpayers and utility consumers of the country.

If we ignore the growing scientific evidence, we will waste billions of dollars—even with declining waste projections current estimates of this program's costs have increased from $23 billion in 1983 to $33 billion or more in constant 1987 dollars; already over $3 billion have been wasted.

We will then find ourselves near the end of the century with no answer to the high level radioactive waste problem that the country has failed to solve since commercial nuclear power generation began in the 1950's.

During the years since the passage of the original Nuclear Waste Policy Act DOE's egregious mismanagement of major programs has become clearly apparent. We have a chance to redirect one of those programs now, instead of a costly bailout, cleanup, or crisis being forced on the taxpayers later.

Important technical developments have occurred since the targeting of Yucca Mountain in 1987.

Independent scientists have come forward with data and analysis that supports and strengthens the State's case that Yucca Mountain can never safely succeed as a high level waste repository, nor ever be licensed by the Nuclear Regulatory Commission.

The ironic twist is that the more successful the State's efforts to uncover the flaws of the site, the more restrictive the Department of Energy, and now the Senate Energy Committee, become with the funds to continue independent State oversight of this program that was provided for in the original act.

In the legislation before you, the majority of funds to be utilized for the State's independent study of Yucca Mountain are restricted, under the authority of the Secretary of Energy, only to be released if some vague standard of cooperation by the State is determined to exist by the Secretary.

Given DOE's myopic and misguided management of this program and others, such a restriction defies rational policy. The independent technical funds that the State can utilize to do its own analysis and confirmatory studies of Yucca Mountain may be the only safeguard the country has to avoid wasting billions more without solving this environmental crisis.

As the technical doubts grow, the pattern from past experiences is repeated, and the agency that brought you Rocky Flats, WIPPS, Savannah River, and a more than $100 billion cleanup in our defense weapons plants, is once again calling the technical shots despite the independent evidence that the path they are pursuing is fatally flawed.

Expecting the citizens to pay for one costly program failure after another is unreasonable. From the examination of the Lyons, KS, salt site of the early 1970's through today—two decades later—the DOE's track record on this issue is littered with expensive failures.

Reality—scientific, technical, economic, and political—indicates the existing program is flawed and radioactive waste storage at Yucca Mountain should never occur. It is not in the public interest to pursue a costly policy destined to fail.

On Wednesday, June 28, 1989, the Secretary of Energy was quoted in the New York Times extensively about the critical problems that DOE currently faces. He acknowledged that the Department ignored the recommendations made by the National Academy of Sciences relative to the waste isolation pilot project near Carlsbad, NM, and indicated that the information available from DOE sources on various programs was so incomplete or slanted

that it was inadequate for making management decisions.

On Yucca Mountain specifically, he said:

It has been a nightmare for me to try and unravel the background sufficient to make some decisions.

It's been very confusing, and each day is revealed to me some new technical information.

The time is right to bring order and scientific credibility to a process that has gone far astray. We can save U.S. citizens billions of dollars, and effectively send to the public a message that it is no longer a time of business as usual at the Department of Energy. Unfortunately, in approving the restrictions in this bill, the Senate is sending the opposite message.

This bill contains many programs I support. Atomic energy defense programs, including the Nevada test site, are funded at $9.66 billion; $2.22 billion fund energy supply research and development; $1.66 billion fund defense waste clean up and environmental restoration. For water projects the Corps of Engineers receives $3.15 billion and the Bureau of Reclamation $977 million. I could not object to these national priorities being acted on as expeditiously as possible.

However, the bill's unfairness to Nevada in the Radioactive Waste Program is bad policy and personally repugnant to me both as a citizen and as a legislator.

SUPERCONDUCTING SUPER COLLIDER

Mr. BENTSEN. Mr. President, the superconducting super collider will be the largest, most advanced scientific instrument ever built and the biggest industrial project the State of Texas has ever seen. The SSC will put the United States on the cutting edge of technological advances gained from increased knowledge of the basic forces in the universe. The project will not only create a large number of jobs in Texas but will attract the world's best scientists to work on expanding the frontiers of human knowledge and understanding.

Our country must make investments today, particularly in science, if we are to guarantee our future ability to compete in a world of rapidly evolving technology. I would argue that we should be increasing our R&D efforts in order to remain competitive with out international trading partners. But, some frontiers of knowledge can only be explored with complex and costly equipment and teams of skilled scientists.

I am acutely aware of the need to reduce the Federal deficit and restrain expenditures. But, just as we make room in the budget for critical national defense programs and for meeting basic human needs, we also must provide for basic research to secure American leadership in science and technology. Such leadership is essential for our economic growth, our industrial competitiveness, and our national security. The SSC is a key element in a comprehensive program for scientific excellence.

For these reasons, I am especially proud of the bipartisan effort that went into securing congressional approval of the $225 million which will allow construction of the SSC to begin this year, and I will be looking forward to the groundbreaking ceremony during the coming year. I am especially grateful for Senator JOHNSTON's leadership and support on this issue as chairman of the Energy and Water Development Appropriations Subcommittee.

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

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

Mr. JOHNSTON. Mr. President, the unanimous-consent agreement does not require a rollcall vote; am I correct?

The PRESIDING OFFICER. The unanimous-consent agreement does not call for a rollcall vote; that is correct.

Mr. JOHNSTON. Mr. President, I think Senators throught we would have a rollcall vote because one had been orally requested, but the oral request has now been removed. So it will not be necessary to have a rollcall vote.

So, Mr. President, I ask unanimous consent that it be in order to consider the matter prior to the hour of 10:25.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question is on agreeing to the conference report to H.R. 2696.

The conference report was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

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

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

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1990

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 3015) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1990, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Byrd Amendment No. 727 (to committee amendment beginning on page 5, line 22), to provide additional funds for drug programs.

(2) Lautenberg Amendment No. 728 (to committee amendment beginning on page 71, line 6), to permanently ban cigarette smoking on domestic airline flights.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the cloture motion, which the clerk will report.

The assistant legislative clerk read as follow:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon second excepted Committee amendment on page 71, on line 6 to line 12, pertaining to smoking or airplanes.

George J. Mitchell, Patrick Leahy, Kent Conrad, Brock Adams, Paul Sarbanes, Bob Kerrey, J.J. Exon, Bob Graham, Frank Lautenberg, Tom Daschle, Dale Bumpers, Don Riegle, Harry Reid, Paul Simon, Max Baucus, Barbara A. Mikulski.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the second excepted committee amendment, on page 71, on lines 6 to 12, pertaining to smoking on airlines, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Vermont [Mr. LEAHY] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. LOTT] is necessarily absent.

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

The result was announced—yeas 77, nays 21, as follows:

[Rollcall Vote No. 176 Leg.]

YEAS—77

Adams	Durenberger	Mikulski
Armstrong	Exon	Mitchell
Baucus	Garn	Moynihan
Bentsen	Glenn	Murkowski
Biden	Gore	Nickles
Bingaman	Gorton	Nunn
Boren	Graham	Packwood
Boschwitz	Harkin	Pell
Bradley	Hatch	Pressler
Bryan	Hatfield	Pryor
Bumpers	Heinz	Reid
Burdick	Humphrey	Riegle
Chafee	Jeffords	Robb
Coats	Kassebaum	Rockefeller
Cochran	Kennedy	Roth
Cohen	Kerrey	Rudman
Conrad	Kerry	Sarbanes
Cranston	Kohl	Shelby
D'Amato	Lautenberg	Simon
Danforth	Levin	Simpson
Daschle	Lieberman	Specter
DeConcini	Lugar	Stevens
Dixon	Mack	Thurmond
Dodd	Matsunaga	Wilson
Dole	McCain	Wirth
Domenici	Metzenbaum	

NAYS—21

Bond	Grassley	McClure
Breaux	Heflin	McConnell
Burns	Helms	Sanford
Byrd	Hollings	Sasser
Ford	Inouye	Symms
Fowler	Johnston	Wallop
Gramm	Kasten	Warner

NOT VOTING—2

Leahy	Lott

The PRESIDING OFFICER. On this vote, the yeas are 77, the nays are 21. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I understand that the pending second-degree amendment must fall because it does not satisfy the technical germaneness rules under cloture.

I ask the Parliamentarian whether that is so or not.

The PRESIDING OFFICER. The Senator from New Jersey is correct. The amendment is nongermane and, therefore, it does fall.

AMENDMENT NO. 739

(Purpose: To amend the committee amendment on smoking on airplanes)

Mr. LAUTENBERG. Mr. President, I call up amendment No. 739 and ask that it be read, please.

The PRESIDING OFFICER (Mr. DIXON). The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 739.

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

Mr. HELMS. I do not want to object. Let him read the amendment.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk read as follows:

In the pending committee amendment on page 71:

Strike all after the word 'deleting' and insert the following: "in 49 U.S.C. App. 1374(d)(1)(A), all after the words 'any scheduled airline flight' and inserting in lieu thereof, 'segment, commencing 95 days after the date of enactment of this Act, in air transportation or intrastate air transportation, which is between any two points in the United States, and' ".

Mr. LAUTENBERG. Mr. President, I have called up a second-degree amendment to the pending Committee amendment upon which cloture was invoked. It simply delays the effective date by 5 days.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LAUTENBERG. Am I correct that the pending business is now the committee amendment on page 71 and the second-degree amendment which I called up?

The PRESIDING OFFICER. The Senator is correct.

Mr. LAUTENBERG. Also, Mr. President, a further inquiry: It is, I think, clear that both amendments are legislative in nature. But is it not true that were a point of order made under rule XVI that the amendments were legislation on an appropriations bill, the defense of germaneness would be available to this Senator because the pending amendments meet the threshold test for germaneness under rule XVI?

The PRESIDING OFFICER. The germaneness defense would be available and the Senate would decide the issue.

Mr. LAUTENBERG. Mr. President, a further inquiry: The basis for finding that a germaneness defense lies in this: the House bill contains a legislative provision to which the pending amendments could be conceivably germane. Is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. LAUTENBERG. I thank the Chair.

Mr. President, as my colleagues have just heard the pending amendment, the amendment that has been debated here over the last 2 days, does meet the threshold test for germaneness.

Now I make this point for my colleagues to make it clear that the pending committee amendment, in accordance with the Senate rules, does have a place on this bill and that the Senate has a right to act on it as part of this bill.

This is important because the House of Representatives, where appropriation bills originate, often include legislative provisions on its appropriation measures.

When such items are included on the House bill, it is important that the Senate be able to respond to those provisions.

Clearly, the authorizing committees provide the usual means of enacting legislative provisions.

I sit on an important authorizing committee, the Committee on Environment and Public Works. I respect the rights and the duties of the authorizing committees to do their work.

But, Mr. President, there are times when our colleagues in the House decide, in accordance with the rules and procedures of that body, to include legislative provisions on appropriations bills.

For that reason, the Senate has determined time and time again that the Senate can include legislative provisions germane to underlying House provisions.

It happens all the time. It is part of the process. And that is the kind of case that we have before us.

But, Mr. President, in this case, with the amendment now pending before the Senate, the Senator from South Carolina has indicated that he may raise a point of order that is not often made. In that case, he would not be objecting that this is legislation on an appropriations bill under rule XVI. If he did that, there would be, as we described, the defense of germaneness.

Instead, he has indicated that he will make a point of order under rule XV, paragraph 5. That rule says that a committee amendment cannot contain significant matter outside the jurisdiction of the committee proposing it.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LAUTENBERG. If a point of order is made under rule XV, paragraph 5, against this amendment, and if it were sustained, then once committee amendments are dispensed with and the bill is open to amendment from the floor, the identical amendment could be offered from the floor, and then it would not be subject to a point of order under rule XV.

Is that correct?

The PRESIDING OFFICER. The Senator from New Jersey is correct.

Mr. LAUTENBERG. Further, if that amendment were offered, and an objection were heard that it was legislation on an appropriations bill, the amendment would then meet the threshold test of germaneness.

Is that not so?

The PRESIDING OFFICER. The Senator is correct.

Mr. LAUTENBERG. So I would tell my colleagues what that means is that those supporting a point of order under rule XV are saying that an indi-

vidual Senator, acting from the floor, could offer an amendment to address the underlying House provision, which is clearly legislative. On the other hand, the Appropriations Committee, which holds hearings, which deliberates in markup, acting upon the collective wisdom of its members, cannot.

Mr. President, I submit that this does not make sense. Yes, in general, rule XV promotes an important policy: The protection of committee jurisdiction. I do not quarrel with that. But in the special case we have here, it does not make any sense. When the House has chosen to include language on an appropriations bill and when the Senate committee proposes a committee amendment to which a germaneness defense would apply, it makes no sense to give a single Senator acting from the floor greater power than the committee charged with reporting the bill.

I want to let my colleagues know, and I want to be very clear, that if the Chair rules in favor of the point of order, I intend to appeal that ruling and put the matter before the Senate.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LAUTENBERG. Such an appeal would not, I assume, be debatable under cloture?

The PRESIDING OFFICER. The Senator from New Jersey is correct.

Mr. LAUTENBERG. So I am taking the time of the Senate now to say why it should vote in support of such an appeal.

I would note that the distinguished Senator from South Carolina is not only the chairman of the Commerce Committee, an important committee, a commitee which he heads with distinction, but he also chairs the Subcommittee on Commerce, Justice, State, and the Judiciary of the Appropriations Committee. I am pleased and honored to serve on that subcommittee with him.

That subcommittee's bill includes important provisions, legislative provisions, within the jursidiction of other committees like the Small Business Committee and the Judiciary Committee.

I cannot imagine that those provisions were included to end-run an authorizing committee. I cannot say whether they would be found germane to House provisions or not, but I know that they would be subject to a rule XV point of order.

The issue is not about defending jurisdiction. It is about whether we are going to defend the rights of nonsmokers on airplanes.

Those who would support the point of order have not won the debate on the substance of the issue. The vote on cloture, 77 to 21, shows an overwhelming support for a smoking ban on airplanes. So the opponents would chose instead procedural red tape.

The Senate should be clear on the issue that will soon be before us when it is asked to vote on a ruling of the Chair under rule XV. The Senate has long accepted germane amendments to House legislation on an appropriation bill, and that is all I ask it to do now. The issue is very simple. It is: Are we going to ban smoking in airplanes or do we wnat to stall? Do we want to force those who want to fly smoke free to wait for the air to clear or do we act now? Is it time to say we finally had enough talk and it is time to vote on the substance of the issue?

Mr. President, the committee system is safe. The health of the flying public is not.

When I ask the Senate to appeal the ruling of the Chair I will ask the Senate, "Are you ready to ban smoking on domestic airline flights, or do you want to spend more time for talk and delay?

The Senate has already spoken very clearly on this issue in the vote we just concluded. We ought not to waste any more time. If and when a point of order is made, I say again, I will appeal the ruling of the Chair if the Chair sustains the point of order. I hope that my colleagues will support the smoking ban issue and vote with me. I yield the floor.

Mr. DANFORTH. Mr. President, I support the substance of the amendment that has been offered by the distinguished chairman of the Transportation Appropriation Subcommittee.

However, I am the ranking member of the Committee on Commerce, Science, and Transportation. It is the Commerce Committee that is the committee of jurisdiction. The chairman of the Commerce Committee, Senator HOLLINGS, has raised a point of order. He has raised the point of order to urge the Senate to follow its procedures.

The chairman of the Commerce Committee has given his assurances to the Senate that this issue will be dealt with in a timely manner. He has asked for an opportunity to hold hearings. He has asked for an opportunity to examine the results of the Department of Transportation's study on this issue ordered by the Congress at the time of passage of the original 2-hour airline smoking ban. On the basis of jurisdiction, I support my chairman in his request.

Mr. KOHL. Mr. President, I support the principle and intent of rule XV which is designed to protect the jurisdiction of the Senate's committees. In this particular case, on the merits, I believe the ruling of the Chair is correct: the amendment before us does infringe on the jurisdiction of the Commerce Committee.

Despite that fact, in this particular case, I intend to vote to overturn the ruling of the Chair. I do so for two reasons.

First, as the distinguished Senator from New Jersey indicated, he could—under the rules—get the same issue before the Senate, using a different procedural route. It would, however, take an additional 2 or 3 days before we returned to the same place we are now. I see no reason to spend the time getting back to where we are—especially since we have so much work to do before the beginning of the fiscal year on October 1 and the Gramm-Rudman-Hollings sequester deadline of October 15.

Second, and more importantly, I think the intent of rule XV was to prevent raids on committee jurisdiction within the Senate. I certainly support that goal. But we also need to understand that when the House of Representatives initiates legislation on an appropriation bill, the Senate needs to respond—otherwise we would be giving the House the power to initiate action without the Senate, through the Appropriations Committee, being able to respond. If we sustained the ruling of the Chair we would, in effect, be restricting our ability to respond to the House since that response would most probably be initiated by the Appropriations Committee rather than the authorizing committee of jurisdiction. Accordingly, when the Senate is responding to legislation initiated by the House in an appropriation bill, the motive of rule XV—protecting committee jurisdiction—has to be balanced against the greater interest of protecting the right of the Senate to respond to the action of the House.

I simply want to make it clear for the record that my vote in this case is not a vote to overturn rule XV or weaken the committee system. It is simply a recognition of the fact that we face some particular circumstances in this case. So, while I would be inclined, in other situations, to support efforts to enforce rule XV, given the two arguments I have made, I do not believe that it ought to apply in this situation.

Mr. HOLLINGS. Mr. President, our distinguished colleague from New Jersey, the chairman and manager of the bill, has prevailed. He does not want debate, so he calls for cloture; he says we have heard enough debate. And then before I could even talk he started debating.

So I intend momentarily to make the point of order, as I gave the Senate notice last evening. When I make that point of order, I hope no one comes down here and says let us have consent to argue and start debating about it. Because my point of order is strictly in defense of the rules. My point of order is to preserve the process and order of this body. It is

not a question, here, of smoking or not smoking on airlines.

And, incidentally, if the Senator and his staff research our subcommittee report on this matter of legislation on an appropriation bill, let me state up front that I put that provision on at the request of the chairman of the relevant authorizing committee. And if a point of order is made about it, I hope it is sustained that we do not legislate. But when I get a request from a chairman, I try to respond properly, particularly to the authorizing committees, because that is what the rules and the procedures are carefully outlined for, in order to get due process in this Senate.

The truth of the matter is the process has been corrupted by the politics. We have degenerated into government by political poll. What a contrast to the Founding Father's original conception of the Senate. It was George Washington who said to Thomas Jefferson "We pour legislation into the Senatorial saucer to cool it." Washington was drinking tea with his guests and, of course, his point was that the U.S. Senate's responsibility was to calm the heat and passion of legislation that may occur from time to time in the popularly elected body, the House of Representatives. Similarly, at the Constitutional Convention, James Madison said that the Senate should serve as a "necessary fence."

Yet I must observe, with great regret, that far from serving as a necessary fence, we have become a necessary farce. The polls have taken over. We cannot wait patiently on the processes and the procedures. Rather than act with all deliberate speed, we act with all deliberate panic.

The Senator from New Jersey has shown a preference for legislative ambush rather than government by the time-honored committee process. And he is hardly alone. The pattern is well established. We leave in August to attend to our duties in our home States and, without hearings or consultations or correspondence, they line up the votes.

And when we come back, bam, bam, bam, you have a subcommittee not just legislating but taking over your particular jurisdiction. That is exactly why we have both the legislating rule XVI and the jurisdictional rule XV. Yet the votes are lined up, and Senators sit there with a box of proxies and no one is listening.

I say the Senate has become a farce because again and again we subvert the traditional processes for reasons of political expediency. Gramm-Rudman-Hollings—worked for 2 years, 1986 and 1987. But when we got to the 1988 summit agreement with President Reagan, we threw all responsibility to the wind, fashioned a fraud, whereby this present fiscal year the deficit is supposed to be $136 billion, but instead will come in at $161 billion. And, by the way, we have agreed to just hide $14 billion off budget for the S&L bailout. The U.S. Senate said put it off budget, just issue bonds. The House of Representatives responsibly said let us keep it on budget. But the intemperate Senate embraced the gimmick of off-budget. We no longer serve to cool the passions. Instead, we stake the passions, we are a superconductor transmitting the passions of the moment into instant legislation.

It was Winston Churchill who said, "Nothing is more dangerous than to live in the temperamental atmosphere of a Gallup Poll, constantly taking one's temperature or feeling one's pulse." He said, "The only safe course, the only duty is to try to do what is right."

And that is my advice this morning, that we do what is right. Are we going to be a body of ambush and sleight of hand, or are we going to honor the process and make sure that this particular issue is properly considered?

I am amazed that some in leadership positions have taken the position that we should forget about the committees, forget about the process.

Let me address this particular issue so everyone can get in step and know exactly what we are talking about. I do so knowing full well that this is a fixed jury. The votes are there. Indeed, I can tell you right now that my colleague, the distinguished Senator from North Carolina, was criticized yesterday on the floor as responsible for the delay. It is the Senator from New Jersey who is responsible for this delay. He is the one who put this provision in, not the Senator from North Carolina.

That is why we got into the extended debate and that is why they voted cloture.

As early as the 98th Congress, legislation introduced by Senator INOUYE was adopted and signed by President Reagan, and it called on the Transportation Department to solicit the National Academy of Sciences for a study on airline cabin air quality.

Mr. President, not only did they come along in 1986, 2 years later when that study was completed, but they submitted that report to the committee's Aviation Subcommittee, of which our distinguished colleague from Kentucky is the chairman at this particular time.

We held hearings back in the 99th Congress, and at that time, after those hearings, they found that the evidence was incomplete and equivocal. The Department of Transportation asked for more research before it could comment on the issue of banning smoking aboard commercial airlines. And who do you think joined in requesting that additional Department of Transportation study? The Senator from New Jersey. Indeed, he provided the taxpayer money.

He said: "I am anxious about it, too." And he wrote a letter on October 22, 1987, and said:

DEAR MR. SECRETARY: This responds to former Secretary Dole's request of September 25, 1987, to reprogram $450,000 within the Transportation, Planning, Research, and Development account "for the collection and analysis of data in support of a possible rulemaking on airline cabin tobacco smoking." As described in your letter, the proposed analysis would be conducted in two phases. The first would seek to ascertain the impact of tobacco smoking on cabin air quality under varying flight and cabin ventilation conditions. The second would assess the implications for the health of passengers and crew of the observed contaminant levels.

The National Academy of Sciences' recommendation that smoking be prohibited on all domestic commercial flights, of course, is based on its comprehensive review of extant research on airliner cabin air quality as required by Public Law 98-496. Further specification of the harmful effects of passive smoking in the airliner cabin environment could be useful in devising a well defined approach to the implementation of the Academy's recommendation, as your letter suggests. The precise direction of the proposed study, though, is unclear from Secretary Dole's letter. Surely there can be no doubt that smoking on airlines significantly diminishes cabin air quality and poses a risk to the health of those exposed to it. True, the Academy's Committee on Airliner Cabin Air Quality concluded that further research is required to determine the exact magnitude of the health risks involved. But this Committee had no doubts that existing evidence on the effects of passive smoking warranted a ban on smoking in airliner cabins.

Therefore, the Committee will not object to the requested reprogramming subject to assurance that the proposed study will in fact meet the tests of scientific objectivity and will address the lacunae in health effects research identified in the Academy's study. Before proceeding, the Department should provide for the Committee's review a plan of study endorsed by the Academy that identifies the objectives, scope, and methodology of the data collection and analysis. This plan should include a schedule for the timely completion of the research and the promulgation of a final rule. The Committee expects that the results of the study will be available for review as soon as possible consistent with the requirements of scientific procedure. In the meantime, we wish to be kept apprised of the progress of the research and of any problems or delays that may be encountered.

Sincerely yours,

FRANK R. LAUTENBERG,
Chairman,
Senate Appropriations Subcommittee on Transportation and Related Agencies.

Mr. President, my distinguished colleague not only wrote the letter approving the follow-on study, but he provided taxpayer money for the study that is going on now, this minute. And he also said, "Before proceeding, I want to make sure this is a deliberate study and not a hasty one."

We thought, frankly, that the study was a little too deliberate. Who is the

"we"? This Senator, from South Carolina; the Senator from Wisconsin [Mr. KASTEN], ranking member of our Consumer Subcommittee; the Senator from New York [Mr. D'AMATO]; the Senator from Louisiana [Mr. BREAUX]; the Senator from Tennessee [Mr. SASSER]; and others.

We wrote the Secretary on May 27 and said:

DEAR SECRETARY BURNLEY: We would like to express our thanks to the Department of Transportation for expanding its study on airline cabin air quality to identify any and all contaminants that may be present in the airline cabin environment. Your study should enhance the ability of all concerned to reach knowledgeable and well-informed decisions on these issues in the future.

However, we are concerned the study will not be completed until May or June 1990 at the earliest; and, even then, there is no provision for a report to be made on the findings into a rulemaking procedure, if required. The provisions of recently enacted legislation to ban smoking on flights of two hours or less for two years will expire in April 1990. At that time Congress will consider whether to extend these provisions, modify them, or let them expire.

We believe it is imperative that results of your study be available, if possible, to the Congress several months prior to the scheduled expiration of the ban so that further debate on the airline cabin air quality issue may be undertaken in a timely manner. We understand that individuals experienced in this kind of study feel the study could be compressed by at least five months without diminishing its scope or quality. Therefore, enclosed for your consideration is what would appear to be a more reasonable study completion schedule.

The results of your study will affect the flying public for many years to come. If the study timing can be reduced, and a report issued upon completion of Phase II, Congress can conduct its debate based upon the greatest possible body of information.

Thank you for your consideration, and we look forward to your response.

As I said, several Senators signed that particular letter.

The point, Mr. President? We asked that the Department accelerate the study by at least 5 months so we could have deliberate consideration of the report before the expiration of the ban itself in April 1990. Then, Mr. President, the Secretary wrote back in June of 1988, to Secretary Burnley and he said this:

Thank you for your letter regarding the Department's planned study of airliner cabin air quality. I share your concern that the study be completed in time to provide Congress with the best possible information on this issue, prior to the expiration of the current statutory ban on smoking aboard airliners. We are revising the program schedule.

As I am sure you are aware, the study schedule was lengthened in order to comply with a Congressional request that we also measure and ascertain the health risk from possible pollutants beyond those attributable to smoking. Because of the innovative nature of the work being proposed and the need to ensure the scientific validity of the study, we believe it is possible to make only slight cuts in the time allowed for executing the substantive aspects of the study. On the other hand, we estimate that we can accelerate the acquisition cycle and reduce somewhat the time necessary to award the procurement. Thus, the overall schedule has been trimmed to reflect a minor contraction in the study's duration and a decrease in the times allotted for solicitation and award. Under this new schedule, we would expect to complete the study in 21 months. This is subject, of course, to the offerors' acceptance of these time constraints as consistent with our desire for a quality product.

Having just received approval of our project plan by the House and Senate Transportation Appropriations Subcommittees, we are initiating the procurement process. Under our accelerated schedule, we anticipate that the final report of the study would be due March 1, 1990, or about 7 weeks prior to the expiration of the smoking ban. It is also worth noting that the report on contaminant levels will be available by October of 1989.

Enclosed is our new program schedule for your information.

And the Secretary includes that particular schedule.

It is important to note that a report on contaminant levels under the contract will be available when? Next month. Here is a gentleman who knows this, yet who is putting these preemptive provisions on the bill, who cannot wait. He says we have to pass the law now. Earlier, he asked for the study, put the taxpayer money in for the study, programmed in the delay, and now, by gosh, he says forget about the study, override it all. Then he points at the Senator from North Carolina and the Senator from South Carolina saying we are delaying. Why give the money for the study in the first place? He knew we were not even going to get the contaminant level study until next month.

Then, Mr. President, we have a letter in December from the Assistant Secretary for Policy and International Affairs to our distinguished colleague from New Jersey, the chairman of the Subcommittee on Transportation, dated December 30, 1988:

DEAR MR. CHAIRMAN: Knowing of your committee's continuing strong interest in our proposed study of airliner cabin air quality, I am pleased to advise you that the Department awarded a contract today to Geomet Technologies, Inc., of Germantown, Maryland, for execution of the study. The contract requires Geomet to collect data on the pollutants and contaminants found in airliner cabins, to assess the health risk they present to airliner occupants, and to analyze mitigation strategies. The risk assessment and mitigation portions of the contract will be subcontracted to Versar, Inc., of Springfield, Virginia, Geomet's parent company. Geomet was selected as best from among six offerors.

We greatly appreciate the constructive suggestions which your committee provided on the study plan an the Request for Proposal (RFP), which became the basis for this procurement. We expect to be able to forward to you the results of the study and our own recommendations early in 1990.

Yes, the Senator put in a bill and wrote a letter requesting a hearing. We also had copies of the correspondence to the distinguished chairman of the Transportation Committee and to this Senator as the chairman of Commerce, Space Science, and Transportation.

Right to the point, we have been working. We would not schedule that hearing before completion of the follow-on study. We would have been accused of being premature. So why provide a half million bucks of the taxpayers' money, order up a thorough study so no doubts will remain, delay action, and then come here piggybacking amendments onto an appropriations bill that lacks jurisdiction? And why point to the responsible authorizing committee as being irresponsible, as causing delays, and then that long explanation of rules about legislating on appropriations? That is not my point.

I make my point under rule XXV, the Committee of Commerce, Space Science, and Transportation. The amendment to permanently ban smoking relates to the regulations of civil aviation and falls directly under jurisdiction of the Committee on Commerce, Science, and Transportation.

Mr. President, this is a matter of extreme importance. If you would look at rule XV, paragraph 5. It says:

It shall not be in order to consider any proposed committee amendment other than a technical, clerical or conforming amendment which contains any significant matter not within the jurisdiction of the committee proposing such amendment.

So therein you see, Mr. President, it is a significant matter. This is the one thing my distinguished colleague from New Jersey and I can agree on: It is significant. Most assuredly, he would have to agree it is within the jurisdiction of the authorizing Committee on Transportation dealing with civil aviation.

I certainly have the highest regard for Senator LAUTENBERG of New Jersey. He has done an outstanding job and continues to do an outstanding job. He is my kind of Senator.

Had I known of the Senator's plan to push this amendment in the bill, I would have told him, "Wait a minute, we are not even going to get the pollutant segment of the study, which you demanded with your staff and with your money, until October, so maybe we can have a preliminary ban, just get something done this year if that is what you want to do. I will go along." I respect Senator LAUTENBERG and his interest in this matter, but nothing was really said about that.

Instead, we came back from the August recess under the gun to get all the appropriations bills out by October 1, so we would not have to resort to a continuing resolution, and here we have an ambush. The votes are there, the markup is there, and bang.

This is not simply legislating on an appropriations bill. They are also violating jurisdiction. It is the question to the Senate whether we are going to go along with this practice of policy by ambush.

I was amazed even further when the Democratic Policy Committee put out, on September 13, the day before yesterday, in its update on the Department of Transportation appropriations bill, nothing about the rules of jurisdiction applying in this matter.

I think it is important in the Senate that we respect the rules and cut out the monkeyshine. We demean and diminish the body. I have witnessed it to despair. As former chairman of the Budget Committee, for example, I almost go into a funk when I contemplate how the budget process is distorted.

Senator Muskie, Senator Bellmon, myself and others sat down and we went entirely into the various budgets. We no longer do any of that deliberate hearing and seeing and listening and learning in the authorizing committee. I told my distinguished colleague from Tennessee, Senator SASSER, our chairman, I thought he was head of the CIA. I could not find him all year. Then I looked up on TV and he was over at the White House on a Friday afternoon saying that a deal is a deal and, bam, bam, we had a budget. Nothing about hearings or anything else of the kind. What do you do? They just take the Post Office off budget or take the S&L bailout off budget. They just go right on down the list, falsifying the figures. They order the Department of Defense to advance the payday by one day to put it into the previous fiscal year. They put the S&L bailout off budget.

It is one grand charade. Then you hear these folks downtown tell us we have to get new ideas, new ideas. On the contrary, what we need is old ideals. We need to return to responsibility as a body. We need to cool the tempers and not inflame them. We need to go deliberately by the committee authorizing procedure and not let the Appropriations Subcommittee just take it all over, or much less the task forces. They do not like the committee procedure so they get a task force on this and a task force on that, and a task force on everything else. And every time you think you are going to have a hearing with deliberation, with experts in the field, then they cook up another task force. Everyone is hitting and running and identifying with pollster politics.

And that is what we are going to be voting on here. We are going to be voting, as I understand it, when we make the point under rule XV, that this is a significant matter not within the jurisdiction of the subcommittee of appropriations or the full Committee on Appropriations.

I would make the same point of order to the House matter. I would make it to this particular amendment at this time. Indeed, I am prepared to make it on my own bills. But we have to decide whether we are going to cross the Rubicon, forget about due process, and just say "sooey pig," everybody come in and put in what you want, get yourself a task force, get yourself a TV, 7 o'clock news, grin, and say, "I am concerned."

That is a sorry game. No wonder the Congress lacks integrity or character. No wonder our reputation amongst the people is so low. We are a sham and a fraud. Instead of the "necessary fence," as Madison said we were intended to be, the Senate is becoming a farce. And you can hear all the little arguments that they make up about legislating on an appropriations bill. That is not rule XV. I hope when the Chair rules that we will sustain this Chair. And incidentally, let us have no more debate now because Senator LAUTENBERG and his allies are the ones who prevailed on cloture. They are the ones who did not want debate. I voted against that.

I want the Senate to sober up. I want them to settle down. I want them to adhere to the rules and cut out this pell-mell, anything-you-think-you-can-get mentality.

I think the Lautenberg provision is totally out of order. I am confident my distinguished friend knows that. I understand his attempt because he feels very strongly on this matter. I feel equally as strong against allowing this body to be diminished day after day, and the Senators are contributing to the diminution by this kind of exercise.

Mr. President, I ask unanimous consent that the four letters to which I referred be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, October 22, 1987.

Hon. JAMES BURNLEY,
Acting Secretary, Department of Transportation, Washington, DC

DEAR MR. SECRETARY: This responds to former Secretary Dole's request of September 25, 1987, to reprogram $450,000 within the Transportation, Planning, Research, and Development account "for the collection and analysis of data in support of a possible rulemaking on airline cabin tobacco smoking." As described in your letter, the proposed analysis would be conducted in two phases. The first would seek to ascertain the impact of tobacco smoking on cabin air quality under varying flight and cabin ventilation conditions. The second would assess the implications for the health of passengers and crew of the observed contaminant levels.

The National Academy of Sciences' recommendation that smoking be prohibited on all domestic commercial flights, of course, is based on its comprehensive review of extant research on airliner cabin air quality as required by Public Law 98-496. Further specification of the harmful effects of passive smoking in the airliner cabin environment could be useful in devising a well defined approach to the implementation of the Academy's recommendation, as your letter suggests. The precise direction of the proposed study, though, is unclear from Secretary Dole's letter. Surely there can be no doubt that smoking on airlines significantly diminishes cabin air quality and poses a risk to the health of those exposed to it. True, the Academy's Committee on Airliner Cabin Air Quality concluded that further research is required to determine the exact magnitude of the health risks involved. But the Committee had no doubts that existing evidence on the effects of passive smoking warranted a ban on smoking in airliner cabins.

Therefore, the Committee will not object to the requested reprogramming subject to assurance that the proposed study will in fact meet the tests of scientific objectivity and will address the lacunae in health effects research identified in the Academy's study. Before proceeding, the Department should provide for the Committee's review of plan of study endorsed by the Academy that identifies the objectives, scope, and methodology of the data collection and analysis. This plan should include a schedule for the timely completion of the research and the promulgation of a final rule. The Committee expects that the results of the study will be available for review as soon as possible consistent with the requirements of scientific procedure. In the meantime, we wish to be kept apprised of the progress of the research and of any problems or delays that may be encountered.

Sincerely yours,
FRANK R. LAUTENBERG,
Chairman, Senate Appropriations Subcommittee on Transportation and Related Agencies.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, May 27, 1988.

Hon. JAMES H. BURNLEY IV,
Secretary, Department of Transportation, Washington, DC.

DEAR SECRETARY BURNLEY: We would like to express our thanks to the Department of Transportation for expanding its study on airline cabin air quality to identify any and all contaminants that may be present in the airline cabin environment. Your study should enhance the ability of all concerned to reach knowledgeable and well-informed decisions on these issues in the future.

However, we are concerned the study will not be completed until May or June 1990 at the earliest; and, even then, there is no provision for a report to be made on the findings at that point. Rather, the Department plans to move directly into a rulemaking procedure, if required. The provisions of recently enacted legislation to ban smoking on flights of two hours or less for two years will expire in April 1990. At that time Congress will consider whether to expand these provisions, modify them, or let them expire.

We believe it is imperative that results of your study be available, if possible, to the Congress several months prior to the scheduled expiration of the ban so that further debate on the aircabin air quality issue may be undertaken in a timely manner. We understand that individuals experienced in this kind of study feel the study could be

compressed by at least five months without diminishing its scope or quality. Therefore, enclosed for your consideration is what would appear to be a more reasonable study completion schedule.

The results of your study will affect the flying public for many years to come. If the study timing can be reduced, and a report issued upon completion of Phase II, Congress can conduct its debate based upon the greatest possible body of information.

Thank you for your consideration, and we look forward to your response.

Sincerely,

Thad Cochran, Bob Kasten, Alfonse D'Amato, John Breaux, Fritz Hollings, Mitch McConnell, Jim Sasser.

THE SECRETARY OF TRANSPORTATION,
Washington, DC., June 14, 1988.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC.

DEAR FRITZ: Thank you for your letter regarding the Department's planned study of airliner cabin air quality. I share your concern that the study be completed in time to provide Congress with the best possible information on this issue, prior to the expiration of the current statutory ban on smoking aboard airlines. We are revising the program schedule.

As I am sure you are aware, the study schedule was lengthened in order to comply with a congressional request that we also measure and ascertain the health risk from possible pollutants beyond those attributable to smoking. Because of the innovative nature of the work being proposed and the need to ensure the scientific validity of the study, we believe it is possible to make only slight cuts in the time allowed for executing the substantive aspects of the study. On the other hand, we estimate that we can accelerate the acquisition cycle and reduce somewhat the time necessary to award the procurement. Thus, the overall schedule has been trimmed to reflect a minor contraction in the study's duration and a decrease in the times allotted for solicitation and award. Under this new schedule, we would expect to complete the study in 21 months. This is subject, of course, to the offerors' acceptance of these time constraints as consistent with our desire for a quality product.

Having just received approval of our project plan by the House and Senate Transportation Appropriations Subcommittees, we are initiating the procurement process. Under our accelerated schedule, we anticipate that the final report of the study would be due March 1, 1990, or about 7 weeks prior to the expiration of the smoking ban. It is also worth noting that the report on contaminant levels will be available by October 1989.

Enclosed is our new program schedule for your information.

Identical letters are being sent to Senators Thad Cochran, Robert W. Kasten, Alfonse M. D'Amato, John B. Breaux, Mitch McConnell, and James R. Sasser.

With warmest regards,
Sincerely,

JIM BURNLEY.

DOT CABIN AIR QUALITY STUDY SCHEDULE

Action	Original schedule		Revised schedule	
	End of month	Duration next activity (months)	End of month	Duration next activity (months)
Final congressional approval	0		0	
		1.5		1.0
RFP issued	1.5		1	
		2.5		2.0
Proposals due	4		3	
		3.0		3.0
Award Phase I contract	7		6	
		10		9.5
Phase I completed	17		15.5	
		1.0		0
Award Phase II	18		15.5	
		6.0		5.5
Phase II completed	24		21	

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, DC, December 30, 1988.

Hon. FRANK R. LAUTENBERG,
Chairman, Subcommittee on Transportation, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Knowing of your committee's continuing strong interest in our proposed study of airliner cabin air quality, I am pleased to advise you that the Department awarded a contract today to Geomet Technologies, Inc., of Germantown, MD, for execution of the study. The contract requires Geomet to collect data on the pollutants and contaminants found in airliner cabins, to assess the health risk they present to airliner occupants, and to analyze mitigation strategies. The risk assessment and mitigation portions of the contract will be subcontracted to Versar, Inc., of Springfield, VA, Geomet's parent company. Geomet was selected as best from among six offerors.

We greatly appreciate the constructive suggestions which your committee provided on the study plan and the Request for Proposal [RFP], which became the basis for this procurement. We expect to be able to forward to you the results of the study and our own recommendations early in 1990.

Sincerely,

GREGORY S. DOLE,
Assistant Secretary for Policy and International Affairs.

Mr. HOLLINGS. Mr. President, I make a point of order on the pending matter under rule XV that it contains significant matter not within the jurisdiction of the committee proposing such amendment.

Mr. LAUTENBERG. Mr. President, I suggest the balance of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. 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. MITCHELL. Mr. President, I understand the point of order having been made, the Senator from New Jersey being prepared to request an appeal of the ruling of the Chair once made, that the subject is not debatable at this time. Is that correct?

The PRESIDING OFFICER. That is correct. The majority leader is correct.

Mr. MITCHELL. Mr. President, this is an important matter, both the substance of the issue before the Senate, important to both sides in the debate, as well as the procedure and the possible precedential effect on the operations of the Senate. These are complex interrelated rules. This could be considered by some to be a novel circumstance.

It is a subject which arose, ironically, after debate on the same subject 2 years ago. The then majority leader, now chairman of the Appropriations Committee, Senator BYRD, whose dedication to this institution is, I believe, known and admired by all Members of the Senate, addressed the Senate at that time on the question of the procedure involved and the possible effects upon the operation of the Senate.

In view of the importance of the matter, I accordingly, Mr. President, ask unanimous consent that, in consideration of the fact that the distinguished Senator from South Carolina has had the opportunity to address the Senate and did so for approximately 35 minutes with respect to his point of view prior to making his point of order, Senator BYRD be permitted to address the Senate for 15 minutes on the subject as I have just outlined.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I tried my best to give time to Senator BYRD and Senator LAUTENBERG, and all Senators, to debate. I voted against cloture because Senator LAUTENBERG insisted on cloture and took away the time of debate. So I have to object.

The PRESIDING OFFICER. Objection heard.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The amendment reported by the committee does contain significant matter within the jurisdiction of another committee in violation of rule XV, paragraph 5. The point of order is sustained.

Mr. BYRD addressed the Chair.

Mr. LAUTENBERG. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. BYRD. Mr. President, will the distinguished Senator from South Carolina object to my having 5 minutes?

Mr. HOLLINGS. I object to having any Senator having any minute. I made that clear ahead of time before the cloture was made. I even talked to the majority leader about it. I said:

You folks are shoving cloture. He is the one who insisted on cloture.

Mr. BYRD. I did not vote for cloture.

Mr. HOLLINGS. I regret that I have objection.

Mr. BYRD. I did not vote for cloture. I voted with the Senator from South Carolina.

Mr. HOLLINGS. I then, therefore, really regret it.

Mr. BYRD. I regret it also, because this is a very important precedent that the Senate is going to be making. It is going to affect future appropriations bills. The Senator is a distinguished member of the Appropriations Committee. I would hope that we would have at least 5 minutes for someone to speak in support of the appeal. I ask unanimous consent that I may have 5 minutes.

The PRESIDING OFFICER. The Senator from West Virginia requests unanimous consent for 5 minutes to respond.

Mr. HOLLINGS. The Senator from South Carolina objects.

Mr. BYRD. Mr. President, I am sorry the Senator has objected. I urge the Senate to support the appeal to overturn the ruling of the Chair, and after that action is taken, then I will take my hour.

I suppose I can have an hour under the rule, which I am entitled to. I will take sufficient time out of it to lay down the legislative history on this, so the Parliamentarians in the future and the Senate will have some guidance as to the action the Senate will take.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate? The yeas and nays have been ordered.

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

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The bill clerk proceeded to call the roll.

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

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

The question is, Shall the decision of the Chair stand as the judgment of the Senate. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. LOTT] is necessarily absent.

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

The result was announced—yeas 34, nays, 65, as follows:

[Rollcall Vote No. 177 Leg.]

YEAS—34

Bentsen	Helms	Murkowski
Breaux	Hollings	Nickles
Bryan	Humphrey	Robb
Burns	Inouye	Rudman
Cochran	Jeffords	Sanford
Danforth	Kassebaum	Shelby
Dole	Kasten	Symms
Domenici	Kerry	Thurmond
Ford	Mack	Wallop
Gore	McCain	Warner
Gramm	McClure	
Heflin	McConnell	

NAYS—65

Adams	Durenberger	Metzenbaum
Armstrong	Exon	Mikulski
Baucus	Fowler	Mitchell
Biden	Garn	Moynihan
Bingaman	Glenn	Nunn
Bond	Gorton	Packwood
Boren	Graham	Pell
Boschwitz	Grassley	Pressler
Bradley	Harkin	Pryor
Bumpers	Hatch	Reid
Burdick	Hatfield	Riegle
Byrd	Heinz	Rockefeller
Chafee	Johnston	Roth
Coats	Kennedy	Sarbanes
Cohen	Kerrey	Sasser
Conrad	Kohl	Simon
Cranston	Lautenberg	Simpson
D'Amato	Leahy	Specter
Daschle	Levin	Stevens
DeConcini	Lieberman	Wilson
Dixon	Lugar	Wirth
Dodd	Matsunaga	

NOT VOTING—1

Lott

So, the ruling of the Chair was overruled.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the ruling of the Chair was overruled.

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

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, today, I rise in support of the ban on smoking on airline flights contained in H.R. 3015, the 1990 Transportation appropriations bill. I agreed to cosponsors S. 519 which is similar to this provision of H.R. 3015 because of the health hazards of smoke to those confined on airplanes.

Current law prohibits smoking on flights of 2 hours or less. This provision makes the prohibition permanent and extends it to all airline flights. Because of the significant health hazards to persons exposed to smoke, I support a smoke-free environment in the air.

Studies by the Environmental Protection Agency and the National Cancer Institute have indicated that nonsmokers on flights are exposed to the same levels of nicotine as are smokers. Pregnant women, individuals with respiratory problems, and newborn babies all are subjected to the hazardous aftermath of cigarette smoke.

This provision only prohibits smoking on airline flights where confinement is required and where individuals who choose to breathe clean air are unable to escape the smoke.

Some may argue that supporters of this prohibition are against the tobacco industry. I am not against the tobacco farmer who produces one of the major agricultural crops in my State. I have supported measures to expand the export potential of tobacco in foreign markets, including Korea, Thailand, and others. Selling tobacco contributes favorably to our balance of payments with other countries. The most recent figures indicate that in 1988, the United States exported about 35 to 40 percent of its domestic crop. Tobacco made a positive contribution of $3.5 billion of the United States balance of payments in 1988. Furthermore, I have opposed recent proposals to increase taxes on tobacco products.

These points have nothing to do with the issue here. I cannot in good conscience refuse to support a measure which is calculated to protect peoples' health in confined places. The bill should have little effect on farmers but great effect on airline travelers. It concerns the health of the people of our Nation.

Mr. McCONNELL. Mr. President, I wish to voice my opposition to the provision to impose an absolute ban on smoking aboard all domestic airline flights. I believe that at this point in time any measure to extend the smoking ban beyond the current restrictions is inappropriate.

Nearly 2 years ago the Senate Appropriations Committee approved an amendment to ban smoking on all scheduled domestic airplane flights of 2 hours or less. During the subsequent debate on the Senate floor it was those very proponents of the ban who suggested that following a trial period this Congress would review the ban and determine whether to continue it, amend it, or expand it. Mr. President, we have not reviewed that action taken in 1987 and changing the current law in any way is premature and does not follow due process.

I am sure that all of my colleagues agree that this is very important legislation, and because of its importance we need to be presented with all of the facts. What some are attempting to do is expand the ban on smoking on airline flights without the opportunity of holding any type of hearing to review what we have learned from the current temporary ban.

The Department of Transportation is presently conducting a comprehensive study of airline cabin air quality—including the effects, if any, of smoking aboard aircraft. Since last April, the DOT contractor team has been collecting data and taking actual measurements of both environmental tobacco smoke and a variety of other cabin air contaminants. A scientific team will then conduct a health risk assessment and analyze a range of options. Mr. President, I believe that we

should have the benefit of this study before we enact any broader measures.

It is interesting to note that when the House of Representatives spent more than 10 hours in hearings—in which experts on both sides of the issue testified—the House Committee on Public Works and Transportation rejected a total ban. Also, I remind my colleagues that when the House was faced with this issue a second time they decided to continue the current 2-hour ban. It is interesting to note that the House has spent more time on this issue and held hearings, yet they continue to suggest a different resolution from what is being pushed through the Senate.

I would also point out that this legislation does not provide for any flexibility for the airline industry. There is no provision that would allow for an airline carrier to accommodate the individuals who choose to smoke. There is no flexibility nor incentive for the industry to develop any new technology that could improve airline cabin air quality. I believe that we are moving too fast without full consideration of the facts.

It was interesting in earlier discussions this morning to note the concern over individuals' rights. We have been given the benefit of many polls that indicate the majority of people are in favor of the extension of the ban. But what about the rights of the minority. The distinguished Senator of New Jersey mentioned that smoking is not allowed in most theatres or opera houses. The difference is that if an individual does choose to smoke they may excuse themselves and have the freedom to leave the area to go outside and smoke. It is obvious to me that this same freedom of leaving the area is not afforded a passenger on an airline traveling 600 miles per hour at 30,000 feet in the air.

Mr. President, there is not much that I can add to this debate that has not already been discussed. I would like to only make three points before I yield the floor.

First, I believe we are attempting to pass legislation without the benefit of having a hearing that obtains views from both sides of the issue.

Second, there will be no flexibility nor incentive for the industry to adopt any changes in new technology that would afford all passengers a cleaner environment and allow individuals the freedom to smoke.

Finally, the rights of those in this country that chose to smoke are once again lost. The difference in this situation is those individuals have not other options but refrain from smoking for the duration of the flight. They can not excuse themselves from a restaurant table or a seat during a play. They are faced with a loss of their rights to smoke for the duration of the flight.

Because this issue is important to so many people I suggest that a hearing be held and more thought go into any final decison. Mr. President I yield the floor.

Mr. GLENN. Mr. President, as a cosponsor of legislation to ban smoking on all domestic flights, I am pleased that this proposal is included in the Transportation legislation we are considering today. I urge my colleagues to join me in opposing all challenges to expanding the current smoking ban on flights of 2 hours or less.

Study after study shows that smoking kills. It is estimated that almost 400,000 smokers die annually due to the link between cigarettes and such deadly diseases as lung cancer, emphysema, and heart disease. Another 5,000 people die from the effects of passive smoking which is a particular problem for nonsmokers in the confined space of airplanes. Experts tell us that the simple separation of smokers and nonsmokers aboard airplanes does not sufficiently diminish the nonsmokers' exposure to airborne tobacco smoke. I believe that we must protect both nonsmokers and in-flight crew from the health hazard of passive smoking. Further, polls have shown that 84 percent of all airline passengers, both smokers and nonsmokers, support the existing ban, and that two-thirds of the public support extending the ban to cover all domestic flights.

I commend my colleague from New Jersey, Mr. LAUTENBERG, for his leadership on this issue, and I am pleased to join the medical and scientific communities of this Nation in supporting a ban on smoking on all doemstic flights. I urge my colleagues to support our efforts to combat smoking—the single largest preventable cause of death in our country.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from New Jersey to the committee amendment.

The amendment (No. 739) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the committee amendment, as amended, was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, the Senate has taken an action which requires some explanation. The Senate overturned the ruling of the Chair. I voted to overturn the ruling of the Chair. I did not do that lightly. I think there should be an explanation in the RECORD, however, as to why that was done so that the Parliamentarian in the future and Senators in the future will have some legislative history that will indicate why the Senate overturned the ruling of the Chair.

My good friend, Senator HOLLINGS, did not allow me to speak 5 minutes on the appeal. He had a right to object. I do not question his right to object. But I will take a little time later in the day so that there will be some legislative history for future guidance to the Senate and to the Chair and to the Parliamentarian.

I do have a meeting in my office right now that was to begin at 12 o'clock, so I will not do that just now. But it will be done and I hope Senators will listen to my statement or read it in the RECORD.

I yield the floor.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, for the information of Senators, it is my understanding now, having discussed the matter with the managers and the principal advocates of the issue that we have just been debating and voting on, that there will be no further amendments to the Transportation appropriations bill and that the only remaining amendment is the Byrd amendment relating to drug funding.

As all Senators know, discussions are underway with a view toward reaching an agreement that would result in Senator BYRD withdrawing that amendment from this bill. We anticipate that will occur. That would clear the way for final passage of this bill, there being no further issues with respect to this bill.

But we will have to defer final passage until we resolve the issue with respect to the Byrd amendment.

That being the case, the Senate will have completed action in effect on the Transportation appropriations bill. The next measure which I had intended and still hope to bring before the Senate then was the D.C. appropriation bill.

The report on that was filed shortly after noon yesterday. Under the Senate rules, any Senator who wishes to do so may object to its being brought before the Senate until shortly after noon tomorrow.

I have discussed this with several Senators interested and involved who have specific issues that they are concerned about. I hope that we will be permitted to go forward with the D.C. appropriations bill, with the understanding that any Senator who wishes to do so obviously has the opportunity to fully explore whatever issues he or she wishes to on that bill, and discuss any amendment or offer any amendment that they wish.

Inability to move forward on the D.C. appropriations bill would present us with a situation where we have completed action, in effect, on the Transportation bill, but are unable to

move forward on a Thursday, the day we have generally set aside for devoting to work, until noon tomorrow.

If that happens, then our common interests, which I believe every single Senator shares, in completing action on all of the appropriations bills prior to the end of the fiscal year—an already difficult task—will be much more difficult and will virtually guarantee long, perhaps all night sessions next week and next weekend.

I have discussed this with the Senator from Colorado. I know he has a concern, and I want to give him an opportunity to express that concern fully. Following that, I will request consent to proceed to the D.C. appropriations bill.

I yield to the Senator from Colorado.

Mr. ARMSTRONG. Mr. President, if the Senator would yield, my concern is I have an amendment which I think needs some consultation. In fact, I can expedite the proceedings of the Senate if we consult first rather than proceed on the amendment first.

Upon reflection, however, I have no objection if the leader wishes to go to the bill and take up other amendments. In discussing it earlier, the leader did indicate to me he would be willing to withhold final action on the bill until we have had a reasonable chance to talk to everybody involved.

I am ready to offer my amendment or amendments, but my desire is to be sure that everyone who is interested in it is aware of it, and perhaps we can speed things up in that way.

So if the leader would like to proceed, I will not object to proceeding to the bill, nor do I have any desire to delay final action. But I may ask him to withhold while we consult all around on a couple of amendments that are pending.

Mr. MITCHELL. I am grateful to the Senator.

Mr. ARMSTRONG. Let me just add, the reason this somewhat unusual request on my part is occasioned is because the bill is not technically qualified under the rule, and we had been banking on the normal amount of time just to run our trap line. We will start to do that immediately, and hope to do it this afternoon. But if we are not able to do it, I might ask the leader to put off conclusion of the bill until tomorrow.

Mr. MITCHELL. I thank the Senator.

Mr. DOLE. Will the majority leader yield?

I would also indicate, we are trying to clear on this side H.R. 1502, which is the D.C. police, which I understood the majority leader might want to take up even before the D.C. appropriations bill.

We are hotlining that. I will have information for the majority leader very soon. That will just take a very brief time. We hope to be able to offer that to the majority leader, too.

Mr. MITCHELL. I think that is an excellent idea by the Republican leader.

Mr. CRANSTON. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. CRANSTON. It has been brought to my attention this morning that there is a need for a technical amendment to the transportation bill which I think would be viewed as that. It requires no additional expenditure of funds. It simply authorizes the local government to purchase a right-of-way.

If it is viewed as technical I would like to be able to bring that up before we pass the bill.

Mr. MITCHELL. I certainly have no objection, and I suggest the Senator discuss that.

Mr. CRANSTON. I will do that. I appreciate that. I will talk to the people handling the bill.

Mr. MITCHELL. Mr. President, the distinguished Senator from North Carolina has just advised me that he wants a few minutes to check something on the D.C. appropriations bill and asked me to withhold the unanimous-consent request.

If the Republican leader would remain, perhaps what I can do is get unanimous consent on the D.C. police bill now and go to that.

Mr. DOLE. Fine.

Mr. MITCHELL. And then with the understanding that in just a few moments either I or someone acting in my behalf will get consent for the D.C. appropriations bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Accordingly, Mr. President, I ask unanimous consent that the majority leader, after consultation with the minority leader, may turn to the consideration of H.R. 1502, a bill to provide for additional D.C. police officers.

I further ask unanimous consent that when the bill is considered, it be under the following time limitations: 30 minutes on the bill, including the committee substitute, to be equally divided between Senators SASSER and HEINZ or their designees; that the only other amendments to be in order are the two amendments by Senator SASSER, one a technical amendment, and, two, an amendment providing for the police corps pilot program, the time for which is to come out of Senator SASSER's bill time; no other amendments or motions are in order, except for motions to reconsider and table; 40 minutes to be under the control of Senator LEVIN for debate only, and when all time is used or yielded back, the Senate proceed to third reading, and vote on final passage without any intervening action or debate.

Mr. DOLE. We have no objection.

Mr. MITCHELL. Just one moment, Mr. President; would the Chair withhold for one moment?

Mr. President, I am advised that the managers are discussing with Senator LEVIN the possibility of an amendment by him, so I would amend this to include provision for a possible third amendment, to be a Levin amendment.

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

Mr. DOLE. Mr. President, did the Senator say a Levin amendment? That would be relevant? A relevant amendment?

Mr. MITCHELL. Yes, it would have to be.

Mr. DOLE. And it could include a second-degree, if needed?

Mr. MITCHELL. Yes. As modified to conform to my answers to the questions of the distinguished Republican leader, I renew the request.

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

Mr. MITCHELL. Mr. President, I therefore ask unanimous consent that the existing consent agreement with respect to the transportation bill be modified to preclude any further amendments on the subject of smoking and, Mr. President, I ask unanimous consent that any rollcall vote ordered between now and 5 p.m. occur not earlier than 5 p.m.

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

Without objection, both foregoing requests are agreed to.

The majority leader.

Mr. MITCHELL. Mr. President, I ask unanimous consent that after dispositioin of H.R. 1502, a bill to provide for additional D.C. police officers, that the majority leader, after consultation with the minority leader, may turn to the consideration of H.R. 3026, the D.C. appropriations bill.

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

The Senator from Kentucky.

Mr. MITCHELL. Would the Senator yield for just one moment? Just so there is no misunderstanding, I modify my request that the authority to move to the measure just addressed be for me, the majority leader, or his designee in my absence, after consultation with the distinguished Republican leader.

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

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask that the pending transportation appropriations bill be set aside, and there now be a period for morning business with Senators permitted to speak therein.

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

Mr. MITCHELL. Mr. President, I yield the floor and I thank my distinguished colleague from Kentucky for his patience and forbearance.

The PRESIDING OFFICER. The Senator from Kentucky.

COMMITTEE RESPONSIBILITIES

Mr. FORD. Mr. President, if you lose your good humor around this place you might as well go home. I am going to try my best to try to keep my humor. Hopefully it is good as long as I am in this body.

Mr. President, I had a dual interest in the last vote as it related to the overriding of the decision of the Chair. Coming from a tobacco State, trying to defend those constituents that I represent, knowing full well the outcome, it was something like—you arrive at an age when knowing that a fight you are going to lose is better than no fight at all. I hope I have not arrived to that age yet, but I suspect I am getting fairly close.

Having this dual interest, then, in tobacco, and the second part of that interest, after 15 years in the U.S. Senate, having served 15 years on the Commerce, Space, Science and Transportation Committee, I arrived at the lofty position of chairman of a subcommittee.

Some of those who have not been around here quite that long may not understand what I am saying. But eventually they will. I have worked awful hard as chairman of the Aviation Subcommittee to do some things that are appropriate for safety and at the same time be fair to all parties involved.

I have worked diligently to attempt to work out a study as it relates to cabin air on airplanes. There are some people who are violently opposed to smoking who have concerns about the quality of air in the cabin of an airplane, and they are part of the study and the reason for the study that is now underway, a scientific study, at the insistence of the Senator from New Jersey.

As we are closing in on the report, which was supported by $500,000, approximately, of taxpayers' money, we have made a decision without the report, and we made a decision without the chairman of the subcommittee having an opportunity to see it to carry out the obligations that have been given to him to bring to his colleagues of the full committee and on to the Senate.

I was very pleased to see that all of those in the well during the vote on the point of order made by the distinguished Senator from South Carolina and chairman of the Commerce, Science, and Transportation Committee, Senator HOLLINGS, that with all that pressure, there were still 34 Senators who stood up in support of the ruling of the Chair. That tells me there is some sentiment in this body for the jurisdictional position of a committee and the responsibilities that the rules give the committees.

So, Mr. President, I want to just say that there is some frustration on this Senator's part as it relates to the responsibility he has been given and accepted gladly and waited almost 15 years to receive through seniority. I came here and was indoctrinated by the leadership on how to proceed, even almost how to dress in the Chamber: Dark suits, white shirts, red tie. Do not overdress; do not be sporty. Have some etiquette in the Senate. I took that seriously. I read my rules. I presided over the State senate in Kentucky. I knew something about presiding; I knew something about the rules and appreciated those. We had a precedent here that was in addition to what we had when I presided over the senate in Kentucky. I know we will get an hour's report on why and the reasons for support of overturning the ruling of the Chair later on today, and I respect the most learned Senator we have as it relates to the rules, but there is some personal feeling tempered justice with mercy, if nothing else, as it relates to an individual's hard work up to the point where you are ready to move, or close to it, and then have the rug almost pulled out from under you. There is something wrong about that, Mr. President.

I am talking for myself now and other Senators may talk for themselves. I have a tremendous staff who has worked hard trying to do a good job. I think it takes the wind out of the sails of the staff to have them work months and months and months and then, all of a sudden, from another unrelated committee an amendment is placed on a bill and that work is for nought. So I not only speak for myself now, Mr. President, but I speak for those young people I work with who have dedicated long hours, day and night, weekends, giving up their Saturdays and Sundays in an attempt to do a good job. That is the way it is, they say. If you get 51 votes here, you can do most anything. If you get 60 votes, you can get cloture. If you get 67 votes, you can override a veto. We lacked one vote yesterday. It is disappointing to 66 of us who voted to override. We just needed one more. Like I heard a Presidential candidate say, he can touch it with his fingernails. We can touch a veto override with our fingernails. It is disappointing. Life, I guess, is full of disappointments.

I am of the opinion, Mr. President, that if this continues, the hard work we did several years ago day after day to reduce, reform, and refine our committee system, to reduce it from a large number down to just a couple dozen, to be sure that they had the proper nomenclature under those committees as to the jurisdiction, we made very clear, I think, at that time. I think Senator Adlai Stevenson, Senator Stevenson was the lead point man when we changed all that. We worked hard. I thought he left a pretty good legacy here just by reorganizing the committee structure of the Senate.

So, Mr. President, I am disappointed twice today. Once the disappointment was not too much of a shock because I expected it. I can count votes. It is easier sometimes than others, and so the vote, as it related to smoking on airlines, was a foregone conclusion, but I think there was a principle involved.

They say, oh, well, the language is in the House bill and we are perfectly within our rights to do that. Sure; I am sure they will find somewhere in there that they can make a judgment. Judgments are opinions. Everybody has an opinion. You have to have 51 votes to sustain your opinion or judgment. Sometimes it is easier than others.

So if I can do nothing for myself, I hope I can do something for others to at least give them a warning that all their work and their labor for months, staff's work and labor for months, wake up one day and it is on another bill in another committee and what you have been working toward is over. Spending taxpayers' money in order to have a scientific judgment made—I doubt seriously if there are many in this Chamber who have the scientific ability to make the studies that this Chamber asks for. I think it was a waste of taxpayer's money, or will be, because of what has happened.

And so I alert the younger Senators who have come on since I have. Maybe they understand it. I think it is time that if you give responsibility, it ought to be there. I have seen this Chamber work when jurisdictional problem and debate was on this floor and every chairman stood up for the chairman that was making the point because they did not want it to happen to them when the time came for their point of order.

I do not know who voted how except my vote on that last vote, but I will guarantee chairmen did not stick with chairmen on that last vote or ranking Members did not stick with chairmen on that last vote. And so we are doing it unto ourselves.

I hope there will be time to reflect on that vote and that judgment. Maybe it is time we give consideration to changing the committee system. Maybe it is time we make the Senate as a whole the Appropriations Committee. That would not be farfetched, because the Senate now is being the Appropriations Committee. So why not just make the Senate as a whole

the Appropriations Committee, maybe have the Senate as a whole as the Finance Committee, maybe the Senate as a whole another committee and we just not worry about the committee system at all.

Maybe that will be good because it will limit all the trivial things that we make into large things and we would not be concerned with other things.

Mr. President, I apologize for taking so much time, but I do think it is time we rethink this. Maybe the other side will be the chairmen and they will have the same consideration. But we are now chairmen of committees and jurisdiction is being taken away, in my opinion.

Of course, I am sure I am going to be told I am wrong because the Senate said I was wrong. But at least there are 34 of us who stood tall, in my opinion, and defended the committee system and the jurisdiction, assigning of rules.

There is not much you can do in the Commerce Committee as it relates to appropriating funds; there is not much you can do in the Energy Committee about appropriating funds. All you did do is authorize them.

There was a pretty fast meeting in the subcommittee on Department of Transportation and related agencies appropriations bill for 1990. The only discussion that I know of—and there may have been more—was the point of order on jurisdiction as it related to the ban on smoking. Everything else was all cut and dried. I am not used to that. Somehow or another we just cannot agree that easy.

So, Mr. President, I am going to be looking at possibilities, and as chairman of the Rules Committee I think I may have some time to look at the procedures of the Senate. I whetted my appetite a little today as it relates to that and so we will see what we see.

I thank the Chair for its patience and yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

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

I have listened with great interest to the comments by my friend from Kentucky. I have enjoyed working with the Senator on this, and he and I both knew what the ultimate result would be. There was a principle to be defended, but I say to the Senator I think I received an engraved invitation from Senator LAUTENBERG and 64 other Senators.

I used to be pretty active in the business of working on appropriations bills. I have introduced, and succeeded with many of them, a number of amendments on appropriations bills, a couple times this year. But the invitation reads: Senator LAUTENBERG and 64 other Senators cordially invite Senator HELMS to proceed with legislation on appropriations bills.

That was the message. But that was not the important message to me. The important message was that Senators stood in this well and voted to reverse the Parliamentatian who had given an obviously correct ruling on the amendment.

I do not do that. I do not think Senators can go back through the record and find any instance where I have voted to overrule the Chair. There may be one somewhere, but I do not recall. That was the mistake, and it was a mistake that was not necessary to be made because the orderly procedures of the Senate were working, and the Senate would have acted on the issue Senator LAUTENBERG raised in the Appropriations Committee with his legislation on an appropriations bill, which is clearly against the rules of the Senate.

So I do not believe this was the Senate's finest hour today, but we will move on and comity will be restored. I regret some of the rather disappointing exchanges, but the Senate is bigger than that. The Senate will survive.

I think it was Winston Churchill who described the United States system as "the worst system on earth except all the rest."

So we will proceed, but I hope that we will not frequently overrule the Chair when the Chair is right with respect to the rules of the Senate. If we go down that road, then the Senate becomes meaningless in terms of what the Founding Fathers intended it to be.

Mr. President, I thank the Chair for recognizing me, and I yield the floor. 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. BOSCHWITZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CAPITAL GAINS

Mr. BOSCHWITZ. Mr. President, during this session of morning business, I would like to address the question of changes that are being proposed in capital gains rates which are now being argued and debated, particularly in the House; and it seems that there will be some changes made in the way capital gains are subjected to taxation. I want to register my approval of those changes. Hopefully the rates on capital gains will come down, and this will have many positive effects on the economy. I will summarize that in a different speech at a different time.

I would like to, however, address the question of whether or not these gains inure to the rich. As I read the comments that are made by many people in many editorials, they say that capital gains by and large inure to the rich, and is that true? I must tell you that I am not sure, but let me tell you about some of the exemptions from capital gains taxation.

Some of the exemptions from capital gains taxation, really perhaps would swing the answer to the question: Do capital gains inure principally to the rich? It would really move it in that direction. For instance, capital gains on pension funds are exempted from taxation, and a huge amount, the largest amount of the funds that people have in their pensions and an enormous percentage of the savings of this country are locked up in pension funds. Yet, the capital gains that benefit those pension funds are exempted from taxation, so that they do not count in making the analysis of whether or not the capital gains benefits one sector of society or another.

Second, the largest asset that most Americans have is their home. In the event that they sell their home and buy a new home and that new home costs more than they have sold the old home for, that, too, is exempted from taxation. So in transaction that involve the largest assets of most Americans, their homes, most of that is exempted from taxation as well.

Indeed, if you are over 55, in the event that you sell a home and do not reinvest it at all, as many people do, then they have the largest gain in their lifetime; $125,000 of that gain is exempted from taxation. So when you take away all these gains and do not count them in the pot, perhaps it is true that the remainder of the gains do inure in the majority to the rich. I do not know if that is the case, but perhaps they do. It may well be that after you exempt the largest number of capital gains from the largest assets held by the American people, those that remain that are taxed as capital gains, the gains of investors, may indeed inure to the rich.

Who are the rich? Well, let us take a guy who is a farmer and has 300 or 400 acres and has farmed them for 25 or 30 years—not an uncommon situation—and over that period of time, the value of his real estate, which is his principal asset, has risen. In the year he sells his farm, he is among the rich, but only in that year—probably only in that year in his lifetime, is he among the rich—and that definition is people who have incomes in excess of $100,000 or $200,000 a year.

It does not take a very big farmer to have income more than that when he sells his principal asset. It is the product of 25 years of his or her work for 20 or 30 years, a long-term product of many years of work. In that 1 year, he or she certainly should be among the

rich. So, for this once in a lifetime transaction, that year, that person is counted among the rich, and that transaction is also put among those who are deemed to be wealthy in our society.

One of the things that surprises me is that all concede that lowering the capital gains rate will increase revenues, at least in the first couple of years. I think it will increase revenues in the longer run, but nevertheless, all concede that many billions of dollars will be raised in the first couple of years.

Why then, if the money does indeed come from the rich, who many think should be taxed to a larger degree than they are now taxed, why do those same people who want to tax the rich oppose lowering the capital gains rates and collecting $10 or $15 billion from the people who they have defined as being well to do? I say lower the rate and let us sock it to them. If they are the rich ones who have the ability to pay the tax, let us get some of their money, and let us not oppose the lowering of the capital gains rate, as some do.

I see that my friend, the chairman of the Finance Committee, is now on the floor of the Senate. We can raise $10 or $15 billion and take that money from people in our society who can afford it, and I think we all should be supportive of it. It would be my hope that a capital gains measure that would lower the rate for a couple of years and index it will indeed be passed.

So from my standpoint, I hope the indexing goes back a little bit and does not just start with the legislation. Let me also comment that I believe that capital gains is a different type of income than income that arrives in a paycheck every 2 to 4 weeks. Capital gains, first of all, by and large reflect inflation. A paycheck does not reflect inflation, unless there is rapid inflation that takes place during that 2 or 4 week timeframe. It is a very different form of income. In addition, it reflects a gain on capital that results from after tax income in the first place.

How is capital accumulated? Capital is accumulated from after tax income. And you are taxing the income of income once again, and that is very different than a paycheck that comes on a biweekly basis.

So capital gains reflects the investment of after tax income and, in my opinion, therefore, should have a different rate of taxation than the paycheck that comes on a biweekly basis.

Let me also say that capital gains is a voluntary transaction. It is not, again, like a paycheck that comes in a very regular manner. Whether or not somebody is going to make a sale is very much dependent on the inclination that person has. He does not have to take a capital gain. A person can take a piece of property on which he has a gain and go to a bank and increase the loan that he has on it, thereby replenishing the cash that he or his company needs, without making a sale. That would be a nontaxed transaction.

In my business, we own a building on which we are making just that kind of decision. If we sell the building and encounter a large capital gain, not only from the standpoint of the Federal Government but also the State, or should we just go to the bank or the insurance company and refinance that building and not have a capital transaction at all?

We would not add anything to the net worth of the company. We would increase the amount that the company is leveraged, but we would avoid some rather sizable taxes. Capital gains is a very voluntary act. Therefore, in the event you want that voluntary act to occur, the Government should give some incentive to have that voluntary act occur.

When I was in business, whenever we wanted to increase sales, we would lower the price. If you lower the price, you make a smaller margin on each sale, to be sure, but you are supposed to have more transactions. So it is with a capital gains tax. If you lower the price you will have more transactions, and in this case, the price is the tax that is imposed by the Federal Government. If you lower the rate, you are surely going to have more transactions. That is certainly what we experienced every time the rate has been lowered, or conversely, every time the rate has been increased.

In December of 1986, the number of transactions, again all voluntary transactions, which took place was remarkable. I believe that the Federal Government had a windfall of $20 billion or $25 billion out of the taxes by the taxes it received from the transactions that took place at the very end of 1986, just before the higher rate of tax went into effect on January 1, 1987.

It is a very voluntary transaction. There are alternatives to selling and realizing the capital gains, and therefore the voluntary nature of the transaction really is underlined.

In addition to that, it is different from regular income, so to speak, the biweekly paycheck, because capital gains is tied to investment for economic activity, investment for new business, investment for the creation of new jobs, and therefore has a particularly important economic impact.

For all of these reasons, I feel that a capital gains transaction should be treated differently for tax purposes than ordinary income. For those who say that income is income and it does not matter what the source, I disagree. I think that our economy would be well-served by lowering the capital gains rate, that the Government would receive additional revenues, that additional investments and additional job creation would result, and we would become more competitive with other world economies.

Mr. President, I yield the floor.

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

Mr. METZENBAUM. Mr. President, I did not intend to speak at this moment, but having heard my friend and colleague from Minnesota speak to the subject of reducing capital gains taxes. I have been around here long enough to know that there is always such a persuasive argument made to reduce taxes.

I remember when capital gains taxes were far higher than the highest rate being paid today for taxes generally. I remember when they continued to come down, I think if my recollection serves me right, from something like 48 to 28 percent, and I believe lower than that at a subsequent point.

The argument is made that that is going to bring in a windfall of dollars. The fact is that reducing the capital gains tax is nothing more than giving billions of dollars away to the very richest people of this country.

There are people in this country who are fighting to make a living, who are striving to be able to pay the rent, the food, the clothes, and to educate their children. Those are the people who are being taxed and carrying the burden of our Government.

It is an unbelievable reality that if you make over $175,000 a year, your taxes go down in this country. What an absurdity. What an absurdity.

There is now the proposal to reduce the capital gains tax. The rich get richer. Just provide more money for those who already have so much and do nothing for those who have so little. It will be a bonanza.

Why was there a big bonanza when the law was changed? Because they knew there was going to be a higher rate when we eliminated the capital gains tax, but the taxes were reduced. There was no outcry against eliminating capital gains taxes at that point, because taxes were being reduced across the board. We now come back to take care of those very few in this country who wheel and deal in the stock market.

Oh, yes, there are some who make a profit by having built a company and holding it for a number of years. But the reality is that reducing the capital gains taxes is nothing more than a giveaway to the rich. Write it any way you want. Spell it any way you want. Argue for it any way you want. But when all is said and done a very small segment of the people in this country, very small, will be the beneficiaries and the rest of the people of this country will be called upon to pay the tax burden.

This is a subject that has bothered me. It has concerned me. I expect to speak to the subject at some length within the next several days but I could not sit here and hear the distinguished Senator from Minnesota talk about what a great thing it would be for this country to reduce the capital gains tax and not feel impelled to at least indicate that there are some of us in this body who feel every bit as strongly and maybe a little bit more strongly than does he about the lack of virtue of reducing the capital gains tax.

It would not be good for this country. It would be good for the rich. It would not be good for the average American, and I hope that this Congress does not see fit to do it. It would be the wrong thing.

I yield the floor.

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

Mr. BOSCHWITZ. Mr. President, I did not realize I was going to get such a spirited response from my friend from Ohio. But he often gives spirited responses, so let me comment on what he said if I may.

I did not speak about reducing the capital gains taxes. I talked about increasing the amount of dollars that the Government received. I talked about reducing the capital gains rate of taxation. It is the rate that we want to reduce for the reasons that I outlined. It is not the total amount of money that the Government receives. As a matter of fact, all of us agree, as I mentioned, at least in the first 2 years—I believe as in the succeeding years as well—but at least in the first 2 years more money will come into the Federal Treasury in large amounts, $10 to $15 billion. If this money actually does come from the rich, as I said in my statement, then those who want the rich to bear a bigger burden of the taxes in this country, a bigger share of the taxes, then they should welcome a reduction in the capital gains rate because then the well-to-do will create more transactions. And really they are created, they are voluntary transactions, and they will pay more taxes.

It is not clear to me entirely why my friend from Ohio and others object to having the rich pay more taxes in this country. But they are so imbued with the idea that if you lower the capital gains rate that you will somehow be advantaging the rich that they oppose, even though more moneys will inure to the benefit of the Government.

But the other elements of it, the investment to the economy, the job creation that would occur, the ability to be competitive with other countries that, by and large, in the industrial world either have no, or much lower capital gains rates than we do so that we attract capital, because as you look at the American capital it is important that we create more jobs in this country and sustain the economic growth pattern that we have.

Again I see that my friend from Ohio is now engaging in a separate conversation. But I believe that if he wants to have more money come to the Federal Treasury from the rich he should support a lowering of the capital gains rate, not a lowering of capital gains taxation, rather an increase of capital gains taxation through a lowering of the rate.

I yield the floor.

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

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

TERRY ANDERSON'S CAPTIVITY

Mr. MOYNIHAN. Mr. President, today marks the 1,643d day that Terry Anderson has been held in captivity in Beirut.

I ask unanimous consent that a very revealing, very important piece entitled "My Life as a Hostage" and written by David Jacobsen—once a hostage himself—be printed in the RECORD.

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

[From the Los Angeles Times magazine, Mar. 1, 1987]

MY LIFE AS A HOSTAGE

(By David P. Jacobsen with Ray Perez)

At 10 minutes past 8 on the cool, clear morning of May 28, 1985, David P. Jacobsen of Huntington Beach was kidnaped at an intersection near the American University Hospital in Beirut. Jacobsen, the hospital's administrator, was forced into a van by six gunmen after a brief scuffle. He had visited California just weeks earlier and was expected back again in less than a month for his son's wedding. But it would be almost a year and a half before Jacobsen would see California again. In the meantime, he would live the ordeal of a Mideast hostage, held captive in turbulent West Beirut by Shia Muslims hoping to force the release of compatriots imprisoned in Kuwait. Today, dozens of foreigners are held hostage in Lebanon, pawns in the religious and political warfare that has torn that country apart. Among them are two Americans—Terry A. Anderson, a correspondent for the Associated Press, and Thomas Sutherland, acting dean of agriculture at the American University—whom Jacobsen befriended in captivity. Here, Jacobsen for the first time paints a detailed portrait of their world.

RABBITS IN A CAGE

Our first room was about the size of the living room of a two-bedroom apartment. It had little wooden partitions to block the view. I was kept blindfolded, but I could tell there were other hostages. I didn't know how many, but I could hear them being asked, "Are you hungry?" When I was taken to the toilet, I had to step over their bedding.

I was chained and put to the floor and told to remain silent. My clothes had been taken from me during interrogation, so I just had my underwear and a cotton tablecloth that served as a blanket. It has little fringes on the end. Fortunately, it wasn't cold. (The weather in Beirut is some of the finest around, similar to Santa Monica's.) Though I was chained by my right ankle and right hand, I was able to turn and to do push-ups and even leg lifts. I couldn't do sit-ups, but sometimes after I was taken to the toilet, I'd say, "Hey, I need some exercise," and would jog in place for a couple of minutes.

After five weeks, I was taken to another room, this one about 12 feet wide, with high ceilings. I had my blindfold on and was chained, but after the door was locked I lifted my blindfold to see where I was. A guy was sitting in the other corner, peeking through his blindfold. It was Terry Anderson.

We were alone for a month, and during the day, when the door was locked, we chatted very quietly. Anderson had 74 days' seniority on me as a prisoner and had picked up a little information. We knew there were Americans next door, and Anderson—who had reported on their kidnapings for the Associated Press—had guessed that they were Father Lawrence Martin Jenco and the Rev. Benjamin Weir.

The guards brought us a Bible, but I didn't have glasses so everything was just a fuzz. Anderson had his glasses, but they were broken. Even so, he would read the Bible to me an hour a day when we were permitted to have it.

Our third room brought us all together. We were moved there in July, 1985, when the shelling in Beirut got too close. Waiting for us was Tom Sutherland. I knew him from the university, but not all that well. The guards were going to put Jenco and Weir in another room, but we said, "Hey, stay with us. The more the merrier."

So the five of us were finally together, and each of us had a chaise lounge pad. The room was just big enough to fit four pads abreast, with one at the foot. Each day, we were allowed to go to the toilet one by one. We had 15 minutes to take a shower, wash our clothes, empty our urinals, get fresh water and clean our plastic bowls, spoons and cups. The guards got very unhappy if it was 16 minutes, because there were five of us, and the whole procedure took up at least an hour and 15 minutes of their time.

We were not permitted to see our captors. We had instructions to put on our blindfolds whenever they came in the room. When we heard them coming down the hall, we put on our masks. It wasn't a pleasant experience. It was hell. But they weren't pulling out our fingernails. They weren't breaking our bones. They weren't torturing us. We were just kept like rabbits in a cage, without any privileges. We lost all of our freedoms except two: the freedom to think and the freedom to pray.

The first time Anderson and I saw the sun, we weren't even outside. We were taken to a window and permitted to look out for a few minutes. I saw bottle-brush trees and eucalyptuses and was reminded of California. There was a little breeze. Later, we were taken outside to exercise in an enclosed patio, but we were blindfolded most of that time.

Still later, we were kidding the guards: "Is there still a moon, are there still stars out

there?" It had its effect. They got permission to take us outside, one at a time, on a beautiful evening. When it was my turn, one of the militias had fired a flare that lit up the sky. A purple ball of light was slowly coming down, and I could see the mountains of Lebanon. There were stars and the moon. It was like a religious experience.

ONE DAY AT A TIME

We had been taken captive separately, and each of us dealt with his confinement on his own terms. But we also came to rely on one another for emotional and psychological support as the days stretched into weeks, and then months. Like all of us, I suppose, I never thought I'd be in as long as I was. In fact, I thought I'd be getting out within the first month, in time to return to Huntington Beach for my son Paul's wedding. As it turned out, I spent that day chained to the floor.

To help myself through the hours, I spun an elaborate fantasy. I pretended I was with my family, getting ready to go to the wedding and doing all the things the father of the groom doesn't have to do. In my mind I went to St. Bonaventure's Church on Springdale Street and saw my future daughter-in-law coming in. In my mind I drove down to the Huntington Harbour Club for the reception. I spent the whole day lost in my fantasy of what was happening thousands of miles away.

I did the same thing on my son Eric's birthday, July 3. And on my dad's birthday, July 9, I mentally drove up to see him and spent some time. For the hospital, I prepared budgets and construction plans, new programs and services. Always, I tried to think of the good things in my life, the people I loved.

Father Jenco and I played a game to keep ourselves going. At the beginning of a week, we'd agree that we were certain to be released that Saturday night. When it got to be Saturday night and we weren't released, we'd snap our fingers and say: "We goofed. It's not this Saturday, it's *next* Saturday." It was just a game, of course, but it gave us at least a little hope each week that the next weekend would be our last locked up.

Every morning we'd put our pads against the wall and do stretching exercises. Then we'd walk. We'd walk around and around, lost in our thoughts. Anderson made sets of beads by tying knots in string he pulled out of the plastic mat on the floor, and I think that he and Father Jenco used the beads to say the Rosary. I love musicals, so every day I'd sing a Broadway musical to myself—from "Evita" all the way back to "Oklahoma!"

We all had a good sense of humor, and one day we jokingly decided to put together a hostage kit that every American should carry in case they were kidnaped overseas. All of us literally had tears running down our cheeks from laughter.

As the rookie hostage, Tom Sutherland bore the brunt of most of our jokes. He is a very gentle man, but he was very meticulous. The guards would bring a big plastic bag of Kleenex, and as the supply got lower and lower, Sutherland—who has oily hair and an oily forehead—would fret that he would not get more when they were gone. He'd literally try to ration the Kleenex to us.

Occasionally I'd sneak some tissues out of the bag, fold them up and stick them under Sutherland's pad. In the morning, when we'd lift up the pads to walk, the rest would look at Sutherland in a funny way as if to say: "Hey, Tom, are you like an alcoholic storing away your bottle? You're storing away your Kleenex?"

But Sutherland is a great teacher, and made life bearable by instructing us in genetics and agro-economics. We also had church services, two a day. Ben Weir, a Presbyterian minister, conducted one, and Father Jenco, a Roman Catholic priest, the other. We named our church the Church of the Locked Door. Each service took 45 minutes to an hour. For a while we kept a calendar on paper, writing down anything significant that happened—when the leader of our captors, Haj, visited us, or when the guards said something would be brought to us.

Later, when I was put in isolation, I was afraid I'd lose track of time. So I took a medication vial and moved it along the floor tiles between the wall and door. Before I went to sleep, I'd move the container to the next square so that when I awoke I'd know which day it was. For the date, I saved olive pits. I put one pit in the corner each day, until I had accumulated enough for a month.

JUST FOUR YOUNG MUSLIM KIDS

The people who held me are Lebanese. They are not Syrians, they are not Iranians, they are not Iraqis, they are not Egyptians, and they are not Libyans. They are Lebanese and they are Shia Muslims. They take orders from no one.

They honestly didn't realize the harm they were doing to our lives. "We've been good to you. We've taken good care of you. We haven't hurt you," they told us. They were just four young Muslim kids earning $25 to $50 a month to support their families. It was a job to them.

The squad leader could be very calm, but he was a volcano ready to explode. He was short—a little kid—and he wore these little tennies. He used to make good Arabic coffee for us.

Once he bought a new gun. It was the size of a Magnum, the kind only Clint Eastwood could carry. He showed it to Terry Anderson because Anderson had been in the Marine Corps six years. "That gun is too big for you," Anderson said. "You've got to get a gun your size." That upset the guard—but he got rid of the gun. He needed both arms just to lift it. It *was* too big for the kid.

When Anderson and I were together, Haj once philosophized with us (through an interpreter) about liberty, peace, justice and democracy. He was upset because the U.S. government would not talk with him about his group's demand for the release of 17 Muslims held in Kuwait.

"Nobody will talk. We want to solve this," he said. So we suggested that he release one of us. "One way you can do it, Haj, is just let us go," we said. "We'll tell them." We talked about the impact that would have. We argued that one of us could go out and tell the world that the Shias weren't really evil people—that we weren't being tortured and abused. Then Haj left.

When the five of us were together, Haj came in again and asked, "Is there anything you want?" We asked for a transistor radio, and he sent it. We were supposed to have it all the time, but the guards only gave it to us twice a day for about an hour. We would pick up the Voice of America, the BBC and the local English-language station, and Ben Weir translated some Arabic.

Haj came back again after we had been moved to the third room. "You know, we're going to let one of you go," he said. "You decide who it should be." We did, but Haj rejected our recommendation. (Until the others are released, I don't want to say who that was.) Instead, he spoke to Ben Weir in Arabic. Weir got very upset and kept saying, "Oh, no, no. Oh, no, no."

Weir was told that he would be released, even though he felt that others should go instead. On Sept. 14, 1985, he left. It gave Anderson and me some hope. "Well, you know, Haj is reasonable," we said. "We told him to let somebody go, and he did."

We were put into a news isolation in February, 1986. Our radio was taken away, and we were denied newspapers and magazines. When we asked why, we were told, "You're just asking too many questions and you know more than we do. We don't have time to do our work if you are always asking questions."

I believe the real reason was that Anderson's father had died that month. To this moment, I suspect, Anderson still doesn't know about his dad or that his brother, Glenn, died of cancer a week after making an emotional, videotaped plea for Anderson's release. He had not been told when I was with him, and I have no reason to believe that the Shias would tell him now. It could well be that they imposed the news embargo so they would not hurt him. They did have some compassion.

A BOND THAT OVERCOMES

I know more about Terry Anderson, and he knows more about me, I think, than any other human being. Anderson is an extremely liberal Democrat; I am a conservative Republican. Anderson is a journalist who believes that everyone has a right to know; I'm a hospital administrator and believe firmly in the rights of privacy. I enjoy sports; Anderson couldn't care less about athletics. We differed on virtually everything—from philosophy to foreign policy—and we'd get into tremendous arguments. But he is still my brother and I still care for the man. On the outside, as free men, I don't think either of us would have selected the other as a friend. But there's a bond that overcomes our differences.

We were a diverse group. Ben Weir is a Presbyterian minister who has taught more than he has preached. Tom Sutherland is a Presbyterian layman. Marty Jenco is a Servite priest, and Terry Anderson a Catholic layman. I was born a Lutheran, though now I consider myself simply a good, solid Christian.

When one of us was depressed or discouraged, we always knew how to bring him up. Some needed kindness and cheering up. I learned that when Sutherland was down, I had to make him mad. When he got mad, you'd know he was over his depression. Sometimes Sutherland would have disagreements with Anderson and Father Jenco. Then I would side with Sutherland.

There was one hostage none of us was able to help. He was William Buckley, the CIA's station chief in Beirut, who Vice President George Bush, in January, said had died in captivity. Although I never saw him, I think I heard him die on June 3, probably of congestive heart failure.

That night, I heard a prisoner hallucinating and throwing up. He was coughing severely and sounded as if he had pneumonia. The guard came to me because I was associated with hospitals. I urged himn to take the man to a doctor immediately. He said that was impossible, that it just couldn't be done, so I suggested that they at least get fluids into him and give him a wide-spectrum antibiotic—things I'd overheard doctors say over the years.

They didn't do anything for him. There was continued coughing, delirious talking, then a kind of gurgling, followed by silence. Then there was a rush of commotion and noise, somebody being carried out—all the attending sounds of death.

DAYS OF EMOTION

Before the news embargo began, Anderson and I were able to learn bits and pieces about how our captivity was being handled back home. Occasionally, the guards wouldn't turn their television down quickly enough, and we would catch a tantalizing phrase or comment. (For a couple of weeks, they'd bring the TV set into our room so we could watch "Three's Company." The frustration then was that we couldn't turn it off.)

One night, we heard former Secretary of State Henry A. Kissinger on the radio. He said: "Well, there are several things I could advise the President to secure the release of the American to secure the release of the American hostages, but in the last resort they are going to have to use their own resources to get out."

I was sitting in my underwear on a pad. The room had no windows. There was a double lock on the door. An armed guard was outside the door, and another armed guard was watching him down the hall. I said: "My God, Henry, what resources do I have? What resources do you think I have?" The others reacted the same way. Other than the day I was kidnapped, that was the low point.

After Weir was released, the four of us remaining had occasional access to the radio. We heard very little about our situation, and we knew that we'd been forgotten. It wasn't like the hijacking of TWA Flight 847 in June, 1985. There weren't any TV cameras zooming in on our hell, with everybody watching the high drama.

I suggested that we use an old political technique: Write an open letter and print it in the newspaper. We debated for days and days and finally decided to write to President Reagan and to the Archbishop of Canterbury, Robert A. K. Runcie. We had heard on the BBC a hint that Runcie would be interested in helping resolve the hostage problem. (We also had a chance to write to our families. I wrote a total of seven letters to my children; they received three.)

We were trying to light a fire, to create a sense of urgency. We realized that the President of the United States had more things to do than deal with four hostages. But we wanted to be higher on the list of priorities.

When Weir was released, we had some optimism. It will be difficult to convince me that Anderson's and my hours of philosophizing with Haj did not play a major role in Weir's release. Anderson and I did that. We also had hints from the guards that Terry Waite, who had been sent to Lebanon by the archbishop, was making progress. Within hours after he arrived in Beirut, he got confirmation that we were alive and well. He obviously was talking to the right people.

Surprisingly, the four of us—Father Jenco, Terry Anderson, Tom Sutherland and I—didn't just collapse when Waite's negotiations fell through. We merely shrugged our shoulders. In fact, we had hope—at least we knew that a major effort, a sustained effort, had been made. We never once lost faith that we were going to be free. Never once.

Ten months later, on July 26, 1986, Father Jenco was freed. I rejoiced for him, but his release became the catalyst for a series of events that brought some of my darkest days in captivity.

With this release, though, there was no discussion. Our captors just came in and made us think we were all leaving. "You have to be quiet. Get ready," they said. "You'll go out one at a time into the bus." We assumed that they were taking us to a Red Cross exchange. In fact, they had brought us each shoes, trousers and a shirt. "You're all going to go, so if you have a beard, shave it off," they said. "If you don't have a beard, grow one." They didn't want us to be identified leaving the building.

I went first. But I wasn't taken out of the building; I was simply marched into another room. Then Anderson and Sutherland came in, and I knew Father Jenco was going home.

I was taken out of the room and asked to make a videotape that would be released to Lebanese television. Anderson and Sutherland learned that Father Jenco had been released when they heard me say it while I was making the tape. They were blindfolded, sitting in the same room against the wall.

Some days later, we were allowed to see my tape as it had appeared on TV. The clip included footage of Father Jenco after he had reached Syria. As I spoke, lettering flashed on the screen. Jacobsen, it said, apparently was trying to send a coded message when he made the tape. I thought, "Oh, boy, trouble's coming."

The guards were very unhappy. They yelled and screamed and threatened. I was angry with the news media's irresponsible speculation. So was Terry Anderson. When he got out, Anderson said of his colleagues in the press, "Skin is coming off."

One day in September, one of the Shias who spoke English said to me, "I want you to write a letter," which they would use to pressure the Reagan Administration to negotiate. He gave me an outline of points I was to cover, and I wrote it. In it, I complained that the Administration was working to free U.S. journalist Nicholas Daniloff from the Soviet Union but was ignoring our plight. The Shia was back within an hour. He said: "It's no good. We don't trust you. We are going to rewrite it. You are going to write it down exactly as dictated. You are going to spell it like we tell you. You are going to punctuate it like we tell you."

I did as they said. One of them checked it word for word, sentence for sentence. It was exactly as they dictated, but I warned them that the outside world would know the words weren't mine.

Sure enough, when the letter made its way into print, the news media circled all the grammatical mistakes, and my captors accused me of deliberately inserting them. The guard who spoke English did not speak up and tell his superiors that it had been written exactly as he dictated it. They were angry because they thought I had sent out another coded message and embarrassed them before the entire Arab world.

So they took me to another room and beat my feet with a rubber hose. They were giving me a pretty good working over. I thought, "They are just going to do more until they get some emotion out of me." I didn't want them to think I was a G. Gordon Liddy type, so I started to say, "Ouch, it hurts," and "Hey, stop it" and "Why are you doing this?"

Eventually they stopped. I was put in isolation on Sept. 19, 1986, in a little room six feet square. It was dark except for light coming through the transom, but I had nothing to read anyway. I did a tremendous amount of exercise.

When I awoke early one morning in October, I had the overpowering feeling that I was going to be released. It wasn't a dream—just a tremendous, powerful feeling that I was going to get out on Saturday, Nov. 1, or Sunday, Nov. 2, 1986. It was so powerful that when I went to bed on Saturday night, I knew that I was going to be going home in several hours.

I had just fallen asleep when I heard a noise in the guards' room, followed by the shuffling of feet. A stranger came in my room and said, "Mr. David, we're happy you're going home. You'll be going home in a couple of hours. But first we have to move everyone." They were always concerned that their location—and their identities—would be discovered. They think the United States has photographs of them all, that there is a CIA agent lurking behind every Shia.

I had always known that the day of my release would be the most dangerous time of my captivity, because I would be exposed in a very violent city. There is metal in the air in Beirut. There are stray bullets. I could fall right in the middle of a gun battle or be kidnaped again upon release.

I was released in the area of the old, bombed-out American Embassy in West Beirut, which is not occupied except by a security force. I walked too far, overshooting the embassy by about 200 meters. One of the Shias tapped me on the shoulder and told me that I'd walked too far, to turn and walk back. For a moment I thought, "Oh no, I'm being kidnaped again."

The ambassador had to organize a convoy to get me out of West Beirut. On duty at the new embassy in East Beirut were 23 Lebanese of the same religious factions that have been warring for years—Sunni, Shia, Druze and Christian. The embassy asked for volunteers to go from East to West Beirut, through the shelling and sniper fire, to bring out an American. There were 23 on duty, and all 23 came.

That was a day of emotion, a day of excitement. After 17 months, I finally was walking along the corniche, seeing that gorgeous Mediterranean and smelling that air, seeing the ships at sea and the people jogging along the street or drinking coffee at the cafes.

I was happy, but I wasn't doing cartwheels. I'm still in chains until Sutherland and Anderson are out. I don't have nightmares now. I sleep well and exercise hard. I lead a constructive life. But those guys are still heavy on my mind, and I can't forget their situation. It was my situation for 17 months, and I pray that it won't be theirs much longer.

HOMELESS CITIZENS VOTE

Mr. KENNEDY. Mr. President, I want to call my colleagues' attention to an article in the New York Times earlier this week entitled "Gently Urging the Homeless To Vote." Much has been said on this floor about the need to help the homeless, and certainly much more needs to be said—and done. Homelessness is one of America's greatest shames. Children and grandparents, blacks and whites, men and women are sleeping on the streets of America tonight and every

night. Congress, the administration, and the States must do more to assist these Americans, and we cannot afford to wait.

But this week, in New York City, and perhaps unnoticed in other communities of America, some of the homeless decided not to wait for us. They voted. It matters not for whom they voted, or whether they voted in Democratic of Republican primaries. They voted. These citizens, who have perhaps the greatest reason of all to believe that they are the unseen and unheard Americans of our time, stood up and were counted. They voted. The press report is a heartwarming account of pride, persistence, and patriotism, and I ask unanimous consent that it may be printed in the RECORD.

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

[From the New York Times, Sept. 13, 1989]

GENTLY URGING THE HOMELESS TO CAST VOTES

(By Felicia R. Lee)

Malcolm Mack is a man without a family, a job or a home. But yesterday morning he did something that many New Yorkers more comfortably situated neglected to do. He voted.

"It's got to do with what you call it—the Constitution," Mr. Mack said, as he walked to his polling place on West 41st Street. "Someone told me by voting you get a lot done for you."

Mr. Mack was one of the hundreds of people reached yesterday by a loosely organized nonpartisan group called Homeless Voter '89. They estimate that from 10,000 to 20,000 of the city's 60,000 homeless people are registered voters. They also estimate that from 30,000 to 50,000 of the city's homeless are eligible to register to vote in the general election.

The goal of Will Daniel, the group's director, and his 30 volunteers is to register homeless people, educate them about the voting process and then prod them to vote.

MANY REGISTERED LONG AGO

Prodding was on the top of Mr. Daniel's agenda yesterday. He made the rounds of churches, homeless shelters, soup lines and places like Grand Central Terminal to find eligible voters. The final results were impossible to measure. Most people said they planned to vote later in the day.

"I'm a little discouraged by not being able to find people I can take to the polls," Mr. Daniel said.

Still, there was interest. Many of the homeless people approached yesterday had registered long before they fell on hard times, and they were not certain if they could still vote. Others pulled out worn voter registration cards and asked the location of their polling place. Still others eagerly filled out yellow registration cards so they could participate in the November general election.

Many said they gave a church, a post office or a shelter as their address so they could vote.

"Every time I register I don't get a response," complained William Henry, a homeless man. "I gave a church address. I want to vote. I want to vote for Dave Dinkins."

Standing in a soup line in Chelsea, Vincent Wright, said he was a disabled Vietnam veteran. He is homeless and has not worked for 20 years. He wanted a ride to East Harlem to vote for Manhattan Borough President David N. Dinkins.

"It's time for a change," he said. "He's going to give me an address like he's got one."

Mr. Daniel said many homeless people hunger for change. "They definitely need to help themselves," he said. "Lasting change comes through participation in the process."

It was a little before 7:30 A.M. when Mr. Daniel met Mr. Mack in the morning breakfast line at St. Francis of Assisi Monastery and Church at 135 West 31st Street. Mr. Daniel quickly walked down the line and asked people if they remembered it was Election Day and if they planned to vote. Most shook their heads no, but many thumbed through a blue and white pamphlet entitled "You Don't Need a Home to Vote."

Mr. Mack, 36 years old, said he abused drugs and alcohol. In January his friend kicked him out of the apartment they shared. Since then, he has spent most nights in a subway station.

Yesterday, all Mr. Mack wanted was a chance to vote for Mr. Dinkins. He found the location of his polling place from Mr. Daniel, who lugged several thick books listing polling places.

"I'm voting for Dinkins, hoping somewhere down the line it will open up something for the homeless," Mr. Mack said.

At the Open Door Drop-In Center at 401 West 41st Street Mr. Daniel had little luck. A man named Ricky, who said he did not want to give his last name, said he would vote later.

His friends shrugged and laughed when they were asked about voting. They said they did not see how it could make much difference in their lives.

"I think everybody should vote," Ricky said. "I want to see a mayor do something for everybody. Do something before election time. They start picking up drug dealers around election time—that's not right."

Mr. Daniel then roamed the halls of the Port Authority Bus Terminal at Eighth Avenue and 41st Street. Most of the people he encountered were apathetic or hostile.

The long lunch line at the Church of the Holy Apostles at 296 Ninth Avenue, near West 28th Street, proved to be fertile ground. Mr. Daniel registered 15 people for the general election and told dozens of others the location of their polling places. They promised to vote and seemed touched that someone cared about their opinion.

Charlie Ray, a homeless man, shyly approached Mr. Daniel. He pulled out a voter registration card but said he did not know where to vote. He said he did not remember the last time he voted.

"I'm a little reluctant because I'm not familiar with the procedure," he said.

His polling place turned out to be a school only blocks away, on 24th Street. Once there, Mr. Ray needed the assistance of two poll workers Martha Rodriguez, a Democrat, and Frances Martinez, a Republican. He said he could not clearly see the names on the ballot and felt a bit overwhelmed by the choices.

Mr. Ray, who said he had been on the street a long time, was ecstatic as he left the voting booth.

"I feel like a citizen," he said.

ADMINISTRATION PROPOSES NEW AID FOR POLAND

Mr. DOLE. Mr. President, I am very pleased to advise those Senators who may not already have heard that the administration just a few moments ago announced a new food aid initiative for Poland—$50 million in additional food aid for fiscal year 1990.

I ask unanimous consent that the White House announcement of this new initiative be printed in the RECORD.

It will include, I think, from us—and it is also in tandem with the package of $140 million from the European Community—but it will include meat, corn, butter, oil, cotton, sunflower, rice, and other matters that are food items that are deeply needed and urgently needed in Poland.

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

STATEMENT BY THE PRESIDENT, SEPTEMBER 14, 1989

I am pleased to announce today that the United States will offer to provide additional food and commodity aid to the Polish people. Subject to consultations with the Polish government, we are prepared to offer an additional $50 million in assistance in FY 90. This amount would be in addition to the $50 million already announced on August 1st. Together with the $8.4 million in emergency food aid in FY 89, this new aid brings to $103.4 million the total of U.S. food/commodity assistance.

Our effort works in tandem with the $140 million of agricultural aid pledged by the EC as part of the coordinated effort called for by President Bush at the recent Paris Economic Summit.

We expect to offer quantities of meat, corn, butter, butter oil, cotton seed/sunflower oil, cotton and rice.

The Administration intends that the food aid will support long-term reform of the Polish agricultural system by providing much needed commodities during a transitional period toward a market economy. The food shortages and extremely high prices in Poland in recent weeks have placed a heavy burden on the Polish people. We expect that shipments of the new assistance will arrive in time for the difficult winter months.

This new assistance is one element of our continuing efforts, working with our allies and others, to support the process of change that is underway in Poland. It underscores our continuing commitment to assist the Polish govenment and people in their efforts to introduce market market principles and to build a private sector that will enable Poland to invigorate its economy.

Mr. DOLE. Mr. President, this new package will bring total food aid to Poland announced by the administration to $108.4 million; and the total aid package—food plus other forms of aid—to nearly a quarter of a billion dollars over 3 years. At this time of budgetary crisis in our own Government, that is a big, big commitment—but a well-justified one.

Yesterday, I introduced the legislation to implement the President's

original proposal, made during his historic visit to Poland and Hungary. In that statement, and on other occasions since my visit to Poland in August—including in a meeting with President Bush in Kennebunkport—I have urged the administration to undertake some new initiative for Poland. I am very pleased at this quick response.

The President's original proposal was made at a time when Poland—while taking some important steps in political reform—still had a Communist-dominated government. It seemed to me important to signal our intent to do more for a democratic government then we had intended for a Communist regime.

I also felt we should take some action quickly—to signal our political backing for the Mazowiecki government. As I indicated on my report to the Senate on my trip, every Polish leader I met said the new governments honeymoon would be short. Unless it shows some concrete results quickly, it could risk losing vital political momentum—and that, in turn, could jeopardize the whole democratic experiment in Poland.

Prime Minister Mazowiecki put it best, when he said to me: "Anyone who gives now, gives twice."

So, in my view, the stakes are high. And this administration initiative will have an impact beyond just the dollar value of the package.

It will be a clear signal to Poland, and around the world, that we are prepared to take special steps to support the new government. It will help that government get over the hump of its initial months in office. It will help Poland get through the upcoming winter with stable food supplies.

It is a good decision; some additional political insurance for the new Mazowiecki government, and a good investment in democracy and economic reform in Poland.

DISTRICT OF COLUMBIA POLICE AUTHORIZATION AND EXPANSION ACT

Mr. ADAMS. Mr. President, the request I am about to propound has been cleared by the Republican side and is a unanimous-consent request that has been cleared by all parties.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1502, calendar item No. 231, the D.C. police authorization bill.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 1502) to authorize the appropriation of funds to the District of Columbia for additional officers and members of the Metropolitan Police Department of the District of Columbia, and to provide for the implementation in the District of Columbia of a community-oriented policing system.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Police Authorization and Expansion Act of 1989".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR ADDITIONAL OFFICERS AND MEMBERS FOR THE METROPOLITAN POLICE DEPARTMENT OF THE DISTRICT OF COLUMBIA.

(a) IN GENERAL.—Section 502 of the District of Columbia Self-Government and Governmental Reorganization Act is amended by adding at the end thereof the following new subsection:

"(c)(1) In addition to the amounts authorized to be appropriated under subsection (a), and subject to paragraphs (2) and (3), there are authorized to be appropriated to the District of Columbia, for salaries and expenses (including benefits and necessary equipment) of 700 additional officers and members of the Metropolitan Police Department of the District of Columbia, $23,149,000 for fiscal year 1990, $23,338,000 for fiscal year 1991, $25,199,000 for fiscal year 1992, $27,252,000 for fiscal year 1993, and $28,367,000 for fiscal year 1994.

"(2) Amounts appropriated under paragraph (1) shall be available only for salaries and expenses (including benefits and necessary equipment) of officers and members of the Metropolitan Police Department of the District of Columbia in excess of the authorized level of the department, for fiscal year 1989, of 4,055 officers and members.

"(3)(A) For fiscal year 1990, no funds authorized to be appropriated under paragraph (1) may be obligated or expended until 120 days after the Mayor develops and submits a plan for the implementation in the District of Columbia of a community-oriented policing system to the Committee on the District of Columbia of the House of Representatives and the Subcommittee on General Services, Federalism, and the District of Columbia of the Committee on Governmental Affairs of the United States Senate.

"(B) For fiscal years after 1990, no funds authorized to be appropriated under paragraph (1) may be obligated or expended until the Mayor submits a notification to the Committee on the District of Columbia of the House of Representatives and the Subcommittee on General Services, Federalism, and the District of Columbia of the Committee on Governmental Affairs of the United States Senate that the District of Columbia has implemented for such fiscal year a community-oriented policing system in the District of Columbia.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect October 1, 1989.

SEC. 3. DEVELOPMENT OF CLASSIFICATION SYSTEM FOR INDIVIDUALS CONVICTED OF CRIMES IN DISTRICT.

(a) ASSISTANCE FROM BUREAU OF PRISONS AND NATIONAL INSTITUTE OF CORRECTIONS.—Not later than 180 days after the date of the enactment of this Act, the District of Columbia shall request the Director of the Bureau of Prisons and the Director of the National Institute of Corrections to provide the District of Columbia with technical assistance and training in the development of a criminal recordkeeping and classification system, which will provide the basis for a uniform strategy for managing and evaluating the processing in the District of Columbia's criminal justice system of individuals convicted of crimes in the District of Columbia.

(b) INFORMATION INCLUDED IN SYSTEM DATA BASE.—The recordkeeping and classification system described in subsection (a) shall include a data base continuously updated to provide current information on the prison population of the District of Columbia, including, but not limited to, the following:

(1) Aggregate inmate profiles and classifications based on individual records and files.

(2) Escape and other risk assessments for individual inmates.

(3) Ongoing counts of the number of persons at various stages of processing in the criminal justice system.

(4) Projections for future prison populations.

SEC 4. USE OF PROCEEDS OF FORFEITED PROPERTY FOR LAW ENFORCEMENT ACTIVITIES.

Section 502(d)(3)(B) of the District of Columbia Uniform Controlled Substances Act of 1981 (section 33-552(d)(3)(B), D.C. Code) is amended by striking "shall be used to finance programs" and inserting "shall be used, and shall remain available until they are so used regardless of the expiration of the fiscal year in which they are collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs".

SEC. 5. DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT PARTICIPATION IN THE NATIONAL CRIME INFORMATION SYSTEM.

(a) DISSEMINATION OF ADULT ARREST RECORDS TO LAW ENFORCEMENT AGENTS.—(1) Notwithstanding any other provision of law, the District of Columbia Metropolitan Police Department shall disseminate its unexpurgated adult arrest records to members of the court and law enforcement agents, including the Identification Division of the Federal Bureau of Investigation. Such dissemination shall be done without cost and without the authorization of the persons to whom such records relate.

(2) Any records disseminated under this section shall be used in a manner that complies with applicable Federal law and regulations.

(b) DEFINITIONS.—For purposes of this section—

(1) the term "member of the court" shall include judges, prosecutors, defense attorneys (with respect to the records of their client defendants), clerks of the court, and penal and probation officers;

(2) the term "law enforcement agent" shall include police officers and Federal agents having the power to arrest; and

(3) the term "unexpurgated adult arrest records" shall include arrest fingerprint cards.

AMENDMENT NO. 747

(Purpose: To make technical amendments to the bill reported by the Committee on Governmental Affairs)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Mr. ADAMS], for Mr. SASSER, proposes an amendment numbered 747.

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

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

The amendment is as follows:

On page 11, strike lines 19 through 21 and insert the following:

(a) Paragraphs (3) and (3a) of section 502(d) of the District of Columbia Uniform Controlled Substances act (sections 33-552(d)(3) and (3a), D.C. Code) are amended by—

(1) redesignating paragraph (3) as paragraph (4);

(2) redesignating paragraph (3a) as paragraph (3); and

(3) reordering the paragraphs so that paragraph (3), as redesignated, precedes paragraph (4), as redesignated.

(b) Section 502(d)(4)(B) of the District of Columbia Uniform Controlled Substances Act of 1981 (section 33-552(d)(4)(B), D.C. Code), as redesignated by subsection (a), is amended by striking "shall be

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 747) was agreed to.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 748

(Purpose: To provide for the implementation of a police corps pilot program in the District of Columbia and the State of West Virginia)

Mr. ADAMS. Mr. President, I send an amendment to the desk on behalf of Senator SASSER and Senator BYRD and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Mr. ADAMS], for Mr. SASSER (for himself and Mr. BYRD) proposes an amendment numbered 748.

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

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

The amendment is as follows:

At the end of the bill add the following new section:

SEC. 6. POLICE CORPS PILOT PROGRAM.

(a) DEFINITIONS.—For the purpose of this section—

(1) the term "academic year" means a traditional academic year beginning in August or September and ending in the following May or June;

(2) the term "Administrator" means an Administrator of the Police Corps program appointed pursuant to subsection (b);

(3) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of the baccalaureate degree; or

(B) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses;

(4) the term "participant" means a participant in the Police Corps program selected pursuant to subsections (i) and (j); and

(5) the term "participating law enforcement agency" means—

(A) in the case of a participant selected for the Police Corps program under regulations prescribed by the Administrator described in subsection (b)(1), the Metropolitan Police Department of the District of Columbia; or

(B) in the case of a participant selected for the Police Corps program under regulations prescribed by the Administrator described in subsection (b)(2), the West Virginia State Police (or such other law enforcement agency as the superintendent of the West Virginia State Police may designate).

(b) APPOINTMENT OF ADMINISTRATORS.—There shall be two Administrators of Police Corps programs pursuant to this decision, to be appointed as follows:

(1) the Chief of the Metropolitan Police Department of the District of Columbia shall appoint a person in the Metropolitan Police Department to serve as an Administrator; and

(2) the Superintendent of the West Virginia State Police shall appoint a person in the West Virginia State Police to serve as an Administrator.

(c) RESPONSIBILITIES OF ADMINISTRATORS.—Each Administrator shall be responsible for the administration of a Police Corps program pursuant to this section and shall have authority to promulgate regulations to implement this section.

(d) EDUCATIONAL ASSISTANCE.—(1) Each Administrator is authorized to pay the educational expenses of up to 25 participants in the Police Corps program, by—

(A) entering into an agreement to repay, and repaying, an educational loan of a participant; and

(B) entering into an agreement to repay, and repaying, a participant for educational expenses paid out of the participant's funds.

(2) Except for payments of interest on an educational loan, repayment under an agreement made pursuant to paragraph (1) shall be made following completion of a participant's course of educational study and service as required by this Act.

(3) Repayment of an educational loan made pursuant to paragraph (1) may be made in the form of direct payment to a lender or reimbursement of a participant for payments made to a lender.

(4) An educational loan that may be repaid under paragraph (1) is a loan made pursuant to or in connection with a Federal, State, local, or private loan or loan guarantee program designated by an Administrator and other loans that meet terms prescribed by such Administrator by regulation.

(e) ADMISSION OF APPLICANTS.—An applicant may be admitted into the Police Corps program either before commencement of or during the applicant's course of educational study.

(f) PAYMENT OF EDUCATIONAL EXPENSES.—(1) An Administrator may agree to repay an educational loan and to reimburse a participant for expenditures made prior to or after the time that a participant applies for admission to the Police Corps program.

(2) The amounts of educational expenses that an Administrator may pay under this section are limited as follows:

(A)(i) The amount of educational expenses incurred by a participant to cover the cost of an academic year of study that an Administrator may pay is limited to $10,000.

(ii) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of educational expenses incurred by a participant to cover the cost of such calendar year that an Administrator may pay is limited to $13,333.

(B) The amount of educational expenses incurred by a participant to cover the cost of undergraduate study is limited to $40,000 in the aggregate, regardless whether the time of study exceeds 4 years.

(g) ADMINISTRATOR'S OBLIGATION TO PAY.—(1) An Administrator's obligation to pay a participant's educational expenses under this section shall be void, and such Administrator shall be entitled to recover from the participant the amount of any interest on an educational loan that such Administrator has paid, if the participant fails to complete satisfactorily—

(A) the course of educational study undertaken by the participant; and

(B) service as required by subsection (o), unless the failure is the result of death or permanent physical or mental impairment.

(2) For the purpose of paragraph (1), a participant shall be deemed to have completed satisfactorily—

(A) an educational course of study upon receipt of a baccalaureate degree (in the case of educational expenses incurred to cover the cost of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of educational expenses incurred to cover the cost of graduate study); and

(B) service in a participating law enforcement agency upon completion of 4 years of service on the force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the force.

(3) As a condition to payment of educational expenses of a participant who fails to complete a course of educational study or service as a result of permanent physical or mental impairment, an Administrator may require the participant to perform appropriate alternative community service.

(h) GROSS INCOME.—For purposes of section 61 of the Internal Revenue Code of 1986, a participant's gross income shall not include any amount paid as educational assistance under this section.

(i) SELECTION OF PARTICIPANTS.—Participants in the Police Corps program shall be selected on a competitive basis under regulations prescribed by each Administrator.

(j) SELECTION CRITERIA AND QUALIFICATIONS.—(1) In order to participate in the Police Corps program, a participant must—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the participating law enforcement agency, including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the participating law enforcement agency shall not disqualify

the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer:

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the participating law enforcement agency;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the participating law enforcement agency before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the participating law enforcement agency, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after the date of enactment of this Act, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under subsection (o), and such a participant shall be subject to the same benefits and obligations under this Act as other participants, including those stated in paragraph (1) (E) and (F).

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of subsection (o), such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(k) RECRUITMENT OF MINORITIES.—Each Administrator shall make special efforts to seek and recruit applicants from among members of racial and ethnic groups whose representation in the participating law enforcement agency is substantially less than in the population of the District of Columbia (in the case of the Administrator described in subsection (b)(1)) or of the jurisdiction of the participating law enforcement agency (in the case of the Administrator described in subsection (b)(2)). This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (i) and (j).

(l) ENROLLMENT OF APPLICANTS.—(1) An applicant shall be accepted into the Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, an institution of higher education (as described in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)))—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(m) LEAVE OF ABSENCE.—(1) A participant in the Police Corps program who requests a leave of absence from educational study or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason, including temporary physical or mental impairment, may be granted such leave of absence.

(2) If a participant who has taken a leave of absence pursuant to paragraph (1) fails or is unable to resume educational study or service after the expiration of the leave of absence, the provision of subsection (f) shall apply.

(n) IN-STATE TUITION.—At least 50 percent of the applicants admitted to the Police Corps program must qualify for and be obligated to pay no more than the in-State tuition rates at the institutions they attend.

(o) SERVICE OBLIGATION.—(1) Upon satisfactory completion of a participant's educational course of study (in the case of a participant taking a baccalaureate degree) and prior to commencing or continuing graduate study (in the case of a participant who desires to do graduate work), and upon meeting the requirements of the participating law enforcement agency, a participant shall be sworn in as a member of the participating law enforcement agency and shall serve for 4 years as a member of such agency.

(2) A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the participating law enforcement agency, including those contained in applicable agreements with labor organizations and those provided by law.

(3) If the participating law enforcement agency subjects a participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under this section, the Administrator may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, upon satisfactory completion of that service, provide assistance pursuant to this section.

(4) The participating law enforcement agency may decline to offer a participant an appointment, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures.

(5) A participant in the Police Corps program shall, while serving as a member of the participating law enforcement agency, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the participating law enforcement agency.

(p) REPORTS TO PRESIDENT AND CONGRESS.—Not later than April 1 of each year, each Administrator described in subsection (b) shall submit a report to the President and to the Speaker of the House of Representatives and the President of the Senate. Such report shall—

(1) state the number of current and past participants in the Police Corps program administered by such Administrator, broken down according to the levels of educational study in which they are engaged and years of service they have served with the participating law enforcement agency (including service following completion of the 4-year service obligation);

(2) describe the structure and progress of the program; and

(3) discuss the perceived strength and weakness of the program and any proposals for changes in the program.

(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the District of Columbia and to the State of West Virginia to carry out this section, for fiscal year 1990, such sums as may be necessary to carry out the provisions of this Act, and for each fiscal year thereafter such sums as may be authorized in the annual authorization Act for such year.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 748) was agreed to.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 749

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS], for Mr. LEVIN, proposes an amendment numbered 749.

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

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

The amendment is as follows:

On page 9, line 15, strike out "of the authorized" through "4,055" on page 9, line 16, and insert in lieu thereof "of 4,355".

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 749) was agreed to.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, the amendment I have offered to H.R. 1502, the District of Columbia Police Authorization and Expansion Act of 1989, would ensure that the District government pays for its promised 300 police officers before it hires the additional 700 police officers authorized by this bill. By including this requirement, we are making sure that the District government lives up to its commitment, made earlier this year, to hire 300 additional police out of the D.C. budget and not substitute our

commitment of 700 police for their earlier promise.

I expressed my reservations during the committee markup on this legislation. In particular, I noted my concern over the special treatment this bill appears to give the District of Columbia in the drug war. The District of Columbia should get its money to fight drugs either through the normal budget process in which we determine the level of the Federal payment, or through a nationwide grant program, which makes such money available to all drug-plagued cities.

Last year we passed a major drug bill. Part of that legislation provided a pool of money to be distributed on a formula basis to the States and local governments with each State getting a minimum of $500,000 and additional moneys based on population. The District of Columbia was eligible for its share of that pot and in fact received $731,000. These grants could be used for additional personnel, equipment, training, and technical assistance in combating the drug crisis. That is the appropriate method for distributing funds which address nationwide problems. Actually, the formula for these funds did not include crime rate as a factor, and maybe it should have so that cities like the District of Columbia and Detroit could have gotten a larger share. That's one way anti-drug money can appropriately be directed to the District of Columbia.

The other is through the Federal payment, and the process that was followed in approving these 700 slots was not ideal. As I understand the history of this bill, the District of Columbia did not initially ask for more money from the Federal Government for additional police. The D.C. Council recommended or approved—out of D.C. funds—an increase of 300 police. In response to questioning at a Senate hearing on the D.C. drug crisis, the D.C. chief of police was asked how many police he could use, and he said 700. That proposal, then, took on a life of its own. At one point it appeared that some of the 700 federally funded police would substitute for some of the 300 D.C. funded police. My amendment would preclude that from happening. In any event, Mr. President, the appropriate way for an increase in police officers to be handled is through the District's annual request for its Federal payment. This bill was not part of that process and thus has the appearance of being special treatment. I don't think that serves any of us well.

The District of Columbia obviously has one of the worst drug problems in the country, and it needs assistance in some form. But many cities need such assistance. We are plagued with crack houses in my hometown of Detroit, MI, too. In 1988, the Detroit police made 10,321 narcotic-related arrests. We, too have children killing children over drugs and cocaine-addicted mothers and fathers simply turning their backs on their families for drugs. Miami, Los Angeles and New York, and many other cities face a similar crisis. Interestingly enough, while the District of Columbia apparently now has the highest murder rate in the Nation, it is 16th in the overall crime rate, Detroit is 8th, and Atlanta is 1st.

The Governmental Affairs Committee Permanent Subcommittee on Investigations held hearings in Atlanta and Macon, GA, earlier this year on the drug crisis there, and the testimony was dramatic. One small business in rural Georgia found through preannounced drug testing that almost half of its employees tested positive for drugs. There is a major, but often unattended, drug crisis in many of our rural communities as well.

But there is a question as to whether or not more police are the answer. The D.C. criminal justice system is already overloaded by the current number of arrestees. I haven't seen satisfactory data to prove that the court and penal systems in the District of Columbia could adequately handle the additional cases that 700 police officers would bring. I'm not sure that the problem is so much the lack of our ability to arrest individuals in the District of Columbia, as it is our inability to successfully prosecute and seriously punish the offenders. The prisons are bulging and are, in fact, under court order because of overcrowding.

Moreover, the Washington Post has recently described a human services department that is in shambles. It appears to be totally inadequate to respond to the tragedy that the drug crisis is causing for D.C.'s child victims. The Post reports that more than half of the child welfare system's authorized social work positions are vacant and that those social workers they do have are enormously overburdened. "Babies born to drug-addicted mothers," the Post reports, "are lingering in local hospitals, although they are healthy and ready to be discharged. Other children are crammed into crowded and unlicensed foster care homes. Sometimes children are lost within the system because of a defective computer tracking system."

Later on the article continues, "[T]he drug crisis and its impact on children is a national problem. But unlike some other jurisdictions that have obtained additional money and larger staffs to battle the crack epidemic, top administrators in the District's child welfare system have not yet geared up." The article goes on to say that one of the reasons for the current situation in the child welfare system is that it has been "plagued by major budget problems." I am pleased to note that Senator ADAMS has included additional money in the D.C. appropriations bill for drug treatment and child-related services, in addition to the 700 police officers.

Finally, Mr. President, I certainly recognize our role in adequately funding the District of Columbia. The presence of the Federal Government in the District not only affects the District's tax base but imposes unconventional demands on its city services as well. I understand that. And I am concerned over the recent figures that show a drop in the Federal Government's share of support for the District of Columbia. The Federal payment as a percentage of the D.C. budget has dropped from 26.7 percent in 1975 to 16.4 percent in 1988. I think that level of support should be reexamined to determine if we really are paying our fair share.

But having said that, I do not think a separate bill for the District of Columbia, outside the normal budgeting process, is the preferable way to handle D.C. issues. The District of Columbia did not ask for these additional 700 police during its normal budget request. That is when this issue should have been addressed, but it was not. By failing to follow the normal legislative process for D.C.'s budget, we appear to be giving the District of Columbia favored treatment in the drug war. On closer examination, I do not believe that is true. The District of Columbia's budget request should have included a request for an additional 700 officers. But it did not and the city should not suffer for the failings of the process. I am pleased however, that by adopting my amendment, we have made sure that there is no possibility that the Federal Government is stepping in to pay for what the District of Columbia had already planned on paying for—namely the additional 300 police.

Mr. SASSER. Mr. President, I am pleased to bring before the Senate two amendments to H.R. 1502, the District of Columbia Police Authorization and Expansion Act of 1989.

The first amendment, which is purely technical, corrects a misnumbering of two paragraphs in the District of Columbia Code, which deal with the disposition of proceeds from assets forfeited in drug cases. This rendered those provisions internally inconsistent, a preexisting oversight that was discovered in drafting section 4 of H.R. 1502 which amends one of the paragraphs in question.

My second amendment adds section 6 to H.R. 1502, to authorize a pilot test of a national "police corps" proposal. The National Police Corps Program is the subject of S. 1299, introduced by myself and Senator SPECTER, of which I am proud to be a coauthor.

The police corps legislation is similar to the Reserve Officers Training Corps Program, which provides educa-

tional benefits for college students who make the commitment to serve in our Nation's Armed Forces for a specified period after graduation. Under the police corps bill, a participating student would agree to serve for 4 years as a law enforcement officer upon the completion of his or her educational study. The Government, in turn, would guarantee the repayment of the participant's educational loans and expenses in the maximum amount of $10,000 per year and $40,000 in the aggregate. This repayment could be directly to the lender, or to the participant in the case of expenses directly incurred. The Government's obligation to repay would mature only when the participant has satisfactorily completed both the course of educational study, and service in a law enforcement agency.

What my amendment does is to authorize a pilot test of this Police Corps Program involving up to 50 positions. Half of these would be available to the Metropolitan Police Department of the District of Columbia as the participating law enforcement agency. The other 25 pilot program positions will be available to participating law enforcement agencies in the State of West Virginia, either the State police or other law enforcement agencies designated by the superintendent of State police.

The District of Columbia and the State of West Virginia will each have an administrator for their respective portions of the Pilot Test Program. Participating students will have to meet the same requirements for admission as any other trainee of the participating law enforcement agency. Upon graduation and commencement of service, they will be subject to the same rules and discipline as other officers of the force on which they serve.

Just as the ROTC Program has provided our Nation with thousands of fine military officers, I am confident that the police corps proposal will attract many accomplished, intelligent, and dedicated young people to the service of law enforcement. The pilot test afforded by my amendment will give us an early opportunity, as we consider S. 1299, to publicize the program and learn more about how it will work in practice. It will augment the law enforcement requirements of our Nation's Capital, which is the essential purpose of H.R. 1502. At the same time, by encompassing a less urban state, the pilot test will retain a limited scope and yet permit comparison of the program's appeal in a diversity of geographic areas.

The inclusion of a police corps pilot test in H.R. 1502 was previously discussed in the Subcommittee on General Services, Federalism, and the District of Columbia, which I chair, and in the full Committee on Governmental Affairs. I wish to thank my distinguished colleague from Alaska, Senator STEVENS, for his cooperation and assistance in formulating the pilot program which is embodied in my amendment.

Mr. HEINZ. Mr. President, I am pleased to rise in support of H.R. 1502, the District of Columbia Police Authorization and Expansion Act of 1989. This bill authorizes the appropriation of additional Federal funds totaling $127.3 million in fiscal year 1990 through fiscal year 1994. Seven hundred officers will be added to the Metropolitan Police Department of the District of Columbia under this authorization.

This legislation takes other important steps in responding to the troubling crime battlefield found in our Nation's Capital. These steps include calling for the implementation of a community-based policing system in the District of Columbia, a pilot police corps program, and the development of a classification system for individuals convicted of crimes in the District.

This bill will help the District do a better job in enforcing the law here, but it will also require the District to become part of the nationwide anticrime fight. As a result of an amendment I offered in full committee, the District of Columbia Metropolitan Police Department must participate in the Federal Bureau of Investigation's [FBI] National Crime Information System.

The District's Duncan Ordinance prohibits the Washington Metropolitan Police Department from transmitting its arrest records, including arrest fingerprint cards, to the FBI's Identification Division. The District of Columbia is the only jurisdiction in the Union that has such an ordinance.

In short, if an individual has an arrest record in another State and is picked up for a crime committed in Washington, DC, the District of Columbia is unable to verify the person's identification since law enforcement records are not fully shared with the FBI's Indentification Division.

I ask my colleagues to consider the following example. An escaped felon is wanted by police in District of Columbia in connection with the murder of an elderly woman. If this individual flees to Pennsylvania and is arrested for some reason, the Pennsylvania authorities have no means at their disposal to check whether the person in their custody has a record with the District of Columbia. A wanted felon, in this example, could go free because the Duncan Ordinance severely curtails the exchange of national law enforcement data—leaving another criminal on our streets.

Mr. President, I am sure my colleagues in the Senate will agree that enactment of this legislation and repealing the Duncan Ordinance will not help take a bite out of crime in the Nation's Capital but put more teeth into law enforcement across the country.

Mr. GLENN. Mr. President, I rise to support H.R. 1502, a bill authorizing funds for 700 new policemen in the District of Columbia. H.R. 1502 addresses a problem we often talk about here in Congress: Crime. It also gives us a chance to do more than just contemplate, bemoan, or study our crime problems. This bill puts 700 crime fighters on the streets of our Nation's Capital.

I commend Senator SASSER for his hard work on H.R. 1502. Without his diligence and concern for the city of Washington, we would not have before us today this necessary measure.

Crime—and especially crime related to the illegal drug trade—is a plague in almost every major city in America. The Committee on Governmental Affairs, which has jurisdiction over the District of Columbia, has focused this year on the District's drug related crime problems. In a hearing before the full committee, witnesses testified that the first step in solving these problems is reclaiming the District's streets for lawful citizens. Simply stated, that means more patrols—patrols of community groups, of interested citizens, and, most importantly, of dedicated policemen.

As he has testified before many committees, and as he has demonstrated by his actions, the new D.C. Chief of Police, Isaac Fulwood, is committed to increasing police presence in the high-crime areas of the District. However, he is attempting to do so with a law enforcement team which, when it reaches its authorized size later this year, will include almost 1,000 men less than it did in the 1970's. H.R. 1502 remedies this shortfall and, I hope, gives Chief Fulwood the resources he needs to carry out his ambitious and necessary plans.

I support H.R. 1502 because it is a direct response to the District's crime program. There are no shortcuts to safe streets. The authors of this legislation in the House, and its champions in the Senate, have realized this. I commend them for acting so promptly on their realization.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment, as amended, and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 1502), as amended, was passed.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

OUR FLAG

Mr. FORD. Mr. President, 175 years ago today the words to our national anthem—"The Star Spangled Banner"—were written. It was a period of national peril. Our young country was invaded by a foreign enemy who threatened our citizens and their livelihood, and attempted to destroy several of our major cities. Here in Washington this Capitol Building and the White House were burned by the British.

Mr. President, in terrible times like those, our forebearers needed things they could count on and unifying symbols they could rally to. They had one in the flag.

Nearly two centuries later the threat of this Nation is not as obvious, but the need of our citizens and the need of our Nation's leaders is no less great. The flag is one symbol that we can look to in our struggles and find hope—one symbol we can see in our daily work and find common purpose.

Mr. President, I am pleased to announce that on this anniversary of the writing of "The Star Spangled Banner" the Joint Committee on Printing is publishing once again the booklet called "Our Flag." In the past it has been one of the most frequently requested congressional publications, but it has not been reprinted for more than a decade. This revised edition retells the history of the flag's development—how Congress chose the Stars and Stripes and how the stripes came to be limited to 13, and how our Nation and flag grew together. In a period of our history when our highest court is telling our people what they can get away with and what they don't have to do to fulfill their duties as citizens, this little book tells you what you can do if you respect and love our flag.

I am very pleased that each Senator will receive a supply of these books. One Senator has already received thousands of requests for the reprint. I am proud of the staff of the Joint Committee on Printing. They have done an excellent job. It is up to date. Even Speaker FOLEY's picture is in it. Remarks about Congressman Pepper are included.

It is a book that primarily is issued and reprinted for our children. I hope that everyone who is watching us today, with a child or grandchild who would like to have this book, will see their Congressman or Senator to see if they will be able to get one. There will be only 300,000 of them. We may have to reprint. I hope we do, Mr. President, have to reprint it.

Hopefully, this booklet will begin to strengthen the fiber that has held this country together for so long. I thank my distinguished colleagues for allowing me a couple minutes to bring this to the attention of the Senate.

I yield the floor.

Mr. ADAMS. Mr. President, we thank the Senator from Kentucky for his fine remarks. It was a great pleasure to be present while he made them.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1990

Mr. ADAMS. Mr. President, under the previous order of the Senate, I am pleased to call up at this time H.R. 3026, the bill making appropriations for the District of Columbia.

The PRESIDING OFFICER. Pursuant to the previous order, the clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 3026) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1990, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

H.R. 3026

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the District of Columbia for the fiscal year ending September 30, 1990, and for other purposes, namely:

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

For payment to the District of Columbia for the fiscal year ending September 30, 1990, $430,500,000: *Provided,* That none of these funds shall be made available to the District of Columbia until the number of full-time uniformed officers in permanent positions in the Metropolitan Police Department is at least 3,880, excluding any such officer appointed after August 19, 1982, under qualification standards other than those in effect on such date.

FEDERAL PAYMENT FOR WATER AND SEWER SERVICES

For payment to the District of Columbia for the fiscal year ending September 30, 1990, in lieu of reimbursement for charges for water and water services and sanitary sewer services furnished to facilities of the United States Government, **[$34,740,000]** *$8,685,000,* as authorized by the Act of May 18, 1954, as amended (D.C. Code, secs. 43-1552 and 43-1612).

FEDERAL CONTRIBUTION TO RETIREMENT FUNDS

For the Federal contribution to the Police Officers and Fire Fighters', Teachers', and Judges' Retirement Funds, as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), $52,070,000.

TRANSITIONAL PAYMENT FOR SAINT ELIZABETHS HOSPITAL

For a Federal contribution to the District of Columbia, as authorized by the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (98 Stat. 3369; Public Law 98-621), $15,000,000.

CRIMINAL JUSTICE INITIATIVE

For an additional amount for the design and construction of a prison within the District of Columbia, $20,300,000 to become available October 1, 1990: Provided, That these funds shall remain in the United States Treasury and shall be transferred to the District of Columbia government only to the extent that outstanding obligations are due and payable to entities other than agencies and organizations of the District of Columbia government, and payments to such agencies and organizations may be made only in reimbursement for amounts actually expended in furtherance of the design and construction of the prison.

The $50,000,000 previously appropriated under "Criminal Justice Initiative" for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1989, for the design and construction of a prison within the District of Columbia shall remain in the United States Treasury and shall be transferred to the District of Columbia government only to the extent that outstanding obligations are due and payable to entities other than agencies and organizations of the District of Columbia government, and payments to such agencies and organizations may be made only in reimbursement for amounts actually expended in furtherance of the design and construction of the prison: *Provided,* That construction may not commence unless access and parking for construction vehicles are provided solely at a location other than city streets: *Provided further,* That District officials meet monthly with neighborhood representatives to inform them of current plans and discuss problems: *Provided further,* That the District of Columbia shall operate and maintain a free, 24-hour telephone information service whereby residents of the area surrounding the new prison, can promptly obtain information from District officials on all disturbances at the prison, including escapes, fires, riots, and similar incidents: *Provided further,* That the District of Columbia shall also

take steps to publicize the availability of that service among the residents of the area surrounding the new prison.

DRUG EMERGENCY

For a Federal contribution to the District of Columbia, $31,772,000, to remain available until expended, to close open air drug markets, increase police visibility, and provide for speedier court processing of drug-related violent cases.

DIVISION OF EXPENSES

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the general fund of the District of Columbia, except as otherwise specifically provided.

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, $112,971,000: *Provided,* That not to exceed $2,500 for the Mayor, $2,500 for the Chairman of the Council of the District of Columbia, and $2,500 for the City Administrator shall be available from this appropriation for expenditures for official purposes: *Provided further,* That any program fees collected from the issuance of debt shall be available for the payment of expenses of the debt management program of the District of Columbia: *Provided further,* That notwithstanding any other provision of law, there is hereby appropriated $6,726,000 to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board, of which $818,000 shall be derived from the general fund and not to exceed $5,908,000 shall be derived from the earnings of the applicable retirement funds: *Provided further,* That the District of Columbia Retirement Board shall provide to the Congress and to the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: *Provided further,* That the District of Columbia Retirement Board shall provide the Mayor, for transmittal to the Council of the District of Columbia, an item accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report: *Provided further,* That of the $150,000 appropriated for fiscal year 1990 for Admission to Statehood, $75,000 shall be for the Statehood Commission and $75,000 shall be for the Statehood Compact Commission: *Provided further,* That the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally-generated revenues: *Provided further,* That no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission: *Provided further,* That no part of these funds shall be used for lobbying to support or defeat legislation pending before Congress or any State legislature.

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, $137,913,000: *Provided,* That the District of Columbia Housing Finance Agency, established by section 201 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Code, sec. 45-2111), based upon its capability of repayments as determined each year by the Council of the District of Columbia from the Agency's annual audited financial statements to the Council of the District of Columbia, shall repay to the general fund an amount equal to the appropriated administrative costs plus interest at a rate of four percent per annum for a term of 15 years, with a deferral of payments for the first three years: *Provided further,* That notwithstanding the foregoing provision, the obligation to repay all or part of the amounts due shall be subject to the rights of the owners of any bonds or notes issued by the Agency and shall be repaid to the District of Columbia government only from available operating revenues of the Agency that are in excess of the amounts required for debt service, reserve funds, and operating expenses: *Provided further,* That upon commencement of the debt service payments, such payments shall be deposited into the general fund of the District of Columbia: *Provided further,* That up to $275,000 within the 15 percent set-aside for special programs within the Tenant Assistance Program shall be targeted for the single-room occupancy initiative.

PUBLIC SAFETY AND JUSTICE

Public safety and justice, including purchase of 130 passenger-carrying vehicles for replacement only for police-type use and 29 additional passenger-carrying vehicles for fire-type use without regard to the general purchase price limitation for the current fiscal year, [$833,206,000] *$861,191,000*: *Provided,* That the Metropolitan Police Department is authorized to replace not to exceed 25 passenger-carrying vehicles and the Fire Department of the District of Columbia is authorized to replace not to exceed five passenger-carrying vehicles annually whenever the cost of repair to any damaged vehicle exceeds three-fourths of the cost of the replacement: *Provided further,* That not to exceed $500,000 shall be available from this appropriation for the Chief of Police for the prevention and detection of crime: *Provided further,* That not to exceed $26,000 shall be available solely for an accreditation study of the Metropolitan Police Department by a recognized law enforcement accreditation organization: *Provided further,* That funds appropriated for expenses under the District of Columbia Criminal Justice Act, approved September 3, 1974 (88 Stat. 1090; Public Law 93-412; D.C. Code, sec. 11-2601 et seq.), for the fiscal year ending September 30, 1990, shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1975: *Provided further,* That funds appropriated for expenses under the District of Columbia Neglect Representation Equity Act of 1984, effective March 13, 1985 (D.C. Law 5-129; D.C. Code, sec. 16-2304), for the fiscal year ending September 30, 1990, shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1985: *Provided further,* That $50,000 of any appropriation available to the District of Columbia may be used to match financial contributions from the Department of Defense to the District of Columbia Office of Emergency Preparedness for the purchase of civil defense equipment and supplies approved by the Department of Defense, when authorized by the Mayor: *Provided further,* That not to exceed $1,500 for the Chief Judge of the District of Columbia Court of Appeals, $1,500 for the Chief Judge of the Superior Court of the District of Columbia, and $1,500 for the Executive Officer of the District of Columbia Courts shall be available from this appropriation for official purposes: *Provided further,* That the District of Columbia shall operate and maintain a free, 24-hour telephone information service whereby residents of the area surrounding Lorton prison in Fairfax County, Virginia, can promptly obtain information from District of Columbia government officials on all disturbances at the prison, including escapes, fires, riots, and similar incidents: *Provided further,* That the District of Columbia government shall also take steps to publicize the availability of that service among the residents of the area surrounding the Lorton prison: *Provided further,* That not to exceed $100,000 of this appropriation shall be used to reimburse Fairfax County, Virginia, and Prince William County, Virginia, for expenses incurred by the counties during fiscal year 1990 in relation to the Lorton prison complex. Such reimbursements shall be paid in all instances in which the District requests the counties to provide police, fire, rescue, and related services to help deal with escapes, riots, and similar disturbances involving the prison: *Provided further,* That none of the funds appropriated by this Act may be used to implement any plan that includes the closing of Engine Company 3, located at 439 New Jersey Avenue, Northwest: *Provided further,* That the staffing levels of each two-piece engine company within the Fire Department shall be maintained in accordance with the provisions of article III, section 18 of the Fire Department Rules and Regulations as then in effect[,-until final adjudication by the relevant courts or October 1, 1990, whichever occurs later]: *Provided further,* That none of the funds provided in this Act may be used to implement District of Columbia Board of Parole notice of emergency and proposed rulemaking as filed with the District of Columbia Register July 25, 1986: *Provided further,* That the Mayor shall reimburse the District of Columbia National Guard for expenses incurred in connection with services which are performed in emergencies by the National Guard in a militia status and which are requested by the Mayor, in amounts that shall be jointly determined and certified as due and payable for these services by the Mayor and the Commanding General of the District of Columbia National Guard: *Provided further,* That such sums as may be necessary for reimbursements to the District of Columbia National Guard under the preceding proviso shall be available from this appropriation, and their availability shall be deemed as constituing payment in advance for the emergency services involved: *Provided further, That of the funds provided to the District of Columbia Superior Court $2,600,000 shall remain available until expended: Provided further, That of funds provided to the Department of Corrections $36,311,000 shall be for the expense of housing D.C. Code violators in Federal Bureau of Prisons facilities, including $5,064,000 of payments previously forgiven.*

PUBLIC EDUCATION SYSTEM

Public education system, including the development of national defense education programs, [$689,353,000] *$691,120,000,* to be allocated as follows: [$500,579,000] *$502,346,000* for the public schools of the District of Columbia; $86,300,000 for the District of Columbia Teachers' Retirement Fund; $76,088,000 for the University of the District of Columbia; $18,849,000 for the Public Library; $3,527,000 for the Commission on the Arts and Humanities; $3,440,000 for the District of Columbia School of Law; and $570,000 for the Education Licensure Commission: *Provided,* That the public schools of the District of Columbia are authorized to accept not to exceed 31 motor vehicles for exclusive use in the driver edu-

cation program: *Provided further,* That not to exceed $2,500 for the Superintendent of Schools, $2,500 for the President of the University of the District of Columbia, and $2,000 for the Public Librarian shall be available from this appropriation for expenditures for official purposes: *Provided further,* That this appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 1990, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area*: Provided further, That funds provided under this head in Public Law 100-202 (101 Stat. 1329-94) to match private contributions to the District of Columbia Public Schools Foundation shall be available until September 30, 1989.*

HUMAN SUPPORT SERVICES

Human support services, [$825,898,000] *$827,918,000*: *Provided,* That $18,611,000 of this appropriation, to remain available until expended, shall be available solely for District of Columbia employees' disability compensation: *Provided further,* That of the funds provided for the D.C. General Hospital subsidy, $646,000 shall be used to provide health care to homeless persons.

PUBLIC WORKS

Public works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and purchase of passenger-carrying vehicles for replacement only, $223,898,000, of which not to exceed $3,600,000 shall be available for the School Transit Subsidy: *Provided,* That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business.

WASHINGTON CONVENTION CENTER FUND

For the Washington Convention Center Fund, $7,874,000: *Provided,* That the Convention Center Board of Directors, established by section 3 of the Washington Convention Center Management Act of 1979, effective November 3, 1979 (D.C. Law 3-36; D.C. Code, sec. 9-602), shall reimburse the Auditor of the District of Columbia for all reasonable costs for performance of the annual Convention Center audit.

REPAYMENT OF LOANS AND INTEREST

For reimbursement to the United States of funds loaned in compliance with An Act To provide for the establishment of a modern, adequate, and efficient hospital center in the District of Columbia, approved August 7, 1946 (60 Stat. 896; Public Law 79-648); section 1 of an Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, sec. 9-219); section 4 of An Act To authorize the Commissioners of the District of Columbia to plan, construct, operate, and maintain a sanitary sewer to connect the Dulles International Airport with the District of Columbia system, approved June 12, 1960 (74 Stat. 211; Public Law 86-515); section 723 of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 821; Public Law 93-198; D.C. Code, sec. 47-321, note); and section 743(f) of the District of Columbia Self-Government and Governmental Reorganization Act amendments, approved October 13, 1977 (91 Stat. 1156; Public Law 95-131; D.C. Code, sec. 9-219, note), including interest as required thereby, $251,474,000.

REPAYMENT OF GENERAL FUND DEFICIT

For the purpose of reducing the $218,872,000 general fund accumulated deficit as of September 30, 1988, $20,000,000, of which not less than $442,000 shall be funded and apportioned by the Mayor from amounts otherwise available to the District of Columbia government (including amounts appropriated by this Act or revenues otherwise available, or both): *Provided,* That if the Federal payment to the District of Columbia for fiscal year 1990 is reduced pursuant to an order issued by the President under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177, approved December 12, 1985), as amended, the percentage (if any) by which the $20,000,000 set aside for repayment of the general fund accumulated deficit under this appropriation title is reduced as a consequence shall not exceed the percentage by which the Federal payment is reduced pursuant to such order: *Provided further,* That all net revenue the District of Columbia government may collect as a result of the District of Columbia government's pending appeal in the consolidated case of U.S. Sprint Communications, et al. v. District of Columbia et al., CA 10080-87 (court order filed November 14, 1988), shall be applied solely to the repayment of the general fund accumulated deficit.

SHORT-TERM BORROWINGS

For the purpose of funding interest related to borrowing funds for short-term cash needs, $10,997,000.

OPTICAL AND DENTAL BENEFITS

For optical and dental costs for nonunion employees, $2,569,000.

ENERGY ADJUSTMENT

The Mayor shall reduce authorized energy appropriations and expenditures within object class 30a (energy) in the amount of $2,000,000, within one or several of the various appropriation headings in this Act.

EQUIPMENT ADJUSTMENT

The Mayor shall reduce authorized equipment appropriations and expenditures within object class 70 (equipment) in the amount of $6,100,000, within one or several of the various appropriation headings in this Act.

PERSONAL SERVICES ADJUSTMENT

The Mayor shall reduce appropriations and expenditures for personal services within object classes 11, 12, 13, and 14 in the amount of $31,550,000, within one or several of the various appropriation headings in this Act.

CAPITAL OUTLAY

For construction projects, $134,650,000, as authorized by an Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; Public Law 58-140; D.C. Code, secs. 43-1512 to 43-1519); the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; Public Law 83-364); An Act To authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, secs. 9-219 and 47-3402); section 3(g) of the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved August 20, 1958 (72 Stat. 686; Public Law 85-692; D.C. Code, sec. 40-805(7)); and the National Capital Transportation Act of 1969, approved December 9, 1969 (83 Stat. 320; Public Law 91-143; D.C. Code, secs. 1-2451, 1-2452, 1-2454, 1-2456, and 1-2457); including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: *Provided,* That $10,556,000 shall be available for project management and $26,319,000 for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor: *Provided further,* That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: *Provided further,* That $20,300,000 *of the $134,650,000* shall be available solely for the Correctional Treatment Facility *to be constructed in the District of Columbia which is financed with Federal funds appropriated to the District of Columbia for fiscal year 1991*: *Provided further,* That $547,000 for the Department of Recreation and $3,080,000 for the Department of Public Works for pay-as-you-go capital projects shall be financed from general fund operating revenues: *Provided further,* That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: *Provided further,* That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1991, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1991: *Provided further,* That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

WATER AND SEWER ENTERPRISE FUND

For the Water and Sewer Enterprise Fund, $199,382,000, of which $34,964,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

For construction projects, $29,700,000, as authorized by An Act Authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; Public Law 58-140; D.C. Code, sec. 43-1512 et seq.): *Provided,* That the requirements and restrictions which are applicable to general fund capital improvement projects and are set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title: *Provided further,* That of the

$27,085,000 in water and sewer enterprise fund operating revenues for pay-as-you-go capital projects, $1,200,000 shall fund new authority in the fiscal year 1990 capital budget and $25,885,000 shall fund prior year capital budget authority.

LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND

For the Lottery and Charitable Games Enterprise Fund, established by the District of Columbia Appropriation Act for fiscal year 1982, approved December 4, 1981, (95 Stat. 1174, 1175; Public Law 97-91), as amended, for the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Code, secs. 2-2501 et seq. and 22-1516 et seq.), $8,600,000, to be derived from non-Federal District of Columbia revenues: *Provided*, That the District of Columbia shall identify the sources of funding for this appropriation title from its own locally-generated revenues: *Provided further*, That no revenues from Federal sources shall be used to support the operations or activities of the Lottery and Charitable Games Control Board.

CABLE TELEVISION ENTERPRISE FUND

For the Cable Television Enterprise Fund, established by the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 5-36; D.C. Code, sec. 43-1801 et seq.), $1,600,000.

GENERAL PROVISIONS

SEC. 101. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 102. Except as otherwise provided in this Act, all vouchers covering expenditures of appropriations contained in this Act shall be audited before payment by the designated certifying official and the vouchers as approved shall be paid by checks issued by the designated disbursing official.

SEC. 103. Whenever in this Act an amount is specified within an appropriation for particular purposes or objects of expenditure, such amount, unless otherwise specified, shall be considered as the maximum amount that may be expended for said purpose or object rather than an amount set apart exclusively therefor, except for those funds and programs for the Metropolitan Police Department under the heading "Public Safety and Justice" which shall be considered as the amounts set apart exclusively for and shall be expended solely by that Department; and the appropriation under the heading "Repayment of General Fund Deficit" which shall be considered as the amount set apart exclusively for and shall be expended solely for that purpose.

SEC. 104. Appropriations in this Act shall be available, when authorized by the Mayor, for allowances for privately owned automobiles and motorcycles used for the performance of official duties at rates established by the Mayor: *Provided*, That such rates shall not exceed the maximum prevailing rates for such vehicles as prescribed in the Federal Property Management Regulations 101-7 (Federal Travel Regulations).

SEC. 105. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor: *Provided*, That the Council of the District of Columbia and the District of Columbia Courts may expend such funds without authorization by the Mayor.

SEC. 106. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of judgments that have been entered against the District of Columbia government: *Provided*, That nothing contained in this section shall be construed as modifying or affecting the provisions of section 11(c)(3) of title XII of the District of Columbia Income and Franchise Tax Act of 1947, approved March 31, 1956 (70 Stat. 78; Public Law 84-460; D.C. Code, sec. 47-1812.11(c)(3)).

SEC. 107. Appropriations in this Act shall be available for the payment of public assistance without reference to the requirement of section 544 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Code, sec. 3-205.44), and for the non-Federal share of funds necessary to qualify for Federal assistance under the Juvenile Delinquency Prevention and Control Act of 1968, approved July 31, 1968 (82 Stat. 462; Public Law 90-445; 42 U.S.C. 3801 et seq.).

SEC. 108. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 109. Not to exceed 4½ per centum of the total of all funds appropriated by this Act for personnel compensation may be used to pay the cost of overtime or temporary positions.

SEC. 110. Appropriations in this Act shall not be available, during the fiscal year ending September 30, 1990, for the compensation of any person appointed to a permanent position in the District of Columbia government during any month in which the number of employees exceeds [38,475] *39,569*.

SEC. 111. No funds appropriated in this Act for the District of Columbia government for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community or partisan political group during nonschool hours.

SEC. 112. The annual budget for the District of Columbia government for the fiscal year ending September 30, 1991, shall be transmitted to the Congress no later than April 15, 1990.

SEC. 113. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, salary, past work experience, and salary history are not available for inspection by the House and Senate Committees on Appropriations, the House Committee on the District of Columbia, the Subcommittee on Governmental Efficiency, Federalism and the District of Columbia of the Senate Committee on Governmental Affairs, and the Council of the District of Columbia, or their duly authorized representative.

SEC. 114. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making payments authorized by the District of Columbia Revenue Recovery Act of 1977, effective September 23, 1977 (D.C. Law 2-20; D.C. Code, sec. 47-421 et seq.).

SEC. 115. None of the funds contained in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name and salary are not available for public inspection.

SEC. 116. No part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

SEC. 117. None of the Federal funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

SEC. 118. At the start of the fiscal year, the Mayor shall develop an annual plan, by quarter and by project, for capital outlay borrowings: *Provided*, That within a reasonable time after the close of each quarter, the Mayor shall report to the Council of the District of Columbia and the Congress the actual borrowing and spending progress compared with projections.

SEC. 119. The Mayor shall not borrow any funds for capital projects unless he has obtained prior approval from the Council of the District of Columbia, by resolution, identifying the projects and amounts to be financed with such borrowings.

SEC. 120. The Mayor shall not expend any moneys borrowed for capital projects for the operating expenses of the District of Columbia government.

SEC. 121. None of the funds appropriated in this Act may be used for the implementation of a personnel lottery with respect to the hiring of fire fighters or police officers.

SEC. 122. None of the funds appropriated by this Act may be obligated or expended by reprogramming except pursuant to advance approval of the reprogramming granted according to the procedure set forth in the Joint Explanatory Statement of the Committee of Conference (House Report No. 96-443) which accompanied the District of Columbia Appropriation Act, 1980, approved October 30, 1979 (93 Stat. 713; Public Law 96-93), as modified in House Report No. 98-265, and in accordance with the Reprogramming Policy Act of 1980, effective September 16, 1980 (D.C. Law 3-100; D.C. Code, sec. 47-361 et seq.).

SEC. 123. None of the Federal funds provided in this Act shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of the District of Columbia.

SEC. 124. None of the Federal funds provided in this Act shall be obligated or expended to procure passenger automobiles as defined in the Automobile Fuel Efficiency Act of 1980, approved October 10, 1980 (94 Stat. 1824; Public Law 96-425; 15 U.S.C. 2001(2)), with an Environmental Protection Agency estimated miles per gallon average of less than 22 miles per gallon: *Provided*, That this section shall not apply to security, emergency rescue, or armored vehicles.

SEC. 125. (a) Notwithstanding section 422(7) of the District of Columbia Self-Government and Governmental Reorganization

Act of 1973, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(7)), the City Administrator shall be paid, during any fiscal year, a salary at a rate established by the Mayor, not to exceed the rate established for level IV of the Executive Schedule under 5 U.S.C. 5315.

(b) For purposes of applying any provision of law limiting the availability of funds for payment of salary or pay in any fiscal year, the highest rate of pay established by the Mayor under subsection (a) for any position for any period during the last quarter of calendar year 1989 shall be deemed to be the rate of pay payable for that position for September 30, 1989.

(c) Notwithstanding section 4(a) of the District of Columbia Redevelopment Act of 1945, approved August 2, 1946 (60 Stat. 793; Public Law 79-592; D.C. Code, sec. 5-803(a)), the Board of Directors of the District of Columbia Redevelopment Land Agency shall be paid, during any fiscal year, a per diem compensation at a rate established by the Mayor.

SEC. 126. Notwithstanding any other provisions of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code, sec. 1-601.1 et seq.), enacted pursuant to section 422(3) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(3)), shall apply with respect to the compensation of District of Columbia employees: *Provided*, That for pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5 of the United States Code.

SEC. 127. The Director of the Department of Administrative Services may pay rentals and repair, alter, and improve rented premises, without regard to the provisions of section 322 of the Economy Act of 1932 (Public Law 72-212; 40 U.S.C. 278a), upon a determination by the Director, that by reason of circumstances set forth in such determination, the payment of these rents and the execution of this work, without reference to the limitations of section 322, is advantageous to the District in terms of economy, efficiency and the District's best interest.

SEC. 128. No later than 30 days after the end of the first quarter of fiscal year 1990, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia the new fiscal year 1990 revenue estimates as of the end of the first quarter of fiscal year 1990. These estimates shall be used in the fiscal year 1991 annual budget request. The officially revised estimates at midyear shall be used for the midyear report.

SEC. 129. Section 466(b) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 806; Public Law 93-198; D.C. Code, sec. 47-326), is amended by striking out "sold before October 1, 1989" and inserting in lieu thereof "sold before October 1, 1990".

SEC. 130. No sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in section 303 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Code, sec. 1-1183.3), except that the District of Columbia Public Schools may renew or extend sole source contracts for which competition is not feasible or practical, provided that the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated Board of Education rules and procedures.

SEC. 131. For purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended, the term "program, project, and activity" shall be synonymous with and refer specifically to each account appropriating Federal funds in this Act and any sequestration order shall be applied to each of the accounts rather than to the aggregate total of those accounts: *Provided*, That sequestration orders shall not be applied to any account that is specifically exempted from sequestration by the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended.

SEC. 132. In the event a sequestration order is issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended, after the amounts appropriated to the District of Columbia for the fiscal year involved have been paid to the District of Columbia, the Mayor of the District of Columbia shall pay to the Secretary of the Treasury, within 15 days after receipt of a request therefor from the Secretary of the Treasury, such amounts as are sequestered by the order: *Provided*, That the sequestration percentage specified in the order shall be applied proportionately to each of the Federal appropriation accounts in this Act which are not specifically exempted from sequestration by the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended.

[SEC. 133. None of the funds available to the District of Columbia government shall be used for any purpose involved in billing individual agencies or establishments for water and water services and sanitary sewer services traditionally funded under the account "Federal Payment for Water and Sewer Services" unless and until existing statutes (sections 106 and 212 of the District of Columbia Public Works Act of 1954, as amended, Public Law 364, approved May 18, 1954 (68 Stat. 101; D.C. Code, sections 43-1552 and 43-1612), are amended to specifically provide for such billing.]

SEC. 133. (a) It is the purpose of this section to improve the means by which the District of Columbia is paid for water and sanitary sewer services furnished to the Government of the United States or any department, agency, of independent establishment thereof.

(b) Section 106 of title I of the District of Columbia Public Works Act of 1954 (68 Stat. 102; D.C. Stat. 43-1552) is amended by—

(1) striking in subsection (a) all that follows the sentence beginning with "Payment shall be made as provided in subsection (b)"; and

(2) amending subsection (b) to read as follows:

"(b)(1) Beginning in the second quarter of fiscal year 1990 and thereafter, the government of the District of Columbia shall bill directly on a quarterly basis and in advance for water services provided to all buildings, establishments, or other places owned by the Government of the United States. Bills for each such building, establishment, or place shall be directed to the Federal department, independent establishment, or agency responsible for paying other utility charges for the location. The District government shall adjust its individual billings to reflect actual usage of water services not later than 2 years after the conclusion of each quarter.

"(2) Each Federal department, independent establishment, or agency responsible for making payments described in paragraph (1) for utility services to buildings, establishments, or other places shall pay from funds available to it, quarterly on the first day of each fiscal quarter to the account in the United States Treasury designated or established for 'Federal Payment for Water and Sewer Services,' the amount billed by the District government for water services to be furnished. Amounts in the account shall be made available to the District government on the 5th day of each fiscal quarter but in no case later than 30 days after payments are received from Federal agencies.

"(3) The amount or time period for late payment of water charges involving a building, establishment, or other place owned by the Government of the United States imposed by the District of Columbia shall not be different from those imposed by the District of Columbia on its most favored customer.".

(c) Section 212 of the District of Columbia Public Works Act of 1954 (68 Stat. 108; D.C. Stat. 43-1612) is amended by—

(1) striking in subsection (a) all that follows ": Provided, That"; and

(2) amending subsection (b) to read as follows:

"(b)(1) Beginning in the second quarter of fiscal year 1990 and thereafter, the government of the District of Columbia shall bill directly on a quarterly basis and in advance all buildings, establishments, or other places owned by the Government of the United States for the sanitary sewer services it receives. The District government shall adjust its individual billings to reflect actual usage of sanitary sewer services not later than 2 years after the conclusion of each quarter.

"(2) Each Federal department, independent establishment, or agency responsible for making payments described in paragraph (1) for utility services to buildings, establishments, or other places shall pay from funds available to it, quarterly on the first day of each fiscal quarter to the account in the United States Treasury designated or established for 'Federal Payment for Water and Sewer Services,' the amount billed by the District government for sanitary sewer services to be furnished. Amounts in the account shall be made available to the District government on the 5th day of each fiscal quarter but in no case later than 30 days after payments are received from Federal agencies.

"(3) The amount or time period for late payment of water charges involving a building, establishment, or other place owned by the Government of the United States imposed by the District of Columbia shall not be different from those imposed by the District of Columbia on its most favored customer.".

(d) The first sentence of subsection (d) of section 207 of the District of Columbia Public Works Act of 1954 (68 Stat. 106) is amended to read as follows: "Whenever a property upon which a sanitary sewer service charge is a public park, or uses water from the water supply system of the District for an industrial or commercial purpose in such a manner that the water so used is likewise not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary

sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof.".

(e) The amendments made by this section shall take effect January 1, 1990.

SEC. 134. (a) The paragraph under the heading "Lottery and Charitable Games Enterprise Fund" in the District of Columbia Appropriation Act, 1982, approved December 4, 1981 (95 Stat. 1174; Public Law 97-91), is amended—

(1) by striking the 10th proviso; and

(2) in the 11th proviso, by striking "1144, as well as in the Old Georgetown Historic District:" and inserting "1144:".

(b) The 11th proviso referred to in subsection (a)(2), as amended by such subsection, shall not apply with respect to any activity relating to a lottery, raffle, bingo, or other game of chance sponsored by, and conducted solely for the benefit of, an organization which is described in section 501(c)(3), and exempt from tax under section 501(a), of the Internal Revenue Code of 1986.

SEC. 135. No funds appropriated in this Act for the operation of programs, projects, or activities of the government of the District of Columbia for which the Council of the District of Columbia has approved a specific budget increase shall be reprogrammed or reduced prior to 30 days written notice to the Council of the District of Columbia.

SEC. 136. Such sums as may be necessary for fiscal year 1990 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

[SEC. 137. For the fiscal year ending September 30, 1990, and for every fiscal year thereafter, the District of Columbia shall pay interest on its quarterly payments to the United States that are made more than 60 days from the date of receipt of an itemized statement from the Federal Bureau of Prisons of amounts due for housing District of Columbia convicts in Federal penitentiaries for the preceding quarter.]

SEC. 137. Section 11-903, District of Columbia Code, is amended to read as follows:

"§ 11-903. Composition.

"The Superior Court of the District of Columbia shall consist of a chief judge and fifty-eight associate judges."

SEC. 138. Of the funds appropriated in Public Law 100-202 for carrying out part B of title VII of the Higher Education Act that remain available for obligation, $6,700,000 shall be awarded without regard to section 701(B), section 721(B), and section 721(C) of said Act to the consortium of institutions of higher education in the Washington, D.C. metropolitan area for the purpose of constructing and equipping an academic research library to link the library and information resources of the universities participating in the consortium.

SEC. 139. Section 132, as contained in section 101(c) of Public Law 100-202 is hereby rescinded.

This Act may be cited as the "District of Columbia Appropriations Act, 1990".

Mr. ADAMS. Mr. President, I am pleased to present the District of Columbia appropriations bill for the fiscal year 1990 to the Senate. It has been a great pleasure to work with Senator GRAMM on this through the subcommittee and full committee level.

This bill contains recommended Federal funds for the various payments in lieu of taxes and in services rendered to the Federal Government.

The bill also includes nearly $3 billion in locally generated revenue from the taxpayers of the District of Columbia. It is very important to remember that we form just one part of the revenue base of the District of Columbia. The bill presented here is within the 302(b) allocation budget authority and outlays for the District of Columbia Subcommittee.

In addition, we are $18.9 million below last years appropriated level. Mr. President, I will briefly highlight the bill and the work of the subcommittee.

The chairmanship of the district subcommittee is always a challenge. But I suspect this year it is more of a challenge than most. I approach this task with the long history of involvement with the District government, and a conviction that the problems of the District of Columbia are not isolated. I drew, as chairman the Subcommittee on Constitutional Law of the District of Columbia Committee for the House of Representatives, the charter that is known as the Home Rule Charter in 1973. So I have had some familiarity with the District, and I believe that the problems of the District are not isolated problems. They are the problems of any urban city in the United States.

At the top of that list are drugs and crime. Drugs and crime are everywhere. I recently visited a hospital ward in Seattle devoted to crack babies—the innocent victims of this plague. I rode with the police in Seattle and in Takoma through drug infested neighborhoods. The problems in my State are not as bad as the problems in the District of Columbia. But they will become bad if we do not stop this scourge now.

The subcommittee has spent most of its time at hearings, and in informal meetings discussing the problem of crime and drugs in the District of Columbia. I have a strong belief that we have to work with the District government to make the streets of our Capital City as safe as possible. I believe in home rule, and I do not want to run the District of Columbia. But I do want to help the District of Columbia.

Washington, DC has been hit with an unprecedented epidemic of crack abuse, and this has brought with it terrifying violence. This white plague is responsible for a wave of murders that have received national attention. Whole neighborhoods have been taken over by the thugs who sell and use these drugs. We cannot allow the streets of our Nation's Capital to be taken over by the drug lords.

The subcommittee talked at length with the leadership of the District government. We heard from the police, the judges, the corrections department, and those in the front lines trying to treat and rehabilitate addiction. We talked with those from the school board interested in trying to educate and prevent the start of crack addiction.

We have looked at the very considerable resources which the District government is spending, both on the war on drugs and trying to take back the streets. And we have looked for areas where we, the Congress, can target additional resources. Our philosophy from the start has been that our first priority regardless of what we may think on all other subjects must be to take back the streets. We cannot, and we will not, Mr. President, surrender any part of this city to drug pushers and addicts.

We have included in this bill $31.8 million in targeted funds for the emergency that drugs have caused in the District. This is a District drug emergency. The money as appropriated would fund the following:

First, 700 new police. We have just passed that bill authorizing the 700 new police and this bill will fund it. We need to increase police visibility on the streets in order to close down open-air drug markets and stop the violence. In 1969 Washington, DC, had over 5,000 police officers. The 700 new police recommended along with the 300 locally funded will return the Metropolitan Police Department to 1969 levels. The recommended bill includes $23 million to fund these police for fiscal year 1990.

Second, the court system is in dire need of help to deal with the increased number of drug felons. We simply cannot be left with arresting people and not have the full process work so that the streets are not only cleaned but remain clean. The subcommittee is recommending $4.8 million for the courts. This includes funds for eight additional judges. Drug offenders must be tried and punished as swiftly as possible after arrest.

Third, prisons. The subcommittee has approved the District's request for $42 million in authority for the District to borrow in the municipal bond market to construct an 800- to 1,000-bed facility at Lorton. Additional borrowing authority of $22 million is provided to plan three other prisons. We have also done everything we can in the committee to expedite the construction of the new correctional facility in Southeast Washington that was authorized, unfortunately to say, 3 years ago. It has languished. I want to compliment Senator GRAMM and all the other members of the committee for their unified action in helping me and the other authorities to start this prison moving because it is the first one that could be on line.

Fourth, drug treatment. Law enforcement has been emphasized because it is necessary to stabilize the streets. But the long-term battle will not be won unless we can treat and re-

habilitate addicts. We are providing $2 million to begin a program to provide treatment on demand for addicts who are pregnant. Too many crack addicted babies are born in Washington, DC. Our first goal should be to try to save these innocent children.

Last, we are recommending an additional $1.3 million for the D.C. school system to expand afterschool programs, particularly in high-risk neighborhoods. We have to give our children an alternative to the enticement of drug activity on the streets.

What I have outlined above, Mr. President, will not solve the problem of drugs in Washington, DC. We hope that it will help a city government which is already spending an ever-increasing amount of money on the drug problem. The subcommittee will expect the District's Director of Drug Control Policy to coordinate and implement these recommended programs.

Senator GRAMM and I have agreed that we will hold hearings in 1990 to ensure that these resources are being spent as appropriated on time and for the projects which have been authorized, and for which money has been provided.

The remainder of the Federal funds portion of the bill, Mr. President, I will describe now. There is the regular portion of the bill, and it fits within the budget guidelines that have been provided to the committee and subcommittee.

First, there is a $430.5-million payment that is the Federal payment to the District of Columbia. Second, there is a $52 million amount for the Federal contribution to the various retirement funds in the District. These were authorized, Mr. President, and some Members may not know this, many years ago, but we did not fund the retirement fund for the police and fire departments through many years when this city did not have home rule and for a period thereafter. We are trying, as is the city, to be certain those retirement funds are appropriately funded.

Fifteen million dollars is appropriated as the next-to-the-last installment on the payment to the District for the extraordinary costs associated with taking over the operation of St. Elizabeths Hospital. This was required by a law passed by this Senate and this Congress, and the operation of St. Elizabeths is now moving into the control of the District, and this is the next-to-the-last installment.

Eight point seven million is appropriated for the first quarter of payments for water and sewer services to the Federal Government.

Mr. President, this is a new program that has been recommended for many years by the Office of Management and Budget and which the Senate subcommittee and full committee are recommending be adopted now. What it does is represents a reduction of more than $26 million below the House allowance for this purpose, and a departure from past practices. Since 1954, the Federal Government has simply made a lump sum payment, in lieu of charging to the various entities of the Federal Government in the District. It is a lump sum payment to the District for services.

Three years ago the President recommended that the District bill each Federal agency for these services. We have looked to this proposal and agree that now is the time to make the change. Therefore, we have included sufficient funds to make the first quarter payment in a lump sum, and it included language authorizing the District government to begin billing and receiving payment from the various Federal agencies beginning on January 19, 1990.

Let me close by thanking Senator GRAMM for his cooperation and support during this progress. We do not agree on everything, and that will become apparent; we disagree with good grace and humor. I thank the other members of the subcommittee for their hard work on a task that is very rarely rewarded.

Before I yield the floor, I want to thank the members of the committee for their interest, cooperation and support this year, and, in particular, the distinguished chairman on appropriations, Senator BYRD, who has provided us with leadership and guidance and made certain that we brought these bills on time to the floor. I am very grateful to them and to the members of the staff who have assisted us.

Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, and that the bill as thus amended be regarded for purposes of amendment as original text, provided that no point of order under rule 16 shall have been considered to have been waived, if the request is agreed to.

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

Mr. ADAMS. Mr. President, I now wish to yield the floor for any statement Senator GRAMM may wish to make and, once again, to indicate to him my appreciation for this bill moving rapidly to the floor.

The PRESIDING OFFICER. The Senator from Texas [Mr. GRAMM].

Mr. GRAMM. I thank our distinguished chairman for his leadership on this bill, Mr. President. I think that I can summarize my views very quickly. I think Senator ADAMS has gone through the bill in some detail.

First of all, I think it is important to note that this bill is within our 302(b) allocations, which, converted into English, means that it fits the budget that we adopted, and the budget that we set out as our target.

Second, I think it is important to note that in terms of outlays, last year we had in Federal payments $556,910,000. This year, we have $538,027,000.

In addition, we have implemented a fundamental reform, and I want to congratulate our chairman for his support of that reform. That is a reform whereby we are going to have the District of Columbia bill Federal agencies for their sewer and water, rather than making up some fictitious figure to be negotiated out by politicians. I think it is vitally important that we move toward a more business-like relationship with the District of Columbia.

Next, we have in this bill reimposed apportionment requirements in relation to the District of Columbia, so that the District of Columbia, in the Federal outlays we make to it, is treated as all other areas receiving funding from the Federal taxpayer, so that the Federal Government has oversight and management in relation to the timing of those payments.

Finally, and most important, Mr. President, this is an appropriation bill that is committed to imposing law and order in the District of Columbia. It commits resources and combines that with a mandate to get on with the job of building a new prison, to put these hoodlums that ravage the law-abiding citizens of the District of Columbia in jail and to keep them there.

Second, we commit resources, and a lot of resources, to hire 700 new police officers to, again, enforce the law. In addition, we provide additional funding to engage in drug education and drug rehabilitation.

So in the District of Columbia appropriation bill, you can debate forever on the merits or lack thereof in the bill, but clearly this bill is a step toward greater fiscal restraint, greater efficiency in the managing relationship between the Federal Government and the District of Columbia, and then intensification of our commitment to enforcing the law and to protecting law-abiding citizens.

As our distinguished chairman said, I am not interested in being Mayor of the District of Columbia. It does not look like a very good job to me, looking in from the outside, and I have not sought that job.

We have tried, very effectively, I think, on a bipartisan basis, to do the Federal job and to leave the running of the city of the District of Columbia up to those who are elected here.

Let me say, Mr. President, that I do believe that with the resources that we have provided, that having participated in providing more money for law enforcement officials, more money for prisons, more money for education, more money for drug rehabilitation, I commend to the government of the District of Columbia an effort on their

part to reorder the priorities of the use of their local tax moneys for these same purposes. I commend to them strong mandatory sentencing.

It is outrageous, given the terrible crimes and brutal murders that occur in the District of Columbia, that there is no death penalty here, even for killing a police officer. The level of sentences being handed out by courts is moving in the wrong direction, with lower sentences and fewer numbers of years served.

I hope we have moved to at least give them the capacity to correct that, with the providing of money for prisons.

Finally, Mr. President, let me say I am sure there are a lot of controversial items here I think the final controversial item that we will address on the floor, Senator ADAMS and I decided if you are going to have a big shootout, why do it twice.

So, clearly, a point of contention in this bill is: Should we have a prohibition, since Federal funds are used throughout the District of Columbia? And it is like throwing one more piece of lead into a big pot of melted lead; all of it gets mixed up.

Should there be a prohibition against using, in essence, directly or indirectly, the taxpayers' money in funding abortions when the mother's life is not in danger? That is the outstanding issue. I am sure my colleagues have seen it.

The President has said that unless this language is corrected, that he will veto the bill. Obviously, much of the contention here on the floor is going to be directed at this issue.

Let me conclude by saying that I enjoyed having an opportunity to work with our distinguished chairman. We have had lots of hearings; we have heard from a lot of people. Our problems in the District of Columbia are very serious problems.

I think it is important for us to remember that this is the Nation's Capital. If we cannot address these problems here, we are going to have a very difficult time addressing them anywhere else.

I think we have committed the resources. We have given the District of Columbia the tools. Will they use those tools efficiently? Obviously the voters of the District of Columbia will have an opportunity to look and see how they do that job and hold them accountable and that is what the democratic process is about.

I commend our chairman. I enjoyed working with him. I think we have worked well together in trying to keep it on the offensive, not on the political side of what is going on in the District of Columbia, and the basic objective we have is to provide the Federal funds to defray the costs incurred as a result of tax liability that is not paid here.

I commend the chairman. I enjoyed working with him. I have not worked on these bills in the past; it has not been an opportunity that has been imposed on me by our fellow colleagues. But I think it is basically a bill that has many strong points. I am hopeful that we can correct this last problem with it on the floor and that as a result we will eliminate the controversy and the President can sign the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. ADAMS. Mr. President, I know of no amendments on this side. As Senator GRAMM indicated, there may be amendments from the other side.

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

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

Mr. WILSON. Mr. President, I rise to offer an amendment. Before I do, I wish to give credit where it is due. Recently, the Washington Post has run a series; in 3 consecutive days, they have told a chilling story of the explosion of crack as an epidemic here in the District of Columbia and what its implications have been in terms of the children of this District.

The first of these articles contained a headline, "Abuse, Neglect Rising in D.C. Drugs Ravage Home Life."

The second installment bore the headline, "Boarder Babies"—meaning those who have been abandoned—"Linger in Hospitals. Drug Users Abandon Their Infants."

The third in this series entitled "The Crack Legacy" bore the headline "Sitting on a Time Bomb Waiting for Kids To Die"—that being a quote from a District of Columbia Child Welfare Services worker. And the headline below is "D.C. Child Welfare Services Overmatched."

Mr. President, this is an ugly story. It is a story that demands attention. Perhaps to put it in simplest terms, I will simply quote the first three paragraphs of the last installment.

This is a series by Marcia Slacum Greene, Washington Post staff writer, and she wrote in the concluding installment:

Children whose families have been ripped apart by the District's crack cocaine epidemic are being victimized twice: once by the drug scourge and again by a child welfare system beset with long-standing operational problems.

More than half of the system's authorized social work positions are vacant. Social workers, who have found that drug cases defy traditional solutions and demand enormous commitments of time, are handling average caseloads of 61 families each, one of the highest of any major city. One D.C. worker has been assigned to oversee 117 families with 221 children.

The system's mandate to determine promptly whether a child is in danger is not being carried out. Last month, the agency had a stack of uninvestigated cases involving 771 children.

Mr. President, I ask unanimous consent that this series from the Washington Post, "The Crack Legacy," be printed in the RECORD.

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

[From the Washington Post, Sept. 10, 1989]

ABUSE, NEGLECT RISING IN DC—DRUGS RAVAGE HOME LIFE

(By Marcia Slacum Greene)

An increase of crack-cocaine addiction in Washington has brought an unprecedented surge in the number of children being abused, neglected and mistreated.

Parents seeking the next crack fix have abandoned their young children in the streets and in hospitals. They have sold food stamps and their children's clothes for drug money. A few even have sold their children as prostitutes.

Like children of war, the neglected youngsters wipe their tears, eat what they can find and spend hours—sometimes days—at home alone. Authorities have found 6-year-olds taking care of 2- and 3-year-olds, and preschoolers begging neighbors and strangers for food. Some children have been beaten, burned or sexually abused. A few have died.

These damaged children are among the newest and most helpless victims of crack cocaine, which has created more profound changes in human behavior than any other illegal drug in recent history, including heroin, PCP and the more traditional form of cocaine powder. It alters brain chemistry to such an extent that it makes addiction almost a certainty, usually in a matter of months.

More so than with other drugs, crack addicts are found among young mothers, with small children, few child-rearing skills and no spouse to share their load. In their extended families, even some of the grandparents are addicted.

"I've been a police officer for 20 years and for the first time I'm seeing kids born without families, including a mother," said Sgt. Peter D. Banks of the D.C. police youth division. "No one is teaching them any moral values. Nobody is giving them any love. Nobody is holding them."

The effects are seen throughout the system. Nearly half of the neglect and abuse cases entering D.C. Superior Court are drug related and illegal drugs are a factor in the majority of some social workers' caseloads. In more than half of the nearly 6,000 neglect or abuse reports received from October to June, drugs, including alcohol, were a factor.

Experts believe there are many more drug-related child neglect and abuse cases that are going undiscovered. As it is now, many children living in drug environments are coming into the system only after someone stumbles upon them. Social workers making their rounds, police on drug raids and concerned neighbors are increasingly finding these children by accident.

Police conducting a drug raid at a Southeast Washington apartment last October found a girl and a boy—ages 2 and 4—asleep on a urine-soaked mattress, covered with roaches and "so filthy that the dirt could be scraped off of them," according to court records. The floor was littered with broken furniture and an eight-inch-deep layer of clothing. Rats were everywhere.

The only food in the apartment was a moldy substance in an oven. When questioned, the children's mother, who carried a wad of cash, said she could not remember when she last fed the children. The police bought food from a street vendor and watched as the children devoured it so quickly they feared the youngsters might choke.

Addicted parents' loss of their sense of responsibility is increasingly leaving children in traumatic situations that were rare just a few years ago.

One drug-addicted mother left her three children, ages 3, 2 and 1, in an apartment building closet for hours so she could get some free time. They were found there at 3 a.m.

Last year, three boys, ages 14, 8 and 6, whose parents bought and used drugs in front of them, thought they were going to be massacred by drug dealers when police, with guns drawn, entered the Northeast Washington apartment during a drug raid, according to court records. The oldest child testified that he cooked meals for his brothers and described his home as having a bedroom for his parents, a bedroom for the children and a drug room.

In his televised anti-drug speech last week, President Bush spotlighted the case of 7-year-old Dooney Waters, a Prince George's County boy whose life in a crack house was chronicled in The Washington Post this summer. "No child in America should have to live like this. Together, as a people, we can save these children," Bush said.

The District's child welfare system is just one of many across the country and the region that are struggling to save them.

"The most victimized children have come within the last three years, and they are under the age of 7," said District child psychiatrist Alberta Vallis. "This is the next generation, and so many will grow up not adhering to any value system that you won't be able to build enough prisons to house them."

Neglected and abused children in the District have remained largely hidden because of confidentiality laws that keep their identities and the details of the cases from the public. The Washington Post obtained permission to review 100 family court cases, provided the names of the children were not disclosed.

Although the laws are aimed at protecting the victimized children, they also have the effect of creating an invisible web where new patterns of neglect and abuse and shortcomings within the child welfare system are shielded from outside scrutiny.

In addition, some cases are undetected because many of the at-risk children are not in school or may not receive regular health care, removing two groups of professionals—teachers and doctors—who often are the first to detect child neglect and abuse.

Nevertheless, hundreds of children whose parents are drug abusers have been referred to the Child and Family Services Division of the D.C. Department of Human Services, which provides child protective services and, when necessary, places children in foster care. But in a self-assessment, the agency concluded that staffing shortages last year made it difficult "to provide even a minimum level of services and care" to children and their families.

D.C. Social Services Commissioner Barbara Burke-Tatum said the city not only has a shortage of social workers, but also is finding that its traditional methods are inadequate to deal with families troubled by myriad social problems, including drugs, homelessness and mental illness. As a result, she said, "We just can't keep up."

Burke-Tatum said she lacks sufficient data to know whether crack cocaine has had a significant effect on the child welfare system. She noted that the system does not separate cases in which the parents were involved with illegal drugs from cases involving alcohol.

The social workers who work with the children, however, readily say they are overwhelmed because of a rise in drug cases. They say they are engaged in triage prioritizing cases in a desperate attempt to get to the worst ones, only to see the less severe cases later turn into major problems. Often, children enter the system only after they are harmed.

"We don't worry about the children who can get up and walk because they can beg in the streets or at the next-door neighbors," said an investigator with a backlog of 50 cases. "We will leave them with anyone who will take them, related or unrelated. To be honest with you, we don't have time to go back and check to see what happens to them."

Neighbors of these drug-riddled families are becoming surrogate parents who often are the first to encounter hungry children, the first to realize the extent of the problem.

Catherine Graham, for instance, listened for about a year for the timid knock of an upstairs neighbor who was just tall enough to reach the doorknob in his apartment. While his mother slept, the 3-year-old would seek out Graham. His greeting was often direct: "I'm hungry."

Graham, a resident at a Southeast public housing complex, recalled those visits recently, telling how she fed the child breakfast cereal, snacks and greens. She would watch him eat "like he was trying to store it up inside 'cause he didn't know when he was going to eat again," she said.

When his mother, an alleged crack user, forbade the child to go inside Graham's apartment for food, the boy, who wore the same grimy clothes for weeks at a time, would stand outside her door like a Dickensian character and plead: "Please, Cath. Can I have some bread?" He would run to play clutching slices of bread.

Last December, shortly after the child's fourth birthday, Graham said, she called the city's child protective services agency, the apartment building's rental office and a D.C. Council member after the boy showed her two welts on his back. The protective services agency promised to send someone, but no social worker ever interviewed her, Graham said. Soon, the child stopped coming.

In January, after overhearing an older child in the apartment building tell his playmates to come see the little boy upstairs because "he messed up," Graham felt a chill, slipped on her shoes and went upstairs. After she persuaded the little boy, alone and crying, to open his apartment door, his appearance "brought tears to my eyes and put a pain in my heart," she said.

"His face was black and blue," Graham continued. "One eye was closed. He had raw sores on his stomach, legs and back. His cheek was broken, his nose was broken. He looked like somebody's punching bag."

Graham took the boy to her apartment and called the apartment manager, who immediately called police. When the child left the hospital, he was placed in an emergency shelter for children.

The boy's mother, a woman in her mid-twenties who had completed a computer training class before her alleged drug involvement began, and her girlfriend were charged in the D.C. Superior Court's criminal division with assault with a dangerous weapon and cruelty to children. The mother was also charged with neglecting to provide food, clothing and shelter for her son. Her case is pending.

The court system, which received 609 new child-neglect cases last year, is bracing for a record 1,000 new cases this year, largely because of the impact of drugs.

D.C. Superior Court Judge Geoffrey M. Alprin, deputy presiding judge of the family division, who handled the neglect calendar between October and March, said he was outraged by the drug factor.

"In so many of these cases, we were coming across young children that we never knew about before, in the context of a drug raid," Alprin said. "We were seeing the conditions that they live in and how badly they are treated. My eyes were opened. We as a community are missing these children."

Some of the parents in those cases have histories of drug abuse; many are unemployed and under stress, and have poor parenting skills. Child-care professionals said the addition of crack cocaine has made the parents unpredictable and their children extremely vulnerable. Some of those children are showing up in some unlikely places.

Last August, a woman pumping gas about 10 p.m. at an Amoco service station on New York Avenue NE noticed a toddler standing beside a man she assumed was his father. When the man left without the boy, the woman watched the barefoot child head toward the traffic on Bladensburg Road. She ran after him. The child, who had wandered into the station alone, turned out to be 23 months old.

A door-to-door search by police located the toddler's grandmother. She said the child had been in the custody of his mother, who frequently went to the Northeast neighborhood to get high. During the time police were trying to identify the boy, the mother had told the grandmother that he was being cared for by relatives in Virginia.

Some drug-addicted parents leave their children for days with friends or strangers, which sometimes makes it difficult for authorities to determine who neglected or abused a child.

One woman referred for drug treatment told child welfare workers that she had no idea who sexually abused her 2-year-old daughter, who had contracted gonorrhea.

In March, a mother went to buy drugs and left her 1-year-old boy—who was dressed in a yellow designer jogging suit and expensive British Knights sneakers and wore a gold chain around his wrist—with two acquaintances, one of them an addict whose name the mother didn't know.

After the mother had been gone for four hours, the addict called the child protective services agency, but got inpatient when no one came immediately. The woman left the child on a street corner, called police and said she found an abandoned boy on the way to the store. Police picked up the child, but were unable to locate the mother for

two days. A source said the child was subsequently returned to his mother.

Since January parents or relatives have been charged or convicted in the deaths of at least seven District children under the age of 12. One of the greatest fears of child-care workers is that the city may begin to see more children die because of their parents' crack cocaine use.

Although the District does not keep official records of deaths due to neglect or abuse, a group studying the issue for the Mayor's Committee on Child Abuse and Neglect plans to recommend the establishment of a formal child death review committee.

"We're concerned that some children have died of neglect or abuse and have not been counted," said Mirelle B. Kanda, head of the study group and director of child protection for Children's Hospital. "I have a concern that more children may die. The indicators are there and are more pervasive in families where there is drug use."

U.S. Attorney Jay B. Stephens said his office has prosecuted several "bone-chilling" child death cases, including at least three in which illegal drug use has been alleged.

Crack cocaine is a key issue in legal motions filed in the case of Padrica Caine Hill, a District woman charged in April with killing two of her children and trying to kill a third.

When Hill's husband arrived at his home in Northeast Washington, he found the body of 8-year-old Kristina Caine in the basement and the body of 4-year-old Eric Hill Jr. on the living room sofa, both with clotheslines wrapped around their necks. Jennifer Hill, a 2-year-old, was still alive in an upstairs bedroom with a clothesline around her neck. Jennifer survived and told police "Mommie hurt Jennifer," according to court records.

A defense attorney's motion states that Hill was "heavily under the influence of crack" when her children died and, according to Hill's own statements, had been smoking crack for a day and a half.

Stephens said he is concerned about the potential danger for children whose parents are drug addicts.

"The cases really demonstrate the tragedy of drug abuse," Stephens said. "It makes the case that drug abuse is not a victimless crime."

There is little debate about what the problem means for the future of some of the neglected children.

"Some of the medical problems we can heal," Kanda said. "What neglect does to their self-esteem and personalities is more serious. Neglected kids have internal scars that may last for the rest of their lives."

Children entering foster care are much angrier than ever, according to some long-time foster parents.

One foster mother purchased Popeye punching bags so the children could vent their frustration. One 5-year-old foster child, whose mother used drugs, became so angry about having to visit her mother that she stuck sharp objects into the walls. Her foster mother took the little girl back to social workers when the child began tearing up her own clothes.

Child psychiatrist Vallis, who sees about 100 neglected or abused children a year, said that many of her nursery school clients are born to drug-addicted mothers and are incapable of verbalizing their wants and unable to follow instructions.

"They should have an attention span that will allow them to stick to one thing for 20 to 30 minutes," Vallis said. "Some of them can stay with it for 20 or 30 seconds. Depending on the neurological [damage] it sometimes takes a year or two to settle them down."

Child counselors also say that some young children neglected by drug-addicted parents are overly aggressive and engage in socially unacceptable behavior. Vallis said children at her therapeutic nurseries are not allowed to go to the bathroom alone because they have begun to engage in sexual acts. At one emergency child-care facility, counselors discovered 4-year-olds engaged in oral sex.

Betty Phifer-Ames, an assistant corporation counsel for the District who prosecutes neglect and abuse cases, says that for many of the children she sees, all signs of innocence are long gone.

"When we do get foster homes [for these children], they are dealing with kids who are used to seeing people have sex in front of them, who are not used to bathing in any regular fashion, who are not used to eating," Phifer-Ames said. "We see an increase of sex abuse cases, and others are starting to prostitute their daughters."

In some cases, the psychological damage to abused children makes it difficult for them to adjust normally.

When one 3-year-old District child entered foster care after his mother abandoned him at a bus station, he greeted strangers with: "I hate you and I want to kill you."

Before he was abandoned, the child's mother, according to official records, had suffered from mental problems and his grandmother had been accused of physically abusing him. He also had lived in vacant buildings, bathing in public restrooms.

Even after the boy was safe and well cared for in a foster home, his past haunted him.

When his foster mother took another foster child to the hospital and returned home without him, the little boy, who vividly remembered being abandoned, confronted her: "You threw (him) away," he whined over and over. During a show-and-tell session in Sunday school, the child told his class that his foster brother had been thrown out in the trash. The foster mother had to get permission for the child to see the boy in the hospital.

After being adopted by his foster parents, the boy's emotional state improved. But even with the security of a permanent home, the child still has bitter memories.

When his adoptive father's mother asked him to call her "grandma," the request unleashed an old pain. "If I call you grandma," the child responded, "does that mean you can burn me?"

[From the Washington Post, Sept. 10, 1989]

GRANDMOTHER STRUGGLES TO PICK UP WHERE PARENTS LEFT OFF

(By Marcia Slacum Greene)

When Patricia A. Gordon's son called from Lorton Correctional Complex to say that he was concerned about whether his girlfriend, who he said was a drug user, would look after their three children. Gordon's initial reaction was to not get involved.

Gordon, 44, had reared her four children, now adults, alone after separating from her husband and considered it meddlesome to interfere with another woman's family.

In the past, her only visits with the children had been at her house. She was unprepared for the living conditions when she went to visit them.

"I could not believe what I saw. I thought I was walking into a story," Gordon said of visiting there last November. "The children had dirt caked on them. There was no food in the apartment. The apartment was dirty, the floors, the walls, and it looked vacant with a board up over a broken window."

She told the children's mother, who was pregnant, that she would take the children, and the mother agreed. Now, the three grandchildren, ages 2, 3 and 4, are living with her, as is the baby born in January. She agreed to take care of not only her grandchildren but also the woman's 6-year-old daughter, who is not related to Gordon.

As Gordon sat recently in the living room of her two-bedroom apartment at Langston Terrace, a public housing complex in Northeast Washington, it was as if she were trying to help her grandchildren recapture lost love. She bounced the baby girl on her lap while smothering her with kisses, disciplined the mischievous 2-year-old boy who tried to walk across the sofa and promised to get the oldest a bandage for a barely visible scratch.

As the 3-year-old, whose eyes are almost closed because of a vision problem, moved across the room, his head slightly lifted so he could see where he was going. Gordon watched him closely, then impulsively pulled him to her and hugged him tightly.

As the crack cocaine epidemic continues to wreak its havoc on families in the District and throughout the region, grandmothers—traditionally the anchors for troubled families—are being called upon more and more often to step in and pick up the pieces, according to workers in the child welfare system. But even as the problem grows deeper, they say, the ability to rely on the extended family structure is becoming less of a sure thing.

Many grandmothers cannot afford to raise their grandchildren or already have taken in two or three children and refuse to take another. In some cases, grandmothers, many of them young women who were teenage mothers, also are addicted to crack cocaine.

And family members who are willing to assume the responsibility for the children of their crack-addicted relatives find that a new set of daunting challenges awaits them.

Gordon said she has been told by doctors that all of her grandchildren are high-risk babies who have or are likely to develop medical problems or learning disabilities as a result of their mother's drug use. She does not fully understand what such an assessment could mean for the future, but she is painfully aware of existing medical needs.

Gordon said the 7-month-old baby was born with cocaine withdrawal symptoms. The 3-year-old's vision problem, she said, may require surgery. Most of the children have not yet received all of their required immunizations. In July alone, Gordon took the children to 15 medical appointments.

"They are my grandchildren, and I think it is my responsibility," she said. "I would not have gotten them if their parents were able to care for them."

When she first took the children home last November, Gordon quit her part-time job as an office cleaner because she could not pay a babysitter. She said she told District social workers that she would take care of the children but that she needed financial assistance. Because of a misunderstanding on her part, Gordon did not realize she had to apply for the funds, and the money never came.

After using up her savings, Gordon said, she had about $5 left. She returned the chil-

dren to their mother, believing she had no choice.

In January, after the youngest grandchild was born, the children's father called once again to ask Gordon to intervene. In March, she took the children home with her. This time, she relied on donations from local charities for food and clothing.

In April, the D.C. Department of Human Services began providing homemaker services so that Gordon could leave home to shop, do the laundry and take the children for medical appointments. Gordon now receives $480 a month from the Aid to Families with Dependent Children program

Gordon has no idea how long she will be taking care of her grandchildren, but says she has considered the possibility that she may be involved until they are grown.

"These kids need a chance. I want to give them the chance that their mother and father don't seem to be mature enough to give them," Gordon said. "I feel God is not going to fail my grandchildren."

[From the Washington Post, Sept. 11, 1989]

"BOARDER BABIES" LINGER IN HOSPITALS—DRUG USERS ABANDON THEIR INFANTS

(By Marcia Slacum Greene)

In a quiet room at Howard University Hospital, there is a healthy 7-month-old baby who has spent her entire life there.

The mother smoked crack cocaine during her pregnancy and abandoned the child a few days after she was born, leaving hospital officials an address for the child's grandmother, who already had three of the woman's children.

After months of being unable to locate the mother, the hospital staff realized last month that the woman had returned as a patient. When social workers confronted her, the mother gave no reason for abandoning her baby, made no apologies and signed papers making her daughter a ward of the city.

Then, without visiting her baby, the woman left the hospital.

The baby and dozens of other District children are residents of the ad hoc orphanages of the 1980s—local hospitals that have become the only safety net for children who are sometimes abandoned before they are named.

The children, who are medically ready to be discharged but have no place to go, are called boarder babies, and their number is growing.

Although the problem has been recognized nationally, boarder babies are a new phenomenon for the District. Hospitals used to have only one or two of them a year. Since January 101 such children have been boarders in seven D.C. hospitals, including 41 on hand during one week in August when The Washington Post conducted an informal survey.

Nurses at these hospitals try to fill the parental void. At D.C. General Hospital, for example, they name the children for their own, cuddle them whenever they can and record developmental milestones in baby books.

Howard nurses remember to put fresh ribbons in the girls' hair and throw six-month birthday parties. Most of the babies' clothes, including special outfits for holidays, come from the doctors and nurses.

And when the babies move to other parts of the hospitals, it is the nurses who cry.

Unwanted by drug-addicted parents, the babies linger in hospitals because the District's operationally troubled child welfare system has failed to locate enough foster care and adoptive homes for them.

As a result, there is an increasing number of babies, some of them as old as nine months, who have never seen the sun or felt the wind, who have never slept in a darkened room, whose only form of human bonding is with a changing sea of doctors and nurses.

Some of the babies are developmentally behind, and their futures are fraught with uncertainty.

Beyond the human toll on the babies and on the limited nursing staffs, the financial costs are enormous: $100,000 a year or more for each child.

The hospitals have picked up most of the costs, which vary widely depending on whether a hospital includes medical treatment or just the cost of sheltering the babies. During the past eight months, costs ranged from $60,000 for six babies at the Washington Hospital Center to more than $3 million for 41 babies at Howard.

Howard Hospital has had the largest number of boarder babies, and at D.C. General, one-fifth of the women in labor have acknowledged using drugs—twice as many as in 1987. Administrators at both hospitals have pushed vigorously for a citywide solution.

"I think it is a crisis that has to be attended to," said Jaynes Rice, administrator for Howard Hospital, who worked with boarder babies in New York City years ago. "I don't believe there is an understanding of how easy children can be institutionalized. We are going to do something. We don't intend for these kids to be reared in this hospital. That is not a threat. That is a reality."

D.C. Social Services Commissioner Barbara Burke-Tatum, whose agency oversees neglected, abused and abandoned children in the District, said she had not heard the term boarder baby until April.

Since then, she has met with local hospital administators and questioned whether some hospitals have given a true picture of the boarder baby population. Burke-Tatum said she found that some of the children described as boarder babies at Howard and another hospital, which she declined to name, were not medically ready to be discharged. In other cases, she said, hospitals had not notified the child welfare system in a timely fashion about some of the children.

Burke-Tatum said that many of the hospitals have not clearly understood what steps to take to get the District government involved. She said her staff is now providing that direction.

"We are not a legal kidnapping service," Burke-Tatum said. "Everybody in the world who is on drugs, I cannot walk in there and take their child. Life doesn't work that way. If we get a complaint of abuse or neglect or I have gone so far as to say if they think . . . that neglect is possible, I am willing to make the moves then."

Records kept by Howard indicate that in most cases, the Social Services Commission was notified about a boarder baby within days after the child was born or ready for discharge.

"If they can demonstrate that they acted quickly when cases were brought to their attention, then they can put the blame on the hospitals," said Antoine Fomufod, director of newborn services as Howard. "If you had only three or five babies who are well, it's too many babies. But the hospitals are dealing with overcrowding [in the nurseries]. Our hospital is lucky that we have not had epidemics of infection. It is a problem that could explode at any time."

Meanwhile, boarder babies have altered the hospital atmosphere.

In the nurseries, cribs have joined the traditional bassinets, Rattles, dolls, swings and playpens add a day-care center touch. Once places where sleeping was the chief activity, nurseries now have floor mats for babies who are beginning to crawl.

The older chidren have changed the working environment. At a nurses' station on Howard Hospital's sixth floor recently, nurses finished paperwork and doctors conferred while two boarder children watched it all. One, a 6-month-old girl, laughed as she rocked in a blue Fisher-Price swing perched beside the front desk. The other, a wide-eyed, 14-month-old girl, sat in a highchair and eagerly tried to keep an eye on her overdue lunch and every visitor who walked by.

For each of the boarder babies at Howard, there is a tragic story in which the main character is a mother whose crack-cocaine addiction has stripped her of the desire or the ability to care for her child.

The 14-month-old girl at the nurses' station had been at the hospital for 10 months. Both her grandmother, who brought her to the hospital, and her mother are drug abusers. The girl was referred to the city's child welfare system for placement last October. Since then, she has learned to walk and talk in the hospital.

In one pediatric ward, chubby, 6-month-old twin boys are still in residence even though their mother announced at their birth that she wanted to give them up for adoption. The mother, a cocaine user who has a lengthy history of substance abuse, has three other children in the child welfare system.

In the nursery, a boy and girl, ages 2 months and 1 month, were born to cocaine addicts. The mother of the boy told hospital staff that she wanted to take him home, but city officials ordered the hospital not to release the baby because two other children had been taken from the mother because of her drug use.

The other mother already had two children in foster care and had abandoned a child born a year ago. When her most recent child was born, the hospital could not find her for a month. She turned up one day and asked when the baby could go home, but has not been seen since.

Medical staffs at the hospitals stress that their facilities are detrimental to healthy children.

Boarder babies are in danger of contracting diseases from sick children. But even more troubling is the prospect of raising children in nurseries that are neither designed nor staffed to give babies the kind of nurturing they should receive.

Mirelle B. Kanda, director of child protection for Children's Hospital, said that even a healthy child kept in an institution such as a hospital for long periods may never relate to people.

"It can damage the child's personality in terms of being able to develop lasting relationships with others," Kanda said. "It can also lead to antisocial behavior. People who don't identify with other human beings can harm others and not feel any guilt."

Hospital officials say the longer the babies remain in the hospital, the more withdrawn they become. At first, the babies eagerly reach out to the daily parade of doctors and nurses who tend to them. But when the sea of faces continues to change and the staff dashes away to take care of the sick chil-

dren, some boarder babies sense rejection and begin to withdraw.

Busy hospital staff members have devised creative ways to fill the dual role of parent and nurse.

One day this summer, a healthy, 5-month-old girl at D.C. General grinned at a nurse who was making faces at her and tugging at her dress. A card taped above the baby's bed reminded the nurses of what kind of developmental activities they should expect for a child that age: "Five months. . . . Sits with slight support. . . . Reaches for toys when beyond reach . . . If you put a mirror in front, baby will move toward it."

"Children need space, and you can't always place them on the floor because it is not safe," said Regina M. Milteer, a D.C. General pediatrician. "Even with the best of care, they are still developmentally delayed."

"It's a tremendous amount of pressure on already understaffed nurses," Mehnur Abedin, director of nursing for D.C. General, said of the boarder baby problem. "This [nursery] would be a day-care center if it were not in a hospital. We need to break the cycle and restore the family units. [The mothers] are having too many free babies and going scot-free and leaving the babies with me."

But while the goal is for each child to have a permanent home, making such arrangements has not been easy. If the child welfare system is convinced that a child has been neglected or abandoned, it can file a court petition to have the child placed in foster care. It also can seek to have the child adopted once parental rights have been relinquished or once it has been determined that the child cannot be returned home or to relatives.

No information was available on where the babies removed from District hospitals by the child welfare system have been placed.

In June, the D.C. Commission on Social Services and Howard Hospital took out advertisements in local newspapers, decrying the fact that about 50 infants and young children are "lingering" in the city's hospitals and appealing for adoptive and foster parents.

"Please open your home and your heart," the advertisement said. The children "are in desperate need of loving families, just like yours, who can give them a home either temporarily or permanently."

Meanwhile, officials at the St. Ann's Infant and Maternity Home in Hyattsville, where the city contracts for emergency care for infants, have noted their own boarder baby phenomenon as the stay for some children at the facility has increased from several months to a year or longer.

In April, according to a source, the home had 12 children who had been there more than a year. In some cases, the home's administrators have sent letters to the District's Human Services Department, warning it that some children are being harmed by the longer stays.

At least two letters were written on behalf of a girl who arrived at St. Ann's in August 1987 at age 3 months. In July 1988, St. Ann's asked city officials to provide the child with a "more permanent and nurturing setting." Two months later, St. Ann's sent another letter saying that the child had received no visitors or phone calls and there had been no inquiries about her status in a year. "If she continues to be institutionalized," the letter warned, "she will most likely suffer emotional problems in the future."

Nearly eight months after the last letter and more than a year and a half after the child was first placed at St. Ann's, an official of the Human Services Department told a judge that the city would put the child in a foster home.

As of last week, the girl was still at St. Ann's.

BOARDER BABIES IN D.C. HOSPITALS

Hospital	Number in August	Total for 1989
D.C. General Hospital	9	15
Georgetown University Hospital	2	13
George Washington University Medical Center	4	8
Greater Southeast Community Hospital	8	14
Howard University Hospital	14	41
Providence Hospital	1	4
Washington Hospital Center	3	6
Total	41	101

Note—Other hospitals in the District reported having no boarder babies.
Source: Area hospitals.

[From the Washington Post, Sept. 12, 1989]

"SITTING ON A TIME BOMB WAITING FOR KIDS TO DIE"—D.C. CHILD WELFARE SERVICES OVERMATCHED

(By Marcia Slacum Greene)

Children whose families have been ripped apart by the District's crack cocaine epidemic are being victimized twice: once by the drug scourge and again by a child welfare system beset with long-standing operational problems.

More than half of the system's authorized social work positions are vacant. Social workers, who have found that drug cases defy traditional solutions and demand enormous commitments of time, are handling average caseloads of 61 families each, one of the highest of any major city. One D.C. worker has been assigned to oversee 117 families with 221 children.

The system's mandate to determine promptly whether a child is in danger is not being carried out. Last month, the agency had a stack of uninvestigated cases involving 771 children.

Babies born to drug-addicted mothers are lingering in local hospitals, although they are healthy and ready to be discharged. Other children are crammed into crowded and unlicensed foster care homes. Sometimes children are lost within the system because of a defective computer tracking system.

"The child welfare system in Washington is in an ongoing state of crisis as severe as that experienced by many of the homes from which the system is removing children," the American Civil Liberties Union said in a lawsuit filed against the District in June.

D.C. Social Services Commissioner Barbara Burke-Tatum, who overseas the system, acknowledged in a recent interview that it has major problems. Until changes are made, a child at risk in the District, she said, is a child in "bad shape." For now, Burke-Tatum said: "It is not a system that I would like to be in."

A Washington Post review of more than 100 court cases and interviews with scores of professionals over four months found that children of crack addicts are entering the system at an alarming rate. Consumed by drugs, the parents are not feeding, clothing or supervising their children, many of whom are being discovered during police drug raids.

The drug crisis and its impact on children is a national problem. But unlike some other jurisdictions that have obtained additional money and longer staffs to battle the crack epidemic, top administrators in the District's child welfare system have not yet geared up.

While D.C. social workers maintain that they are inundated with cases involving crack cocaine, Burke-Tatum said she cannot yet say that the drug is having an impact on the child welfare system because she has no statistics that she can trust. "I'm not going to hang my name on any figures unless they have been substantiated," she said.

Social workers on the front line who are pushing for change are more conclusive.

"Prevention is not a word that exists in our agency anymore," said Thomas Wells, a District social worker who has become a spokesman for his colleagues. "When we define tragedy, it is not a child's failure to thrive. It is either they are maimed to the point they will never recover or they are dead."

THE SYSTEM

The District's child welfare system is part of the Department of Human Services, the city's largest agency with about 10,000 employees and a budget of nearly $1 billion. In recent years, the agency has been plagued by major budget problems, contracting scandals, program inefficiencies and persistent vacancies at the top levels.

The Child and Family Services Division of the department—which administers programs for 6,500 children, including protective services, foster care and adoption—has been without a chief for two years and currently has vacancies in three other key management jobs.

While the agency has been grapping with leadership problems, the number of children alleged to be neglected or abused has climbed steadily, to more than 8,000 in 1988.

Child advocates such as Joyce Thomas, present of the D.C.-based Center for Child Protection and Family Support, maintain that for nearly a decade efforts to force the city to hire adequate staff have failed. The city has allowed more than half of the 113 social worker positions in the division to remain vacant. Overall, the division has a 41-percent vacancy rate.

In recent years, annual reports show that operational problems worsened until the agency declared in fiscal 1988 that staffing shortages made it difficult for it "to provide even a minimum level of services and care to neglected and abused children and their families."

Burke-Tatum, former administrator of the Massachusetts workfare program, who became head of the District's Social Services Commission in November, maintains that the city's child welfare system is no worse than those in other metropolitan areas. But she acknowledges that the District is receiving more children at a time when her staff is overwhelmed.

"Somebody may sit here and tell me that 'I have visited everybody on my caseload,'" Burke-Tatum said. "There is no way in hell I would believe that because they don't have enough people, they don't have enough time, they don't have enough resources. That is one of the basic problems."

The Child and Family Services Division already has one of the fastest-growing budgets in the city, and is currently receiving $54 million. Much of the total goes to paying for foster care placements—putting children in local family homes as well as sending them to costly out-of-state facilities.

Burke-Tatum said the division needs even more money to respond adequately to a new crop of children whose medical, emotional and behavioral problems are more severe.

But because of the city's budget problems, the division cannot fill an empty position or hire a single new worker without special permission. In May, Burke-Tatum asked Mayor Marion Barry for an additional $1.8 million to hire 150 social workers. The request was denied.

CASELOADS

On good days, some District child social workers merely feel frustrated overwhelmed. The bad days mean handling one crisis after another—being unable to visit families because of a shortage of agency cars, or baby-sitting for children who need to be placed in foster homes when none are available.

Until an administrator discovered the practice and stopped it, some social workers were so swamped that they allowed clients visiting the office to answer telephones.

One worker with a caseload of 60 families and about 130 children said he handled the cases by "ignoring most of them."

Another caseworker summed up the helplessness many feel this way. "I don't go to work. I go to war. If we help a child, it's by accident."

Those sentiments were voiced over and over again in interviews with 20 current and former social workers. Only one agreed to have his name used; the rest said they feared retaliation if they spoke on the record.

New allegations of abuse and neglect also are being ignored even though by law the city is required to initiate investigations on all cases within 24 hours.

In August, agency officials said, there was a backlog of 185 cases involving 771 children that either had not been investigated or had not been completed. Some social workers said the backlog was closer to 300 cases.

Burke-Tatum said that last November one worker was found to have 70 cases stacked in a drawer, none of which had been investigated. She did not say how long they had been there, but said they since have been investigated.

Some workers say case-juggling prevents them from intervening on time.

In one case, four children in a family were suffering from malnutrition before they finally were placed in foster care, even though the system had known for two years that the children were being neglected, according to court records.

About 8 p.m. on a cold February night in 1987, the oldest child in the family, a 9-year-old girl, ran away from home and dialed 911 from a telephone booth. She begged police for help, saying that her mother was on drugs and not feeding her or her three siblings.

Before that night, Protective Services had intervened after receiving several reports that the children were begging for food and being left alone, and that the mother was abusing drugs. A social worker had provided support services for the family and repeatedly warned the mother that her children could be taken away, according to court records.

Nevertheless, by the time the girl called police, malnutrition had stunted the growth of one of her brothers.

Workers fear that the size of the caseloads has reached a lethal level.

"It's like sitting on a time bomb waiting for kids to die," said one worker. "When you hear that a child died, you rush to your caseload to see if it is one of yours."

That nightmare almost came true for one caseworker in May.

For a month, Deborah Hill, a client, had called a social worker up to seven times a day, complaining that she was hearing voices and seeing her face change, according to a source familiar with the case. The social worker, who handles crisis cases and was assigned to 67 cases with 140 children, had visited Hill's home twice during that time and referred her to several programs that provide in-home services, as well as to a psychiatrist. In the end, none of those efforts was sufficient.

On May 6, according to charges filed against her, Hill told her 7-year-old daughter that she "would be going to heaven to see her grandmother" and then allegedly forced the child to swallow an overdose of drugs. Hill, who was indicted on charges of intent to kill and cruelty to children, has plead not guilty and is scheduled for trial in October. The girl was hospitalized and is now in the custody of relatives.

DIFFICULT CASES

Even if the system operated efficiently, some social workers say, it is now encountering cases so complicated and situations so unpredictable that Child Protective Services cannot be held responsible.

Drug cases, in particular, pose more difficult problems.

Often when drug-addicted parents are reported for abusing their children, a visit to the home does not yield the evidence authorities need to make a case in court.

One such case involves a woman with a drug habit, mental problems and 12 children. At one time or another, 11 of them have been in the child welfare system.

The mother tried to give one child to a security guard at the city's Reeves Municipal Center. Last spring, a mail carrier found another child abandoned on the steps of a shelter for the homeless.

"She never made herself available for any services, so we tried to take care of the kids the best we could," said a former social worker.

Another case illustrates the unpredictable dangers facing some children.

Social workers had intervened in a custody dispute over a child whose mother was in jail on drug charges. But the agency had no legal authority to get involved when the same woman had another child—this one born with cocaine in her system while the mother was incarcerated—because the woman had placed the baby in a grandmother's care.

The baby, Tawanda Wicker, was 7 weeks old when she was pronounced dead on arrival at Greater Southeast Community Hospital last September.

Her grandmother, Evelyn Wicker, told authorities that she had fed Tawanda and changed her diaper less than an hour before calling for help at her Southeast apartment. Wicker also said that during the two weeks that she cared for the child, she fed Tawanda every three hours and changed her diaper twice a day, according to official records.

An autopsy report stated that Tawanda had been dead for four to six hours before Wicker called for help and apparently had not been fed for days. The autopsy concluded that Tawanda died from competing causes: diaper rash "ulcerated all the way to the bone," starvation and blunt force trauma to the head.

"I have done what I could. . . . The baby is an addict, and the baby was thrust upon me. I had this burden thrust upon me," Wicker told authorities, according to court records. She has been indicted by a grand jury on charges of second-degree murder and cruelty to children.

TRACKING CHILDREN

For nearly a year, a foster couple tried to convince child welfare workers that the city had forgotten it had placed a child in their home, according to a source familiar with the case.

Although the foster parents received monthly payments for the child, no social worker had ever visited her. When the foster mother inquired about whether the city planned to return the child to her home or put her up for adoption, the woman was told that the city had no record of the child.

Eventually, records were found showing that the child's biological mother had given up the baby shortly after delivery. By this time, the child was 16 months old.

Social workers and administrators say the city's Child Welfare Tracking System, designed to keep vital information on children, does not work or provides unreliable information.

Several days a month, the computer system is down, forcing the staff to keep track of more than 2,000 foster children on index cards, workers say.

Lawyers who represent children in D.C. Superior Court have complained angrily that some children who were voluntarily placed on a 90-day emergency basis have been kept in foster care for years, without a judge's approval or representation by a lawyer.

District officials recently determined that of the 125 children now in emergency care, 96 have exceeded the 90-day limit.

The computer system also generates monthly payments to foster parents and is the only way the city can establish claims for federal reimbursement for foster care costs.

An internal Human Services Department memorandum estimated in April that the city's foster care program may be losing up to $18 million a year because of poor record-keeping.

PLACEMENT PROBLEMS

Foster care is the child welfare system's chief method of protecting children who have been removed from their homes, but in recent years demand has far outstripped the supply. During the past six months, about a dozen children have slept overnight in makeshift beds and on the floor of the Child and Family Services Division's intake office because there was no place else to put them.

The system has an average of 2,200 foster children in placement each month and on some days has had only two openings in its inventory of 329 foster homes.

Although the city spent $37,000 to recruit foster and adoptive parents during the current fiscal year, only 10 new homes were added at a time when the city needs at least 80 new homes.

Burke-Tatum said the city does not have an effective marketing plan for foster homes and, because of record-keeping problems and constant changes in the population, it does not always know how many homes are violating their licenses by caring for too many children.

Meanwhile, the shortage has created havoc.

"Due to placement problems, some workers are doing things like taking a child from a drug-addicted mother and placing them with an alcoholic father," said one social worker.

Statistics show that more District children are entering foster care and staying longer, an average of nearly five years. Some children are being bounced from home to home.

Mae Harris, a 58-year-old foster mother who lives in Mount Rainier in Prince George's County, said that the District told her she is allowed to have only four foster children, but that frequently she is asked to take more temporarily.

In April, Harris already had seven foster children in her care when the agency asked her to keep three more girls because no one else would take them. For three nights Harris had 10 foster children plus her own four adopted children.

"The kids have to have a place to stay," Harris said. "If I figure I couldn't handle them, I would not let them come into my home."

City licensing regulations are supposed to limit the number of foster children placed in one home. But here, too, there are problems.

Harris's home is not licensed. Neither are the other 102 foster homes that the District has established in Maryland. In response to a Washington Post inquiry, agency officials said that only six foster homes were overplaced as of June. But the city's own child welfare monitoring unit has found that as many as 25 of the 60 to 100 homes visited a month are overplaced, according to a source familiar with the process.

[From the Washington Post, Sept. 12, 1989]

STATES, CITIES BEGIN TO TACKLE PROBLEM

Jennifer Clarise Johnson of Sanford, Fla, was convicted in July of delivering cocaine to infants after two of her children were born with traces of cocaine in their systems. A judge ruled that the method of delivery was the umbilical cord.

Prosecutors, aware of the state's growing population of cocaine-addicted babies charged Johnson, 23 under a law usually applied to drug dealers.

Cocaine babies—Florida alone expects to have 10,000 this year and experts estimate that up to 375,000 are born nationwide each year—are but one of a myriad of problems that illegal drug use has inflicted on child welfare systems throughout the country.

Some cities, such as New York, Los Angeles and Miami, have been in the midst of the problem for several years. The District, which experienced the crack epidemic later than those jurisdictions, is now seeing the impact on its children.

Federal and state governments have yet to write the policies and develop the programs necessary to save the next generation of children.

They say the need to address multiple problems—drug addiction, homelessness, parenting skills, teenage pregnancy—has made it difficult to create national models.

"Even the rural communities are talking about the drug problem and how pervasive it is," said Beverly Jones, a program consultant for the American Public Welfare Association. "Along with the drugs, people are seeing unpredictable violence and behavior. With parents who are using crack, workers spend most of their time just trying to find out where they are, and trying to have a rational conversation with them almost becomes impossible."

Marica Robinson Lowry, director of the American Civil Liberties Union's Children's Rights Project, said the current crisis stems from a failure to prepare for what she called predictable changes, as well as the absence of tough management practices.

NEW APPROACHES

Florida, New York and California, all states with large urban areas that were hit early by crack epidemics, are ahead of the rest of the country in trying new approaches.

Florida, for example, has sought to eliminate delays in investigating neglect allegations—a problem in the District and a number of states—by creating one statewide hot line. Now, the 105,000 reports of child abuse and neglect that come into the central registry in Tallahassee annually are entered directly into a new computer system.

If it is not notified within 24 hours that a case has been assigned and an investigation initiated, it flags the case.

"That's accountability," said Peter Digre, deputy secretary in the Florida Department of Health and Rehabilitative Services.

Another major problem is the number of cases social workers are required to handle. A recently revised national standard calls for caseloads of 12 to 17 families per worker, but in many cities the average is 25 families or more. The District has one of the highest averages in the country, with 61 families per worker.

Although some cities have hired or plan to hire additional social workers, officials in other jurisdictions argue that getting more caseworkers is only a first step.

In 1980, the federal government mandated that states avoid removing children from their homes unless absolutely necessary. Social workers have found that in dealing with crack-addicted parents, it often is impossible or unwise to reunite families.

As a result, in the past two years some jurisdictions have reported a phenomenal increase in the number of children requiring foster care.

An attendant national shortage of such homes has prompted some child advocates to call for the return of orphanages as a means of handling this new population of children.

"Many of these children are going to have to be raised into adulthood," said Michael Weber, director of the Hennepin County Community Services Department in Minneapolis. "If the only alternative is seven or eight babies in a home with a single foster parent, the care might be worse than a lot of the orphanages that people fought to close."

In Los Angeles County, where 200 drug-exposed children are born each month, officials have created three group nurseries. At a cost of $2,300 to $2,500 a month a per child, the babies are cared for in the homes until they are medically stable enough to return to their families or enter foster homes.

New York City has seen a doubling of the number of children, about 200 a day, entering foster care. In response, the city has aggressively recruited new foster parents, 9,071 since 1987.

That has allowed it to reduce the average hospital stay for its boarder babies—which number about 400 a month—from 36 days to five days, said Suzanne Trazoff, child welfare administration spokeswoman.

Some of New York's approaches are controversial. In 1986, the city created an "extended placement process" whereby some children spend the night in foster care homes and return to field offices the next day, a one-two step that is repeated until a permanent placement is found.

The city's Legal Aid Society filed a class action lawsuit on behalf of a group of children in the overnight placement system, citing two brothers who were placed 80 times in 3½ months.

Nevertheless, New York maintains that it has made solving the problems a priority, increasing the child welfare budget from $403 million in 1985 to $1.07 billion for 1990. "We are still up against staggering numbers, and I can't tell you that the problem has been solved," Trazoff said.

MD'S SUPPORT NETWORK

In the past four years, some states, including Maryland, have established networks of family resource centers aimed at breaking the cycle of poverty and protecting at-risk children.

Maryland's 11 family support centers, operated by Friends of the Family, a nonprofit corporation, target teenage parents through a variety of programs that promote self-sufficiency and provide such services as child-development screening, recreation for the children and classes in parenting, job skills and budgeting. The centers provide home-like environments in communities where parents who drop in are assisted by a paid staff as well as professional volunteers.

During the past three years, The Parenting Place of Annapolis, one of the network's centers, has provided services to 500 families, including teenage mothers and fathers and young girls from the community, who liked the programs and wanted to know, "Do you have to have a baby to come?" said founding Director Carlesa Finney.

"This gives you someplace to go other than the streets," said Phyllis Coleman, a 20-year-old mother of two. "I see kids 4 and 5 hanging out in the streets and their mothers are home and don't know or don't care where the children are. I can come here and talk to Carlesa about anything. If she can't fix it, she can make me feel better. It's great to have someplace to lay my problems down instead of holding them in." —Marcia Slacum Greene

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HOW D.C. COMPARES TO OTHER CITIES

Average Caseloads for Social Workers in Long-Term Foster Care:

Baltimore: 90 child protection workers (those who offer continuing support when children are still in the home) and 82 foster care workers, each handling an average of 25 family cases.

Chicago: 437 child welfare workers for (or follow-up social workers—they work with children who are still in the home and also those in foster care; they handle cases that have already been investigated and evaluated as needing intervention), each having an average of 57 family cases. There is an average of 2.7 children in each case.

Detroit (includes Wayne County): 186 foster care workers averaging 25 family cases each.

District of Columbia: 62 of 113 social worker positions are filled (as of June 30). Each worker averages 61 family cases involving 136 children.

Miami (includes Key West): 58 foster care workers, each having an average caseload of 28.1 children.

New Orleans: 66 foster care workers, having average caseloads of 28 families each.

New York: 268 family service units (workers who handle cases after an investigation

reveals family problems calling for outside supervision), averaging 18.4 families each. Foster care is contracted to 67 nonprofit agencies.

HOW TO BECOME FOSTER OR ADOPTIVE PARENTS FOR DISTRICT CHILDREN

The District has an acute shortage of foster homes. The city needs homes for infants and toddlers, young mothers and their infants, and therapeutic foster homes, which provide care to children with special emotional, developmental or physical needs. The D.C. Department of Human Services also has 63 children waiting to be adopted.

Requirements for foster parents:

Age: Foster parents must be at least 21 years of age, but not older than 60 at the time of their application. They may be married or single.

Residence: Foster parents may live in Washington, Maryland or Virginia, within a 25-mile radius of the District. The residences must meet city licensing standards for foster homes and be free of safety hazards and lead paint. Foster parents may own their home or rent an apartment or house.

Health: Foster parents must submit a doctor's certificate verifying that they are in good physical health. All household members must be free of communicable diseases.

Pay: Foster parents are paid $307 a month for health children under the age of 12 and $321 for healthy children over the age of 12. There is a larger monthly allotment for some children who have special needs, including physical or emotional handicaps. Foster parents must have sufficient income to meet the needs of their own families.

Requirements for adoptive parents:

Residence, age, health: Requirements are the same for adoptive parents. The adoption process is lengthier and includes a more complicated selection process for the parents.

Interested? Anyone interested in becoming a foster or adoptive parent for District children should call the D.C. Department of Human Services at 727-3161 between 8:15 a.m. and 4:45 p.m. for information.

REPORTING ABUSE AND NEGLECT

Here are some common questions about suspected child abuse and neglect, and what happens when a case is reported in the District. The answers are based on the manual of operations used by social workers in the child and family division of the D.C. Department of Human Services:

How does the District determine whether a child is neglected? Children are considered neglected if they are given excessive responsibilities to care for the home or younger children; if they are forced to beg or steal; if they are malnourished, emaciated or denied adequate food; if they are left alone or abandoned; if they do not have adequate clothing and shelter; or if they are deprived of love and security.

How does the District determine whether a child is being abused? Unexplained bruises, welts, burns and fractures can be indicators of physical abuse. Children who are sexually abused, may have difficulty walking or sitting, or have pain or itching in the genital area.

What should someone do who believes a child is being abused or neglected? The Department of Human Services receives complaints on a 24-hour reporting hot line, 727-0995. Although callers are encouraged to give their names and addresses, such information is not required to file a complaint. The caller will be expected to give the nature and extent of the alleged neglect or abuse, including whether the child is believed to be in immediate danger.

What happens after the District receives a complaint? By law, a child social worker must initiate an investigation within 24 hours. If the allegations are substantiated, another social worker is assigned to the case. If the child is in immediate danger, the police department's youth division is called to remove the child from the home. Social workers are supposed to provide family support services that will make it possible for children to remain in their homes safely. The city needs court permission to keep a child in the system for an extended period.

Where does a child who is removed go? Neglected or abused children removed from their homes are placed in foster homes, group homes, emergency institutions, or with relatives or friends based on what the agency deems appropriate. When social workers are satisfied that the situation that led to the abuse or neglect has been corrected and that there is no danger to the child, the child is returned home. When children cannot be returned home safely or placed with a relative, they remain wards of the city until they are adopted or reach age 21.

Mr. WILSON. Mr. President, I will simply say that what these articles state in the eloquent and stark prose of Ms. Slocum Greene is that there is within the District, as there is unhappily across the Nation, a crisis, a crisis in what they have termed the crack epidemic that is manifesting itself in a variety of ways but in no more painful and, frankly, in no more threatening way for the future, not only of the afflicted children but for the future of this Nation, than in the neglect of these children. And, in the fact, that we are seeing abuse both through the umbilical cord and the actual abuse and neglect of children by parents who are so in the thrall of this addiction that they are incapable of functioning as mothers; indeed, as some have told me, after going through rehabilitation, incapable while they are using drugs of functioning as human beings.

Mr. President, these are people who need help. The focus of this amendment is upon their children who are in need of special help and, indeed, what we need is to deal with this problem in a preventive fashion so that we do not have mothers abusing substances during pregnancy, giving birth to drug-exposed children.

To give you an idea of why it is that Ms. Slocum Greene and other authorities are referring to this as a crack epidemic, you have only to look at the birth rate statistics of hospitals here in the District of Columbia. At D.C. General Hospital, in 1987, of the newborns in that hospital, 1 in 10 was the child of a mother using drugs during pregnancy. That figure in 2 years has doubled, which is to say that now 1 in 5 live births are of a child drug exposed. And drug exposed, Mr. President, is a euphemism that includes those who are addicted, those who have suffered permanent and irreversible damage of a severe nature, including mental retardation, physical deformities, developmental disorders of a kind that are manifesting themselves now in the school system in terms of behavior disorders and learning dysfunctions.

So we have what I think is justifiably described as an epidemic. Indeed, as one of the medical authorities within the District of Columbia has termed it, in time we can perhaps deal with the immediate health problems, but the emotional scars will last a lifetime.

Mr. President, in these pages are recounted several individual case histories. The author of this work was permitted by the District of Columbia to examine 100 case histories and to chronicle what it was she found in those records provided she did not violate the privacy of the families involved, that being a matter of law. So she has used pseudonyms in order to protect those whose identities are required by law to be protected.

But what I will tell you, Mr. President, far more important is that we protect those children. As this article entitled "The Crack Legacy" says, the D.C. child welfare services are simply overwhelmed; they are overmatched. It is a wonder, I suppose, Mr. President, given the fact that this crack phenomenon has burst upon America in a way in which we were clearly unprepared.

What has happened, in short, Mr. President, in constrast to the IV drug use with which we have been too long familiar, crack has become the poor man and the poor woman's drug of choice, because it is dirt cheap. It is within reach of the poorest of Americans, and it seems to have a peculiar appeal for young women of childbearing years. The result has been the use of this drug, which is far more addictive than IV drug use, has led to what is correctly described as an epidemic. The use of the drug is far more widespread. The addiction is far more tenacious. The effects of the drug are particularly insidious, especially as it relates to the effect upon maternal instinct.

Some years ago, not very long, two boarder babies a year were the experience of all the hospitals in the District of Columbia. By boarder babies, Mr. President, I refer to those who have gone through withdrawal, who are no longer in need of intensive care treatment in the nurseries of these hospitals but who remain in those hospitals for two reasons—first, because they have been abandoned by their mothers. One of the most insidious things about the use of crack is the destruction of the maternal instinct in so many women. This series records time and again the circumstances of abandonment of these children. In one case

mentioned in this article, a mother returned for medical help for herself, was confronted by the nurses as the missing mother of one of the boarder babies. She acknowledged that the baby was her own, expressed no interest in the child, finally signed papers allowing its placement, and left.

Mr. President, we are facing a phenomenon for which we are, again, unprepared.

When Senator KOHL, the junior Senator from Wisconsin, recently held hearings, in the Governmental Affairs Committee, on the phenomenon of substance abuse during pregnancy, one of his most eloquent witnesses was the director of public health of his home city of Milwaukee. In the course of his eloquent testimony, the director of public health made a prediction. He predicted the return to America of an institution which we thought we had consigned to history, the orphanage. He said in effect that because of the tremendous difficulty of placing these crack babies, in many instances abandoned and in too many seriously permanently impaired, there will be a grave difficulty in finding an adequate number of foster homes and that the likelihood, given the explosion in their increase and the duty of placing them, will be the need for some kind of an institutionalized system of care.

This is not without precedent. Indeed, the article recounts the experience of a professional, now present in the District of Columbia, who has had some experience before in New York City.

What is clear is at the present moment, the District of Columbia is in desperate need of some kind of plan to deal with this phenomenon for which they clearly have been unprepared to deal and for which they have made a grossly inadequate response.

Our purpose should not be to embarrass the administration of the city. It is, instead, to prevent the danger that is so clearly spelled out in this series of articles and to assist, if we can. So what we have done in this simple amendment is to require that within a year from now the Commissioner of Social Services, who has this responsibility for the District of Columbia, will, through the work of a task force that she can appoint, come back to us with specific recommendations and with a specific plan that will detail how the District will provide care for these abandoned or otherwise abused children for whom foster care has not been found within 6 months of their birth.

The reason for that, Mr. President, is probably obvious but it has been very well spelled out in the remarks quoted by one of the leading nurses in one of the District of Columbia hospitals. She has stated that there is grave danger to these children in remaining too long as boarder babies in the hospitals. The danger is one that is obvious to health professionals. In an overcrowded nursery the possibility of the outbreak of some infection is such that it could lead to literally a peril to all of the 41 children who at the time this article was written were boarder babies—41, Mr. President—at the Howard University Medical Center.

There is, beyond that, the developmental danger to these children. In place of a parent, they have a succession, an ever-changing sea of faces, people who care about them, nurses and physicians, but not a single person with whom they can bond.

Among the developmental problems reported by the professionals who were consulted for this report, there is a phenomenon that the children who are placed in these foster homes after they have had this experience are angry little children, 3, and 4, and 5 years old, so angry that they destroy their own clothes, so angry that they are incapable of conducting themselves without disrupting preschool classes, incapable of learning.

So the time, Mr. President, for action was yesterday, and we are obliged not to, as the President has termed it, look the other way.

We are obliged because we have a responsibility to see to it that the District comes to grips with this problem. It is not just because of the tax dollars that are involved. The Federal taxpayers are involved. They support Howard University Hospital with about $21 million. It is not a great deal of money. I do not know what portion of that actually goes for this. Taxpayers are involved in the support of the D.C. General Hospital, $46 million annually. The same observation applies.

But let me give you an idea of what the cost is of this kind of neonatal intensive care.

For the 41 children at Howard University, it is now over $3 million.

It is estimated that a child that has spent 9 months in that neonatal intensive care ward, or any nursery, can wind up costing well over $100,000.

The cost, I might add, of rehabilitation, which is not cheap, is far less than that. Two or three of these substance abusing mothers could go through a Phoenix House type rehabilitation for the same cost as trying to deal with the withdrawal and the neonatal care of one of these infants.

In instances, here within the district, we have had a situation where a child has been since 1987 in what is supposed to be an emergency maternity and child care facility, and still the Department of Social Services has been unable to deal with that phenomenon.

Mr. President, you and others will be relieved to learn I am not going on.

You will, I think, agree that this situation is not one that we can allow to go on.

There are more points to be made. But I will simply say that the District is doubtless not alone because the crack epidemic has touched many other parts of the Nation. It certainly has touched my home State.

I have stood on this floor before and recited the unhappy statistics that relate to Los Angeles County in terms of the growth in the number of drug exposed children there. As a physician at the UCLA-Harvard Hospital recently stated, it is a logarithmic group, one that is estimated in the Los Angeles County Hospital by the chief of gynecology and obstetrics to achieve the incredible number of 10,000 births annually by 1991.

But here we have a direct responsibility because the Nation's capital is a Federal enclave. So we have a peculiar responsibility that we do not have elsewhere. It is also true that the problem is particularly grave here, and that it is particularly in need of response.

AMENDMENT NO. 750

(Purpose: To require the District of Columbia Commissioner on Social Services to establish a task force to develop a plan to improve treatment of infants who were exposed to maternal substance abuse during pregnancy)

Mr. WILSON. Mr. President, I send to the desk an amendment that will, I hope, not just focus attention but focus in a concentrated fashion that leads to the development of the kind of plan that clearly is now lacking. With that plan, with the professionals who have been quoted in this series involved, it seems to me that we have a much greater hope to at least begin on a solution.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 750.

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

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

The amendment is as follows:

At the end of the bill add the following new section:

SEC. . TASK FORCE ON SUBSTANCE ABUSING PREGNANT WOMEN AND INFANTS EXPOSED TO MATERNAL SUBSTANCE ABUSE DURING PREGNANCY.

(a) IN GENERAL.—The Director of the Department of Human Services of the District of Columbia (referred to as the "Director") shall establish a task force, to be known as the District of Columbia Task Force for Coordinated Service to Drug-Exposed Infants (referred to as the "Task Force"), to develop a plan for the most efficient and effective delivery of services to substance abusing pregnant women and infants who were exposed to maternal substance abuse during pregnancy, including recommendations to ensure maximum cooperation between service providers.

(b) MEMBERS.—(1) The Director shall appoint no more than fifteen persons to serve on the Task Force, including persons with experience in treating substance-exposed infants, representing the following organizations and disciplines:

(A) Child protection and welfare.

(B) Local hospitals.

(C) Health care professionals, including drug treatment specialists, public health experts, primary care providers, and child development specialists.

(D) Public safety and justice.

(E) Public education.

(F) Community-based organizations serving substance abusing pregnant and post partum women and their infants.

(G) Public housing officials.

(H) Other human support services.

(2) In addition to the members of the Task Force appointed pursuant to paragraph (1), the U.S. Attorney or a designee of the U.S. Attorney shall be a member of the Task Force.

(3) The Director or the designee of the Director shall act as chairman of the Task Force and provide such clerical support as the Task Force requires.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act the Task Force shall submit a report to Congress making findings and recommendations for legislative or other action, and including a specific plan detailing how the District will provide for the care of abandoned or otherwise abused infants for whom foster homes have not been found within six months of birth; and a timetable for implementing its recommendations.

(d) TERMINATION.—The Task Force shall terminate on submission of its report in accordance with subsection (c).

Mr. ADAMS. Mr. President, we have examined the amendment presented by the Senator from California. I wanted to point out to the Senator from California that we are very much in support of what he is doing. I do not know whether he was here earlier but we have added funds in the amount of $2 million to begin a program to provide treatment on demand for addicts who are pregnant to prevent crack-addicted babies.

So we are very much in support of the task force that the Senator has recommended here, and on this side we will be willing to accept the amendment of the Senator from California, and we commend him for his efforts in doing this. It gives direction to the moneys that we have suggested be appropriated.

Mr. WILSON. Mr. President, I thank the distinguished majority manager. I was not on the floor at that time. I was ignorant of the action taken. I must say that I not only thank the Senator, but I commend him because the money that is allocated for that purpose is going to the real root of the problem. All that I am discussing here flows from our failure to deal in a preventive way, as indeed that $2 million is directed.

To the extent that we are able to prevent this tragedy, we will not have to worry about the adequacy of an availability of foster care. The kind of abuse and neglect that we have seen will in fact not occur because we will have prevented the addiction that has created this tragedy.

So the Senator not only thanks him for his accommodation, but far more importantly, I thank him for that action because it is precisely what is necessary. I thank my friend from the State of Washington.

Mr. ADAMS. I know of no objection.

Mr. KOHL. Mr. President, I became aware of the amendment to establish a task force within the District of Columbia on pregnant substance abusing women and their infants shortly before my distinguished colleague from California [Mr. WILSON] presented it. I was pleased to offer some suggestions to strengthen my colleague's amendment, suggestions which he was kind enough to accommodate. I think the amendment is a much better amendment as a result and am therefore pleased to cosponsor it.

I also want to commend the distinguished floor manager of the D.C. appropriations bill, Mr. ADAMS, for adding $2 million in treatment funds for pregnant substance abusing women within the District of Columbia. As I learned at a governmental affairs hearing I chaired on this issue on July 31, the plight of pregnant women seeking drug or alcohol treatment within this city is pitiful. As commissioner of public health Reed Tuckson testified, every month D.C. ambulances pick up 20 pregnant women so ill from drug abuse that they need emergency medical treatment. Births of drug exposed infants at D.C. hospitals are staggering, ranging from 33 percent at Greater Southeast Hospital, 40 percent at Howard University Hospital, to 60 percent at D.C. General. And the infant mortality rate here—now twice the national average—has soared directly as a result of maternal substance abuse.

Mr. President, the District of Columbia is not the only city in crisis due to substance abuse by women of childbearing age. In my own city of Milwaukee, 500 pregnant women will need drug treatment this year alone. Yet as I learned at a field hearing I chaired there earlier this week, there is only one residential treatment program for women and children in the entire State of Wisconsin. At present, that program—Meta House for women and children—is only able to treat eight women and their children. If that isn't an alarming statistic, I don't know what is.

Mr. President, we must look at ways to create coordinated services for high-risk women and infants. And the D.C. task force which this amendment creates will help do that. But we must also ensure that drug treatment and targeted prevention programs are available for the women and children who need them most. And toward that end, I look forward to continuing to work with my colleagues to address the pressing problems of substance abusing women and their infants.

Mr. SIMON. Mr. President, I rise to support Senator WILSON's amendment to the D.C. appropriations bill, aiming to bring coordinated and comprehensive services to substance abusing pregnant women and their children. As each of us has seen in our States, simply the numbers of different agencies and programs that can and must get involved with this special population works against providing services smoothly and efficiently.

My State of Illinois has had such a coordination of services for the past year. Illinois is no different than any other State or area in the country: increases in infant mortality rates, incidence of child abuse, neglect, and abandoned babies resulting from substance abuse by a parent, usually the mother. Illinois was facing the same problems so vividly described in the recent Washington Post series on this problem, the same problems faced by Los Angeles, Des Moines, New Orleans, Cheyenne, Joliet, IL, Gainesville, FL and Newark, DE. Urban, rural, big town, small town, the problems are there—too many babies, too many pregnant women without assistance and options, too few treatment facilities and no coordination of services. The interrelationships between drugs, abuse, and dysfunctional families is too clear. And to treat all of these means bringing together the full force of all the agencies and programs within a State, or a city in this instance, needed to help individuals and their families begin functioning again.

As with the Illinois model, it is time for us to recognize the need to provide a multiagency cooperative approach. The Task Force included in Senator WILSON's amendment is a solid and necessary first step to ensuring that this will occur in Washington, DC. I also hope it is the first step in seeing this type of congressional direction and guidance going to all 50 States as well.

Again, I am pleased to join in support of this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from California.

The amendment (No. 750) was agreed to.

Mr. ADAMS. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments?

Mr. ADAMS. We are aware of no further amendments on this side, Mr. President. We have been informed by the other side that there may be one more amendment.

So 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. HUMPHREY. 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. HUMPHREY. Mr. President, it is not unusual for the Senate to spin its wheels and waste time. Indeed, the very consideration of this bill is a waste of time, because the President has indicated unequivocally that he is going to veto it. It is virtually certain that the House lacks sufficient votes to override the veto.

This bill is dead.

It is dead because whatever good provisions it may contain and however necessary it may be, ultimately, to pass an appropriations bill for the District, the bill contains some very, very bad language, from the President's point of view, and from mine, and from the point of view of many others, in the area of abortion.

Mr. President, President Bush, as is well-known, opposes abortion on demand. This bill contains language which provides for abortion on demand in the District of Columbia. The President has said that in its present form, he will veto the bill.

As I have noted, the House is all but certain to sustain that veto. This bill contains a provision that will allow for taxpayer funding, taxpayer funding of abortions, conducted for any reason, any reason at all, or for that matter, no reason at all.

The bill will fund—or would, if it became law in its present form, which is highly unlikely—about 3,600 such abortions on demand during the next fiscal year here in the District of Columbia. To be sure, the bill prohibits the use of Federal funds to perform abortions, except in certain cases, such as where the life of a mother is threatened or in the event of rape or incest. But the bill permits use of so-called local funds to pay for any and all abortions; that is, funds derived from local taxes or local sources.

We have been through this controversy before on the D.C. appropriations bill, year after year. Some will say that it is an infringement upon home rule for the Senate to seek, or for that matter, to prohibit the District from spending locally derived moneys to pay for abortions.

That argument, as I have said in past years, and as others have said, is utter bunk, because the Constitution requires that the Congress act as the legislature for the District of Columbia. Even under the home rule statute, Congress explicitly and unequivocally reserved to itself the powers of legislation wherever it chose to exercise them.

The Congress appropriates all funds which are expended by the District of Columbia, including funds derived from local taxes. That is our responsibility, not only our prerogative, but our responsibility. The point is unassailable. The Constitution reserves that power to the Congress, and nothing has ever changed that circumstance.

Well, fortunately, Mr. President, notwithstanding the awful language of this bill, the American public has selected yet another President who opposes abortion on demand. The President has made it clear that he will veto this bill.

And just to underscore the point, let me read an excerpt from an August 2 letter which the President sent to the chairman of the House Subcommittee on the District of Columbia.

The President said:

> If a bill presented to me presents the use of appropriated funds to pay for abortions, other than those where the life of a mother would be endangered if the fetus were carried to term, I will veto it. I urge Congress to vote to protect the lives of America's unborn children.

This bill is going to be vetoed, and millions of Americans will silently compliment President Bush for his principle and his courageous stance, because those millions of Americans recognize the self-evident that abortion kills human beings, recognize as self-evident that the offspring of human beings are human beings, and biologically, they can be no other. So we, the millions who oppose abortion on demand, are left puzzled when some refuse to regard prenatal infants as human beings.

Well, Mr. President, I might ask the question, what defines a human being, anyway? Is it appearance? Who among us looks today as we looked 30 or 40 years ago, and who among us will look in 20 or 30 years as we look today? The fact is that we all change markedly during the course of our natural lives. So, clearly, it is not appearance which defines human beings or humanness.

Is it viability? Some like to use that word, some like to use viability itself as the benchmark for determining what is a human being. Let me just point out if one must breathe on one's own to be a human being, then what were those precious creatures that we used to put in iron lungs during the polio epidemic—now thankfully a matter of the past—who could not breathe on their own, who were not viable in that sense? They were human beings, obviously.

Must one be sensate to be a human being? If that is the case, to fall into a coma is to be ruled out of the human race. Must one be wanted by others to be a human being? If so, then I suggest that Mother Teresa and her colleagues are wasting their time on nonhumans in Calcutta.

There is just no way around it, Mr. President. If one is conceived of human parents, one is a human being. One is a human being right from the start, however inconvenient that may be to modern society. Embryo, fetus, infant, child, adolescent, adult, these are just labels that describe certain stages of life.

Is adolescence any less human than an adult? Of course not. Is a child any less human than an adolescent? Of course not. Is an infant any less human than a child? Of course not. Then why is a fetus less human than a child? I wish someone would come to the floor and tell me that.

The fact of the matter is that the offspring of human beings are human beings, and every abortion, each and every abortion kills a human being. Some Senators are prepared to make exceptions and to accommodate abortion and even fund abortion where the life of the mother is in danger, and others are willing to do so in the case of rape and incest.

I want Senators to know before they vote on this bill that this bill contains language which is wide open and will fund abortions for any reason, under any circumstance, or for no reason at all. It is abortion on demand, clear and simple.

The President opposes it and is going to veto the bill, and almost certainly the House will sustain that veto. Ultimately, of course, we are going to have to have an appropriations bill for the District, just as we did last year. Last year, just as this year, and I suppose for every year for the last 10 years or so, there has been a big wrangle. Ultimately, last year, in conference—I should say on the floor of each House—the language ultimately, after a big struggle, which was agreeable to both sides and the President was ultimately reached. That is what will happen this year after this is vetoed and the veto is sustained; we will get a sensible bill, one that the President can support. It will not be this one.

I urge Senators who have registered their disapproval of abortion in past years, and in particular on this D.C. appropriations bill, to vote against it, and to do so knowing that the President will stand behind those negative votes and in fact will veto the bill itself.

Mr. President, I yield the floor. Inasmuch as no Senator seeks recognition, 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. HUMPHREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HUMPHREY. Mr. President, I add to my remarks by reading into the RECORD a statement of administration policy, dated September 13, yesterday's date. This is in regard to the bill before us, H.R. 3026, District of Columbia appropriations bill for fiscal year 1990.

The Administration strongly objects to the bill, as passed by the House and reported by the Senate Appropriations Committee. The reported bill deletes language included in the FY 1989 District of Columbia Appropriations Act that prohibits the use of appropriated funds for abortion except where the life of the mother would be endangered if the fetus were carried to term. We urge the Senate to restore this language in the FY 1990 bill. In a letter dated August 2, 1989, the President stated that the absence of this language would result in his veto of the bill.

Mr. President, I do not intend to offer such an amendment. Such amendments have been offered in the past on the D.C. appropriations bill. But the certainty of the President's veto is so absolute that there is little point in doing so. It would be a further waste of the Senate time frankly to take such a vote. We would of course want a rollcall vote. Otherwise there would be no point to it. That would consume time. We are not going to do that.

The President made a statement of policy that he was going to veto the bill. It is dead. This bill is not even breathing. It may be a little warm but will not be for long. It is not breathing. It is done for. It is going to have to be redone and a new bill will have to be written. That will be easy indeed, by striking abortion language and providing something the President can support and then it will zip through. No doubt it contains very good measures.

I heard the Senator from Washington in his disclosure with the Senator from California discussing very good drug provisions as I was observing the proceedings on my TV monitor before coming to the floor.

To be sure the bill contains good provisions, but it is fatally flawed and it is dead. It is going to be vetoed, and I urge Senators to vote against it. Then we can get down to the business of writing a bill that is consistent with good policy and human rights and one which the President will sign.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from South Carolina is recognized.

Mr. THURMOND. I thank the Chair.

(The remarks of Mr. THURMOND pertaining to the introduction of S. 1624 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SASSER. Mr. President, the Senate Budget Committee has examined, H.R. 3026, the District of Columbia appropriations bill and has found that the bill is under its 302(b) allocation by $12 million and hits its 302(b) outlay allocation exactly.

I compliment the distinguished manager of the bill, Senator ADAMS, and the distinguished ranking member of the District of Columbia Subcommittee, Senator GRAMM, on all of their hard work.

Mr. President, I have a table from the Budget Committee showing the official scoring of the District of Columbia appropriations bill and I ask unanimous consent that it be printed in the RECORD.

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

SENATE BUDGET COMMITTEE SCORING OF H.R. 3026, SEPT. 13, 1989

[In billions of dollars]

	Fiscal Year 1990	
	Budget Authority	Outlays
LEGISLATIVE BRANCH COMMITTEE—SPENDING TOTALS		
302(b) bill summary:		
H.R. 3026, Senate reported, (new budget authority and outlays)	0.5	0.5
Enacted to date	+(1)	+(1)
Adjustment to conform mandatory programs to resolution assumptions	0	0
Scorekeeping adjustments		
Bill total	.5	.6
Subcommittee 302(b) allocation	.5	.6
Difference	−(1)	0
Bill total above (+) or below (−):		
President's request	+(1)	+(1)
House-passed bill	+(1)	+(1)
House 302(b) allocation	−(1)	−(1)
Summit Cap summary:		
Defense (050) spending in bill	0	0
Allocation under defense cap	0	0
Difference	0	0
International affairs spending in bill	0	0
Allocation under international affairs cap	0	0
Difference	0	0
Domestic discretionary spending in bill	.5	.6
Allocation under domestic cap	.5	.6
Difference	−(1)	0

[1] Less than $50,000,000.

Note.—Details may not add to totals due to rounding.

Source: Prepared by Senate Budget Committee Staff.

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

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

The Senator from Colorado is recognized.

Mr. ARMSTRONG. Mr. President, I rise to bring my colleagues up to date on actions taken last year by the Senate with respect to religious liberty in the District of Columbia. And, having done so, it is my intention shortly to propound an amendment to the pending D.C. appropriations bill.

Mr. President, last year the Senate acted on a measure which came to be known as the religious liberty amendment. It arose in the first place because of a completely unforeseen situation, or at least a situation that was certainly not foreseen by me or anyone to whom I talked about it in advance, the facts of which are quite simple.

A homosexual group asked a Catholic university in the District to provide homosexuals with university recognition, with support, facilities, and so on.

It was not a surprise that the university in question turned down this request. In fact, it would have been almost unthinkable for the university to do otherwise because the university, let me say it again, is a Catholic university, is a religious institution which is founded and which has been supported over the centuries by a church which teaches that homosexuality is a sin.

Let me just say before the discussion gets any further, the question which will be propounded in my amendment is not whether you believe homosexuality is a sin. It is not whether you are for or against homosexuality. That is a question that is worthy of debate on some occasion. It is not the issue which I bring before you today nor is it the subject which we amended a year ago when we considered this matter.

The point is that the Catholic Church teaches that homosexuality is a sin, so when a group of homosexual students, who were students at this university, asked the university, indeed demanded of the university that they be granted special status, a form of university recognition, the right to use university facilities, the mailing list, and so on, the university said no. Because if they had done otherwise they would have been unfaithful to the very creed which led to the establishment of the university in the first place.

I suppose that it is not surprising, given the general cultural norms today, that the students, instead of taking "no" for an answer went to court. And that is when the surprise began to unfold. Because the court found, in a major setback for religious liberty, that the university could be, at least under certain circumstances, required to grant recognition, status, support, both tangible and moral support, to the homosexual student group.

Mr. President, let me make it very clear that the university in question, which was Georgetown, was not engaged in homosexual bashing. The university was not trying to pick a fight with homosexuals. The university was not denying to homosexual students the right to enroll, to be a part of the classrooms, to take part in the life of the university, or even to form an organization which was devoted to advocating and promoting homosexual causes, purposes, and ideals.

Where the university drew the line was at granting university recognition and support, in other words putting the imprimatur of the university on something which they did not believe in and which, in fact, the church of which the university is an outgrowth, teaches to be sinful.

The point is that this is not a homosexual issue. It is a religious liberty issue. At the time—this is now, oh, well, more than a year ago—many, many newspapers editorialized on the subject, though I think none more perceptively than the Rocky Mountain News which wrote the following editorial.

They asked the question:

Can the government force a religious organization to subsidize practices contrary to its fundamental beliefs? In most of the country, no; in Washington, D.C., yes.

The District of Columbia's highest court has upheld a local statute that requires Georgetown University, a Catholic institution, to provide the same "tangible benefits" to organizations of homosexual students as to other student groups.

The ruling will require Georgetown to give homosexual groups equal treatment when they apply for free mailing services and cash grants from the university's treasury. That treasury, of course, comes largely from students, alumni and others who believe that homosexual practices are morally wrong and would not have their money support them.

Freedom of speech is not at issue: The homosexuals are already allowed to disseminate their beliefs and even use the university's meeting rooms. But they insist that those who disagree with those beliefs must not merely tolerate them, but help spread them. It is as if a racist group were to demand subsidies from the NAACP.

The Rocky Mountain News concluded—correctly and very aptly in my opinion:

This ruling allows one well-organized pressure group to pulverize the First Amendment's guarantees of religious freedom. That freedom has to include the right not to support, financially or otherwise, those groups whose views and practices are held to be morally repugnant.

Mr. President, that was the situation a year ago which prompted the Senate to consider and to act upon, and our colleagues in the House to agree to, an amendment the practical effect of which was to require that the D.C. City Council amend a certain portion of the D.C. Human Rights Act dealing with this subject. Broadly speaking, that provision of the D.C. Human Rights Act simply says that you cannot discriminate against homosexuals. Whether or not that is good public policy I think is open for question, but that is not the issue that was addressed in our amendment last year, nor the question I seek to raise today.

I personally think it is wrong, I think it is indeed deeply offensive, it is an outrage, in my view, for a local governing body, a city council, whoever it is, to say to any employer, public or private, that they have to give preference to, or protected status to, or they may not discriminate against a person who practices homosexuality if it is their deeply held belief that such behavior is morally wrong.

Mr. President, I did not propose to amend the D.C. Code with respect to the broad mill run with respect to civic organizations, private enterprises, units of governments or secular schools or universities. What I did offer an amendment to take care of is about 3 dozen religious schools in the District of Columbia who, it seems to me, are entitled to be considered separately as a matter of public policy. I happen to think the provision of the District of Columbia Human Rights Act is probably unconstitutional and, in due course, would probably be struck down by the U.S. Supreme Court. It is just unthinkable to me that the U.S. Supreme Court, under any kind of foreseeable construction, would permit the District of Columbia City Council, or any city council, to require a religious institution to give aid, comfort, and subsidy to an organization devoted to purposes which are directly contrary to the purposes for which the religious institution was founded and exists.

So I suppose one thing we could have done is leave that matter to work its way through the courts. The reason I did not choose to do that was twofold: First of all, because Georgetown had been in court for 8 years, had spent hundreds of thousands of dollars and, according to published accounts, was subject to all kinds of formal and informal threats and coercions and, in addition, because other religious schools in the District of Columbia might find themselves in the same boat perhaps facing years of trials and appeals, and it just did not seem to me that was necessary.

Second, the District of Columbia is a unique piece of geography in the governmental scheme of things in that we are the legislative body for the District of Columbia. We are not just innocent bystanders. Our situation is not the same as if Congress or some Member of Congress would happen to see an injustice being perpetrated in Virginia or North Dakota or Minnesota or Ohio or the State of Washington. We are the people who are responsible, and when an injustice like this comes to our attention, we ought to do something about it.

So the amendment which we adopted simply said that the District of Columbia had to amend the Human Rights Act to specify that that portion of it does not apply to religious institutions. In fact, if I may, I would like to read briefly from the portion of language which Congress sought to compel the District of Columbia city counsel to enact, and I do now quote. This is what we adopted in part last year:

(b) Section 1-2520 of the District of Columbia Code (1981 edition) is amended by adding after subsection (2) the following new subsection:

"(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition—

"(A) the use of any fund, service, facility, or benefit; or

"(B) the granting of any endorsement, approval, or recognition, to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.".

Let me say two or three things about the amendment we adopted last year. First, Georgetown University did not ask me to do it. In fact, there is some reason to believe that at least some of the people of Georgetown University would have preferred that the issue had never arisen because after fighting the matter through for 8 years in court, they finally gave up in exhaustion having spent hundreds of thousands of dollars in attorneys' fees and in an action which proved to be very controversial among members of the governing board of Georgetown, the alumnae, students and everybody else, and they just finally signed a consent decree.

Having done that, it was the position of the Georgetown administration that whatever came of this amendment, which is called the religious liberty amendment, sometimes known as the Georgetown amendment, whatever came of it, whether it was voted up or down, whatever the result, they intended in good faith and, so far as I know, intend in good faith to continue

to abide by the terms of that consent decree.

Even those who within the university may not have agreed with it have not disputed at least to me that the university is morally bound, is honor bound to uphold what they have agreed to. Whether that was provident, wise or improvident and unwise I leave to others to judge. That has been a subject of discussion in some quarters. That is not why I rise here today. That is not my problem.

Georgetown is not the moving party here. It was not the moving party a year ago. May I say just for the information of my colleagues and anybody who is interested, so far as I am aware, I have not even been contacted by Georgetown. Perhaps members of my staff have been contacted, but I am not aware that in any way they have expressed any interest in any amendment that might be offered on this subject on this bill. That is number one.

Second, this amendment is not the kind of broad, sweeping, national legislation that might well be justified. I am told that there are in isolated places around the country other city councils that have adopted similar offensive legislation. It might be tempting to somebody to try to come up and tilt against windmills every place they appear. I do not think that is necessarily our job.

I really am a States rights man myself. I remember when one of the States had a provision in their constitution that was proving so onerous and burdensome to them that members of the State legislature from that State came to us and begged us to pass legislation overriding their State constitution. It had to do with levels of interest rates. I did not want to do that. It looks to me like if a State government wants to make a mistake, even to do something which I thoroughly disapprove, within very broad limits it is not up to the U.S. Congress to interfere with that.

So my amendment does not do that. It just deals with the District of Columbia and does it only with respect to religious institutions which are covered by this very specific act.

In any case, Mr. President, Senators will remember that last year we did pass such an amendment and it was, after some discussion, agreed to by the committee of conference and was signed into law.

Mr. President, during the time it was in the conference committee, I had occasion to meet with the members of the D.C. City Council and they asked me, could we not somehow negotiate a compromise? And, in fact, I was not unwilling to consider a compromise. In fact, we thought of several different versions of it, but ultimately we did not compromise on it at that point for several reasons, but the nub of their concerns, as I recall them, came down to two points. First of all, they did not agree with the purpose and intent of the amendment. They just did not. That is a fact. I do not know that I am speaking for all the members of the city council, but the ones I met with basically disagreed with my point of view. More than that, however, they objected because the mechanism by which Congress sought to enforce its will on the District of Columbia was a parliamentary procedure that they disapproved of.

Specifically, what we said in the amendment adopted last year was that unless the D.C. City Council voted to adopt the formulation which I read to you a few minutes ago, then the funding for the District of Columbia would be cut off.

It was their belief—I do not agree with their point, but I want to explain it as clearly and as fairly as I can—that it was a violation of their first amendment rights for the Congress to force the city council to enact legislation as a condition of an appropriation.

This is a very significant point. It is an entirely separate point, may I say, from the original purpose of the religious liberty amendment.

It is an important point, however, because Congress frequently uses exactly this technique to obtain compliance of local governing bodies, both public and private, with various proposals of Congress.

Now, in the simplest instance we say to a State government:

> If you do not change your speed limit in accordance with our formulation, we are going to cut off your highway funds.

Or we say to a university:

> If the governing board of your University does not adopt a certain provision, such as an equal opportunity or a fair housing provision, then the funds of the university will be cut off.

We do it all the time.

If the legal theory of which the D.C. City Council tried to convince me were to be sustained, much of the existing body of law by which Congress seeks to regulate certain kinds of activities throughout the country would be overturned.

I do not think that legal argument has too much merit, though I must admit there is a certain attraction to it, particularly for someone of my philosophical bent, because if you will think about it, if that point of view were to prevail, if it were to be determined in this country that Congress cannot use funding as a coercive device to require local policymakers to hew to some particular national standard, then it is very clear that many of the legislative enactments of Congress which are on the books and which are being enforced every day in jurisdictions all over the country would go down the drain. There is no doubt about it.

Well, my colleagues, this is not merely an idle reminiscence, because when that bill was signed into law, the D.C. City Council took the Government to court. They asked for and were granted an injunction barring the enforcement of the order and in effect requiring the release of the funds which were the subject of the amendment. The argument that they made to the court was exactly what I have just outlined to you.

I believe I have fairly described their position. They said Congress could not condition an appropriation on requiring the city council to cast their votes in some particular way. Now, at least in informal discussions, the council did not dispute that the Congress has the right to simply amend the D.C. Code, but they said we could not require them to do something which we had the power to do ourselves. We could not indirectly do something which we have, I believe, the unchallenged authority to do directly.

I do not know of anyone who challenges our authority to legislate in this area. That is clear from the Home Rule Act. It is clear from the U.S. Constitution that we do have the authority to actually amend the D.C. City Code.

Mr. President, I had my lawyers take a look at this case at the time, and they wrote me an erudite opinion in which they concluded it was very unlikely that any court would agree with the contention of the city council.

Let me just say that proves that lawyers are not always right, because the district court for the District of Columbia in fact threw out the amendment which we adopted last year on the ground that the city council had brought before the court.

This matter was appealed to the circuit court of appeals on I think May 19 or perhaps May 20. That matter was the subject of oral argument. The circuit court of appeals has not yet handed down its decision, and I do not know when it will do so, nor in fact if it will do so, because of course the issue becomes moot at the end of the fiscal year.

The amendment we adopted last year as a part of the appropriations bill expires with the expiration of the appropriations bill, and that will be in more or less 2 weeks, on September 30.

So that just brings you up to date on the factual situation.

Mr. President, it is for these reasons that I have been considering whether or not there is a more direct way to address this issue. When I brought the amendment before the body in the first place a year ago, I was not seeking to make it complicated. I was not seeking to solve the problems of other jurisdictions or to go beyond a very

narrowly defined problem which was a real emergent problem. In other words, it was not intended to deal with some kind of hypothetical situation or speculative situation. My amendment was aimed at a real abuse which had been the subject of endless litigation in the courts and it was deliberately drafted by its purpose and intent and language to be very narrow, very direct, very discrete, and not very sweeping.

Perhaps because of that, Mr. President, the amendment was warmly approved by everybody from Agudath Israel of America, which is the Nation's largest orthodox Jewish movement, to President Reagan, to the National Association of Evangelicals, a number of thoughtful observers writing in their individual capacity, including John Whitehead of the Rutherford Institute, and James Kilpatrick and Bill Buckley and the Catholic Layman's Committee, and the Christian Legal Defense Committee, the Catholic Standard, the Association of Christian Schools, and an endless number of people who looked at the issue and concluded that the amendment was justified. I am sure it was in part because of their endorsement that the Senate adopted it by an overwhelming margin.

Mr. President, I am really tempted to simply offer the same amendment again and leave the matter to the courts to decide. It is an intriguing legal issue.

However, it seems to me the wiser course is not to precipitate an unnecessary confrontation over the related but basically peripheral question of can Congress compel a local legislative body to enact certain formulations and condition appropriations upon the willingness of these local legislative bodies to do so. There are many, many reasons why that would be a fascinating case to let play out, which is exactly what would happen if we were to reenact this amendment.

Maybe that is what we will do before the day is over. I am not quite sure. That is one possibility. My conviction is that we should not seek to widen the controversy but should continue to try to settle only the issue which came before us, which is are we going to let the District of Columbia government coerce religious institutions and force them to grant material aid and other kinds of recognition to a group which is organized for purposes that are contrary to the faith which prompted the formulation of the institution in the first place.

So with the word of explanation, let me say to the Senate what it is my intention to do. I intend to offer a slightly different amendment than I offered last year. I will offer an amendment which simply will directly amend the District of Columbia Code. I think there is no doubt that we have the authority to do so. We could have done it that way a year ago. In retrospect, it probably would have saved some time in court and we would have been spared this interlude of litigation. But, frankly, it never crossed my mind that anybody would seriously contend, let alone that a court would agree with, the idea which the city council took before the district court and with which the district court did agree.

The reason it never occurred to me is that the way we wrote the amendment was in essence the identical to the way we do it all the time. It was not an unusual formulation. It is my recollection, and somebody might correct me, I believe that in this legislation was a nearly identical formulation having to do with insurance policies for persons who had contracted AIDS. Is that essentially right?

It does not matter. It was something along that line. But the formulation was the same.

I have not gone back to check whether or not this is a parliamentary formulation that we have used 50 times or 100 times or 1,000 times but we have used it over and over again. So it never crossed my mind that would become the item of controversy. But, since it did, I am going to short-circuit that process. It is my intention, purpose and desire to simply offer this amendment which will amend directly the District of Columbia City Code.

AMENDMENT NO. 751

(Purpose: To protect religious liberty and academic freedom within the Nation's Capital)

Mr. ARMSTRONG. With that word of explanation, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

Mr. ARMSTRONG. Mr. President, since the amendment is brief, I would be glad to have the clerk state the amendment.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. ARMSTRONG] proposes an amendment numbered 751.

At the appropriate place in the bill insert the following new section:

SEC. . (a) This section may be cited as the "Nation's Capital Religious Liberty and Academic Freedom Act".

(b) Section 1-2520 of the District of Columbia Code (1981 edition) is amended by adding after subsection (2) the following new subsection:

"(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition—

(A) the use of any fund, service, facility, or benefit; or

(B) the granting of any endorsement, approval, or recognition,

to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.".

Mr. ARMSTRONG. Mr. President, I thank the clerk for reading that. It seemed to me worthwhile to read the amendment in full simply because it speaks for itself.

It is a very simple matter. I simply want to reaffirm in a slightly different way and in a format which we think will deescalate the litigation of the policy decisions which Congress made last year. That is to say, that the District of Columbia may not force a religious institution, whether it is a college, a university, primary school, secondary school, or whatever it is, to grant aid and comfort and support to an organization of this character, which really is anathema to the purposes for which the institution was formed and the ideals which sustain it.

Mr. President, I think others may wish to speak on this subject. In fact, I see the Senator from Ohio is here and I believe he may want to speak on another subject. I have no objection to that. My desire is simply to bring the matter to a head and to adopt the amendment when everyone has had a chance to have their say.

ORDER OF PROCEDURE

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, on behalf of the joint leadership, I ask unanimous consent that any rollcall votes ordered today be delayed to no earlier than 6 p.m.

Mr. ARMSTRONG. Mr. President, have other rollcalls been—if the Senator will yield—been ordered?

Mr. METZENBAUM. I do not know.

The PRESIDING OFFICER. The Chair is not aware of any.

Mr. ADAMS. I state at this point that there have been no rollcall votes ordered at this point.

Mr. ARMSTRONG. Is this to accommodate the arrival of some people from out of town?

Mr. President, I have no objection.

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

MORNING BUSINESS

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Senate now go into morning business for a period not to exceed 6 minutes so that the Senator from Ohio may make a statement.

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

ASSAULT WEAPONS LEGISLATION

Mr. METZENBAUM. Mr. President, if any of my colleagues were to step into the Senate Cloakroom and read the wire service news reports, they would find that this morning, a man armed to the teeth with an AK-47, and two MAC-10 assault weapons, opened fire and killed 7 innocent people and wounded 12.

This morning it was a disgruntled employee in a Louisville printing plant.

Before that it was a gang member in a speeding car opening fire on a crowded street in L.A.

Or it is a man firing randomly on people in a Florida shopping center.

Or it is bank robbers gunning down FBI agents in Miami.

Or it is a madman turning a California schoolyard into a killing field.

How many more people have to die before the Congress of the United States finds the courage to stand up to the National Rifle Association? How many more senseless slaughters must we endure before we limit a madman's access to assault weapons.

Mr. President, the law enforcement officers of this Nation have come to us for help.

They are outgunned by every two-bit drug dealer. They are pinned down by every psychopath with mass murder on his mind.

Yet for 7 months we've been unable to bring an assault weapons bill to the floor.

We have endured 7 months of NRA distortions and delay.

These are not sporting weapons. These are not hunting rifles, unless someone has declared it open season on human beings.

I cannot help but recall the testimony of Lori Mackey, a teacher who witnessed the Stockton schoolyard massacre. She asked the members of the Judiciary Committee, "Why aren't there laws to protect us from this kind of madness? Does it always have to take a tragedy of this magnitude to get any action? Has there been enough suffering to warrant action now?"

Mr. President, I think there has been enough suffering. We have voted an assault weapons bill out of the Judiciary Committee. Let us bring it before the full Senate and vote on it.

I think it could be stronger, and I will offer amendments to that end. But at the very least, let us debate the bill and vote it up or down. Anything less would be irresponsible. It is time to act—now. One more day's delay—one more death—cannot be explained.

Mr. President, I yield the floor.

At the same time, I want to thank the manager of the bill, and I thank the leader for the minority for yielding me this time.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1990

The Senate continued with the consideration of the bill.

Mr. ADAMS. Mr. President, we are returning now to the last amendment of which we have any notice regarding the D.C. appropriation bill. I have just a few remarks, Mr. President. I know of no one else, other than Senator ARMSTRONG, who has already spoken, who wishes to make remarks on this. At the end of my remarks it is my intention to move to table the amendment.

Mr. President, the struggle that has preceded the introduction of this amendment, as pointed out by my colleague, Senator ARMSTRONG, has gone on for over 8 years, and it was settled last year by an agreement between the Georgetown University and the groups that were in opposition. I would like to ask at this time unanimous consent to have printed in the RECORD at this point the letter of March 28, 1988, from Georgetown University, signed by the Reverend Timothy S. Healy, indicating the status of this matter.

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

GEORGETOWN UNIVERSITY,
Washington, DC, March 28, 1988.

To the Members of Georgetown's Faculty and Alumni:

LADIES AND GENTLEMEN: For the past eight years Georgetown University has been engaged as the defendant in a law suit brought by two groups of homosexual students, one on the University's Main Campus and one at the Law School. This week the University arrived at an acceptable agreement with its opponents for the order that the trial court must issue in this matter. For that reason the University will not appeal the case to the Supreme Court. I am writing to give you the history of this long affair, and also the University's reasons for settling at this point rather than carrying it further.

In 1977, a group of students at the University formed an organization called "Gay People of Georgetown University" (GPGU). In 1979 and again in 1980, GPGU requested and received "student body endorsement," a status requiring approval only by the student government and not by the University. This endorsement entitled the group to advertise in student publications, to apply for lecture funds and granted them a limited use of University facilities. The group, however, wanted more than student body endorsement. It demanded full University recognition. That recognition would have meant that the University endorsed the activities of the organization, and would also have afforded it more extensive benefits, including University funding.

The University rejected GPGU's request for University recognition on the grounds that the group presented a homosexual lifestyle as morally acceptable. Among the groups' stated purpose was "fostering theories of sexual ethics consonant with one's personal beliefs." The University stated that norms governing sexual conduct were objective, and that Catholicism does not teach a sexual ethic based merely on personal preference. Georgetown emphasized that "while it supports and cherishes the individual lives and rights of its students, it cannot subsidize this cause because it would be an inappropriate endorsement for a Catholic University."

At this point, local government became involved. The District of Columbia has an ordinance called the Human Rights Act. Under that act it would be unlawful discrimination for an educational institution, * * * to deny, restrict, or to abridge or condition the use of, or access to, any of its facilities and services to any person otherwise qualified, wholly or partially, for a discriminatory reason based upon the race, color, religion, national origin, sex, age, martial status, personal appearance, sexual orientation, family responsibilities, political affiliation, source of income or physical handicap of any individual.* * *

Under the same act, sexual orientation is defined as "male or female homosexuality, heterosexuality, and bisexuality, by preference or practice."

Under the provision of the statute, GPGU, joined by the similar group at the Law School, filed suit in the Superior Court of the District of Columbia alleging that the University had violated the Human Rights Act. The District of Columbia itself promptly intervened as a plaintiff to obtain enforcement of the act.

In October, 1983, the Superior Court, in the person of Judge Sylvia Bacon, declared the act unenforceable against Georgetown under the "free exercise" clause of the Constitution. The court found that under Catholic doctrine, to which Georgetown adheres, no one "affiliated with the Roman Catholic Church may condone, endorse, approve or be neutral about homosexual orientation, homosexual life-style or homosexual acts." The trial court thus found that "the District of Columbia Human Rights Act must yield to the Constitution guarantee of religious freedom.

The plaintiffs then went to the Court of Appeals of the District of Columbia. A three-judge panel in July, 1985, reversed the trial court by a vote of two-to-one. That same day, however, the Court of Appeals issued a sua sponte, per curiam order, vacating the panel's opinion and setting the case for en bloc consideration. Twenty-five months after the case was heard en banc, the Court issued its decision in November 1987. Each judge wrote separately, and there was no opinion for the court. The court was shy one judge, and another judge, a former Georgetown dean, recused himself.

Despite its scattering of opinions, however, the holding of the court is clear; the District of Columbia has a compelling interest in eradicating discrimination against homosexuals and that overrides the First Amendment protection of Georgetown's religious objections to subsidizing homosexual right's organizations. The Court of Appeals held as a matter of statutory interpretation that the act does not require Georgetown to give the groups formal University recognition, which the court labeled an intangible. Instead, the court said, "The act only requires Georgetown to grant the groups the tangible benefits associated with University recognition." The court, therefore, recognized the distinction in principle between officially recognizing an organization and underwriting its activities.

It is important at this point to interrupt this narrative, and describe the University's position during this long litigation. At the first trial, and in the endless depositions that preceded it, the thrust of the plaintiff's arguments was for "recognition." The Uni-

versity fought against that thrust and prevailed. When the case came before the Court of Appeals, the plaintiffs dropped the notion of recognition almost entirely, and argued that all they sought were the tangible benefits. These benefits included office space, telephone, copying facilities, access to mailing lists, listing in various handbooks, a mailbox, and the right to apply to student government for an annual budget. The University had long felt that the key issue was recognition, in other words that Georgetown not be obliged to declare that it regarded a homosexual life-style as morally neutral.

The issue of tangible benefits was a more complicated one. First of all, the group enjoyed tangible benefits by its student government recognition, and indeed acquired more of the same kind of benefits by the ancient art of scrounging. Thus the group existed, met in University facilities, used University bulletin boards to advertise its meetings and activities, ran a limited program of activities, and had access to student funds for inviting speakers onto campus. They were also able to borrow telephones, Xerox machines, and other facilities from other student organizations. Since you are familiar with the way Goergetown runs, you know that these "benefits" are normally taken for granted by any group of students. Recognizing that students as citizens have a right to associate in any way they please, the University did not interfere with any of these activities. It has also long accepted as a premise that, provided nothing illegal or obscene transpires, it will not interfere with the presence of speakers on campus, no matter how unacceptable their opinions to the University itself. During these eight years we have had speakers of the ilk an character of Roberto D'Aubission from El Salvador, which demonstrates how consistently the University has held to the principle that Georgetown neither approves nor disapproves speakers that are invited by any group of students or faculty. For all these reasons, the plaintiffs in their presentations to the Court of Appeals were able to make a substantial case that they are simply asking to have, officially, not much more than what they had long enjoyed unofficially. This claim was, in part, the simple truth.

It could at this point be argued that Georgetown should have taken a harder line, and every time the gay groups surfaced, refused them any cooperation, tolerance, or access. Lawyers can make much of this kind of a suggestion, but lawyers don't run universities. Had Georgetown proceeded this way during the past eight years, we might have had a stronger case to present to the Supreme Court, but we might also not have had a university. The groups involved are small, indeed the full roster of members has never, to my knowledge, exceeded 20. But any public harshness or disrespect on the University's part would have been recognized by the rest of our undergraduate and law students as so thoroughly contradicting Georgetown's being and traditions that they would have refused to accept it.

Much more important, Georgetown has long, on Catholic moral grounds, fought all forms of discrimination. It does not discriminate in any improper way in the admission, retention and graduation of students or in the appointment, promotion or tenuring of faculty. In addition, as a Catholic university it has always recognized its pastoral as well as its educational responsibility to each and all of its students. These young people are here and thus are ours—to teach and guide, to cherish and protect, and above all to respect. That pastoral obligation includes as clear a presentation as we can make of human sexuality in all its complexity and beauty as well as in its divine orientation towards the permanent commitment and responsibility of marriage. Our teaching, however, must be set in a climate of respect and understanding for it to be heard and, indeed, for our community to live and flourish. Disrespect, condemnation and harshness seem to us incompatible with correction or even instruction itself.

You are also well aware that the University's responsibilities on the two campuses are different. Students at the Law School are adults, all of them having finished college, and many of them entering two or three years after their bachelor's degrees. In addition, they are a more religiously heterogeneous body. On the Main Campus, where a substantial majority of the students are Roman Catholic, they first come to us at seventeen and eighteen. At this time of life sexual identity is a serious question and, for at least some, is a source of anxiety and trouble. The University's presence in this delicate area of human growth must be principally pastoral. Abstract moral teaching is needed, but may well also appear to those at whom it is directed both as an interference and a disputable one at that. A posture of total intransigence on the University's part might have created more anger among law students, but it would have worked deep and serious trouble among undergraduates. Thus in everything it said and did in this long trial, Georgetown had to remember that its words and actions would be heard and seen by two different groups of students with sharply divergent needs. That is not meant to deny the University's clear pastoral responsibility towards both groups, and above all not to deny the well-established fact that few human beings derive much spiritual sustenance from being clobbered.

To return to the narrative, it was clear that the divided opinion of the Court of Appeals was still 5-to-2 against the University. The court had tried deliberately and with some skill to tailor its decision to what it felt to be the facts of the case. The University itself had, since the opening of the trial, more vigorously defended its right not to endorse a homosexual life-style than it has defended the right to deny quite minimal tangible benefits to these particular student groups. In that sense, the court could have been said to have adopted the University's own distinctions as presented by its counsel.

During the course of the appeal, and certainly after it, the University had tried to negotiate with the plaintiffs to see if the entire question could not be settled out of court. At the early stages of the trial, the plaintiffs' insistence upon formal University recognition made such negotiations impossible. After the decision of the Court of Appeals, this insistence disappeared, and all that the University was obliged to negotiate was a listing of tangible benefits.

On the ancient and honorable grounds that anyone who intrusts his future to a court is a fool, the University tried seriously to negotiate. In those negotiations it had four principal purposes. The first was to make certain that the tangible benefits awarded by the court did not include religious services, or access to the religious facilities and functions of the University. The second objective was to make certain that Georgetown was not unwittingly used as a staging ground for community activities from Washington or elsewhere. The third objective was to avoid any direct advocacy of homosexual acts as well as to preserve the campus from being the scene of any kind of activity that could under normal moral canons be called improper or indecent. The fourth was to prevent any ambiguous use of the University's name to imply that it approves of homosexual life-styles as morally neutral. Over long and difficult negotiations, covering several months, the University has finally achieved an agreement with the plaintiffs which was presented to the trial court as an agreed upon order for it to issue. In the order as it stands, all four of the major goals the University sought in these negotiations are achieved.

The major decisions in the University's conduct of the case were initially made by me and the Chairman of the Board under advice of counsel. In addition, at several meetings of the full Board the status of the case and of the various developing positions was described for all the members. Thus the Board was thoroughly informed through the entire process. When the decision was handed down by the Court of Appeals last November, the executive committee reviewed the entire case, and heard the advice of counsel. At a subsequent meeting of the executive committee, the members decided that the matter ought to be brought to the whole Board, and for that reason petitioned the Supreme Court for an extension of the time allowed for an appeal. At the same time the executive committee requested that counsel prepare a briefing on the issue and asked for a further analysis of the appropriateness of an appeal, of our chances of gaining certiorari from the court, as well as of the probability of the court finding in the University's favor. The Board also asked that a moral theologian prepare a paper analyzing the case from the Church's point of view. Archbishop Hickey had written me several letters, and these too were presented first to the executive committee and then at the Board meeting on March 17th to the entire Board. The whole day was given over to discussing whether or not to appeal to the Supreme Court.

The Board discussion was long and serious, and counsel was present for it. We began by acknowledging that there is such a thing as discrimination against homosexuals, and that as a Catholic institution, in faithfulness to the Church's teaching, we had to support legal efforts, sometimes even imperfect ones, to remedy that discrimination. We also were aware that the Appeals Court had granted us what we claimed was our principal interest, the freedom to refuse official recognition to these groups. The Board had available to it the brief that the University had submitted to the Court of Appeals, and in that brief this was clearly the University's principal concern. The Board also heard arguments pro and con on the state of the case and its suitability for the Supreme Court. We knew that the decision of the Court of Appeals for the District of Columbia might well be cited in other places as an authority, but that it legally bound only institutions within the District, and that it was based upon a very wide-reaching statute, to the best of our knowledge more broadly drawn than any other statute in the nation. It was pointed out to us that Catholic University, with a very different set of facts because of its pontifical status, might very well not be bound by the decision affecting Georgetown.

The conclusion of the Board was that we had a very weak case to present to the court for the following reasons:

(1) The decision granted the University what it said it wanted, and the court manifestly regarded the "tangible benefits" as minor. That perception was justified by the University's own brief.

(2) In order to make a successful appeal, we were advised that we would have to attack the statute itself, as well as plead our rights of free exercise and free speech. The Board felt that a Catholic institution would have difficulty attacking the statute, which while it was perhaps over-inclusive, at the same time addressed a real problem and constituted a reasonable exercise of the District's police powers.

(3) All the members of the Board felt that having treated our gay students during the long course of the trial with sympathy and understanding made it possible for the other side to urge that we sought now to refuse what we had all along freely granted.

(4) Everyone felt that the reaction of the Supreme Court when we asked for a stay in execution indicated that it was not sympathetic to the University's position. As best we can determine the denial of the stay was 7-to-0.

(5) Judge Antonin Scalia recused himself from the discussion of the stay and thus from the case. He is not obliged to give a reason and he did not. The press speculated that as an alumnus of Georgetown he did not wish to be involved in the case. Even with the addition of Judge Kennedy, this left us facing an eight-judge court, and everyone felt that this was not an ideal way to approach the Supreme Court.

(6) As the decision now stands, its binding authority is limited to the District of Columbia and is based on a broadly drafted statute peculiar to the District. If the case were taken by the Supreme Court (many on the Board felt it would not be) and if the court decided against us, a national precedent would be set which could cause much mischief.

For all of these reasons, the Board voted unanimously that it would be best to work out an agreement with the plaintiffs in the case, so that the trial court in issuing its order would take into account those aspects of its work and life that the University sought most to protect. The Board instructed the University to seek such an agreement, and only to appeal to the Supreme Court if it became clear that the agreement would not be forthcoming or that there was little chance of the judge incorporating it into her order.

In the days that followed, an acceptable agreement was reached. It protected the essential elements I have described above, and it was accepted by the judge. Following the instructions of the Board, the University has allowed the last day on which it could appeal for certiorari from the Supreme Court to pass without an appeal.

Needless to say this long and complicated process has been expensive for the University. The legal fees, both our own counsel's and those the court will mandate for opponents' counsel, will be close to three-quarters of a million dollars. Where Georgetown has really been made to pay for its stubborn defense in this suit is in the denial of the tax-exempt bonds to which it was legally entitled. That denial had nothing whatsoever to do with the case: as a matter of fact the denial was plainly illegal up until November of 1987, since up to that date the prevailing court decision was in the University's favor. Over the course of the next thirty years that denial could cost the University somewhere between 30-50 million dollars. As far as I can see, the issuance of tax-exempt bonds from the District of Columbia is now impossible, and the University must look elsewhere or simply take the consequences.

I would also like to comment on the conduct of the Board. Georgetown has a large Board, and only four members were absent from the discussion on Thursday, March 17 . Throughout the five-hour discussion, the Board conducted itself with common sense, courtesy, and a deep care about the religious dimensions of the case. At no point, nor by even the vaguest suggestion, did any member of the Board imply that these religious aspects were unimportant or indeed other than primary. It was a marvelous demonstration of how a serious board understood Georgetown's tradition as a Catholic university and defended it to the best of its ability.

I am sorry that I could not have written a briefer letter, but the matter has been complicated, the history long, and the stakes high. This case is one in which Georgetown has consistently (and at serious cost) upheld Catholic teaching while it sought for practical ways of implementing it pastorally in a university context. Since this is an issue that shows no signs of going away, and since it is one on which the Church has yet fully to develop her thinking, I wanted the faculty and alumni to understand the actions of the University and the reasoning behind them.

No letter from any university president comes without a request. These eight years have been long and divisive. Thanks to the help of many on the faculty they were considerably less divisive than they might have been. This is the kind of case that no one wins, and both sides lose. The University now needs everyone's help to pull its community back together, and to work so that all of Georgetown's people may find themselves, as the poet says, "United by the strife that divided us."

Sincerely,

TIMOTHY S. HEALY, S.J.

Mr. ADAMS. Mr. President, since that time, what has occurred is this matter has been passed on by the Federal district court, indicating that the amendment that had been offered at that time, which was an amendment instructing the Council of the District of Columbia to act in a particular fashion, was a violation of the right of free speech, and, therefore, was unconstitutional.

That matter is still pending. By pending, I mean it is before the court of appeals, and a decision may be rendered on it at any time.

Mr. President, I am opposed to this amendment. I am opposed to it on the basis of home rule or States' rights, and I think they are synonymous in this case. Ideals. We have a city council, and we have a great university in this city, who have had a difference of opinion. They have taken 8 years to settle this difference of opinion, and they have settled it.

What I feel, and this is—with all due respect to my colleague from Colorado, and I do have for him deep respect—to simply make the point after the parties have already settled and decided it. He has every right to do that, and it has been done in this case by amending—not instructing the District council—directly the statutes of the District of Columbia, which provide, through this appropriation bill, that what the Senator from Colorado wants, that the National Capital Religious Liberty and Academic Freedom Act be written into the statute.

Now, this will be litigated, I am certain, to an even greater degree. I would have the opportunity, Mr. President, to potentially make a point of order against this, but that would leave to an appeal of the ruling of the Chair, and I have determined that the better way of doing this would be to move to table this amendment by the Senator from Colorado, and in that fashion, the body can pass on the manner in which they wish to handle it.

I hope that the Members and my colleagues in the Senate will support the tabling motion. I think the parties themselves would like to have this matter stopped. I think it would be for the good of both the status of the law in this area, Mr. President, and the status of the Constitution, which we have carefully tried to follow in drafting a home rule law, that we in the Congress not involve ourselves in direct legislation for District of Columbia matters.

I do not question the power to do that, Mr. President, but I do question the wisdom of doing that. I particularly question the wisdom of doing that on an appropriation bill. I think that if the Senator from Colorado wishes to make a point, and I do not question either his integrity or his desire to make a particular academic and intellectual point, that he go to the particular committees of the Senate that are involved in these matters and place this legislation and this amendment to the legislation of the District of Columbia before those committees, and let those committees have a hearing and debate it further. I would not recommend that there be a hearing, in that the parties themselves have already settled it. But if it is necessary to debate a principle of law and a principle of constitutional law, in particular, I do not mind, as I know the Senator who is presently in the chair does not mind debating points of constitutional law. I do have a little reluctance to debate such points in an appropriation bill, which involves the home rule of the District of Columbia.

It is for those reasons, Mr. President, that I am going to move to table, rather than going to a full-scale debate and a vote on the merits. Unless Senator ARMSTRONG has something further to say, I will withhold my motion to table, because I do not want to cut off anyone, but I have tried to explain the basis by which

this manager of the bill wishes to table, rather than raising a point of order, simply letting it run on.

I inquire of the Senator of Colorado, and I notice that Senator NICKLES is here, if they wish to speak, and I hope that their remarks will be gentle on the ears and time of our colleagues, because of the time pressures. I will certainly withhold until they have had an opportunity to make their remarks. Does the Senator from Colorado wish to speak?

Mr. ARMSTRONG. I am grateful, Mr. President, to the Senator from Washington for his courtesy. I do have a few thoughts I would like to close with. I am glad to let the Senator from Oklahoma have his say before I go ahead.

Mr. ADAMS. I withhold so that the Senators may proceed.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. I wish to thank my friend and colleague, Senator ARMSTRONG, for his courtesy and for his offering this amendment. I might have a question or two, but first there is no question whatsoever that the legislation that my friend and colleague from Colorado has offered is constitutional.

It is clearly constitutional, and I compliment him for it.

I also want to compliment him on the substance, and the Senator can correct me if I am incorrect—but the substance of the legislation—or I will ask this in the form of a question: Is not the substance of the legislation pretty much codification of what we did on last year's appropriation bill which basically stated it would not be a discriminatory practice from a religious institution to deny their facilities to homosexual groups?

Mr. ARMSTRONG. Mr. President, the Senator from Oklahoma is exactly correct. In fact the operative language is identical to language that was included in the amendment adopted last year.

Mr. NICKLES. I wish to compliment again the Senator from Colorado.

I was ranking Republican on the D.C. Appropriations Committee. Through the Senator's valiant efforts on the floor last year, we had a hotly contested debate over the amendment. But the amendment, if I remember, carried overwhelmingly on the floor of the Senate and we were able to hold this amendment in conference, and it was law. Last year it was on a funding bill. There is a codification of that, which is certainly constitutional.

If one reads the Constitution we in Congress have that right to do so. So I call that to my colleagues' attention, and again I wish to thank the Senator from Colorado for bringing this amendment up. It is almost embarrassing to think that an amendment like this would be necessary but when you look at the activities that have happened by the D.C. Council, unfortunately this is necessary.

So again I compliment the Senator from Colorado and I hope that his amendment will be adopted.

Mr. ARMSTRONG. Mr. President, I am very grateful to my friend from Oklahoma not only for his kind words today, but since he has recalled his membership on the conference committee let me say that he neglected to mention one thing: It is that if he and one or two others on that committee had not stood their ground the Senate would not have been able to prevail on the conference and this similar provision would not have been enacted last year. I am really deeply grateful to him. It was a time of pressure and a time when a lot of things were being settled and it would be easy to let this slide. In fact there was a lot of pressure on him and others to do so. As usual the Senator from Oklahoma stood up to be counted and the results speak for themselves.

Mr. President, I have several points I wish to raise, some directly in response to my friend from Washington. I hope that my colleague from Washington will entertain the thoughts that I am about to raise because I do not want to have any misunderstanding between him and me.

Let me first do an item or two of housekeeping.

First at the request of the Senator from North Carolina I do ask unanimous consent that Senator HELMS be added as a cosponsor on this amendment and I am very honored in having him join me in sponsoring it and do make that request.

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

Mr. ARMSTRONG. Second, the Senator from Washington has inserted in the RECORD a letter from Father Healy and a statement from Father Healy from last year and they are, I think, completely consistent with, and, in fact, I believe they are identical with a statement I made earlier outlining Georgetown's position.

As long as we are putting letters in the RECORD I think I would like to put some letters in the RECORD as well, including a letter from Ronald Reagan on this subject in which he points out it is intolerable that any jurisdiction in this country would force church-related institutions and religious schools to contravene their own religious tenets. I ask unanimous consent that Mr. Reagan's letter be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, July 15, 1988.

Hon. WILLIAM ARMSTRONG,
U.S. Senate, Washington, DC.

DEAR BILL: Your defense of religious liberty through your amendment to the D.C. Appropriations bill was admirable. It is intolerable that any jurisdiction in this country would force church-related institutions and religious schools to contravene their own religious tenets. I applaud your leadership in defending not just religious institutions within the District of Columbia but the freedom of religion throughout this country.

With best regards,

Sincerely,

RON.

Mr. ARMSTRONG. Also I ask unanimous consent to print in the RECORD a letter from Joseph Broadus, a law professor at George Mason University, in which he addresses one of the most important issues here.

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

GEORGE MASON UNIVERSITY,
Arlington, VA, July 13, 1988.

Senator WILLIAM L. ARMSTRONG,
U.S. Senate, Hart Building, Washington, DC.

DEAR SENATOR ARMSTRONG: Thank you. Your effort to restore proper constitutional balance in the District of Columbia is greatly appreciated. The long running saga of the Georgetown case has been deeply disturbing. From the perspectives of freedom of religion and freedom of speech the Georgetown case marks an unfortunate low point in constitutional history.

Whatever the immediate future of your proposal, it has brought this sad and dangerous situation to broader public attention.

Sadly, the Georgetown case is not an isolated episode. It is only the most obvious or dramatic incident in a growing pattern of state intrusion into internal church affairs. I have included copies of other articles that might be helpful to you on this case.

Sincerely yours,

JOSEPH E. BROADUS,
Assistant Professor of Law.

Mr. ARMSTRONG. Mr. President, this is an issue which my friend from Washington raised, and that is a question of whether or not it is an academic exercise or whether or not we are addressing a real and serious problem. It is until it is a settled issue.

The Georgetown part is settled. I said that in my opening statement. They signed a consent decree. Even though they may not be legally bound to honor it, they said they intend to honor the terms of the decree they signed because they think that is their obligation. Listen to what Professor Broadus said. He said sadly the Georgetown case is not an isolated episode.

I am going to ask in a moment consent to put Professor Broadus' letter in the RECORD along with an article which he has written, and he is an authority on this subject by the way, entitled "Georgetown: A Portent of Future Church-State Relations."

I will also ask to have printed in the RECORD at this point a telegram from James V. Heidinger, who is the editor and executive secretary of Good News, a forum for scriptural Christianity within the United Methodist Church, endorsing the amendment; also a statement of the American Association of Christian Schools; a statement of the Association of Christian Schools International; one from Citizens for Educational Freedom; an article by Joseph Sobran, who has written with great perspicacity on this matter; and finally an editorial from the daily Sentinel of Grand Junction, CO.

Mr. President, far from being an isolated episode, this Georgetown incident demonstrates one of the most disturbing trends in America today. It is this notion that somehow everybody's rights ought to be protected except those who are seeking to exercise religious rights.

I believe that that is not only contrary to good practice; it is deeply violative of the better traditions of our country.

In fact, the founders of our country sought to give to religious belief and religious institutions a special and preferred place in the scheme of things, and in fact they did so.

James Madison did it, I think, very neatly in the way he drafted the first amendment to our Constitution, and so far as I know, that stands not only as the result of law but in fact it stands as the aspiration and ideal of virtually every thoughtful American.

So this is not a settled issue. We are not dealing with something that is abstract. We are dealing with something that is very real, is alive, and which in fact is a growing and continuing problem in America today.

I send this material to the desk and ask unanimous consent that it be printed in the RECORD.

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

GEORGETOWN: A PORTENT OF FUTURE CHURCH-STATE RELATIONS

(By Joseph E. Broadus)

During the great disturbances of the revolution in Paris, a mob invaded the Cathedral of Notre Dame, the Church of Our Lady. The rioters displaced the icons of the Virgin and, in her place of honor, the mob enshrined the living flesh of a whore and mock-worshiped the woman of easy virtue as their new Madonna.

No single episode more vividly depicts the conflict between the Church, its ethics, and the sexual mores of modern liberalism. Today the conflict continues and the mobs are back. In public demonstrations, homosexual activists have been reported to have insulted the Eucharist to express their contempt for Catholic moral teaching.

More serious, however, are the more subtle assaults which seek to wound not the sensibilities of Christians but their ability to pursue apostolic purpose. Churches across a wide range are under increasing pressure to conform to the "easy-listening" ethics of our time.

As the traditional Catholic message of moral restraint has increasingly clashed with the official morality of anything goes, it was inevitable that new ways would be found to silence or compromise the Church in its apostolic mission. One of the more recent and frightening episodes involves the holding of the District of Columbia's highest court ordering Catholic Georgetown University to adopt the gospel of homosexual liberation.

For almost a decade the university has struggled with demands from homosexual groups that they be accorded official university recognition and funding. The university has refused.

Under Georgetown's scheme of things, official university recognition is saved for groups that advance the school's particular Catholic mission. Funding is viewed as the highest form of endorsement and saved only for groups that make a special contributions to the Faith.

Georgetown refused to fund the groups because it felt they advocated positions in opposition to Church teaching. One of the groups even prepared a constitution saying its goal was to devise a new sexual ethic limited only by personal choice.

Georgetown was particularly hospitable to the groups. Student government granted them charters, and they gained elements of student and faculty support. The groups were permitted to operate on campus. The university simply refused to endorse them and thus let them use the university's name or to give them money.

What happens next can best be explained only by understanding that the District of Columbia, known for its symbols of our national heritage, is very much America's Sodom to San Francisco's Gomorrah. It is, at last count, a town where powerful homosexual activist groups dominate the ruling Democratic Party.

These groups amended the city's Human Rights Ordinance to include sexual orientation, and they have used their political muscle to propel the city into making an example of Georgetown for its refusal to be more permissive about homosexuals.

The university's response to all of this has been, at best, muddled. It has refused to recognize the groups and fought a long legal battle, all in the name of defending Church doctrine. The effort, however, has left some observers skeptical. They suspect Georgetown has been fighting with one hand tied behind its back. First, the university has refused offers of help. It has nearly savaged lobby groups which attempted to move public sentiment against the city's ordinance that created the problem. It has discouraged offers of help in the litigation.

DOCTRINE FOR SALE

An example of this odd behavior is the recent episode involving Fr. Timothy Healy, S.J., Georgetown's president. After the university's recent defeat in the D.C. Court of Appeals, Georgetown's lawyers raced to the U.S. Supreme Court where an accommodating Chief Justice William H. Rehnquist granted the university a stay.

The university could wait until after the U.S. Supreme Court ruled without changing the position on the homosexual groups. Fr. Healy dashed to the District Council to explain how easily he could comply with the District's requirements if the District would only authorize the sale of $127 million in bonds to support university growth.

The council was unmoved. The Supreme Court, however, may have responded. It removed the protective stay. How great could the danger to religious freedom be if the university's president was publicly declaring the situation no cause for alarm?

The response was shock. Was Georgetown serious in the litigation in defense of Church doctrine? Some joked that Catholic doctrine on various issues was for sale. The Church was willing to revise its views on sexual ethics for the economic value of tax-free bonds. Other price lists might be posted.

Meanwhile, university officials moved quickly to aid the homosexual groups in entrenching themselves. An unusually large amount of money was earmarked for appropriation for the homosexuals.

The groups explained that some of the money would be used for propaganda on campus. In short, the Church's money would be taken and used in internal Church politics to undermine the teaching authority of the Church.

Spokesmen for the university were uncommonly uptight. Would the university appeal? They would only say the matter was up to their board. The indications, however, were not positive.

Observers speculated that the entire lawsuit had been a setup. The Jesuits at Georgetown have always favored a more liberal policy toward homosexuals in the Church. Under this theory only fear of Rome, and the threat of lower donations from an outraged alumni community, prevented Georgetown officials from supporting the groups voluntarily. Fighting, but not winning, the lawsuit permitted Georgetown to have its cake and eat it too.

Others suggested the university was just a victim of complex forces within the Church, and the larger society—and that the internal politics of the university made any stronger action impossible.

Clearly, Georgetown was beset by conflict. Key sections of the student body and the faculty supported the homosexuals throughout. Further, the university showed little interest in an aggressive defense. Georgetown officials always appeared curiously more interested in the sensibilities of its attackers than with the possibility that someone would get to rewrite the Gospels.

THE DAMAGE DONE

The application of the Human Rights Ordinance to Georgetown to compel the university to support advocacy of positions it opposes marks a major breakdown in the constitutional protections for freedom of speech and religion.

Homosexual groups and those concerned with freedom of religion are both closely watching the episode. If the precedent established in this case survives, it marks the end of an era of independent churches in America.

The episodes are unique in that a court has never set out to instruct a church on which sermons to preach. In this case, however, the District of Columbia Court of Appeals ignored constitutional and legal precedent to go to matters that are purely religious questions in reaching its decision.

The court held that homosexual orientation was not a factor relevant in judging a person's capacity or commitment for religion. The court presumed it had jurisdiction to weigh such questions.

The law, however, had until this point been clear. Civil courts have no power to

reach, let alone answer, ecclesiastical questions.

The U.S. Supreme Court has, for over a century starting with Watson v. Jones in 1872, warned civil courts not to intrude into internal disputes between factions in churches or to in any way second-guess churches on questions of doctrine.

Despite these warnings, courts have repeatedly attempted to substitute their judgments for those of religious bodies. The impulse appears nearly irresistible. When the Serbian Eastern Orthodox Church attempted to oust its North America prelate and reorganized itself into three dioceses rather than one, the civil courts in Illinois presumed to enjoin the move.

The U.S. Supreme Court forcibly rejected the move. Such questions were purely matters for church authorities, the High Court warned.

The Georgetown case is far more disturbing than any of the prior cases. Normally, the dispute is between believers. Here the dispute was between believers, and nonbelievers. The homosexuals had come to Georgetown promising to respect Catholic values. The court elected to order believers to adopt new beliefs to accommodate the sensibilities of nonbelievers.

At the heart of the Court of Appeals decision was a finding that Catholic teaching was antisocial and dangerous, and that the court therefore had a duty to contain it.

The finding itself violates repeated warnings from the Supreme Court that civil courts are not to weigh or pass judgment on religious beliefs.

The court was truly lawless; yet its historic usurpation of power drew little criticism from either the Church or the outside community. It is not only a comment on the corruption of civil authority, but on the curious state of Church leadership.

[From Religious Freedom Alert, March 1988]

GEORGETOWN CASE THREATENS CHURCH INDEPENDENCE

(By Joseph E. Broadus)

Georgetown University was founded in 1789, the same year the Constitution was ratified. Its founder, John Carroll, the first Roman Catholic Bishop in our nation, spoke with a special sense of history and mission for the school: "On this academy rest all my hope for the flourishing of our holy religion in the United States."

Today these words take on an ironic twist. For today, as Georgetown approaches its bicentennial, the University is locked in a legal battle testing whether not only Georgetown but any religious institution in America is free to choose its members, programs and doctrines.

Today all our hopes for an America free of governmental domination of churches rests, to some extent, on the outcome of litigation in which Georgetown has unwillingly become a surrogate for every American of conscience.

For a decade now Georgetown has fought the efforts of the D.C. government, through its Human Rights law, to compel the University to abandon Catholic teaching and to embrace the trendy ethics of the larger society.

Georgetown has refused to recognize or give financial support to groups of gay activists. Historically, Georgetown has reserved recognition as a form of endorsement from the University, and has seen financial support as the highest form of endorsement for groups with a special value to the school's religious mission.

Georgetown University officials have repeatedly expressed fear that recognition and financial support for the gay groups would be seen as an endorsement by the church of their gay lifestyle.

Further, the constitution of one of the gay groups states among its purposes the development of sexual ethics expressive of individual choice. This is particularly offensive to Catholic doctrine which sees sexual ethics as both universal and best expressed through traditional Christian values.

Georgetown has faced a powerful coalition of foes who have identified the case as an opportunity to set precedent in the church-state arena.

In response to all of this Georgetown has been a most reluctant and frequently inapt champion. First, it appears to some observers that the school's liberal Jesuit managers are not overjoyed by a protracted legal battle in defense of aspects of an exacting moral code more popular in Rome.

The dispute has split the student body and put the school at odds with the powerful District government which has held the non-profit's ability to sell bonds hostage as a result of its refusal to cave in to the city's demands.

Further, the conflict has disturbed Georgetown's image of itself as both a great liberal institution of learning, and a protector of great traditions. The controversy has forced these two elements of the institution's identity into disrepair. While the debate may be experienced as one of great substance within the church, a more detailed analysis with more remote reflection might suggest a dispute over style.

Prior to the dispute and even during it, the school has attempted to express a more open style of ministry than is customary with Catholics. The school has retreated on several occasions after the experiments were brought to the attention of central church authorities.

Some suspect that the school's low key response is the product of these complex internal politics. If that is the case, the situation is even more disturbing. In no case should state power be manipulated to settle internal church disputes. Those are matters beyond the state's concern.

Georgetown was then an ideal victim for those looking for a test case. Duty would compel it to resist, but its own politics might prevent it from the sort of broad scale response needed to address a complex and subtle challenge.

Sadly, the precedents emerging from this case have far reaching ramifications. Prior to the D.C. Appeals Court's ruling, no court had ever ordered a religious group to advocate a particular moral position. Nor had any court previously suggested that sexual preference was more important than religious liberty.

The early judicial returns on Georgetown's position were mixed. Georgetown lost on summary judgement on statutory issues, and prevailed after trial on Constitutional issues.

On appeal first to a panel of the D.C. Court of Appeals and later to the en banc or full court, the church school was held in violation of the local law.

This case represents unprecedented and shocking new statements of church-state relations. Chief Judge Mack, in the lead opinion, asserted that sexual orientation was not relevant to either religious capacity or commitment.

The U.S. Supreme Court has made it clear that civil courts have no jurisdiction over religious bodies when it comes to religious doctrine. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

The D.C. Court of Appeals ruling is proof of the warning issued by the Supreme Court long ago in *Watson v. Jones*, 80 U.S. 679 (1871) that it would lead to the "total subversion of . . . religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed."

Georgetown's position is well-supported by a strong body of case law governing free speech as well as free exercise. Only last year, the U.S. Supreme Court in *Pacific Gas & Electric* held that a public utility could not be compelled to provide mailing services to a consumer group. This holding was based on the *Abood* case in which the court held a union member could not be forced to support a union's political activities against the member's will in cases involving Campus Public Interest Research Groups (PIRGs). Federal courts have found free speech violations where students were forced to donate money to groups with which they disagreed.

Judge Mack tried to escape the force of these cases by saying that Georgetown was only being forced to give the "tangible benefits" of recognition. Only tangible benefits were involved in *Pacific Gas*, and that was enough to violate the Constitution. If someone gets to use your name, your office, and your money against your will they have forced you into speech against your will.

The next round in this long saga will be the U.S. Supreme Court.

WILMORE, KY, *July 12, 1988.*

MR. ROBERT P. DUGAN, JR.,
NAE Office of Public Affairs, Washington, DC.

We heartily endorse the principle expressed by Senator William Armstrong and the United States Senate which would reject any law which would force an institution to make its facilities available to groups whose lifestyle/values are unacceptable to said institutions. We oppose forcing religious institutions to hire homosexual persons or deal with them in any way as a protected civil rights group or category.

JAMES V. HEIDINGER II,
Editor/Executive Secretary, Good News, a Forum for Scriptural Christianity Within the United Methodist Church.

AACS DEPLORES COURT ORDER REQUIRING RELIGIOUS SCHOOL TO ALLOW HOMOSEXUALS TO ORGANIZE ON CAMPUS

JULY 26, 1988.

James E. Lowden, Executive Director of the American Association of Christian Schools, released today a statement of Dr. Richard Harris, Executive Vice President AACS, which expressed gravest concern about the District of Columbia statute which resulted in a recent appeals court decision ordering Georgetown University to permit homosexual groups to organize on the campus of the Roman Catholic institution. The statement by Dr. Harris pointed out that this intolerable precedent effectively bans religious institutions which enforce historic religious or Biblical beliefs from the nation's capital.

Lowden stated that the concerns expressed by Dr. Harris should be thoughtfully considered by all citizens. "The astonish-

ing rapidity of erosion of religious freedom should concern everyone," he said.

AACS is a service organization for its member schools, but increasingly finds that it must defend against movements that will destroy the right of Christian schools to exist.

STATEMENT OF DR. RICHARD HARRIS, EXECUTIVE VICE PRESIDENT OF THE AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS CONCERNING HOMOSEXUALITY AND RELIGIOUS INSTITUTIONS, JULY 26, 1988

"I consider the Government of the United States as interdicted by the Constitution from meddling with religious institutions, their doctrines, discipline or exercises."—Thomas Jefferson

The American Association of Christian Schools represents 1,200 Christian schools across the nation. Most of these schools are operated by churches. We are concerned with any governmental entanglement with any religious school anywhere because it is necessarily the same entanglement with the religious doctrines of the church.

The U.S. Supreme Court recognized in 1971 in *Lemon* v. *Kurtzman* that a church school is an "integral part of the religious mission of the church." That position is also the doctrinal belief of our member schools and the churches that support them.

We desire that all levels of government know of our strongest possible objections to the District of Columbia ordinance which has resulted in a court order requiring a religious institution, Georgetown University, to allow homosexual groups to organize and use school facilities even though homosexuality violates the religious teachings of the Roman Catholic Church. Enforcement of this ordinance against a religious institution sets an intolerable precedent.

What is at stake here is nothing less than the banning of religious schools in the nation's capitol that enforce religious or Biblical beliefs concerning sodomy. No government entity should even possess, let alone exercise power to commit such an outrageous act.

It is of no consolation whatsoever that religious schools are given the empty reassurance that they are free to teach, but not practice their beliefs that homosexuality is sinful. Such governmental action reduces religious belief to a set of inner feelings that are allowed no free exercise.

Christian schools must not only be able to teach, but they must be able to practice their historic Biblical beliefs without governmental interference. The precedent of the Georgetown case must not only be allowed to spread to other jurisdictions, it must not even be allowed to survive in the District.

Finally the judicial assertion that the "compelling governmental interest" in overcoming "sexual orientation discrimination" outweighs free exercise rights is a dangerous notion that threatens the religious liberty of every citizen. It is difficult, if not impossible, to imagine any more reprehensible attack on both freedom and morality in one court ruling. Congress should act to put an end to this attack at once.

ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, NATIONAL/INTERNATIONAL HEADQUARTERS,
La Habra, CA, July 1988.

Senator BILL ARMSTRONG,
U.S. Senate, Washington, DC.

DEAR SENATOR ARMSTRONG: The Association of Christian Schools International commends you on your amendment that requires the District of Columbia to change its homosexuality discrimination law for religious schools.

ACSI stands with you and the U.S. Senate in your support of the rights of a private institution, especially a religious institution, to set its own rules and policies based on its philosophical beliefs. No school should be forced to advocate or support an opposite moral position. Each institution should be allowed to prevent the imposition of a hostile philosophy which attempts to dictate a different set of moral standards.

We commend the U.S. Senate for its vote in favor of your amendment. We call on the House and Senate conferees to keep your amendment attached to the D.C. appropriations bill.

We also applaud the efforts of the National Association of Evangelicals on your behalf, especially their news conference concerning this critical matter. Please know that we are ready to help in any way we can to support your defense of religious freedom.

Respectfully yours,
Dr. JOHN C. HOLMS,
Assistant to the Executive Director.

CITIZENS FOR EDUCATIONAL FREEDOM,
Arlington, VA, July 13, 1988.

Hon. WILLIAM ARMSTRONG,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR ARMSTRONG: This is just to say how much we appreciate your courageous stand in recently prodding the District of Columbia to remedy the serious defects in its civil rights law.

Some people are willing to pursue social gains blindly, destroying wholesale the achievements of the past to enforce marginal and even unwise and illusory gains. They may mean well—some of them—but their totalitarian ideas and zeal for coercion are a threat to American private as well as public life. Repeatedly, across a wide spectrum of social issues, the most simple and foundational elements of American personal and religious freedom are being put in danger today.

Seeing religious groups being forced to host and give de facto approval to homosexual communities you acted in what I'm sure you think of as an ordinary and straightforward response. Perhaps it was ordinary. But if so, we think your wisdom and willingness to act are ordinary examples of why our society has, decade by decade, managed to preserve stability and true social peace while so much of the rest of the world has been brought to ruin by various totalitarian idealisms.

Prior to World War II a small band of British politicians led by Winston Churchill kept England's military options barely alive until events forced a new turn in public opinion and the larger mass of worker politicians followed their long prepared lead.

In our legislatures today a similar encounter is taking place over social issues. The life of the family and religion are in the hands of a strong minority of political leaders who have kept their heads in the high winds of the social policy debates.

Effective and clear-sighted political leadership in a time of confusion is precious, rare and indispensable. Saying this of you, I know I speak for a large number in and around Washington who recognize what you have done, as well as for the thousands of families and friends around the country associated with Citizens for Educational Freedom. Thank you, Senator Armstrong.

Sincerely,
DOUGLAS ALEXANDER,
Executive Director.

[From the Washington Times, July 26, 1988]

DAMAGE CONTROL FOR G.U.

(By Joseph Sobran)

The House of Representatives is about to vote on a minor but telling measure—an amendment to its annual appropriations bill for the District of Columbia. At stake is our public definition of religious freedom.

In 1977 the District passed a "Human Rights Act" that made "sexual preference" an impermissible basis for discrimination. Eventually the city took the principle to its logical extreme and charged Georgetown University with illegal discrimination for refusing to grant official recognition to homosexual groups.

Georgetown is a Catholic institution, of course, and recognizing homosexual groups would contravene the moral doctrine it is dedicated to. So Georgetown took the case to court. Last year the D.C. Court of Appeals ruled that Georgetown can't be compelled to grant the homosexual groups formal recognition, but is required to grant them the same funding and access to its facilities as it accords to, say, groups devoted to praying the rosary.

The ruling made a mockery of Georgetown's identity as a Catholic institution. But Georgetown dropped the fight, rather than appeal to the Supreme Court, where it probably would have won.

At this point, Sen. William Armstrong, the Colorado Republican, proposed his amendment cutting off funds to the District unless it revises its anti-discrimination code to make room for the right of religious institutions to adhere to their own morals. "This amendment addresses a gross injustice against academic freedom and religious liberty, right here on our doorstep in the nation's capital," says Mr. Armstrong. "At issue is whether a university, founded and funded by a church, should be compelled to support activities at the least that are deeply repugnant to its religious teachings—activities and beliefs which are, indeed, contrary to the very reason for the existence of the university."

The amendment passed the Senate with surprising ease, by a vote of 58-to-33. It faces a tougher vote in the House.

One of its Senate opponents was Connecticut's Lowell Weicker, the Republican who affects moral superiority to his party because of his habit of voting like a Democrat. (His approval rating for Americans for Democratic Action is higher than that of Christopher Dodd, Connecticut's ultra-liberal Democratic senator.)

Mr. Weicker called the Armstrong amendment "just good, old fashioned, straightforward bigotry. This thing should go back down the sewer from which it came," he added, with that odd amalgam of pomposity and vulgarity that makes him Lowell Weicker.

If you're old enough—older than 15, maybe—you may recall the days of yore, when homosexual activists assured us that they wanted only tolerance, not approval. But that's an empty distinction if even private and religious institutions aren't allowed to enact their disapproval in their own spheres of activity.

Actually, it's Georgetown that is being denied its "sexual preference": Christian chastity. But nowadays, in Shakespeare's words. "Virtue itself of vice must pardon beg."

The central issue is whether charges of bigotry and discrimination trump traditional claims of liberty, including, as Mr. Armstrong says, religious and academic liberty. Only last year, liberals were worrying about "the right of privacy," allegedly threatened by the monster Robert Bork. But liberalism, except in the area of sexual behavior, has been steadily expanding the domain of the state, while shrinking the arena of privacy to a tiny clearing in a jungle of laws and administrative regulation.

This year's Democratic platform, trumpeting its devotion to "progressive values," says nothing about religion, except for a single perfunctory reference to religion as a category equivalent to "sexual orientation" for purposes of banning discrimination. Its calls for increased aid to education make no mention of private or religious schools.

If Mr. Armstrong's amemdment passes the House, religious and academic freedom will have won a small but essential victory. If it fails, they will take a backseat to homosexuality, and "progressive values" will have carried the day.

[From the Grand Junction Sentinel, July 12, 1988]

RENDER UNTO CAESAR

Colorado Sen. William Armstrong doesn't think two Catholic universities should have to comply with a Washington, D.C., law that requires them to financially support gay rights activities on their campuses.

He's right.

Opponents of his proposal, to withhold federal funding from the city as of the end of the year unless it exempts the universities from its policy of recognizing gays as an official minority group, have accused Armstrong of trying to politicize the issue and of engaging in homosexual-bashing. They're missing the point.

Catholic University of America and Georgetown University have long held a belief, based on their interpretation of the Bible, that homosexual activity is an affront to the Catholic faith. It's irrelevant whether one subscribes to that belief or not.

The schools have a fundamental constitutional right to exercise that religious prerogative in governing student life, particularly when it comes to funding activities. Moreover, the schools' right to religious freedom takes precedence over the city's misguided effort to accord gays rights associated with an officially recognized group entitled to special treatment under discrimination laws.

Armstrong's proposal to withhold all federal funds from the city may seem a Draconian measure, but it's less so than the city's insistence that the schools compromise the tenets of their faith in order to comply with a dubious city law. There's no reason whatsoever that the universities should be forced to spend money paid by all students to support a lifestyle many of them would not condone.

Armstrong should be commended for his effort to free the schools from an "obligation" that most of his constituents—and certainly the schools—do not believe exists.

Mr. ARMSTRONG. Mr. President, I hope my colleague from Washington is listening, because I did not quite understand his point about legislation on an appropriation bill. I understand that some people do not think we ought to legislate on the appropriations bill, but frankly I am surprised to hear the Senator from Washington raise that point.

I have before me the bill that we are now considering, a bill which was reported by Mr. ADAMS from the committee of which he is the chairman, and which contains on page 31 and on page 35, to mention just two places, legislation dealing with the District of Columbia.

On page 31, at section 133, is legislation having to do with water and sanitary sewers; and at section 137, on the subject of judges.

I do not want anybody who might read this RECORD or be listening to this debate to think that somehow, because we are enacting legislation on an appropriation bill, that is an extreme, or dangerous, or unusual, or even, well, it is routine; we do it all the time.

I have not kept score as to what proportion of the appropriations bills that come to the floor contain legislative items, but I will tell you if we ever stopped enacting legislation on appropriations bills, this Government would draw to a conclusion. I mean we just could not function.

Now maybe that is what we ought to do. Maybe we ought to say appropriations are appropriations, and not have any legislation. But that is not the custom; that is not the rule; that is not the way we do business. I just wanted to make the point that on at least two occasions in this very bill reported by the chairman of the committee, we have similar legislative provisions.

So it comes down to a question of how do you feel about the substance. Is this as important a matter as water and sanitary sewers? I happen to think it is. I hold the first amendment dear, and hold the rights of people to be free in the exercise of religion not only dear, but to be sacred.

We do it all the time, and maybe we do it to excess. This is not an unusual example.

Mr. President, I think the issues are well understood. This is a direct, proper, narrowly focused, not very elaborate amendment. On some occasion, I might come back with a more sweeping proposal, but for now my desire is to simply address the problem that we have identified, which is well known and understood by Senators.

So when the Senator from Washington makes the tabling motion, I will ask for the yeas and nays, and I will ask my colleagues to vote against tabling.

Mr. ADAMS. 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. ARMSTRONG. 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. ARMSTRONG. Mr. President, after consultation with the Senator from Washington, it appears to me that we can save some time for the Senate without in any way changing the probable outcome of this amendment. So, based on some discussions we have had, I think perhaps it would not be necessary to have a rollcall. The Senate has voted on this matter a year ago. I do not think the outcome would be any different.

We supported it overwhelmingly at that time. I certainly would be willing to forgo a rollcall because I believe we can go ahead and adopt the amendment by a voice vote. I do not want to sandbag anybody, however.

I do want to say this: It appears to me a rollcall vote is redundant. But if, for any reason, this should come back from conference without the amendment, then there will be an opportunity to offer an amendment and have a rollcall at that time. But to just have a rollcall for the sake of having another in a series of 600 rollcalls for the year, I do not see serves any purpose.

I believe it is the suggestion of the Senator from Washington that we get on with our business, and I agree with that.

Mr. ADAMS. Mr. President, I suggested if the matter was presented as an amendment without a rollcall, it would undoubtedly pass, as it has before, and we could just proceed in that way.

Mr. CRANSTON. I wanted to express my strong opposition to the amendment of the Senator from Colorado [Mr. ARMSTRONG] which amends the civil rights statute of the District of Columbia to weaken its prohibitions against discrimination on the basis of sexual orientation.

When a similar amendment was offered last year, I voted against it. I had been prepared to speak against it today and vote against it again. I am very sorry that it was unexpectedly adopted on a voice vote.

I urge the conferees to delete the amendment.

The Congress of the United States has no business rewriting the civil rights laws of the District of Columbia. As the principal sponsor of the Civil Rights Amendments Act, S. 47, I applaud the District on having a statute that protects the rights of all the residents of the District of Columbia, regardless of their race, color, sex, religion, or sexual orientation.

The statute has been interpreted by the courts in a fair and reasonable manner. The university involved in litigation regarding the statute reached a consent agreement with the

gay and lesbian student groups and intends to abide by that agreement notwithstanding the meddling of the U.S. Senate.

Last year's Armstrong amendment was declared unconstitutional. This year's amendment ought to be discarded by the conferees.

The PRESIDING OFFICER (Mr. BINGAMAN). The question is on agreeing to the amendment of the Senator from Colorado.

The amendment (No. 751) was agreed to.

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

Mr. ADAMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ARMSTRONG. I thank the Senator from Washington.

Mr. ADAMS. I thank the Senator from Colorado.

Mr. President, I know of no further amendments to this bill. There has been some suggestion made that Senator HELMS might have an amendment. I hope all Members, including Senator HELMS, if they have an amendment to offer, would do so because I would like to move forward with this bill.

In deference to him, since he is not on the floor at the moment, I will suggest the absence of a quorum. But before I do that I wanted to state that we are ready to complete this bill and therefore we are not—I see the Senator has appeared in the Chamber now, so I will not suggest the absence of a quorum.

Mr. HELMS. Mr. President, I do suggest the absence of a quorum for the moment.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from New York is recognized.

Mr. MOYNIHAN. I thank the Chair.

(The remarks of Mr. MOYNIHAN pertaining to the introduction of S. 1627 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. CHAFEE. Mr. President, just previously, I was not here at the time, the Armstrong amendment was adopted. This is a matter that we voted on a year ago. The Senator from Colorado, I believe, represented that the amendment was adopted fairly decisively last year, and indeed it was. But nonetheless, I am sorry that it is back with us again.

This dispute between the university administration and the students was settled a long time ago. The D.C. courts affirmed that agreement. It seems to me for the Senate to get involved all over again in that matter is out of the jurisdiction of the Senate and really not a proper matter for us to delve into once again. Again, mentioning the fact that the university and the students and the decisions of the D.C. courts are no longer an issue before us.

So, I regret that it came up once again. I am not faulting the managers for accepting it. I guess it passed relatively easily. It passed on a voice vote. It was not put to a test. But I regret, as I say, that it came up once again because I think it is totally unnecessary.

Mr. MOYNIHAN. Will the Senator from Rhode Island yield for a comment?

Mr. CHAFEE. I will.

Mr. MOYNIHAN. I am sure he is aware that Father Tim Healy, who served with such extraordinary ability and with such distinction for so many years as the president of Georgetown University and who had resolved this matter, has now left to become the head of the New York Public Library. So he is not even here to defend himself.

I would like to associate myself with my colleague's remarks. I am hopeful that this amendment will disappear under the Capitol Rotunda as the conferees gather and I am certain it will do so. I should, however, like for the RECORD to show, that had a voice vote occurred, I would have voted no.

Mr. CHAFEE. Well, I certainly hope the Senator is correct. I want to thank my distinguished colleague from New York for those observations.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

AMENDMENT NO. 752

(Purpose: To transfer $150,000 from D.C. Statehood Commission to the Drug Emergency Fund)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 752.

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

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

The amendment is as follows:

Strike all beginning on page 6, line 6, through the colon on line 15, and insert the following: *"Provided further,* That an additional $150,000 out of local funds shall remain available until expended, to close open air drug markets, increase police visibility, and provide for speedier court processing of drug-related violent cases.".

Mr. HELMS. This amendment strikes the provisions earmarking $150,000 of locally generated funds for the D.C. Statehood Commission, and earmarks those funds, instead, to further the activities described under the "drug emergency" section; that is, "to close open air drug markets, increase police visibility, and provide for speedier court processing of drug-related violent cases."

Mr. President, earlier this month, on September 5, the President of the United States went on national television for his first broadcast from the Oval Office, to commit this Nation to wage war against illegal drugs, and those who spread this poison across our country and among our children. I think all of us remember that the President held up some bags of crack cocaine, which had been seized within view of the White House.

There is a good chance that somebody was murdered in Washington, DC, at the very moment the President was speaking. If that is the case, you can bet that drugs were at the root of that homicide.

To this day, Mr. President, in 1989, there have been 319 murders in the Nation's Capital; in fact by the end of the year 445 people will be murdered in Washington, DC. There is no way to assess how many innocent people have been caught up and ruined by this vicious cycle of violence.

It is often said, and I agree with it, that the District of Columbia is out of control. Its streets are as violent, in certain sections, as the streets of Beirut. The District leadership, putting it in the most charitable frame of reference, is ineffectual. I recall not long ago the distinguished Senator from New Hampshire, Mr. RUDMAN, likened the District of Columbia to what he called a Third World despotism.

Meanwhile the President of the United States and Bill Bennett are so alarmed at the breakdown of competent government in this city that they have declared a drug emergency. And in response to that emergency, the Federal Government will contribute something like $32 million to try to bring this situation under control.

In return for this contribution by the taxpayers of America, the people of this country expect the District of Columbia, to devote all of its resources—not earmarked for essential human services—to go to the war on drugs.

Looking through this bill, however, I noted that the District of Columbia is not using all of its resources in the war on drugs. For example, and it is that one example that this amendment addresses, this bill earmarks $150,000 in D.C. funds for something called the Statehood Commission and the Statehood Compact Commission.

What is this all about? I will tell you what it is all about. It is fancy lan-

guage, saying that this money will not be used to lobby Congress, and all those other niceties that we use around this place, to muddy the water and circumvent the issue. Everybody knows what the D.C. Statehood Commission and the Statehood Compact Commission are up to. They want statehood for this parcel of land which lies between the States of Virginia and Maryland.

We all know the implications of that. These folks want two Senators, the same number of Senators that New York has, the State of Washington has, the State of North Carolina has. We know the rest of the story. And we have been down this road time and time again. More than anything else, I think it is a sham.

I remember managing a piece of legislation some years ago. I was standing at the desk of the distinguished Republican leader at the time. And the able Senator from Massachusetts was pushing this concept of statehood for the District of Columbia.

I candidly told him, and this is in the record, that the Senator from Massachusetts knows that this proposition is going nowhere. The people of the United States will not tolerate it and we are wasting the time of the Senate. The American people are not about to change this part of the Constitution. But here we go with $150,000 to give somebody some money to pump up this tired idea and try to sell it. It is not going to be sold to the American people under any set of circumstances.

Mr. President, before we get to the issue of D.C. statehood, I think we ought to make one thing clear: this amendment is not about statehood. It is about priorities. Are we going to spend everything available on the war on drugs or are we going to waste the taxpayers' money on more political pipe dreams and media hype about something that is not going to happen? I reiterate that the American people will never submit to it.

The two boards, the Statehood Commission and the Statehood Compact Commission—I do not know the distinction between the two—these two boards were set up to "promote, educate and advocate" for D.C. statehood. I thought that the job around this place was to promote, educate, and advocate the eradication of drug pushers and drug addicts and hard-core criminals, the people who are killing at a rate in the District of Columbia that has caused this city to be appropriately labeled the murder capital of the world.

One hundred fifty thousand dollars, I acknowledge, is just a fly speck on the overall Federal budget, but it is the principle that is important. Why throw away even $150,000 of somebody else's money on a pipe dream? Or to put it another way, how many police officers could be paid overtime or provided bulletproof vests with this $150,000? How many children could be saved from drugs by putting $150,000, this $150,000, into drug education programs?

I say, Mr. President, if the leaders of this Senate, this Congress, are serious about drugs, we are not going to put up with this kind of allocation of funds. We better start matching our words with action down to the last penny in every appropriations bill that comes before the Senate. There is not one Member of the Senate who could seriously say that funding these two political commissions is more important than fighting drugs.

It is time for the Congress to exercise its constitutional prerogative by ordering the District of Columbia to get involved up to its earlobes in the fight against drugs. For those Senators who want to think about drugs, just as what happened to one of your colleagues who was caught in a crossfire just a short distance from where we are standing here this afternoon. Better still, ask the thousands of innocent children who will never be able to break out of the cycle of death and violence, ask them how they think this $150,000 ought to be spent? You can bet your bottom dollar that they will not say for a Statehood Commission or a Statehood Compound Commission.

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

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

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

The PRESIDING OFFICER. The clerk will call the roll. The legislative clerk proceeded to call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I compliment the distinguished Senator from Washington and the distinguished Senator from Texas for the outstanding work which they have done on the District of Columbia appropriations bill. This is a very important bill, although it is not as glamorous as some of the appropriations bills which come before the floor of the U.S. Senate.

Mr. President, during my tenure as chairman of the Appropriations Subcommittee on the District of Columbia from 1983 through 1986, I worked to help establish a model rehabilitation program for District prison inmates. These programs received over $40 million between fiscal year 1984 and fiscal year 1986.

The criminal justice initiative resulted in a significant expansion of educational and vocational offerings for inmates in the custody of the District of Columbia Department of Corrections. The programs include a broad range of academic programs in math, English, and reading, as well as vocational courses such as auto mechanics, brickmasonry, barbering, building maintenance, computer repair, and culinary arts. This initiative also includes a job placement component which introduces the graduates of the programs to potential employers.

As a result of the major infusion of Federal funding, the District of Columbia's Department of Corrections has designated these programs as one of its top budget priorities. Beginning in fiscal year 1987, the District of Columbia assumed full responsibility for funding these programs in its budget. In fiscal year 1988, the District provided $8.5 million to operate the educational programs. The fiscal year 1989 budget includes $11 million and the proposed fiscal year 1990 budget includes $12 million for educational programs with 200 positions. Considering that the District's Department of Corrections appropriated only $1.3 million for education in 1982, this represents a substantial increase in District contributions.

On May 17, 1989, in testimony before the Senate Appropriations Subcommittee on the District of Columbia, Mayor Marion Barry reported that since the expansion began in 1984, these programs have demonstrated increasing and significant progress. The average daily enrollment in academic programs increased from 1,607 in fiscal year 1984 to 3,521 in fiscal year 1988, reflecting a 119 percent increase. For the adult basic education courses, average daily enrollment increased from 528 in fiscal year 1984 to 1,035 in fiscal year 1988. The average daily enrollment in vocational programs grew from 349 to 705 between fiscal year 1984 and fiscal year 1988, an increase of 117 percent. Mayor Barry also noted that since fiscal year 1984, a total of 1,263 inmates have taken the general educational development [GED] exam, 787 of whom received passing grades.

A January 1989 study conducted by the National Institute of Corrections reports a significant improvement in the quality of the District's education and vocational programs, and improvement in their administrative structure as well. The enhanced funding also has had a significant impact on the program's administrative structure through the creation of a computer information management system which allows the Correction Department's educational services division to collect and analyze student information data in a systematic way and on a systemwide basis. The National Institute of Corrections' findings also reflect an in-

crease in staffing levels, as well as an enhancement in staff qualifications. The report also indicated that the number of teaching positions increased from 28 in 1982 to 68 in 1988, while funded vocational positions increased from 16 in 1982 to 40 in 1988. The report concludes that the system has the potential to offer further innovative and effective educational programming for District inmates.

I believe that such programs have proven potential to provide newly-released inmates with job opportunities. A related benefit is the reduction in recidivism by those inmates who participate in these programs. On September 22, 1988, Hallem H. Williams, former director of the D.C. Department of Corrections, reported in a letter that as of August 31, 1988, 73 percent of participating former inmates remained in the community, as compared with 52 percent for those who did not participate in these programs. Mr. President, I ask unanimous consent that Director Williams' letters be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, as a former district attorney of Philadelphia and member of the National Commission on Criminal Justice Standards and Goals, and currently a member of the Senate Judiciary Committee, I long have worked for enhanced funding to build additional prison cells to house dangerous career criminals for long periods of time. Yet, I also have worked to help provide realistic rehabilitation to first and some second offenders. I also have toured jails throughout the Commonwealth of Pennsylvania and personally have met with inmates enrolled in rehabilitation programs. It is no surprise when an inmate without a trade or skill, a functional illiterate, is released from jail and returns to a life of crime. In this regard, I introduced legislation—S. 59 in the 98th Congress, S. 1190 in the 99th Congress, and S. 181 in the 101st Congress—to encourage States to provide training in a marketable job skill and basic literacy to certain offenders with the potential for rehabilitation.

Sound legislative precedent supports the use of Federal resources to assist States in providing correctional education. In 1984, as a member of the Appropriations Subcommittee on Commerce, State, Justice, I proposed and Congress provided $2.5 million to the National Institute of Corrections for grants to support education programs for adult offenders in State prisons nationwide. The impact of this funding was significant. Fourteen new programs were commenced and are currently self-sustaining, and 13 programs were improved or updated through computer related asssitance, curriculum development, and teacher training. Students and staff have consistently demonstrated increased motivation and improved morale as a result of these new and enhanced academic and vocational programs for inmates.

The National Institute of Corrections reported in 1987, that at least 75 percent of the Nation's prison population is in need of academic, vocational, and life skills education, and this is deemed to be a conservative estimate. Yet only 25 to 30 percent of the inmate population is reported to be enrolled in education programs, full or part time. I believe that correctional systems nationwide can make great progress in rehabilitating their prison populations and east the significant rate of recidivism by providing inmates with effective education programs that offer an opportunity to learn basic skills.

Mr. President, I believe that, while our criminal justice system must be firm with repeat offenders, I also believe that it must be fair with first and some second offenders who have potential for realistic rehabilitation. Through such action, we can help break the "cycle of crime" for many inmates who can become productive citizens in our society. Therefore, I believe the District of Columbia's vocational and education program for inmates is a sound investment to provide marketable skills to prison inmates, and I urge my colleagues to consider its replication throughout our Nation's prison system.

Mr. President, it has long been my view that the answer to the problem of violent crime in the United States is twofold. It is realistic rehabilitation for youthful offenders, for first offenders, and for some second offenders, in order to give them a chance to succeed, and where they fail and become career criminals—and by that I mean someone who has committed three major offenses—then incarceration for long periods of time, even up to life in prison.

It is not possible, Mr. President, in my view to throw away the key in effect for a youthful offender or for a first offender or for a second offender. I do, however, believe that once an individual becomes a career criminal, then it is appropriate to be very tough and to impose life sentences.

In 1984, this Senator authored the armed career criminal bill which provides that anyone who is a career criminal found in possession of a firearm is sentenced to a mandatory sentence of 15 years to life. The term 15 years to life was established because at that time 15 years was a life sentence under the Federal system, with an inmate being eligible for parole after 15 years.

It would seem to me from my days spanning some three decades as an assistant district attorney in the late 1950's and early 1960's and later as the district attorney in Philadelphia from the mid-1960's to the early 1970's, it is vitally necessary to work on rehabilitation for those who can be rehabilitated. If that is not possible, then I think it is for society to exact sentences of long terms and even life imprisonment for those who are career criminals.

It is no surprise, Mr. President, when you have an inmate who is released from jail without a trade or skill, someone who is a functional illiterate, who goes back onto the street, that person would likely return to a life of crime. And that is in fact what has happened.

Therefore, when I was chairman of the Subcommittee for the District of Columbia, it seemed appropriate to me to try to structure a program which would provide such education and such job training to give youthful offenders, first offenders, and second offenders, those in the D.C. jail system, an opportunity for realistic rehabilitation.

This program was initiated in fiscal year 1984 and from 1984 through fiscal year 1986, the Federal Government started out with seed money of some $40 million to get this program running. I am delighted to see that in the budget for the District of Columbia there is $12 million for the educational program with 200 positions, and $11 million was provided in fiscal year 1989, and all the money from the District of Columbia. So once the impetus was provided by the Federal Government, the District of Columbia has carried it forward. It has always been my hope, Mr. President, that the D.C. program would provide a model to the Nation for realistic rehabilitation.

The D.C. program provides programs of a broad range in academia including math, English, and reading as well as vocational courses such as auto mechanics, brickmasonry, barbering, building maintenance, computer repair, and culinary arts. This initiative also includes a job placement component which introduces the graduates of the programs to potential employers.

On May 17 of this year, 1989, Mr. President, an oversight hearing was conducted by the District of Columbia Subcommittee and the chairman was gracious enough to allow me to participate in that hearing. It has been something that I have maintained on a continuing basis since I concluded my work on the subcommittee in 1986. I have kept a close personal view of what has happened because, as I say, I have a very deep interest in seeing this structure as a model program which could serve the Nation as a way of providing realistic rehabilitation.

On May 17, we had testimony which showed that the average daily enroll-

ment in academic programs increased from 1,607 in fiscal year 1984 to 35,121 in fiscal year 1988, reflecting a 119-percent increase. For the adult basic education courses, average daily enrollment increased from 528 in fiscal year 1984 to 1,035 in fiscal year 1988.

The average daily enrollment in vocational programs grew from 349 to 705 between fiscal year 1984 and fiscal year 1988, an increase of 117 percent.

Since fiscal year 1984, a total of 1,263 inmates have taken the general education development exam; 787 of them received passing grades.

A 1989 January report conducted by the National Institute of Corrections reported a significant improvement in the quality of the District's educational and vocational programs and improvement in their administrative structure as well. This was very gratifying, Mr. President, because the program had been off to a rocky start.

That report also showed that the number of teaching positions increased significantly from 28 in 1982 to 68 in 1988, while funded vocational positions increased from 16 in 1982 to 40 in 1988.

These statistics tend to be a little dull, a little cut and dried, but they show a very material difference in the D.C. vocational and educational programs before and after, before the initiative of the Congress of the United States and now where the funding has been picked up by the District of Columbia.

On September 22, 1988, Hallem H. Williams, director of D.C. Department of Corrections, reported that as of August 31, 1988, 73 percent of the participating former inmates remained in the community as compared with 52 percent for those who did not participate in these programs—suggesting that those who have had the programs are in a better position to assume a position in the community as law-abiding citizens.

Mr. President, it is my hope that the correctional program in the D.C. jail will continue to improve, will flourish, will continue to be financed by the District of Columbia. I have high hopes that if we see from education and from job training inmates can make it on the outside when having a job placement program, this program may well serve as a model for the Nation, so that we will not be releasing from our jails those who are functional illiterates without a trade or a skill and those who will very likely return to a life of crime. If society provides this opportunity for the youthful offender, the first offender, and for the second offender to have a realistic chance to make it in society with education, job training, and a job; that person then fails, and becomes a career criminal, then I do not think that society is exacting too high a price to insist on long sentences, up to life imprisonment for career criminals.

That, Mr. President, will require a very substantial increase in the correctional system and prisons in this country, a subject which this Senator has addressed on other occasions, and which is the subject now of the President's anticrime bill, some $1.4 billion being allocated to that important objective. But I do believe that we can win. It is somewhat trite these days to talk about winning wars, but I think we can roll back the face of violent crime in this country if we approach it in a sensible manner, on the one hand rehabilitation, where possible, and where that fails, long sentences including life in jail.

I thank the Chair. I yield the floor.

EXHIBIT 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA, DEPARTMENT OF CORRECTIONS,

Washington, DC, May 9, 1989.

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

DEAR SENATOR SPECTER: In preparation for the May 17 hearing before the Subcommittee on the District of Columbia of the Senate Appropriations Committee, I am enclosing updated information on job placements for Fiscal Years 1987 and 1988 and the first quarter of Fiscal Year 1989.

Tables I, II, and III provide breakdowns of the status of inmates who were placed in jobs and released into the community for each fiscal year. Inmates who have been placed in jobs through work training but are still in the custody of the Department are not included in the data. Tables IV and V provide some comparisons between the relative success of those inmates who were placed in jobs and all other releases.

All of the data continue to indicate that placement in a job upon release has some positive impact on success in the community. This is particularly true when comparing individuals who were placed in jobs upon expiration of sentence with all other releases to expiration. While this raw data clearly points to the positive impact of our job placement efforts in the short run, it is important to recognize that there are many factors which influence long term success in the community after release. We plan to continue to monitor these individuals carefully to identify factors that contribute most significantly to their success.

I am looking forward to reviewing this information with you in more depth at the May 17 hearing. Thank you for your continuing support.

Sincerely,

HALLEM H. WILLIAM, Jr.,
Director.

TABLE I.—CURRENT STATUS OF INDIVIDUALS PLACED IN JOBS

[Fiscal year 1987]

	Job placements	Success [1]		Reincarcerated		
		Number	Percent	Within 6 months	7–12 months	After 1 year
Parole releases	258	157	61	30	36	35
Expiration	55	35	64	11	7	2
Total	313	192	61	[2] 41	[3] 43	[4] 37

[1] For purposes of this report, success is defined as still in the community as of March 30, 1989.
[2] 13 percent.
[3] 14 percent.
[4] 12 percent.

TABLE II.—CURRENT STATUS OF INDIVIDUALS PLACED IN JOBS

[Fiscal year 1988]

	Job placements	Success [1]		Reincarcerated		
		Number	Percent	Within 6 months	7–12 months	After 1 year
Parole releases	433	351	81	49	25	8
Expiration	144	119	83	15	8	2
Total	577	470	81	[2] 64	[3] 33	[4] 10

[1] For purposes of this report, success is defined as still in the community as of March 30, 1989.
[2] 11 percent.
[3] 6 percent.
[4] 1.7 percent.

TABLE III.—CURRENT STATUS OF INDIVIDUALS PLACED IN JOBS

[Fiscal year 1987 (first quarter)]

	Job placements	Success [1]		Reincarcerated		
		Number	Percent	Within 6 months	7–12 months	After 1 year
Parole releases	118	115	97	3		
Expiration	60	57	95	3		
Total	178	172	97	[2] 6		

[1] For purposes of this report, success is defined as still in the community as of March 30, 1989.
[2] 3 percent.

TABLE IV.—COMPARISON BETWEEN "SUCCESS" OF INDIVIDUALS PLACED IN JOBS WITH ALL OTHER RELEASES

[Fiscal year 1987]

	Total releases	Success[1]		Individuals placed in jobs on release	Success[1]		Individuals placed in jobs who also participated in education program	Success[1]	
		Number	Percent		Number	Percent		Number	Percent
Parole	2,339	962	41	258	157	61	121	69	57
Expiration	11,814	4,794	41	55	35	64	16	8	59
Totals	14,153	5,756	41	313	192	61	137	77	56

[1] For purposes of this report, success is defined as still in the community as of March 30, 1989.

TABLE V.—COMPARISON BETWEEN "SUCCESS" OF INDIVIDUALS PLACED IN JOBS WITH ALL OTHER RELEASES

[Fiscal year 1988]

	Total releases	Success[1]		Individuals placed in jobs on release	Success[1]		Individuals placed in jobs who also participated in education program	Success[1]	
		Number	Percent		Number	Percent		Number	Percent
Parole	2,313	1,519	66	433	351	81	256	198	77
Expiration	12,106	6,833	56	144	119	83	38	32	84
Totals	14,419	8,352	58	577	470	81.4	294	230	78

[1] For purposes of this report, success is defined as still in the community as of March 30, 1989.

GOVERNMENT OF THE DISTRICT OF COLUMBIA, DEPARTMENT OF CORRECTIONS,

Washington, DC, September 15, 1989.

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

DEAR SENATOR SPECTER: In response to your request for information on the education program in the Department of Corrections the following is provided:

Data on the appropriations for the education program was supplied as testimony in the course of the June 28, 1988 oversight hearing. More detailed fiscal information was provided in the package supplied to your staff at the hearing.

Data on enrollment in academic and vocational programs is provided as Attachment I.

The department's Educational Services and Automated Data Processing staff are in the process of compiling information on the status of individuals who were placed in jobs in FY 1987 and FY 1988. Compiling this information requires a manual search of records and is a very time consuming task. The data will be provided as soon as it is available.

Staff are ascertaining the feasibility of determining the employment status and job retention rate for those who secured jobs after release from custody. It may be impossible to supply this type of data since the District of Columbia has no supervision rights or responsibilities over most of these individuals. It is only when they are still in the system, in a community program such as parole supervision, or have returned to custody and provide information covering the period of release, that we are in a position to gather and analyze data.

There have always been some residents released upon expiration of sentence. For these individuals, employment can not be imposed as a stipulation of return to the community. These individuals may or may not be employed at the time of release. When staff determines whether or not some means of tracking individuals not under our supervision is possible we will report this to you.

The department's Educational Services and Automated Data Processing staff are compiling information to compare the success upon release of those who did and did not participate in educational programs. This information also requires manual search of records. The data will be provided as soon as it is available.

The number of individuals who received degrees while incarcerated is supplied as Attachment II. It is not possible to determine those who may have entered the custody of the Department already having college degrees. While we have become aware of certain individuals with degrees due to publicity surrounding their cases, we do not attempt to verify inmate self-reported educational backgrounds. With the volume of individuals entering our system, this task would be well beyond our personnel resources.

As we complete the more complex reporting requirements, which involve manual records searches and original data base development, the results will be forwarded to you. Once again I thank you for your continued interest in and support of our programs. If you have any questions about the data which has been supplied please contact me or have a member of your staff contact Kathleen Byrnes of my Budget Division at 673-7391.

Sincerely,

HALLEM H. WILLIAMS, Jr.,
Director.

D.C. DEPARTMENT OF CORRECTIONS

[Average daily enrollment, academic and vocational programs fiscal year 1985–88]

Fiscal year	Academic only	Vocational only	Academic/vocational
Central Facility			
1985	224	238	50
1986	244	185	56
1987	292	172	76
1988	329	332	73
Detention Facility			
1985	155	22	32
1986	100	22	60

D.C. DEPARTMENT OF CORRECTIONS—Continued

[Average daily enrollment, academic and vocational programs fiscal year 1985–88]

Fiscal year	Academic only	Vocational only	Academic/vocational
1987	201	20	84
1988	230	18	76
Maximum Security Facility			
1985	139	19	1
1986	119	19	
1987	151	6	15
1988	154	11	0
Minimum Security Facility			
1985	85		14
1986	181	31	8
1987	164		
1988	126		
Occoquan Facility [1]			
1985	299	156	17
1986	330	101	49
1987	426	3	37
1988	564	43	33
Youth Center I			
1985	151		22
1986	78		169
1987	340		146
1988	323		159
Youth Center II			
1985	120		10
1986	139	5	78
1987	373	12	29
1988	249	109	55
SUMMARY			
1985	1,173	435	146
1986	1,191	363	420
1987	1,947	213	387
1988	1,975	513	396

[1] In 1987, the three Occoquan facilities were reorganized into one facility. Statistics for 1985–88 reflect combined enrollments.

HIGHER EDUCATION PROGRAM

[Degrees awarded fiscal year 1985–88]

Fiscal Year	Urban studies	Accounting technology	Computer accounting tech.	Legal assist.	Grand total
Associate Degrees					
1985	5	3	0	1	
1986	4	5	1	0	
1987	2	5	1	0	

HIGHER EDUCATION PROGRAM—Continued

[Degrees awarded fiscal year 1985–88]

Fiscal Year	Urban studies	Accounting technology	Computer accounting tech.	Legal assist.	Grand total
1988	5	5	2	0	
Bachelor Degrees					
1985	1				
1986	2				
1987	0				
1988	3				
Totals	22	18	4	1	45

GOVERNMENT OF THE DISTRICT OF COLUMBIA, DEPARTMENT OF CORRECTIONS,

Washington, DC, September 22, 1988.

Hon. ARLEN SPECTER,

U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: This letter and attachments provide the information you requested in your September 19 letter.

1. *The current status of the 290 individuals placed in jobs during Fiscal Year 1987; and the number of those who have not been reincarcerated.*

Our manual review of job placement records and current status showed that a total of 313 inmates were placed in jobs through the Education Services Programs—23 more than we had listed in our original report to you. Of that total, 224 or 72 percent had not been reincarcerated as of August 31, 1988. Table I provides a breakdown of the status of the 313 inmates who were released in FY 1987. Of the 258 inmates who were released to parole after job placements, 189 or 73 percent are still in the community. The remaining 55 were placed in jobs upon expiration of their sentences. A total of 35 or 64 percent of those individuals had not been reincarcerated as of August 31.

2. *The number of prisoners who were unemployed upon release from jail (prison); the retention rate for those who found jobs.*

During FY 1987, the Department of Corrections released a total of 3,210 felons of which approximately 710 were not known to be employed upon release. As of August 31, 1988, we had released 2,267 felons of which approximately 640 were not known to be employed when they were released. As I indicated in my September 15 letter, the city has no way of tracking individuals who are released upon expiration of their sentences because there is no requirement for maintaining contact with the Department of Corrections or the Board of Parole. All of the individuals who did not have verified jobs when they left our custody were released upon expiration of their sentences.

3. *A comparison between prisoners released from the program with those who did not participate.*

Table II provides a comparison of the relative success of parole releases who participated in job training programs with parole releases who did not participate in the program. The data show that program participants had a much higher "success rate." As of August 31, 1988, 73 percent of the program participants were still in the community compared with 52 percent of the non-participants.

In order to improve our ability to measure the success of our job training programs, I have asked Mrs. G.H. Washington, Assistant Director for Education, Industrial, and Agricultural Services, to work with my Program Analysis Office to develop a standard system for monitoring success rates of program participants upon release. As we continue to expand these job training programs, it is essential that we also expand our follow-up reporting systems.

I hope this information responds to your questions. Please feel free to call me if you need further information.

Sincerely,

HALLEM H. WILLIAMS, JR.,
Director.

TABLE I.—CURRENT STATUS OF INDIVIDUALS PLACED IN JOBS

[Fiscal year 1987]

	Job placements	Success [1]	Reincarcerated		
			Within 6 months	7–12 months	After 1 year
Parole releases	258	189	30	36	3
Expiration	55	35	11	7	2
Total	313	224	41	43	5
Percent	100	72	13	14	1.6

[1] For purposes of this report, success is defined as still in the community as of August 31, 1988.

TABLE II.—COMPARISON BETWEEN PROGRAM PARTICIPANTS/NONPARTICIPANTS [1]

[Fiscal year 1987]

	Total number	Success [2]		Reincarcerated	
		Number	Percent	Number	Percent
Program participants	258	189	73	69	27
Nonparticipants	1,108	580	52	528	47

[1] For purposes of this report, only participants who were released to parole were examined. The pool of nonparticipants used for comparison were all first time parole releases.

[2] Success is defined as still in the community as of August 31, 1988.

Mr. PRYOR. Mr. President, I have offered amendments to the previous appropriations bills to cap consultant spending at the levels requested by the Federal agencies and departments. The District of Columbia is not a Federal agency, and does not, under section 1114 of title 31, request a specific amount for consultant services. Therefore, I will not offer an amendment to this particular appropriations bill.

However, Mr. President, this is not to suggest that the D.C. government does not have problems with consultants. Even a casual reading of the newspapers over the past few years reveals that there is much room for improvement in this regard. I would like to suggest to the Appropriations Committee that they ask the D.C. government in future budget requests to provide the dollar amount that D.C. proposes to spend on consultants for the upcoming fiscal year.

Such a simple procedure will not end all potential abuses. However, I believe that the same lack of accountability and monitoring that exists in the Federal Government also plagues the D.C. government.

Mr. President, again, as this bill does not appropriate funds for any Federal agency I will not seek to attach my consultant amendment to it. However, I do urge the committee to undertake to learn how much of this appropriations goes for the purchase of consulting services.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I think we have concluded debate on the District of Columbia bill. In a moment I expect to ask that the time be allocated at 6 o'clock for morning business for those Senators who wish to participate at that time. There will be such a request made.

Mr. President, Senator HELMS had asked for the yeas and nays on his amendment. That was not granted at that time. I have discussed it with him. I ask now for the yeas and nays on the Helms amendment.

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

The yeas and nays were ordered.

Mr. ADAMS. Mr. President, I ask for the yeas and nays on final passage of the bill.

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

The yeas and nays were ordered.

Mr. ADAMS. Mr. President, I ask unanimous consent that the vote on Senator HELMS' amendment occur at 6 p.m. today, that the Senate proceed immediately to third reading and vote on final passage of the bill immediately without any intervening action upon the disposition of the Helms amendment.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

MORNING BUSINESS

Mr. ADAMS. Mr. President, I further ask that there now be a period for morning business not to extend beyond 6 o'clock with Senators permitted to speak therein for up to 5 minutes each.

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

THE NATIONAL RESEARCH AND EDUCATION COMPUTER NETWORK

Mr. PRESSLER. Mr. President, last Friday, the White House Office of Science and Technology Policy released a plan for a federal high performance computing program. The plan embraces, with only a few minor differences, Senator GORE's proposal for a national research and education network. I offer my congratulations to President Bush for making this much-needed proposal.

Last May, Senator GORE introduced legislation which would create a high-capacity national research and education network to link up supercomputers and data bases around the country. I support Senator GORE's bill, and I commend my colleague from Tennessee for his foresight and leadership in this area. High performance

computing and networks that link up users around the Nation are essential to ensure the United States' economic and technological leadership in the next century.

The United States is in the midst of a transition from an economy based on industrial production to one based increasingly on high technology and information. The national research and education network proposed by Senator GORE, and recently embraced by the administration, has may wide-ranging applications that will improve this country's industrial competitiveness, advance our research on climate and weather, improve our ability to diagnose and cure diseases, improve our ability to predict natural disasters, strengthen our military readiness, and design and build the vehicles that will take us into space.

The network will provide an opportunity for researchers around the country to access data bases in other locations, and to exchange information. It will especially benefit small and remote universities and research institutions that do not have access to supercomputer capabilities and specialized data bases. Currently, sophisticated research tools, such as supercomputers and unique data bases, are available only to a privileged few at major research institutions and large corporations. The proposed network will change this by making supercomputers and on-line data bases available to virtually every university in the nation. For example, South Dakota State University is in the process of developing a biostress laboratory to develop strains of crops and livestock that are resistant to temperature extremes and drought conditions. The results of the research produced in the biostress lab could be placed on-line for ready access by users at other universities that are doing similar types of research.

Eventually, the network will be extended, through private initiatives, to include commercial enterprises. Then, small and medium sized companies will have access to the superior design and computational capabilities that large companies can afford today. Large companies are using supercomputer simulations to save money in designing new products and improving existing products. By eliminating the need for expensive prototypes and models, supercomputers increase the speed and efficiency of product design, reduce production costs, and permit businesses to try more creative and flexible designs. For a small business, the savings that would be generated by using supercomputers could mean the difference between staying in business and succumbing to competition from larger companies and foreign competitors. Small businesses cannot afford to purchase supercomputers. A national computer network will set the stage for access by small businesses to the superior resources of supercomputers.

One of the most important benefits of the network proposed by Senator GORE is that it will give scientific researchers immediate access to data in remote locations. Today, there is increasing concern among scientists and policymakers about the warming of the Earth's atmosphere and the depletion of ozone in the stratosphere. Scientists rely on computer-generated models to make accurate descriptions of the future global environment. NASA's Earth Observing System [EOS] will soon be providing a large amount of data for these models. The land remote sensing data acquired by EOS will be stored at the Earth Resources Observation Systems [EROS] Data Center in Sioux Falls, SD. Advances in technology will enable researchers to display the data on screens, so that the researchers can see immediately—and understand easily—the changes that are taking place, such as changes in cloud cover, vegetation patterns, oil slicks, and holes in the ozone layer. A national network will permit instant access to this kind of technology and data, and provide researchers with the ability to collaborate with scientists at other locations. This will significantly improve our ability to predict and react to changes in our climate and the environment. And because this is not just a national concern, I introduced a successful amendment during the Senate Foreign Relations Committee consideration of the State Department authorization bill, requesting the administration to perform a feasibility study on establishing an international global change data information network.

Over the next several decades, the Earth Observing System will produce data at unprecedented rates. These data must be processed into scientifically meaningful forms, entered into active data bases, made available for research and education to earth scientists throughout the nation and the world, and archived before they can be used by scientists to detect global changes. Existing networks would be overwhelmed by the data that will be produced. Even if these data could be processed and stored in active data bases, the technology does not exist to make them accessible for effective scientific use. The high-performance network proposed by Senator GORE would not only provide the necessary technology to process and analyze the data, but also the capacity to transmit it to users everywhere.

The network will also increase the value of the data that the U.S. Geological Survey is receiving from our Landsat satellites. The EROS Data Center in Sioux Falls archives the pictures that are sent back from the satellites. Since 1971, it has stored over 1 million satellite images on magnetic tape. That represents over 248 trillion bits of data. Government and university researchers and commercial enterprises use the images for a wide variety of applications. Geologists use the data for oil and mineral exploration; civil engineers use them to select construction sites and for land-use planning; mapmakers use them to create accurate and detailed maps; ecologists use them to study environmental changes; the Department of Defense uses them for national security purposes; university researchers use them to monitor insect damage in trees and crops; agricultural specialists use them to predict the size and health of crop yields. For example, researchers at the University of New Hampshire used Landsat images to discover damage from insects that are attacking sugar maples in New England.

Witnesses at hearings on the proposed computer network before the Commerce Committee's Subcommittee on Science, Technology and Space have told us that even with all of these uses, 90 percent of the information that we are receiving from the Landsat satellites is going unused because we do not have the technology and the resources to analyze and examine all of the data. The people that need to use the data being generated by the satellites are distributed throughout the entire Nation. In order to do the research, they must communicate with each other, must be able to access the necessary data, and must be able to generate computer models that can be sent to other researchers.

Immediate access to the data through a national research and education network would significantly increase the productivity of our research. It will permit the users of satellite data to employ modern computer visualization techniques to produce color graphics which can also be transmitted throughout the network. Any government, university, and private researcher could use the Landsat pictures that are stored in South Dakota without having to leave their desks or laboratories. Today, if a scientist at the University of Virginia needed a Landsat image, he would have to order it from the EROS Data Center. The image would be copied onto a tape, and the tape shipped by mail to Virginia. That would take as much as 2 weeks. Sometimes, the scientist will discover that he cannot see what he needs on the images that he received, so he has to order more images. With a network, the scientist could browse through all of the available images until he found just the ones he wanted. That would take less than an hour. Most importantly, the network will permit collaboration among scientists who are physically remote from each other, because many researchers

could review the same images at the same time.

President Bush recently announced his plan for America's future in space. One of the elements of his plan is the Mission to Planet Earth, which will use a network of satellites to understand how the Earth's atmosphere, oceans, and living creatures function as a global system. It is one of our most important and critical scientific programs. The satellites will provide scientists with the information they need to make predictions about environmental concerns like the rate of severity of global warming. But we need the resources to analyze the data. Without the capabilities that the national research and education network will provide, we will not be able to take advantage of the information that the satellites send back, and our best scientists will not have ready access to the data.

Senator Gore's plan is an ambitious one. It authorizes $1.75 million in new funding over the next 5 years. Budgets are tight and it will not be easy to find the necessary funding. But this is important technology, and we must find the way to develop it. A computer network across the United States has great potential for increasing the productivity of American industry and stimulating the discovery and exchange of new ideas. Our economic competitiveness and our national security depend on it.

YONKERS, NY, ELECTION

Mr. MOYNIHAN. Mr. President, I rise to congratulate the people of the city of Yonkers on the extraordinary success of their valiant young mayor, Nicholas C. Wasicsko.

Of all the electoral victories in the Nation this week, none is a more important mandate for the rule of law than that of Mayor Wasicsko.

In 1985, a Federal district court found that Yonkers, NY's fourth largest city, had illegally and intentionally maintained segregated public schools and housing. The Court of Appeals unanimously affirmed the ruling in 1987, and, in 1988, the U.S. Supreme Court allowed the ruling to stand.

Soon thereafter I remarked to a delegation of Yonkers citizens dissatisfied with the legal outcome of the case, that we do not have to agree with the Supreme Court but we do have to obey it.

The least we can expect from our elected officials is that they understand and accept the rule of law. In Yonkers, unfortunately, a majority of the city council has not. A striking exception has been the city's 30-year-old Mayor Wasicsko. He has patiently but determinedly worked to bring his city into compliance with the Federal court order in these last 2 years. Mayor Wasicsko has proven himself a man of courage and consequence. A public official with a great future and already a distinguished past.

On Tuesday, September 12, 1989, in a Democratic primary, the voters of Yonkers were offered the chance to stand with Nicholas Wasicsko or against him. The result was an overwhelming victory for the mayor by a ratio of more than 2 to 1. The unofficial tally has the vote at 7,774 to 3,264. It was also a victory for decency, the orderly administration of government, and the rule of law.

I ask unanimous consent that the following article from the Gannett Westchester Newspapers regarding Mayor Wasicsko and the primary election in Yonkers be printed in the RECORD.

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

[From Gannett Westchester Newspapers, Sept. 14, 1989]

YONKERS SIGNALS ITS READINESS TO MOVE BEYOND HOUSING ISSUE

The results of Tuesday's voting in Yonkers, the state's fourth-largest city and home to about one-fifth of the people who live in Westchester County, clearly show more residents are ready to put the housing issue, which has divided their city, behind them.

Two candidates, one Republican and one Democrat, who based their entire campaigns on opposition to court-ordered housing desegregation, were swamped by opponents who addressed a broader range of issues. In the second part of a dual message, Democratic voters gave party leader Ralph Arred a drubbing in three of the four Democratic primary races.

The main event in Yonkers was the Democratic primary between first-term Mayor Nicholas Wasicsko and Dominick Iannacone, a former longtime councilman and county supervisor put up against Wasicsko by Arred.

A political feud, more than the housing court order, was the issue between Wasicsko and Arred. Yet housing did enter the race because Iannacone, in office during the 1970s, was among those responsible for bringing the housing problem about. That, plus Wasicsko's efforts to resolve the housing issue in the best way possible for all, may account for Wasicsko's 2-1 victory. Wasicsko now faces Republican Henry Spallone, the city's most vehement housing opponent, in November.

The only primary in which housing was the major issue was in the 5th Council District, where two opponents made a stunning showing against eight-term Councilman Nicholas V. Longo. Longo won only narrowly over Thomas Dickerson and squeaked by in the Conservative primary over Alyssa Scelza.

Long's marginal win showed that voters in his district are not enthusiastic about his flip-flop record on the housing issue. There will be a Long-Dickerson rematch Nov. 7 because Dickerson has an independent line on the ballot. The Democratic candidate is George Oswald.

In the 1st Council District, Joe Farmer defeated seven-term Councilman Harry Oxman, the party's candidate. This district has a minority population of 85 percent—it was created as a minority district in 1983. Oxman is white and Farmer is black. Farmer also has the Liberal line. The Republican candidate is Ronald Jones, who is also black.

Arred also lost out in the 3rd Council District, where Barbara Cola defeated Thomas Meier, the party's candidate. Cola, widow of longtime Councilman Charles Cola who died in June, campaigned as much against Arred as she did against Meier.

On the Republican side in the 3rd District, John Spencer defeated John D'Agnillo by nearly 6-1. D'Agnillo's campaign was based solely on opposition to the housing order.

The other candidate who used opposition to the housing order as his only issue was Democrat Mel Ellen in the 6th Council District. He was defeated by Ralph Ferraioli, the party's candidate, by nearly 2-1. Ferraioli will meet Edward J. Fagan Jr. Nov. 7.

Mr. ADAMS. Mr. President, that concludes action until the votes occurring at 6 o'clock and the procedure necessary for completing the D.C. bill. At this time, we will return to morning business, and this Senator will yield the floor.

The PRESIDING OFFICER. Who wishes to be recognized?

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

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

Mr. BYRD. Mr. President, I take the floor briefly to compliment the chairman of the Appropriations Committee, Subcommittee on the District of Columbia, and also the ranking members —Mr. ADAMS and Mr. GRAMM respectively. This is not an easy assignment for them, and it is in many ways a thankless one. It does require an inordinate amount of time, as much time as is required to handle some of the Appropriations Subcommittee assignments that are not quite so thankless.

I was chairman of the Appropriations Subcommittee on the District of Columbia for 7 years. We are told in the Scriptures that Jacob worked 7 years for Rachel. He received a commitment out of the prospective father-in-law, Laban, that he, Jacob, would be given Rachel if he were to work 7 years in his fields and orchards in labor. Jacob faithfully fulfilled his commitment. But when he went to get Rachel, Laban gave him Leah, who he did not love we are told, and Laban extracted a promise from Jacob that he would work 7 years more at the close of which time he would be given Rachel. So Jacob worked 7 more.

I worked 7 years on the District of Columbia Subcommittee before there ever came an opportunity for me to have an opening on another subcommittee as chairman. It was 7 long

years. So I had the longest tenure as chairman of the Subcommittee on the District of Columbia of any chairman of that subcommittee in this century.

But, finally, I emerged as chairman of, I believe at that time it was called, the Deficiencies and Supplemental Subcommittee. It has been a long time back. We do not have a Deficiencies and Supplemental Appropriations Subcommittee now. But at that time, such a subcommittee did exist, and I became chairman of that subcommittee.

I was somewhat glad to be able to move up the ladder and get another subcommittee. But 7 years is a long, long time to be chairman of the District of Columbia Appropriations Subcommittee. There is a song, 7 years with the wrong woman. Well, sometimes I felt that I was spending 7 years in the wrong subcommittee.

But the Scriptures also say that: "whatsoever thy hand findeth to do, do it with thy might."

So I did it with all my might. It was not a pleasant task but it was an important one. As I see it, you cannot always start at the top. One has to start at the bottom.

So I took my assignment seriously. I did my job as well as I could. It did not please everybody by any means. But in due time I became chairman of another subcommittee.

So I compliment the chairman of the Subcommittee on Appropriations for the District of Columbia. I hope he will not have to spend 7 years on that subcommittee, and I say the same with respect to the ranking member, Mr. GRAMM.

It is a small subcommittee but it is an important one because it provides funds for the most important city in our country, the Federal City. The Constitution does not refer to a Federal city. It refers to "the Federal City."

This is the Federal City, and in many ways it is not only the Capital of the United States but it is in many ways the foremost city of the world because it is the seat of the Federal Government, a tripartite Government, the seat of the Nation's Capital, the seat of the three branches of this Government, the three equal and coordinate branches, the seat of the legislative branch which is the foremost of the three branches. It is the people's branch, mentioned in the very first sentence of the first article of the Constitution—the legislative branch, and it shall consist of a Senate, and House of Representatives. Washington is the seat of the Supreme Court, and the seat of the executive branch, the President of the United States, his Cabinet, and the Departments.

So it is an important bill, and we are also told in the Scriptures to take seriously those little jobs that may be given to us to do.

When you do the little job well, at some point in time there may be one who will say, "Well done, thou good and faithful servant: thou hast been faithful over a few things, I will make thee ruler over many things."

I, again, thank the chairman and the ranking member, and I thank all the Senators on this subcommittee for the good job they did.

I yield the floor.

Mr. ADAMS. I thank the President pro tempore very much for his kind remarks. Long have both of us labored in the vineyard, and I consider this job another one that was as important as some of the others that I have held.

I thank you for your kindness. I yield the floor.

Mr. President, I ask unanimous consent that the vote on the Helms amendment, the D.C. appropriations bill, be delayed to occur no earlier than 6:30 p.m., and that morning business be extended until that time, under the same terms and conditions, and that the same terms and conditions apply to the final passage of the bill.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered. Who wishes to be recognized?

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

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

The Senator from New Mexico is recognized.

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

Mr. DOMENICI. I thank the Chair, and 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. GRASSLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRASSLEY. Madam President, I would next ask for permission to speak for 4 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator may proceed.

EXCELLENCE OF IOWA SCHOOLS

Mr. GRASSLEY. Madam President, at times like this, I am especially proud to represent my State of Iowa. Of course, I am always proud of my State, but I can puff out my chest just a little bit more when students in my State out perform students in all other States on ACT test scores.

Once again, Iowa took the top spot for the highest average test score on the American college test.

Iowa held first place last year, too, trailed slightly by Wisconsin. But Senators KASTEN and KOHL can join me this year as Wisconsin managed to tie Iowa's score.

In Iowa, the average test score for all students taking the test was 20.1 points out of a possible 36. This is especially significant because over 60 percent of Iowa students take the ACT exam. That is the highest percentage among States participating in the ACT program.

Not only does Iowa rank first in the average test score, we also rank first for the highest percentage of students scoring over 26 points.

That means that Iowa schools, teachers, parents, and school administrators do an excellent job of encouraging our brightest students and are helping average students to perform at their highest ability.

In addition to ranking first on the ACT exam, Iowa high school seniors also ranked first in performance on the scholastic aptitude test, another measure used by colleges as an entrance requirement.

On the average, Iowa students achieved a composite SAT score of 1,084, out of a possible 1,600. The national average for SAT exams is 903, well under Iowa's score.

Even though taken by only 5 percent of Iowa high school seniors, the SAT is a valuable tool for measuring achievement of the brightest students.

I am pleased with Iowa's achievement on this year's ACT and SAT exams. I must also agree with Dr. William Lepley, director of education in Iowa. Dr. Lepley points out that the significance is the stability in performance demonstrated by Iowa students.

Iowa students out performed all other students on both the ACT and SAT not only this year, but last year, too. In fact, Iowa students have achieved scores which rank either first or second on college entrance test scores ever since these tests have been administered, and that is, of course, for decades.

Why is it so important to obtain high test scores, one might ask? High test scores on college entrance exams are the best objective predictor of admission to and performance in a college or university. And a college degree is the best predictor of successful employment.

I would like to tout the achievement of the students in my State as an example for the rest of the country. That achievement is possible because Iowa citizens have a strong commitment to education.

In spite of relatively modest expenditures, Iowa students get lots of attention and support. Secretary Cavazos has repeatedly said that "money alone is not the answer." Parental support and community support, ever-present in Iowa, are the backbone of real educational achievement.

Madam President, these test scores are the result of that support. Indeed, it is another proud day in my State of Iowa in its educational system.

Madam President, I yield the floor.

The PRESIDING OFFICER. The distinguished majority leader.

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

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

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1990

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the amendment (No. 752) by the Senator from North Carolina [Mr. HELMS]. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Vermont [Mr. JEFFORDS], is necessarily absent.

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

The result was announced—yeas 97, nays 2, as follows:

[Rollcall Vote No. 178 Leg.]

YEAS—97

Adams	Domenici	Lautenberg
Armstrong	Durenberger	Leahy
Baucus	Exon	Levin
Bentsen	Ford	Lott
Bingaman	Fowler	Lugar
Bond	Garn	Mack
Boren	Glenn	Matsunaga
Boschwitz	Gore	McCain
Bradley	Gorton	McClure
Breaux	Graham	McConnell
Bryan	Gramm	Metzenbaum
Bumpers	Grassley	Mikulski
Burdick	Harkin	Mitchell
Burns	Hatch	Moynihan
Byrd	Hatfield	Murkowski
Chafee	Heflin	Nickles
Coats	Heinz	Nunn
Cochran	Helms	Packwood
Cohen	Hollings	Pell
Conrad	Humphrey	Pressler
Cranston	Inouye	Pryor
D'Amato	Johnston	Reid
Danforth	Kassebaum	Riegle
Daschle	Kasten	Robb
DeConcini	Kennedy	Rockefeller
Dixon	Kerrey	Roth
Dodd	Kerry	Rudman
Dole	Kohl	Sanford
Sarbanes	Specter	Warner
Sasser	Stevens	Wilson
Shelby	Symms	Wirth
Simon	Thurmond	
Simpson	Wallop	

NAYS—2

Biden	Lieberman

NOT VOTING—1

Jeffords

So the amendment (No. 752) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Vermont [Mr. JEFFORDS], is necessarily absent.

The PRESIDING OFFICER (Mr. LAUTENBERG). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 179 Leg.]

YEAS—56

Adams	Gorton	Moynihan
Bentsen	Graham	Murkowski
Biden	Harkin	Nunn
Bingaman	Heinz	Packwood
Bradley	Hollings	Pell
Bryan	Inouye	Riegle
Bumpers	Kassebaum	Robb
Burdick	Kennedy	Rockefeller
Byrd	Kerrey	Sanford
Chafee	Kerry	Sarbanes
Cohen	Kohl	Sasser
Conrad	Lautenberg	Simon
Cranston	Leahy	Simpson
D'Amato	Levin	Specter
Daschle	Lieberman	Stevens
Dodd	Matsunaga	Warner
Fowler	Metzenbaum	Wilson
Glenn	Mikulski	Wirth
Gore	Mitchell	

NAYS—43

Armstrong	Exon	McCain
Baucus	Ford	McClure
Bond	Garn	McConnell
Boren	Gramm	Nickles
Boschwitz	Grassley	Pressler
Breaux	Hatch	Pryor
Burns	Hatfield	Reid
Coats	Heflin	Roth
Cochran	Helms	Rudman
Danforth	Humphrey	Shelby
DeConcini	Johnston	Symms
Dixon	Kasten	Thurmond
Dole	Lott	Wallop
Domenici	Lugar	
Durenberger	Mack	

NOT VOTING—1

Jeffords

So the bill (H.R. 3026), as amended, was passed.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I move that the Senate insist on its amendments, request a conference with the House of Representatives thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer [Mr. LAUTENBERG] appointed Mr. ADAMS, Mr. FOWLER, Mr. KERREY, Mr. BYRD, Mr. GRAMM, Mr. DOMENICI, and Mr. HATFIELD conferees on the part of the Senate.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, there will be no further rollcall votes this evening.

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. MITCHELL. Mr. President, I ask unanimous consent that the quorum call be rescinded.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ENROLLED BILL SIGNED

The PRESIDENT pro tempore (Mr. BYRD) reported that he had signed the following enrolled bill, which was previously signed by the Speaker of the House:

S. 1075. An act to authorize appropriations for the American Folklife Center for fiscal years 1990, 1991, and 1992.

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-1646. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report on overseas donations of Commodity Credit Corporation stocks of agricultural commodities and sales and barters of those commodities for fiscal year 1987; to the Committee on Agriculture, Nutrition and Forestry.

EC-1647. A communication from the President of the United States transmitting, pursuant to law, a request for consideration of amendments to the request for appropriations for fiscal year 1990 to implement the National Drug Control Strategy; to the Committee on Appropriations.

EC-1648. A communication from the President of the United States transmitting, pursuant to law, a request for consideration of amendments to the request for appropriations for fiscal year 1990 to provide budget authority to the Federal Deposit Insurance Corporation for funding the FSLIC Resolution Fund; to the Committee on Appropriations.

EC-1649. A communication from the Secretary of Defense, transmitting, pursuant to law, a report on a violation involving the overobligation of an approved appropriation; to the Committee on Appropriations.

EC-1650. A communication from the Acting Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report on the Department of the Air Force's proposed letter of offer to Turkey for defense articles estimated to cost in excess of $50 million; to the Committee on Armed Services.

EC-1651. A communication from the Deputy General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend chapter 61 of title 10, United States Code, to provide that members of the Armed Forces who are on extended leave without pay can be retired under such chapter notwithstanding the nonreceipt of basic pay; to the Committee on Armed Services.

EC-1652. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report entitled "Effect of the Five-Year Defense Programs for Shipbuilding, Conversion, and Repair on Domestic Private Industry Mobilization Capability" for the years 1989, 1990, and 1991; to the Committee on Armed Services.

EC-1653. A communication from the Secretary of the Treasury and the President and Chairman of the Export-Import Bank of the United States, transmitting jointly, pursuant to law, a report on Tied Aid Credit Practices dated September 1989; to the Committee on Banking, Housing, and Urban Affairs.

EC-1654. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report on the proposed use of Construction and Facilities resources appropriated to NASA for the acquisition of land needed for groundwater contamination assessment and remediation at White Sands Test Facility, Las Cruces, New Mexico; to the Committee on Commerce, Science, and Transportation.

EC-1655. A communication from the Administrator of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report of progress on developing and certifying the Traffic Alert and Collision Avoidance System for the months of April through August 1989; to the Committee on Commerce, Science, and Transportation.

EC-1656. A communication from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation approving the location of the Memorial to the Women Who Served in Vietnam; to the Committee on Governmental Affairs.

EC-1657. A communication from the Secretary of Energy, transmitting, pursuant to law, the quarterly report on the Strategic Petroleum Reserve for the period April 1 to June 30, 1989; to the Committee on Energy and Natural Resources.

EC-1658. A communication from the Deputy Associate Director for Collection and Disbursements, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-1659. A communication from the Chief of the Forest Service, Department of Agriculture, transmitting, pursuant to law, the boundary description and classification of the Merced and South Fork Merced Wild and Scenic Rivers within the Sierra and Stanislaus National Forests, California; to the Committee on Energy and Natural Resources.

EC-1660. A communication from the Administrator of the Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled "Annual Energy Review, 1988"; to the Committee on Energy and Natural Resources.

EC-1661. A communication from the Deputy Associate Director for Collection and Disbursements, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-1662. A communication from the Acting Secretary of Commerce, transmitting, pursuant to law, a report on the market orientation of the People's Republic of China and U.S. trade laws; to the Committee on Finance.

EC-1663. A communication from the Secretary of State, the Secretary of Labor, and the Administrator of the Environmental Protection Agency transmitting jointly, a draft of proposed legislation to promote democratization and reform in Poland and Hungary through development of the private sectors, labor market reforms, and enhanced environmental protection, and for other purposes; to the Committee on Foreign Relations.

EC-1664. A communication from the Secretary of State, transmitting, pursuant to law, a determination to waive the transfer of foreign assistance funds under the Fisherman's Protective Act; to the Committee on Foreign Relations.

EC-1665. A communication from the Comptroller of the Currency, transmitting, pursuant to law, a report on the adoption of changes to existing pay schedules under the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act; to the Committee on Governmental Affairs.

EC-1666. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Budget Issues—Restructuring the Federal Budget—The Capital Component"; to the Committee on Governmental Affairs.

EC-1667. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, notice of the approval of a proposal for a personnel management demonstration project; to the Committee on Governmental Affairs.

EC-1668. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Financial Disclosure—Legislative Branch Systems Improved But Can Be Further Strengthened"; to the Committee on Governmental Affairs.

EC-1669. A communication from the Chairman of the Council on Environmental Quality, Executive Office of the President, transmitting, pursuant to law, the annual report of the Council under the Freedom of Information Act for calendar year 1988; to the Committee on the Judiciary.

EC-1670. A communication from the Chairman of the United States Sentencing Commission, transmitting, pursuant to law, the annual report of the Commission for 1988; to the Committee on the Judiciary.

EC-1671. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation entitled the "Trademark Law Clarification Act of 1989"; to the Committee on the Judiciary.

EC-1672. A communication from the Acting Chairman of the National Endowment for the Arts and Member of the Federal Council on the Arts and the Humanities, transmitting, pursuant to law, documents relevant to claims for losses filed under the Arts and Artifacts Indemnity Act; to the Committee on Labor and Human Resources.

EC-1673. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations—Projects With Industry; to the Committee on Labor and Human Resources.

EC-1674. A communication from the Chairman and Members of the Railroad Retirement Board, transmitting, pursuant to law, the budget request of the Board for fiscal year 1991; to the Committee on Labor and Human Resources.

EC-1675. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations—Assistance for Local Education Agencies on Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education (Impact Aid); to the Committee on Labor and Human Resources.

EC-1676. A communication from the Acting Commissioner of Education Statistics, Office of Educational Research and Improvement, Department of Education, transmitting, pursuant to law, the first annual report on dropout and retention rates entitled "Dropout Rates in the United States, 1988"; to the Committee on Labor and Human Resources.

EC-1677. A communication from the Inspector General, Railroad Retirement Board, transmitting, pursuant to law, the budget request of the Board for fiscal year 1991; to the Committee on Labor and Human Resources.

EC-1678. A communication from the President of the United States Capitol Historical Society, transmitting, pursuant to law, the annual report of the Society for the year ended January 31, 1989; to the Committee on Rules and Administration.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-313. A joint resolution adopted by the Legislature of the State of California; to the Committee on Agriculture, Nutrition, and Forestry:

"SENATE JOINT RESOLUTION NO. 31

"Whereas Congress is considering legislation relating to crop subsidy and deficiency payments; and

"Whereas the 1988 estimates of the Agricultural Stabilization and Conservation Service indicate that 53.3 million acres were taken out of production in the United States, and 3,084,714 acres were enrolled in California resulting in payments in excess of $385,560,000; and

"Whereas farmers may participate under current law in a conservation or set-aside farming program in which a portion of a farmer's base acreage, which is based on farming history, is removed from production for which a subsidy is received; and

"Whereas the farm conservation or set-aside farming program under current law includes no provision for growing rotation crops on the set-aside ground; and

"Whereas emerging technology exists which demonstrate the potential for farmers to farm crops dedicated to producing alcohol for the production of ethanol or biomass as fuel for electrical production; and

"Whereas a 25 percent reduction in carbon monoxide can be demonstrated by substituting 10 percent ethanol in unleaded gasoline; and

"Whereas the production of electricity from renewable plant resources limits the need for increased usage of nonrenewable carbon monoxide-producing fossil fuels; and

"Whereas growing plants on formerly plowed 'down acreage' increases the number of plants taking in carbon dioxide and giving off oxygen through photosynthesis, thus creating a natural carbon filter effect and providing a net decrease in the collective contribution to the greenhouse effect; and

"Whereas scientists in the United States have developed effective and competitive biomass systems and related technologies which could impact favorably on the balance of trade problems facing this country, now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact legislation which permits farmers who are enrolled in government set-aside programs to grow rotation crops dedicated as feedstock for conversion to fuel sources on displaced base acreage, and which provides the following:

"(1) The acreage dedicated to a fuel rotation crop is not deducted from the base acreage of a farmer's program crop in the farm conservation and set-aside program administered by the Department of Agriculture.

"(2) Farmers who plant 'fuel rotation crops' market these crops solely as fuel crops.

"(3) Farmers maintain displaced base acreage as a part of family farming history and do not receive any other form of governmental subsidy for this acreage; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of Agriculture, and to each Senator and Representative from California in the Congress of the United States."

POM-314. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Energy and Natural Resources:

"ASSEMBLY JOINT RESOLUTION NO. 26

"Whereas on May 4, 1988, the residents of Clark County and Henderson, Nevada, suffered severe trauma when the Pacific Engineering and Production Company plant exploded, resulting in two deaths and over $75 million in property damage; and

"Whereas the Clark County Commission subsequently directed its staff to detail a three-phase program to reevaluate Clark County zoning methodology for industrial land use, including identification of a more appropriate site for heavy industrial use where heavy and hazardous industries could locate or relocate; and

"Whereas the Governor's 'Blue Ribbon Commission to Examine the Adequacy of Existing Regulations Pertaining to the Manufacture and Storage of Highly Combustible Materials' also made several recommendations supporting the relocation of heavy and hazardous industries to more appropriate sites in Clark County; and

"Whereas Privately owned lands suitable for heavy industrial use, sufficiently isolated from population centers and adjacent to utilities and transportation, are not readily available; and

"Whereas the Federal Government owns over 90 percent of the land in Clark County and the use of under-utilizied federal land in the Apex area of the Dry Lake Valley appears to offer the best opportunity to develop a sufficiently remote heavy industry zone; and

"Whereas Clark County is working to acquire sufficient land from the Federal Government to establish a 'Heavy Industrial Park' in the Apex area; and

"Whereas Clark County is assisting and working with Kerr-McGee Chemical Corporation, the only producer of Ammonium Perchlorate left in the country, whose present plant facility is in close proximity to Henderson residential areas; and

"Whereas the proposed 'Heavy Industrial Park' will serve the residents of Nevada and protect the health and welfare of its residents at the least cost by accommodating an existing industry in their relocation efforts, thereby saving jobs; and

"Whereas Creating an industrial park for new manufacturing entities that are of a heavy or hazardous nature and are looking at the State of Nevada as a potential site for location will stimulate economic development; and

"Whereas Legislation has been introduced in Congress (H.R. 1485 and S. 624), which would allow Clark County to acquire 17,000 acres of federal land 15 miles northeast of Las Vegas for a proposed heavy industrial area; now, therefore, be it

"Resolved by the Assembly and Senate of the State of Nevada, Jointly, That the Legislature of the State of Nevada hereby urges the Congress of the United States to adopt H.R. 1485 and S. 624; and be it further

"Resolved, That copies of this resolution be transmitted by the Chief Clerk of the Assembly to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and the members of the Nevada Congressional Delegation; and be it further

"Resolved, That this resolution becomes effective upon passasge and approval."

POM-315. A resolution adopted by the City Council of Cooper City, Florida opposing offshore drilling and mining; to the Committee on Energy and Natural Resources.

POM-316. A joint resolution adopted by the Legislature of the State of Oregon; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION 26

"Whereas the Legislative Assembly of the State of Oregon pursuant to Article V of the United States Constitution, hereby ratifies an amendment to the Constitution of the United States proposed by resolution of the First Congress of the United States in New York, New York, on September 25, 1789, which reads as follows:

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring,* That the following (Article) be proposed to the Legislatures of the several States, . . . which (Article), when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:

"'(An Article) in addition to, and Amendment to the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the Fifth Article of the original Constitution.

"'Article the second . . . No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.'"; and

"Whereas the Legislative Assembly of the State of Oregon acknowledges that the above-quoted Article of Amendment to the United States Constitution has already been ratified by the legislatures of the following states on the dates indicated, to wit: Maryland on December 19, 1789; North Carolina on December 22, 1789; South Carolina on January 19, 1790; Delaware on January 28, 1790; Vermont on November 3, 1791; Virginia on December 15, 1791; Ohio on May 6, 1873 (70 Ohio Laws 409-10); Wyoming on March 3, 1978 (124 Cong. Rec. 7910; 133 Cong. Rec. S12949); Maine on April 27, 1983 (130 Cong. Rec. H9097, S11017); Colorado on April 18, 1984 (131 Cong. Rec. S17687; 132 Cong. Rec. H6446); South Dakota on February 21, 1985 (131 Cong. Rec. H971, S3306); New Hampshire on March 7, 1985 (131 Cong. Rec. H1378, S3597); Arizona on April 3, 1985 (131 Cong. Rec. H2060, S4750); Tennessee on May 23, 1985 (131 Cong. Rec. H6672, S10797, S13504); Oklahoma on July 10, 1985 (131 Cong. Rec. H7263, S13504); New Mexico on February 13, 1986 (132 Cong. Rec. H827, S2207-8, S2300); Indiana on February 19, 1986 (132 Cong. Rec. H1634, S4663); Utah on February 25, 1986 (132 Cong. Rec. S6750, S7578; 133 Cong. Rec. H9866); Arkansas on March 5, 1987 (134 Cong. Rec. H3721, S7518); Montana on March 11, 1987 (133 Cong. Rec. H1715, S6155); Connecticut on May 13, 1987 (133 Cong. Rec. H7406, S11891); Wisconsin on June 30, 1987 (133 Cong. Rec. H7406, S12948, S13359); Georgia on February 2, 1988 (134 Cong. Rec. H2638, S5239); West Virginia on March 10, 1988 (134 Cong. Rec. H2492, S4784); Louisiana on July 6, 1988 (134 Cong. Rec. H5783, S9939); Iowa on Feb-

ruary 7, 1989; and Idaho on March 23, 1989; as well as by the House of Representatives of the State of North Dakota on January 26, 1987, and on February 3, 1989; the House of Representatives of the State of Texas on April 23, 1987; the House of Representatives of the State of Illinois on June 22, 1988; and the Assembly of the State of Nevada on March 28, 1989; and

"Whereas the Legislative Assembly of the State of Oregon acknowledges that the above-quoted Article of Amendment to the United States Constitution may still be ratified by states' legislatures as a result of the ruling by the United States Supreme Court in the landmark case of *Coleman* v. *Miller*, (307 U.S. 433 (1939)) in which it was opined that Congress is the final arbiter on the question of whether too much time has elapsed between Congress' submission of an amendment and the most recent state legislature's ratification of same if Congress did not specify a deadline on the amendment's consideration; now, therefore, be it

"Resolved by the Legislative Assembly of the State of Oregon:

"(1) That the Secretary of State shall notify the Archivist of the United States (pursuant to 1 U.S.C. 106b; 1 U.S.C. 112; as amended by P.L. 98-497, 98 Stat. 2291) of the action of the Sixty-fifth Legislative Assembly by sending to the archivist one copy of this resolution.

"(2) That the Secretary of State shall also send one copy of this resolution to each member of the Oregon Congressional Delegation, the Secretary of the United States Senate and the Clerk of the United States House of Representatives with the request that it be printed in full in the Congressional Record."

POM-317. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION No. 32

"Whereas the State of Nevada in 1977 revised its statutes authorizing the penalty of death for the offense of murder in the first degree to conform to the United States Supreme Court's interpretation of the Constitution of the United States; and

"Whereas this revision of the statutes represented the judgment of the people of Nevada, expressed through their elected representatives, that in certain well-defined cases the penalty of dealth should be imposed for the offense of murder in the first degree; and

"Whereas the State of Nevada has been precluded from imposing the sentence of death in cases decided more than a decade ago against prisoners who have repeatedly sought review in the federal courts; and

"Whereas no prisoner has been executed against his will in any of the states within the territorial jurisdiction of the United States Court of Appeals for the Ninth Circuit; and

"Whereas the guilt of the persons sentenced to dealth in the State of Nevada has been established beyond a reasonable doubt; and

"Whereas the extended and repetitive judicial proceedings that have been responsible for preventing the execution of the sentences of death imposed in the State of Nevada have largely concerned issues that have little, if any, bearing on the reliability of the convictions and the sentences imposed in the trial court; and

"Whereas this interference with state law has been caused by the federal courts, whose process of review is extended and repetitive, as illustrated by the recent decision of a three-judge panel of the Ninth Circuit Court of Appeals in the case of *Neuschafer* v. *Whitley*, 860 F.2d 1470; and

"Whereas the review of state judicial proceedings by federal courts is authorized by 28 U.S.C. § 2254, a provision of the federal habeas corpus statutes, and such review has become a substantial and unjustifiable obstruction of the ability of the states to enforce their laws in an effective and expeditious manner; and

"Whereas public confidence in the law has been seriously eroded as a consequence of seemingly unending review by the federal courts of the decisions of trial courts imposing the sentence of death in Nevada and throughout the United States; now, therefore, be it

"Resolved by the Assembly and Senate of the State of Nevada, jointly, That the Legislature of the State of Nevada hereby urges the Congress of the United States to amend 28 U.S.C. § 2254, the provision authorizing the review of state judicial proceedings by federal courts, to expedite the review of such proceedings in cases where a sentence of death has been imposed; and be it futher

"Resolved, That copies of this resolution be prepared and transmitted forthwith by the Chief Clerk of the Assembly to the Vice President of the United States as the presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

"Resolved, That this resolution becomes effective upon passage and approval.

POM-318. A joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION No. 46

"Whereas California is home to about one-half million refugees from throughout the world, including Southeast Asia, Eastern Europe, the Near East, and the Soviet Union; and

"Whereas refugees contribute to the nation's and state's cultural diversity and economic growth, in particular in the fields of business, technology, medicine, and education, after making the social and economic adjustments necessary to start a new life; and

"Whereas the Refugee Act of 1980 (P.L. 96-212), recognized the need for refugee transition, and set out a carefully crafted federal and state partnership for assisting new arrival refugees, including full federal reimbursement for 36 months from the refugee's date of entry, after which state and local governments assist with long-term integration; and

"Whereas the foundation of the Refugee Act's partnership has eroded during recent years with the decline in refugee assistance, despite increasing admissions, thereby shifting more costs to state and local governments; and

"Whereas the proposed 1990 federal Budget would reduce the reimbursement period to 15 months from the refugee's date of entry, shift one hundred forty million dollars ($140,000,000) in costs to the states, seventy-five million dollars ($75,000,000) to California alone, and eliminate the Targeted Assistance Program operated under the act; and

"Whereas the international refugee situation and the presence of persons in the United States seeking asylum has prompted proposals for the use of alternative categories for admissions of those for whom federal refugee domestic assistance is needed; and

"Whereas admissions should be fully supported by funding appropriated for that purpose; and

"Whereas reprogramming funds from refugee and immigrant programs pits one group against another and undermines a viable refugee program; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to reauthorize the Refugee Act of 1980 in a timely manner; and be it futher

"Resolved, That the United States Department of State should admit persons fleeing persecution in their homelands as refugees pursuant to the Refugee Act of 1980 rather than as parolees or under other immigrant status; and be it further

"Resolved, That the refugee assistance appropriation in the 1990 federal Budget should reflect increased admissions and reimbursement for 36 months from the refugee's date of entry as negotiated in the Refugee Act of 1980; and be it further

"Resolved, That the reauthorization of the act should provide for a continuation of the Targeted Assistance Program; and be it further

"Resolved, That the reauthorization of the act should provide for effective consultation mechanisms, both to ensure government flexibility in responding to emergency situations, and to ensure adequate processing and domestic assistance for newly admitted refugees; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and the Vice President of the United States, to the Secretary of State of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-319. A joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION No. 41

"Whereas the purpose of the United States Census is to count the population of the United States; and

"Whereas the California census undercount in 1980 was estimated to be as high as 3 percent, or twice the national average; and

"Whereas California's population in 1990 is projected to increase by 23 percent from that of 1980; and

"Whereas since 1980, California's population has increased by more than 2 million residents through net immigration; and

"Whereas racial and ethnic minorities are most frequently undercounted, and 48 percent of California's population is comprised of racial and ethnic minorities; and

"Whereas in 1980, California had the largest Hispanic population in the United States, totaling 4.5 million residents and comprising 19 percent of the total state population; and

"Whereas California's Hispanic population will have increased by more than 45 percent by 1990; and

"Whereas based on the estimate by the United States Bureau of the Census that 5.9 percent of the Hispanic population nationally was undercounted in 1980, a total of 268,000 Hispanic residents of California were overlooked in that census; and

"Whereas it is esimated that every uncounted individual costs the State of California $53.58 annually, so that the Hispanic undercount in 1980 cost the state approximately $14 million annually and over $140 million during a 10-year period since 1980; and

"Whereas the census data will determine much of the entitlement for community services for the next 10 years; and

"Whereas the inclusion of otherwise uncounted residents in the census would invariably increase the federal entitlement total for California and its counties, primarily those with large Hispanic populations; and

"Whereas there is danger that the suspicion and fear created by Immigration and Naturalization Service raids for undocumented workers may cause an unknown number of Hispanic residents to refuse participation in any government-sponsored questionnaire, such as the 1990 census, resulting in a continued undercount of California Hispanic residents; and

"Whereas to encourage maximum participation in the 1990 census it is necessary that members of California's Hispanic population feel confident that information gathered for the census is not connected with, or will be used by, the Immigration and Naturalization Service, and that no raids for undocumented workers will be conducted by the Immigration and Naturalization Service from January 1, 1990, until census onsite visits are terminated; and

"Whereas Census day is April 1, 1990, and enumerators will continue to make onsite visits through July 31, 1990; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully urges the President and the Attorney General of the United States to direct the Commissioner of the Immigration and Naturalization Service to implement a moratorium on any searches, raids, or sweeps for undocumented workers commencing on January 1, 1990, and ending on July 31, 1990, so as to encourage maximum participation by the Hispanic community and other minority communities in the 1990 census count; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the United States Attorney General, to the Commissioner of the Immigration and Naturalization Service, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-320. A resolution adopted by the Commission of the City of Miami, Florida relative to recent decisions of the United States Supreme Court; to the Committee on the Judiciary.

POM-321. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Veterans' Affairs:

"ASSEMBLY JOINT RESOLUTION No. 43

"Whereas returning to the civilian work force after serving in the Armed Forces usually requires additional training and education because in many cases the veteran has served in the Armed Forces during his college years; and

"Whereas educational and training benefits offered by the Federal Government to veterans of the Armed Forces have always been a wise investment because of the benefit society receives as a result of having more of its population possessing higher education, allowing the veteran to obtain better jobs and better pay; and

"Whereas veterans need and deserve the opportunity for a chance to become readjusted to the civilian work force because military skills and training are often not adaptable to the civilian workplace; and

"Whereas, Expiration of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 will leave many veterans without the benefit of being able to use the 10-year period generally granted veterans after release from service in the Armed Forces to use their educational benefits; now, therefore, be it

"Resolved by the Assembly and Senate of the State of Nevada, jointly, That the Nevada Legislature hereby urges the Congress of the United States to extend the deadline contained in the Vietnam Era G.I. Bill to allow veterans of the Vietnam era 10 years within which to use the educational benefits contained therein; and be it further

"Resolved, That a copy of this resolution be transmitted forthwith by the Chief Clerk of the Assembly to the President of the United States, the Vice President of the United States as the presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

"Resolved, That this resolution becomes effective upon passage and approval."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 543. A bill to amend the Job Training Partnership Act to strengthen the program of employment and training assistance under that Act, and for other purposes (Rept. No. 101-129).

By Mr. SASSER, from the Committee on Appropriations, with amendments:

H.R. 3012. A bill making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1990, and for other purposes (Rept. No. 101-130).

By Mr. LEAHY, from the Committee on Appropriations, with amendments:

H.R. 2939. A bill making appropriations for Foreign Assistance and related programs for the fiscal year ending September 30, 1990, and for other purposes (Rept. No. 101-131).

By Mr. INOUYE, from the Committee on Appropriations, with amendments:

H.R. 3072. A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1990, and for other purposes (Rept. No. 101-132).

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. LEVIN:

S. 1621. A bill to amend the Domestic Volunteer Service Act of 1973 to provide for programs of national and local significance, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HEINZ:

S. 1622. A bill to promote environmental sector lending by the World Bank; to the Committee on Foreign Relations.

By Mr. CRANSTON:

S. 1623. A bill to designate the Federal plaza located between the Twin Towers of the Oakland Federal Building in Oakland, California, as the "Donald P. McCullum Memorial Plaza."; to the Committee on Environment and Public Works.

By Mr. THURMOND:

S. 1624. A bill to grant a Federal charter to the National Association of Women Veterans, Inc; to the Committee on the Judiciary.

By Mr. CRANSTON:

S. 1625. A bill to designate certain lands in the Los Padres National Forest as wilderness, to designate wild and scenic rivers, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI:

S. 1626. A bill to establish within the Office of Minority Economic Impact the Department of Energy programs involving loans and grants to enhance the development and operation of minority business enterprises with respect to energy related business, to amend the Nuclear Waste Policy Act of 1982 to permit the investment of certain funds in the Minority Bank Deposit Program of the Department of the Treasury, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MOYNIHAN (for himself, Mr. DANFORTH, Mr. BOREN, Mr. CHAFEE, Mr. PRYOR, Mr. HEINZ, and Mr. DASCHLE):

S. 1627. A bill to amend the Internal Revenue Code of 1986 to generally treat bonds issued for section 501(c)(3) organizations in a manner similar to governmental bonds; to the Committee on Finance.

By Mr. BENTSEN (for himself, Mr. PACKWOOD, Mr. MOYNIHAN, Mr. DOLE, Mr. ARMSTRONG, Mr. CHAFEE, Mr. DASCHLE, Mr. DURENBERGER, Mr. HEINZ, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. ROTH, Mr. COATS, Mr. DECONCINI, Mr. GORE, Mr. HATCH, Mr. HUMPHREY, Mr. LEAHY, Mr. MCCONNELL, Mr. NUNN, Mr. SIMON, and Mr. THURMOND):

S. 1628. A bill to amend the Internal Revenue Code of 1986 to authorize a deduction for the expenses of adopting a special needs child and to amend title 5, United States Code, to establish a program providing assistance to Federal employees adopting a special needs child; to the Committee on Finance.

By Mr. SPECTER:

S. 1629. A bill to establish clearly a Federal right of action by aliens and United States citizens against persons engaging in torture or extrajudicial killings, and for other purposes; to the Committee on the Judiciary.

By Mr. BAUCUS (for himself, Mr. CHAFEE, Mr. BURDICK, Mr. DURENBERGER, Mr. GRAHAM, Mr. JEFFORDS, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. MITCHELL, Mr. MOYNIHAN, Mr. WARNER, Mr. COHEN, and Mr. CRANSTON):

S. 1630. A bill to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes; to the Committee on Environment and Public Works.

By Mr. SIMON:

S. 1631. A bill to make a technical amendment to title 11, United States Code, the Bankruptcy Code; to the Committee on the Judiciary.

By Mr. CRANSTON:

S.J. Res. 197. Joint resolution to designate the month of October 1989 as "National HIV and AIDS Awareness Month"; to the Committee on the Judiciary.

By Mr. SIMON:

S.J. Res. 198. Joint resolution designating November 1989 as "An End to Hunger Education Month"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for Mr. DOMENICI) (for himself, Mr. DOLE, Mr. SASSER, Mr. ARMSTRONG, Mr. BOND, Mr. BOSCHWITZ, Mr. CONRAD, Mr. DANFORTH, Mr. DODD, Mr. EXON, Mr. GRAMM, Mr. GRASSLEY, Mr. HEINZ, Mr. HOLLINGS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KASTEN, Mr. MCCLURE, Mr. NICKLES, Mr. PACKWOOD, Mr. ROBB, Mr. RUDMAN, Mr. SANFORD, Mr. SIMON, Mr. SYMMS, and Mr. MCCAIN):

S. Res. 178. Resolution commending Gail D. Fosler for her service to the country and the Senate; considered and agreed to.

By Mr. KASTEN (for himself, Mr. DOLE, and Mr. RIEGLE):

S. Con. Res. 69. Concurrent resolution relating to the right of self-determination of the peoples of Latvia, Estonia, and Lithuania, and for other purposes; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEINZ:

S. 1622. A bill to promote environmental sector lending by the World Bank; to the Committee on Foreign Relations.

ENVIRONMENTAL SECTOR LENDING ACT OF 1989

● Mr. HEINZ. Mr. President, today I am introducing the Environmental Sector Lending Act of 1989. This legislation is timely because this Friday the World Bank is expected to announce a new set of environmental assessments and standards for their lending programs.

My legislation would direct the U.S. representatives at the World Bank to propose a 3-year environmental sector lending program to support those nations with a demonstrated commitment to natural resource conservation.

Loans are to be made not for short-term development of irreplaceable resources, but based on the expected return from sustainable use and protection of the resource base. Too often, Mr. President, we have seen sector loans made which take a quick profit but leave behind environmental devastation. The few environmental loans which have been made to date, Mr. President, have been made only as an adjunct and an afterthought to a much larger package. I have in mind the acre road project through Rondonia. At a time when an area of the Amazon equal in size to Belgium is cleared, slashed, and utterly destroyed each and every year, this road project helped make it easier to gut more forest lands.

The Inter-American Development Bank quite rightly suspended payment on that loan, and has since negotiated a new environmental package with Brazil. This is a very welcome step, but had an environmental sector loan been made first, before development, we might have spared ourselves and the world the loss of thousands of hectares.

The World Bank, while it is not a party to the acre project, is looked to around the globe for leadership on lending issues. The steps they take will likely be replicated by other multilateral development banks and private lenders. Together, these institutions provide nearly 90 percent of the developing world's capital.

As the World Bank prepares to make its announcements this coming Friday, I hope they will take note of this legislation and the House companion bill, authored by Congressman JOHN EDWARD PORTER. The Bank should undertake environmental sector lending without any prompting from Congress. I hope they will take such a step and I urge my colleagues to join as cosponsors of this measure.

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. 1622

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 "Environmental Sector Lending Act of 1989".

SEC. 2. PROMOTION OF SECTOR LENDING FOR THE ENVIRONMENT.

The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with other executive directors of the Bank and the management of the Bank and propose that, in order to reduce the future need for bank lending for reforestation and restoration of environmentally degraded areas, the Bank establish a 3-year pilot environmental sector lending program, to be made available to any and all interested countries with a demonstrated commitment to natural resource conservation.

SEC. 3. CRITERIA FOR SECTOR LENDING.

The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to support through the pilot environmental sector lending program loans and projects based on the estimated long-term economic return which could be expected from the sustainable use and protection of tropical forests, including their value for indigenous people and science, and the value derived from such services as watershed management, soil erosion control, maintenance and improvement of fisheries, water supply regulation for industrial development, food, fuel, fodder, and building materials for local communities, extraction of naturally occurring products from locally controlled protected areas, idigenous knowledge of the management and use of natural resources as well as long-term benefits expected to be derived from maintenance of biological diversity and climate stabilization.●

By Mr. CRANSTON:

S. 1623. A bill to designate the Federal plaza located between the Twin Towers of the Oakland Federal Building in Oakland, CA, as the Donald P. McCullum Memorial Plaza; to the Committee on Environment and Public Works.

DONALD P. MC CULLUM MEMORIAL PLAZA

Mr. CRANSTON. Mr. President, it gives me pleasure to introduce today a bill to designate the Federal plaza between the Twin Towers of the Oakland Federal Building in Oakland, CA, as the Donald P. McCullum Memorial Plaza.

It is gratifying to help bestow an honor as deserving as this one. Judge McCullum gave much to both his profession and his community, and the wide support for this memorial from local representatives and the Oakland legal community is testimony to the breadth of his contribution.

Donald Pitts McCullum was born on January 28, 1928, in Little Rock, AR. He received his BA from Talladega College, AL in 1948 and his JD in 1951 from the Boston School of Law, MA. He was admitted to the Massachusetts Bar in 1953 and the California Bar in 1955.

Between 1952 and 1955, Judge McCullum served as a lieutenant in the United States Naval Reserve during the Korean war. For his service he was awarded the National Defense Medal, the Korean Medal (two engagement stars), and the United Nations Medal.

In addition to his many years in private practice, Judge McCullum served as Deputy District Attorney for Alameda County, as city attorney for Berkeley, and in 1977 was appointed to the Superior Court of Alameda County by Governor Brown. He was elected to Alameda County Superior Court in 1978, reelected in 1984, and served as its presiding judge in 1982 and 1983. In 1984 Donald McCullum served as associate judge pro tempore on the Supreme Court of California.

Judge McCullum gave his time and leadership to numerous organizations, such as the California Judges Association, the National Council of Negro Women, the American Bar Association, the Civil Rights Bar Association, the League of Women Voters, and others. He served as president of the

Oakland NAACP, chairman of the West Coast Region NAACP, and president of the California Association of Black Lawyers. In addition, he was the recipient of many awards for judicial service through his impressive career.

Donald McCullum's commitment to his profession and to the Oakland community was tremendous. The Donald P. McCullum Memorial Plaza would be a fitting and well-deserved tribute to the memory of this exceptional man.

Mr. President, I ask unanimous consent that the text of this bill be printed at this point in the RECORD.

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

S. 1623

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal plaza located between the Twin Towers of the Oakland Federal Building in Oakland, California, shall be known and designated as the "Donald P. McCullum Memorial Plaza".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, record, or other paper of the United States to the Federal plaza referred to in section 1 shall be deemed to be a reference to the "Donald P. McCullum Memorial Plaza".

By Mr. THURMOND:

S. 1624. A bill to grant a Federal charter to the National Association of Women Veterans, Inc.; to the Committee on the Judiciary.

GRANTING A FEDERAL CHARTER TO THE NATIONAL ASSOCIATION OF WOMEN VETERANS, INC.

Mr. THURMOND. Mr. President, today, I am introducing legislation to grant a Federal charter to the National Association of Women Veterans, Inc.

Mr. President, since the inception of this Nation, women have served voluntarily and valiantly in all wars. To date, women have served in every capacity except that of direct combat soldiers. It is extremely timely that this charter should be granted as we mark the 50th anniversary of World War II.

The women of World War II were pioneers, leaving distinct and lasting footprints for their successors to follow. These women were present in every theater of war and worked in every occupation, from clerk to truck driver, to cryptographer, to pilot, to nurse. Three hundred and fifty thousand women served in the military during World War II in the Army, Navy, Marine Corps, Coast Guard, Merchant Marines, and Women's Auxiliary Service Pilots. Seventeen thousand members of the Women's Army Corps [WAC's] served in every combat area overseas. Five hundred and sixty-five WAC's in the Pacific won combat decorations. More than 1,600 Army nurses won combat and noncombat decorations, including Distinguished Service Medals, Silver Stars, Bronze Stars, Air Medals, Legions of Merit, Commendation Medals, and Purple Hearts. More than 2,500 women in the Armed Forces won combat and noncombat decorations during World War II. More than 110 women were held captive for almost 37 months after the fall of Bataan and Corregidor.

During Korea, women again came voluntarily to the service of this Nation. Fron truck drivers to nurses in MASH units, women served proudly and with distinction.

The Vietnam Memorial bears the names of eight women who died in the service of our country during the Vietnam war. Thousands of other women voluntarily entered military service in order to support our national war effort. Nurses and women of all branches of the military served proudly in Vietnam and many still bear the scars of that war.

Today women comprise approximately 10 percent of the military forces which stand ready to defend our country's peace and security. They serve in a volunteer Armed Forces, but their history as volunteers extends back to the Revolutionary War. It is most appropriate at this time in our history that women be counted proudly among our veteran population. Until recently women were invisible veterans, but they must now be given the full status to which they are entitled.

The National Association of Women Veterans, Inc., has among its objectives:

First, uphold and defend the Constitution of the United States;

Second, promote and teach the American way of life;

Third, conduct and publish research on a nonpartisan basis concerning the contributions of women veterans and women currently serving in the military;

Fourth, compile and publish the history of women in military service and to keep that history current;

Fifth, honor outstanding women veterans and outstanding women currently in the military;

Sixth, encourage young women to choose a career in the military;

Seventh, sponsor meetings and seminars for women veterans;

Eighth, improve conditions for women veterans and develop channels of communications to assist women veterans;

Ninth, assist women veterans and other veterans in need of assistance; and

Tenth, consecrate the efforts of the members of the association and women veterans generally to mutual helpfulness and service to their country.

I call upon the Congress of the United States to act upon this legislation and grant to the National Association of Women Veterans a charter as a fully recognized veterans service organization. The National Association of Women Veterans will serve all veterans but will offer a special sensitivity to women veterans and women's issues. I know that many Members of Congress served with dedicated and courageous women in World War II, Korea, the Dominican Republic, Vietnam, or Grenada. I call upon you now to remember and honor these valiant members of our Nation's Armed Forces by supporting this legislation to grant the National Association of Women Veterans a Federal charter.

Mr. President, I ask unanimous consent that the full text of the legislation be printed in the RECORD.

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

S. 1624

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CHARTER

SECTION 1. The National Association of Women Veterans, Inc., a nonprofit corporation organized under the laws of the State of Georgia, is hereby recognized as such and is granted a Federal charter.

CORPORATE POWERS

SEC. 2. The National Association of Women Veterans, Inc. (hereinafter in this Act referred to as the "corporation"), shall have only those powers granted to it through its articles of incorporation filed in the State in which it is incorporated and its constitution and bylaws, and subject to the laws of such State.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 3. The objects and purposes of the corporation are those stated in its articles of incorporation, constitution, and by laws and include a commitment to—

(1) uphold and defend the Constitution of the Untied States;

(2) promote and teach the American Way of Life;

(3) conduct and publish research on a nonpartisian basis concerning the contributions of women veterans and women currently serving in the military;

(4) compile and publish the history of women in military serivce and to keep that history current;

(5) honor outstanding women veterans and outstanding women currently in the military;

(6) encourage young women to choose a career in the military.

(7) sponsor meetings and seminars for women veterans;

(8) improve conditions for Women Veterans and develop channels of communications to assist Women Veterans;

(9) assist Women Veterans and other Veterans in need of assistance; and

(10) concentrate the efforts of the members of the corporation and Women Veterans generally to mutual helpfulness and service to their country.

SERVICE OF PROCESS

SEC. 4. With respect to service of process, the corporation shall comply with the laws of the state in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

MEMBERSHIP

SEC. 5. Except as provided in section 8, eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the constitution and bylaws of the corporation.

BOARD OF DIRECTORS

SEC. 6. Except as provided in section 8, the board of directors of the corporation, and the responsiblities of the board, shall be as provided in the constitution and bylaws of the corporation and in conformity with the laws of the State in which it is incorporated.

OFFICERS

SEC. 7. Except as provided in section 8, the officers of the corporation, and the election of such officers, shall be as provided in the constitution and bylaws of the corporation and in conformity with the laws of the State in which it is incorporated.

NONDISCRIMINATION

SEC. 8. In establishing the conditions of membership in the corporation and in determining the requirements for serving on the board of directors or as an officer of the corporation, the corporation may not discriminate on the basis of race, color, religion, sex, national origin, handicap, or age.

RESTRICTIONS ON CORPORATE POWERS

SEC. 9. (a) No Part of the income or assets of the corporation shall inure to any person who is a member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority by virture of this Act for any of its activities.

LIABILITY FOR ACTS OF OFFICERS AND AGENTS

SEC. 10. The Corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

BOOKS AND RECORDS: INSPECTION

SEC. 11. The corporation shall keep correct and complete books and records of accounts and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote. All books and records of the corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable state law.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 12. The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964, (36 U.S.C. 1101), is amended by inserting after paragraph (72) the following new paragraph:

"(73) The National Association of Women Veterans, Inc.".

ANNUAL REPORT

SEC. 13. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit of the corporation required by section 2 of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal laws", appoved August 30, 1964 (36 U.S.C. 1102). The report shall not be printed as a public document.

RESERVATION OF RIGHT TO ALTER, AMEND, OR REPEAL CHARTER

SEC. 14. The right to alter, amend, or repeal this charter is expressly reserved to the Congress.

DEFINITION OF "STATE"

SEC. 15. For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each of the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. 16. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986.

EXLCUSIVE RIGHT TO NAMES

SEC. 17. The Corporation shall have the sole and exclusive right to use the name "National Association of Women Veterans, Inc.", "The National Association of Women Veterans, Inc.", and "National Association of Women Veterans", and any such seals, emblems, and badges as the corporation may lawfully adopt. Noting in this section shall be construed to interfere or conflict with established or vested rights.

FAILURE TO COMPLY WITH RESTRICTIONS OR PROVISIONS

SEC. 18. If the corporation shall fail to comply with any of the restrictions or provisions of this Act, the charter granted by this Act shall expire.

By Mr. CRANSTON:

S. 1625. A bill to designate certain lands in the Los Padres National Forest as wilderness, to designate wild and scenic rivers, and for other purposes; to the Committee on Energy and Natural Resources.

CONDOR RANGE AND RIVERS ACT OF 1989

Mr. CRANSTON. Mr. President, today I am introducing the Condor Range and Rivers Act. This legislation designates seven wilderness areas and eight wild and scenic rivers in the Los Pardres National Forest, CA, prime habitat of the magnificent California condor. In all, the bill affords protection for 543,100 acres of national forest lands and 247 miles of river, as recommended by California conservationists.

The largest of the proposed wilderness areas is the Sespe Wilderness. This 280,300 area has rugged mountain and valley terrain, with elevations ranging from 3,750 to 6,730 feet, including 13 peaks over 5,000 feet. From the mountain tops one has spectacular views of the Pacific Ocean and the Channel Islands. Also at these higher elevations one finds stands of mixed conifers, Jeffrey, Ponderosa and Sugar Pine, incense cedar, and Big Cone Spruce. Pinyon-juniper, chaparral, and sagebrush characterize the rest of the wilderness. There are also 53 known archeological sites from the Chumash Indian culture in the proposed wilderness.

In addition, the bill designates the Pinos-Badlands Wilderness comprising 85,000 acres, the Matilija Wilderness comprising 32,000 acres, the Garcia Wilderness comprising 16,500 acres, Silver Peak Wilderness comprising 14,500 acres, and expands the Vantana Wilderness by 63,000 acres and the San Rafael Wilderness by 51,600 acres.

The legislation also adds 55 miles of the Sespe Creek as a component of the National Wild and Scenic Rivers System. This designation would protect the best trout stream in southern California, a unique steelhead fishery, important condor habitat, spectacular rock formations, and opportunities for both primitive and developed recreation. The best remaining free-flowing river in southern California, the Sespe indeed deserves wild and scenic river protection.

The bill also includes 49 miles of Piru Creek, 20 miles of Matilija Creek, 51 miles of Sisquoc Creek, 5.5 miles of Lopez Creek, 16 miles of the Arroyo Seco River, 23 miles of the Little Sur River, and 27.4 miles of the Big Sur River in the National Wild and Scenic Rivers System. Finally, it calls for a study of additional segments of Lopez Creek and the Big Sur and Little Sur Rivers for wild and scenic designation.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 1625

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 "Condor Range and Rivers Act of 1989".

SEC. 2. DESIGNATION OF WILDERNESS AREAS.

In furtherance of the purposes of the Wilderness Act, the following lands in the State of California are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System—

(1) certain lands in the Los Padres National Forest, California, which comprise approximately 280,300 acres, as generally de-

picted on a map entitled "Sespe Wilderness—Proposed", dated September 1989, and shall be known as the Sespe Wilderness.

(2) certain lands in the Los Padres National Forest, California, which comprise approximately 85,000 acres, as generally depicted on a map entitled "Pinos-Badlands Wilderness—Proposed", dated September 1989, and shall be known as the Pinos-Badlands Wilderness; and

(3) certain lands in the Los Padres National Forest, California, which comprise approximately 32,000 acres, as generally depicted on a map entited "Matilija Wilderness—Proposed", dated September 1989, and shall be known as the Matilija Wilderness;

(4) certain lands in the Los Padres National Forest, California, which comprise approximately 51,600 acres, as generally depicted on a map entitled "San Rafael Wilderness Addition—Proposed", dated September 1989, and which lands are hereby incorporated in, and shall be deemed to be a part of the San Rafael Wilderness;

(5) certain lands in the Los Padres National Forest, California, which comprise approximately 16,500 acres, as generally depicted on a map entitled "Garcia Wilderness—Proposed," dated September 1989, and shall be known as the Garcia Wilderness;

(6) certain lands in the Los Padres National Forest, California, which comprise approximately 14,500 acres, as generally depicted on a map entitled "Silver Peak Wilderness—Proposed", dated September 1989, and shall be known as the Silver Peak Wilderness;

(7) certain lands in the Los Padres National Forest, California, which comprise approximately 63,200 acres, as generally depicted on a map entitled "Ventana Wilderness Addition—Proposed", dated September 1989, and which lands are hereby incorporated in, and shall be deemed to be a part of the Ventana Wilderness;

SEC. 3. ADMINISTRATION OF WILDERNESS AREAS.

Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act: *Provided*, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. FILING OF MAPS AND DESCRIPTIONS.

As soon as practicable after the enactment of this Act, a map and a legal description of each wilderness area designated in section 2 shall be filed with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and each such map and description shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia.

SEC. 5. DESIGNATION OF WILD RIVERS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraphs at the end:

( ) SESPE CREEK, CALIFORNIA.—The 55 mile segment from its headwaters to its confluence with the Santa Clara River, to be administered by the Secretary of Agriculture.

( ) SISQUOC RIVER AND TRIBUTARIES, CALIFORNIA.—The 33 mile segment of the Sisquoc from its source to the southwest corner of section 23, township 9 north, range 30 west, the 3.5 mile segment of the South Fork Sisquoc from its source to its confluence with the main stem, and the 14.5 mile segment of Manzana Creek from its source to its confluence of the main stem of the Sisquoc, to be administered by the Secretary of Agriculture.

( ) BIG SUR RIVER, CALIFORNIA.—The 18.9 mile segment from its sources to the boundary of the Ventana Wilderness, to be administered by the Secretary of Agriculture.

( ) LITTLE SUR RIVER, CALIFORNIA.—The 15.5 mile segment from its sources to the Los Padres National Forest Boundary, to be administered by the Secretary of Agriculture.

( ) ARROYO SECO RIVER, CALIFORNIA.—The 16 mile segment from its source to the Los Padres National Forest boundary, to be administered by the Secretary of Agriculture.

( ) LOPEZ CREEK, CALIFORNIA.—The 5.5 mile segment from its source near Gay Mountain to the boundary of the Santa Lucia Wilderness, to be administered by the Secretary of Agriculture.

( ) MATILIJA CREEK, CALIFORNIA.—The 20 mile segment from its source to Matilija Reservoir, to be administered by the Secretary of Agriculture.

( ) PIRU CREEK, CALIFORNIA.—The 35 mile segment from its sources to Pyramid Reservoir and the 14 mile segment from Pyramid Dam to Piru Reservoir, to be administered by the Secretary of Agriculture.

SEC. 6. STUDY RIVERS.

Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following new paragraphs at the end:

( ) BIG SUR RIVER, CALIFORNIA.—The 8.5 mile segment from the boundary of the Ventana Wilderness to the Pacific Ocean.

( ) LITTLE SUR RIVER, CALIFORNIA.—The 2 mile segment of the South Fork Little Sur from the Los Padres National Forest boundary to its confluence with the North Fork Little Sur, the 3 mile segment of the North Fork Little Sur from the Los Padres National Forest boundary to its confluence with the South Fork Little Sur, and the 2.5 mile segment of the main stem from the confluence of the North and South Forks Little Sur to the Pacific Ocean.

( ) LOPEZ CREEK, CALIFORNIA.—The 5.5 mile segment from the boundary of the Santa Lucia Wilderness to the Los Padres National Forest boundary.

By Mr. DOMENICI:

S. 1626. A bill to establish within the Office of the Minority Economic Impact of the Department of Energy programs involving loans and grants to enhance the development and operation of minority business enterprises with respect to energy-related business, to amend the Nuclear Waste Policy Act of 1982 to permit the investment of certain funds in the Minority Bank Deposit Program of the Department of the Treasury, and for other purposes; to the Committee on Energy and Natural Resources.

DEPARTMENT OF ENERGY MINORITY ECONOMIC IMPACT REVITALIZATION ACT

Mr. DOMENICI. Mr. President, I am pleased to introduce today what I choose to call the Mickey Leland Minority Economic Impact Revitalization Act.

This legislation would restructure and boost the Department of Energy's Office of Minority Economic Impact, so as to enhance minority involvement in American science and the development of energy-related technologies.

This office has had some degree of success in the past, and if we can give it some real financing tools and permit it to get involved in encouraging entrepreneurial involvement in science and development of energy-related technologies, we will add considerably to the significance of this relatively small aspect of the Department of Energy. The OMEI has already encouraged significant minority participation in science and technology and, in particular, with respect to education.

It was my privilege to work on this bill and this idea with the very distinguished Member of the House, Representative Mickey Leland, prior to his tragic death. We had completed this work, and he had introduced it just prior to leaving.

I have been following up with it, and I am hopeful that it will proceed through the House. There are a few differences on some aspects of this bill; and some of the extra financing may be a bit controversial, but we clearly want to put some additional money into the effort of helping promote economic development and science and technology development by minorities in my State and other States.

It was a pleasure working with Representative Leland on it. I wish we could have passed it together. It was not a major part of his great involvement in serious issues, but it was a privilege and the first time I worked with him on a measure. I want to acknowledge that it is substantially attributable to his work and the work of his staff, therefore, I am suggesting that this bill be named in his honor.

Mr. President, if we are to remain economically competitive in an increasingly scientific world, we need to use fully all the resources at our disposal—human, economic, and technological. To do this we must bring the capabilities and talent we already have within our Nations laboratories together with the human and economic potential in all Americans.

The measure I am introducing today draws upon the tremendous science and technology resources of the Department of Energy to actively get minorities involved in developing energy-related technologies. This bill aims to help improve minority involvement in areas which are of tremendous economic potential and importance, and with which minorities have traditionally not been much involved.

It is an important endeavor to both develop fully our energy-related tech-

nologies but also to assure the benefits of these technologies are enjoyed by all Americans.

To help accomplish this, the Office of Minority Economic Impact [OMEI] was created within the Department of Energy in 1978. The legislation I am introducing today would enhance the capabilities of the OMEI in several key areas.

The first part of this legislation would create a working capital program designed to enhance the development and operation of Energy-Related Minority-Owned Business Enterprises [ERMBE]. When the OMEI was created at DOE, it was intended to research the impact of energy policies and developments on minority communities, as well as improve and expand upon the number of ERMBE's.

While accomplishing the research task, OMEI has been unable to do much to effect the second. This legislation would authorize a $5 million loan fund, and a $5 million venture capital program to help ERMBE's get started and commercialize DOE technologies. This would give OMEI the ability to provide necessary technical and fiscal assistance to help minority businesses move into energy-related fields and develop.

The second part of the legislation would convert the OMEI's current "bid or proposal loan program" into a grant program. OMEI currently loans funds to ERMBE's to help them develop proposals or bids for DOE contracts.

Unfortunately, the program has functioned to hurt ERMBE's since the loans place the ERMBE's in debt without a guarantee of winning a contract. If they do not win the contract they are in a worse financial condition than before the loan. This bill would simply convert the program to an outright grant program.

The last part of this bill is designed to improve upon the current Minority Bank Deposit Program [MBDP] operated by the Department of Treasury. Currently, the Federal Government deposits petroleum overcharge escrow funds it holds into qualifying minority-owned banks.

The Department of Energy administers this program in which the escrowed funds are used to purchase certificates of deposit from minority institutions, thereby making the resulting capital available for use in minority communities.

While currently funded at $35 million, the program could do much more to generate minority economic development if a larger, and more stable, pool of funds could be used by the program. By getting more money for minority banks to lend out, these banks could leverage even more private funds to work in minority communities.

The nuclear waste fund would provide a substantial resource of approximately $80 million, which would also be a very stable funding source. This fund is collected by the DOE and is currently invested in Treasury securities.

This last provision proposes to deposit the nuclear waste fund into the Minority Bank Deposit Program [MBDP]. If deposited in the MBPD, the funds would continue to receive the same rate of interest and be afforded the same FDIC deposit protections.

In closing, Mr. President, I would again like to take this opportunity to salute Representative Leland not only for his work on this important legislation, but also for his work and commitment throughout his career to improve the condition of minorities and all his fellow men.

I hope my colleagues will examine this legislation we have crafted, and I look forward to working with them on this matter.

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. 1626

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, This Act may be cited as the "Mickey Leland Minority Economic Impact Revitalization Act".

SEC. 2. DEFINITIONS.

For purposes of this Act, the term—

(1) "central energy-related minority business enterprise development center" means the management development center established by the Office to create energy-related minority and women-owned business enterprises;

(2) "Department" means the Department of Energy;

(3) "Director" means the Director of the Office of Minority Economic Impact of the Department;

(4) "energy-related" means related to—

(A) the production, distribution, or conservation of any of the Nation's energy reserves with any public or commercial provider of energy or any Federal, State, or local agency requiring energy-related goods or services, or

(B) the commercialization of any research and development effort or technology defined by the central Energy-Related Minority Business Enterprise Center of the Department as energy-related;

(5) "loan committee" means the committee established pursuant to section 103(b);

(6) "minority" means any black American, Native American, Hispanic American, Asian Pacific American, or Subcontinent Asian American

(7) "minority financial institution" means any depository institution described in clause (i), (ii), (iii), (v), or (vi) of section 19(b)(1)(A) of the Federal Reserve Act—

(A) more than 50 percent of the ownership or control of which is held by minority persons; and

(B) more than 50 percent of the net profit or loss of which accrues to minority persons;

(8) "minority business enterprise" means any business enterprise which is at least 51 percent owned by minority persons;

(9) "Office" means the Office of Minority Economic Impact of the Department;

(10) "participating financial institution" means an insured institution, as defined in section 3(h) of the Federal Deposit Insurance Act, that participates under this section in the provision of loans to minority business enterprises that enter into energy-related contracts;

(11) "Secretary" means the Secretary of Energy; and

(12) "venture capital firm or organization" means any financial institution established to provide venture capital funds and services.

TITLE I—MINORITY ECONOMIC IMPACT REVITALIZATION.

SEC. 101. WORKING CAPITAL PROGRAM.

(a) GENERAL AUTHORITY.—The Secretary, acting through the Director, is authorized to establish a working capital program to provide loans and venture capital to minority and women-owned business enterprises. The purposes of such program shall be to—

(1) to commercialize the technologies developed and proven through Department research, development and demonstration efforts;

(2) increase the number of minority and women-owned business enterprises that enter into private and public sector energy-related contracts;

(3) strengthen the competitive and productive capabilities of minority and women-owned business enterprises that conduct business with the Department and its grantees, recipients, contractors, and subcontractors; and

(4) provide start-up capital for minority and women-owned business enterprises in energy-related fields.

(b) ADMINISTRATIONS OF PROGRAM COMPONENTS.—

(1) LOANS.—The loan component of the working capital program shall be administered under the terms of a cooperative agreement entered into by the Secretary with the administrative financial institution selected under section 103 and in accordance with section 105.

(2) VENTURE CAPITAL.—The venture capital component of the working capital program shall be designed and administered by the Secretary through the central energy-related minority business enterprise development center in conjunction with a venture capital partnership established under section 106.

SEC. 102. ELIGIBILITY.

A business entity is eligible to participate in the program established pursuant to this Act if—

(1) such entity is a minority business enterprise or a women-owned business enterprise currently certified pursuant to standards promulgated by the Secretary and administered by—

(A) an agency, department, or office of the Federal Government or of any State or local government, or

(B) an agent or contractor, if specifically designated to certify businesses as minority or women-owned enterprises; and

(2) such entity is—

(A) commencing or is engaged in operations in an energy-related commercial or energy technology transfer enterprise, or

(B) is performing services under an energy-related contract.

SEC. 103. ADMINISTRATIVE FINANCIAL INSTITUTION.

(a) SELECTION.—The Secretary shall select an administrative financial institution to administer loans to minority and women-owned business enterprises pursuant to section 105. Such selection shall be from among bids submitted to him for such selection.

(b) FUNCTIONS.—The Secretary, in consultation with the administrative financial institution and the loan committee, shall establish policies and procedures governing loans pursuant to section 105. Such administrative financial institution also shall provide administrative and other support for the loan component of the working capital program.

(c) LOAN COMMITTEE.—(1) The selected administrative financial institution shall establish a loan committee to review and recommend to the Secretary the approval or denial of applications of loans pursuant to section 105. The loan committee also shall advise the Secretary on such other matters as he should deem appropriate to carry out the purposes of this act.

(2) The loan committee shall consist of a chairman and four other members who shall be appointed, on the advise of the Secretary, by the administrative financial institution.

SEC. 104. PARTICIPATING FINANCIAL INSTITUTIONS.

(a) The Secretary, in consultation with the administrative financial institution, shall establish policies and procedures providing for the participation of financial institutions other than the administrative financial institution in the loan component of the working capital program under this section. A minority business enterprise may request the participation of a specific financial institution with which it conducts business. Other financial institutions may so qualify, at the discretion of the Secretary.

(b) A minority financial institutions participating in the Minority Financial Institutions Deposit Program of the Office shall qualify as participating financial institutions.

SEC. 105. LOAN COMPONENT OF WORKING CAPITAL PROGRAM.

(a) LOAN APPLICATION PACKAGES.—(1) To apply for a loan under this section, the minority or women-owned business enterprise shall submit its loan application package to the administrative financial institution. Such package shall include any documentation required by the Secretary and the loan committee.

(2) If such package contains incomplete information to the extent that a proper evaluation of the credit history of the business enterprise cannot be made by the loan committee, the administrative financial institution shall return the package to the business enterprise with institutions concerning the information necessary to complete the application package.

(3) The administrative financial institution shall forward completed application packages to the loan committee for its review and recommendation to the Secretary pursuant to section 103(b).

(b) LOAN PROCEDURES.—Before a loan request can be forwarded to the Secretary for his approval—

(1) A request for a loan commitment of less than $100,000 shall require the approval of a majority of the members of the loan committee; and

(2) A request for a loan commitment of $100,000 or more shall require the approval of the majority of the loan committee and of the Director.

(c) LOAN TERMS.—(1) Except as provided in paragraph (2), the term of any loan made under this section may not exceed five (5) years.

(2) The Secretary may approve a loan for a period not to exceed seven (7) years if the loan committee determines that the financial soundness of the minority or women-owned business enterprise warrants such longer term.

(d) LOAN CONDITIONS.—The Secretary, on the advise of the loan committee, shall—

(1) require reasonable repayment terms in accordance with the objectives of this Act; and

(2) prescribe regulations concerning default and collection of loans.

SEC. 106. VENTURE CAPITAL PARTNERSHIPS.

Pursuant to the venture capital component of the working capital program under section 101(b)(2), the Secretary may establish venture capital partnerships with venture capital firms and organizations to carry out the purposes of this act.

SEC. 107. TECHNICAL AND ADVISORY ASSISTANCE.

(a) In the event that a minority or women-owned business enterprise needs technical or managerial assistance, it may request assistance through the central Energy Related Minority Business Enterprise Center of the Department.

(b)(1) The Secretary may establish such advisory committees as he deems appropriate to assist him in the performance of their functions.

(2) Members of such advisory committees, other than full-time employees of the Federal government, may be allowed travel expenses, including a per diem allowance in lieu of subsistence (as authorized by section 5703 of title 5, United States Code, with respect to individuals serving in the Federal government without pay) while attending meetings of such committees or while otherwise serving at the request of the Secretary while away from their residences or regular places of business.

(c) The Federal Advisory Committee Act (Public Law 92-463) shall not apply with respect to such committees.

SEC. 109. CONVERSION OF BID OR PROPOSAL LOAN PROGRAM INTO GRANT PROGRAM.

(a) GENERAL.—Section 211 of the Department of Energy Organization Act (42 U.S.C. 7141) is amended—

(1) in subsection (c), by striking "shall" each place such term appears and inserting "may";

(2) in subsection (d), by striking "may" each place such term appears and inserting "shall"; and

(3) by amending subsection (e) to read as follows:

"(e)(1) The Secretary, acting through the Office, shall provide financial assistance in the form of grants to any minority business enterprise under such rules as the Secretary shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent the Secretary considers appropriate.

"(2) The Secretary shall limit the use of such financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 110. ADDITIONAL PERSONNEL.

The Secretary is authorized to hire not less than an additional 20 full-time officers and employees to administer the programs authorized under this act.

SEC. 111. COORDINATION OF DEPARTMENT'S HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAMS.

The Office of Minority Economic Impact shall coordinate, consolidate, and develop the activities and programs of the Department involving historically black colleges and universities.

SEC. 112. BANK DEPOSIT FINANCIAL ASSISTANCE PROGRAM.

The Office of Minority Economic Impact shall coordinate and develop the Minority Financial Institution Deposit Program of the Department of Energy.

SEC. 113. AUTHORIZATIONS OF APPROPRIATIONS.

(a) WORKING CAPITAL PROGRAMS.—There are hereby authorized to be appropriated for each fiscal year beginning with fiscal year 1991, not to exceed—

(1) $5,000,000 for the loan component of the program established under section 101(b)(1); and

(2) $5,000,000 for the venture capital component of the program under section 101(b)(2).

(b) ECONOMIC DEVELOPMENT PROGRAM.—There are hereby authorized to be appropriated for each fiscal year beginning with fiscal year 1991, $2,000,000 to carry out an economic development program within the Office involving, among other functions, the establishment and operation of a central energy-related minority business enterprise development center.

TITLE II—NUCLEAR WASTE FUND

SEC. 201. ADMINISTRATION OF NUCLEAR WASTE FUND.

Section 302(e)(3) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(e)(3)) is amended—

(1) by striking "in obligation of the United States—" and inserting "in—

"(A) obligations of the United States—"

(2) by redesignating subparagraphs (A) and (B), as clauses (i) and (ii);

(3) by striking the period after "borrowings" and inserting a semicolon and "and"; and

(4) by adding at the end the following new subparagraph:

"(B) the Minority Bank Deposit Program of the Department of the Treasury.".

By Mr. MOYNIHAN (for himself, Mr. DANFORTH, Mr. BOREN, Mr. CHAFEE, Mr. PRYOR, Mr. HEINZ, and Mr. DASCHLE):

S. 1627. A bill to amend the Internal Revenue Code of 1986 to generally treat bonds issued for section 501(c)(3) organizations in a manner similar to Government bonds; to the Committee on Finance.

NONPROFIT ORGANIZATIONS TAX-EXEMPT BOND REFORM ACT

Mr. MOYNIHAN. Mr. President, I rise to introduce legislation that will undo what ought never have been done: the classification of bonds of private nonprofit educational institutions and hospitals as those of a private activity. I am joined by my distinguished colleague, Senator DANFORTH, as well as five other Members of the Senate Finance Committee, Senators BOREN, CHAFEE, PRYOR, HEINZ, and DASCHLE.

The Tax Reform Act of 1986 imposed the private activity label on

bonds issued on behalf of nonprofit institutions, collectively known as section 501(c)(3) organizations, thereby obscuring the longstanding recognition in the Internal Revenue Code of the public purposes served by these private institutions. Prior to 1986, the tax law treated private nonprofit colleges, universities, and hospitals essentially the same as governmental entities. Governmental units and section 501(c)(3) organizations were both classified as exempt persons, and accorded the benefits of tax-exempt bonds on the same basis. This represented an explicit recognition in the code of the public purposes served by nonprofit private institutions.

The 1986 act's elimination of the exempt person category and the classification of section 501(c)(3) organizations bonds as private activity bonds has put nonprofit institutions in a lesser status, with their tax-exempt financings vulnerable to restrictions devised for commercial undertakings. Most significant among the restrictions imposed in the 1986 act was the $150 million limitation on the amount of bonds that any nonprofit institution—other than a hospital—may have outstanding. We were successful in 1986 in keeping other private activity bond strictures from being imposed on nonprofits—the minimum tax and statewide volume caps, for example. But the classification of nonprofit institutions' bonds as involving a private activity is the heart of the matter. A distinguishing feature of American society is the singular degree to which we maintain an independent sector—private institutions in the public service, if I may borrow a phrase from New York University. This is no longer so in most of the democratic world; it never was so in the rest. It is a treasure; a distinguishing feature of the American democracy. It is a liberty—if I could use a term a medical lawyer might have used—not to be lost in the interstices of the Tax Code. But mark, it will be if we do not act.

In the age of capital intensive science, to name but one aspect of the matter, a generation of financing under the present restrictions will profoundly change the distribution of major research among the leading institutions in this country. If you accept the judgment of the Association of American Universities that its 58 members represent the ranking research facilities of North America, then you will note that just about half—28—are private. Restricting private research institutions' access to capital financing in relation to public institutions will have a predictable, inevitable impact over a generation. In an age of big science, as scientists say, if we were to continue in this mode, we would not recognize higher education. If I can use an example from California, with this kind of differential in capital costs, we would look up one day and find Stanford to be an institution of the greatest quality as an undergraduate teaching facility—with a fine law school and excellent liberal arts degree program—but with all the big science projects in Berkeley, the State institution.

The legislation that we introduce today will restore the status of nonprofit educational and health institutions, making their access to tax-exempt financing equal to that of their public counterparts.

This parity of status had long been embodied in the Internal Revenue Code, in recognition of the public purposes served by private educational, charitable, religious and other section 501(c)(3) nonprofit institutions. In 1968, when Congress first enacted provisions designed to limit the use of tax-exempt financing by private, nongovernmental enterprises, a critical distinction was made. The new restrictions were to apply to the activities of everyone except exempt persons. An exempt person was thereupon defined as:

(A) a governmental unit, or

(B) an organization described in section 501(c)(3) * * *

[Section 107(a) of the Revenue Adjustment Act of 1968, amending section 103 of the Internal Revenue Code of 1954.]

Now here we had something important. Private educational, charitable and other nonprofit institutions are said to be imbued with a public purpose such that they were specifically equated for tax-exempt bond purposes with sovereign institutions of government in our Federal system. This was an immunity, if you like, of the largest consequence. And this deemed equivalence of 501(c)(3) organizations and governmental units was preserved in all critical respects in subsequent revisions of the law in this area—perhaps most significantly in 1984, when statewide volume limits were imposed on most nongovernmental tax-exempt bonds.

But the principle of permitting tax-exempt bonds for private nonprofit colleges, universities and hospitals on a parity with their public counterparts has never been embraced by tax theorists. Stanley Surrey, and others, were dismayed to see the right to tax-exempt financing extended beyond a very limited range of core governmental undertakings. Indeed, the very concept of tax-exempt finance is objectionable to many tax theorists, as an inefficient—and therefore irrational—means of delivering a Federal subsidy to State and local governments. Faced with the impossibility of eliminating tax-exempt bonds, the task for the theoritician had been to contain their growth. This thinking was evidenced in the tax reform proposals advanced by the Reagan Administration. Both the initial Treasury Department plan of November 1984 and the revised plan endorsed by the President in May 1985 would have cut back on bond volume by completely eliminating tax-exempt financing for 501(c)(3) organizations.

The Senate Finance Committee version of the Tax Reform Act of 1986 rejected this idea, opting to preserve the essential equivalency of 501(c)(3) organizations and governmental units in their access to tax-exempt financing. The House Ways and Means Committee version took a different view, imposing substantial new restrictions on tax-exempt bonds for 501(c)(3) organizations. The House bill placed 501(c)(3) bonds under the statewide volume cap for the first time, made them subject to the alternative minimum tax, and imposed a $150 million cap on the amount of bonds that any single institution could have outstanding—the per institution cap. While the final version settled in the conference rejected the first two House restrictions, the per institution cap and other lesser restrictions were accepted. Alas, the long-standing equivalency of 501(c)(3) organizations and governmental units was compromised—a fundamental mistake, which today we set out to correct.

Our goal is to restore equal access to capital financing between public and private institutions serving in the fields of education, health care and research. And in no small part to re-establish recognition in the Tax Code of the essential public purposes served by private nonprofit institutions. The extent of the private nonprofit sector's contributions in these fields in this country is unique. The beginnings of higher education in America were private sector initiatives. It was almost two centuries before State-sponsored institutions appeared. In time State institutions would enroll the greater proportion of students, but private colleges and universities continue to be vigorous and typically growing institutions. American higher education is unique in the degree to which its major research institutions are private—about an even split—and to the extent that the private sector contains so many of the most sought after small undergraduate institutions.

The role of private nonprofit hospitals is also a central one. Private nonprofit institutions constitute 60 percent of our Nation's community hospitals—nonfederal, short-term, general hospitals—and 70 percent of all community hospital beds. Private nonprofit hospitals provide a disproportionate amount of services on the forefront of medical technology, such as organ transplants, open-heart facilities, radiation therapy, and genetic counselling. Moreover, most of our Nation's medical education and research is conducted in nonprofit hospitals.

Preservation of equal access to tax-exempt financing is a critical element in maintaining the vigor of private initiatives in higher education and health care, for both are now capital intensive undertakings. A recent National Science Foundation study of the country's private Ph.D.-granting universities estimated that more than 26 percent of these institutions' needed capital expansion for research facilities between now and 1991 will have to be financed through tax-exempt bonds. Moreover, of the 19 private universities that rank in the top 50 in research undertakings, 11 have been foreclosed from tax-exempt financing as a result of the $150 million per institution limit, and another 3 anticipate the same result in the next 2 years. The National Science Foundation further estimates that for university research facilities, about $2.50 of needed construction is currently being deferred for every $1.00 planned. Approximately $3.60 in needed repairs and renovations are being deferred for every $1.00 planned.

The future capital needs of private nonprofit hospitals are also extensive. In my own State of New York, nonprofit hospitals will require about $2.5 billion in capital expansion over the next 2 years—for modernization and replacement of facilities, not expansion of bedspace. The comparable figure for public institutions is $1 billion.

Mr. President, the capital needs of private, nonprofit universities and hospitals merit the very serious attention of this body. The most recent report from the Council for Aid to Education, summarizing giving patterns to higher education in 1987-1988, notes that capital gifts are down by $546 million, or 13.4 percent. Senator BOREN has introduced legislation, of which I am a cosponsor, that would restore a full fair market value charitable deduction for gifts of appreciated property to nonprofit institutions. This is one area that merits our study. This bill is another.

Mr. President, we are perhaps the only democratic nation left in which private institutions, not controlled by government, not financed by government, are deeply involved in activities vital to the public good. The legislation that we introduce today will ensure that tax-exempt financing remains available to these most important institutions on a parity with their public counterparts.

Mr. President, I ask unanimous consent that the text of the bill and an explanation 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. 1627

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 "Nonprofit Organizations Tax-exempt Bond Reform Act of 1989".

SEC. 2. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO GOVERNMENTAL BONDS.

(a) IN GENERAL.—Subsection (a) of section 150 of the Internal Revenue Code of 1986 is amended by striking paragraphs (2) and (4), by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) EXEMPT PERSON.—

"(A) IN GENERAL.—The term 'exempt person' means—

"(i) a governmental unit, or

"(ii) a 501(c)(3) organization, but only with respect to its activities which do not constitute unrelated trades or businesses as determined by applying section 513(a).

"(B) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term 'governmental unit' does not include the United States or any agency or instrumentality thereof.

"(C) 501(c)(3) ORGANIZATION.—The term '501(c)(3) organization' means any organization described in section 501(c)(3) and exempt from tax under section 501(a)."

(b) REPEAL OF QUALIFIED 501(c)(3) BOND DESIGNATION.—Section 145 of the Internal Revenue Code of 1986 is repealed.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 141(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking "government use" in subparagraph (A)(ii)(I) and subparagraph (B)(ii) and inserting "exempt person use",

(B) by striking "a government use" in subparagraph (B) and inserting "an exempt person use",

(C) by striking "related business use" in subparagraph (A)(ii)(II) and subparagraph (B) and inserting "related private business use",

(D) by striking "RELATED BUSINESS USE" in the heading of subparagraph (B) and inserting "RELATED PRIVATE BUSINESS USE", and

(E) by striking "GOVERNMENT USE" in the heading thereof and inserting "EXEMPT PERSON USE".

(2) Subparagraph (A) of section 141(b)(6) of such Code is amended by striking "a governmental unit" and inserting "an exempt person".

(3) Paragraph (7) of section 141(b) of such Code is amended—

(A) by striking "government use" and inserting "exempt person use", and

(B) by striking "GOVERNMENT USE" in the heading thereof and inserting "EXEMPT PERSON USE".

(4) Section 141(b) of such Code is amended by striking paragraph (9).

(5) Paragraph (1) of section 141(c) of such Code is amended by striking "governmental units" and inserting "exempt persons".

(6) Section 141 of such Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) CERTAIN ISSUES USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if any portion of the net proceeds of the issue are to be used (directly or indirectly) by an exempt person described in section 150(a)(2)(A)(ii) to provide residential rental property for family units.

"(2) EXCEPTION FOR BONDS USED TO PROVIDE QUALIFIED RESIDENTIAL RENTAL PROJECTS.—Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

"(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

"(B) qualified residential rental projects (as defined in section 142(d)), or

"(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

"(3) SUBSTANTIAL REHABILITATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of section 48(g)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

"(B) EXCEPTION.—For purposes of subparagraph (A), clause (ii) of section 48(g)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 48(g)(1)(C)(i) where appropriate due to circumstances not within the control of the owner."

(7) Section 141(f) of such Code, as redesignated by paragraph (6), is amended—

(A) by adding "or" at the end of subparagraph (E),

(B) by striking ", or" at the end of subparagraph (F), and inserting in lieu thereof a period, and

(C) by striking subparagraph (G).

(8) The last sentence of section 144(b)(1) of such Code is amended by striking "(determined" and all that follows to the period.

(9) Clause (ii) of section 144(c)(2)(C) of such Code is amended by striking "governmental unit" and inserting "exempt person".

(10) Section 146(g) of such Code is amended—

(A) by striking paragraph (2), and

(B) by redesignating the remaining paragraphs after paragraph (1) as paragraphs (2) and (3), respectively.

(11) The heading of section 146(k)(3) of such Code is amended by striking "GOVERNMENTAL" and inserting "EXEMPT PERSON".

(12) The heading of section 146(m) of such Code is amended by striking "GOVERNMENT" and inserting "EXEMPT PERSON".

(13) Subsection (h) of section 147 of such Code is amended to read as follows:

"(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE REVENUE BONDS AND QUALIFIED STUDENT LOAN BONDS.—Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond."

(14) Section 147 of such Code is amended by striking paragraph (4) of subsection (b) and redesignating paragraph (5) of such subsection as paragraph (4).

(15) Subparagraph (F) of section 148(d)(3) of such Code is amended—

(A) by striking "or which is a qualified 501(c)(3) bond", and

(B) by striking "GOVERNMENTAL USE BONDS AND QUALIFIED 501(C)(3)" in the heading thereof and inserting "EXEMPT PERSON".

(16) Subclause (II) of section 148(f)(4)(B)(ii) of such Code is amended by striking "(other than a qualified 501(c)(3) bond)".

(17) Subparagraph (A) of section 148(f)(7) of such Code is amended by striking "(other than a qualified 501(c)(3) bond)".

(18) Paragraph (2) of section 149(d) of such Code is amended—

(A) by striking "(other than a qualified 501(c)(3) bond)", and

(B) by striking "CERTAIN PRIVATE" in the heading thereof and inserting in lieu thereof "PRIVATE".

(19) Section 149(e)(2) of such Code is amended—

(A) by striking "which is not a private activity bond" in the second sentence and inserting "which is a bond issued for an exempt person described in section 150(a)(2)(A)(i)", and

(B) by adding at the end thereof the following new sentence: "Subparagraph (D) shall not apply to any bond which is not a private activity bond but which would be such a bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person."

(20) The heading of subsection (b) of section 150 of such Code is amended by striking "TAX-EXEMPT PRIVATE ACTIVITY BONDS" and inserting "CERTAIN TAX-EXEMPT BONDS".

(21) Paragraph (3) of section 150(b) of such Code is amended—

(A) by inserting "owned by a 501(c)(3) organization" after "any facility" in subparagraph (A),

(B) by striking "any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond" in subparagraph (A) and inserting "any bond which, when issued, purported to be a tax-exempt bond, and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person", and

(C) by striking the heading thereof and inserting "BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—".

(22) Paragraph (5) of section 150(b) of such Code is amended—

(A) by striking "private activity" in subparagraph (A),

(B) by inserting "and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person" after "tax-exempt bond" in subparagraph (A),

(C) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) such facility is required to be owned by an exempt person, and", and

(D) by striking "GOVERNMENTAL UNITS OR 501(C)(3) ORGANIZATIONS" in the heading thereof and inserting "EXEMPT PERSONS".

(23) Section 150 of such Code is amended by adding at the end thereof the following new subsection:

"(f) CERTAIN RULES TO APPLY TO BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

"(1) IN GENERAL.—Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person unless such bond satisfies the requirements of subsections (b) and (f) of section 147.

"(2) SPECIAL RULE FOR POOLED FINANCING OF 501(C)(3) ORGANIZATION.—

"(A) IN GENERAL.—At the election of the issuer, a bond described in paragraph (1) shall be treated as meeting the requirements of section 147(b) if such bond meets the requirements of subparagraph (B).

"(B) REQUIREMENTS.—A bond meets the requirements of this subparagraph if—

"(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

"(ii) each loan described in clause (i) satisfies the requirements of section 147(b) (determined by treating each loan as a separate issue),

"(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

"(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued)."

(24) Section 1302 of the Tax Reform Act of 1986 is repealed.

(25) Subparagraph (C) of section 57(a)(5) of such Code is amended by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(26) Paragraph (3) of section 103(b) of such Code is amended by inserting "and section 150(f)" after "section 149".

(27) Paragraph (3) of section 265(b) of such Code is amended—

(A) by striking clause (ii) of subparagraph (B) and inserting the following:

"(ii) CERTAIN BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of clause (i)(II), there shall not be treated as a private activity bond any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 (or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A))."; and

(B) by striking "(other than a qualified 501(c)(3) bond, as defined in section 145)" in subparagraph (C)(ii)(I).

(f) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 1989.

(2) SPECIAL RULE FOR CERTAIN BONDS ISSUED AFTER DECEMBER 31, 1989.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any bond which—

(i) is issued after December 31, 1989, and

(ii) is part of an issue which is subject to any transitional rule under subtitle B of title XIII of the Tax Reform Act of 1986.

(B) ELECTION OUT.—This paragraph shall not apply to any issue with respect to which the issuer elects not to have this paragraph apply.

EXPLANATION OF NONPROFIT ORGANIZATIONS TAX-EXEMPT BOND ACT OF 1989

PRESENT LAW

The Internal Revenue Code of 1986 ("the Code") generally excludes from income interest on State and local government bonds if the bonds are issued to finance direct activities of these governments (Code sec. 103). Interest on bonds issued by these governments to finance activities of other persons, *e.g.*, private activity bonds, is taxable unless a specific exception is included in the Code. One such exception is for private activity bonds issued to finance activities of charitable organizations described in Code section 501(c)(3) ("section 501(c)(3) organizations") when the activities do not constitute an unrelated trade or business (Code sec. 141(e)(1)(G)).

Classification of section 501(c)(3) organization bonds as private activity bonds

Before enactment of the Tax Reform Act of 1986, States and local governments and section 501(c)(3) organizations both were defined as "exempt persons, under the Code bond provisions, and their bonds generally were subject to the same requirements. As exempt persons, section 501(c)(3) organizations were not treated as "private" persons, and their bonds were not "industrial development bonds" or "private loan bonds" (the predecessor categories to current private activity bonds).

Under present law, a bond is a private activity bond if its proceeds are used in a manner violating either (i) a private business test or (ii) a private loan test. The private business test is a conjunctive two-pronged test. First, the test limits private business use of government bonds to no more than 10 percent of the proceeds.[1] Second, no more than 10 percent of the debt service on the bonds may be derived from private business users of the proceeds. The private loan test limits to the lesser of five percent or $5 million the amount of governmental bond proceeds that may be used to finance loans to persons other than governmental units.

Special restrictions on tax-exemption for section 501(c)(3) organization bonds

As stated above, present law treats section 501(c)(3) organizations as private persons; thus, bonds for their use may only be issued as private activity "qualified 501(1)(3) bonds," subject to the restrictions of Code section 145. The most significant of these restrictions limits the amount of outstanding bonds from which a section 501(c)(3) organization may benefit to $150 million. In applying this "$150 million limit," all section 501(c)(3) organizations under common management or control are treated as a single organization. The limit does not apply to bonds for hospital facilities, defined to include only acute care, primarily inpatient, organizations. A second restriction limits to no more than five percent the amount of the net proceeds of a bond issue that may be used to finance any activities (including all costs of issuing the bonds) other than the exempt purposes of the section 501(c)(3) organization.

Legislation enacted in 1987 imposed low-income tenant occupancy restrictions on ex-

[1] No more than 5 percent of bond proceeds may be used in a private business use that is unrelated to the governmental purpose of the bond issue. The 10-percent debt service test, described below, likewise is reduced to 5 percent in the case of such "disproportionate" private business use.

isting residential rental property that is acquired by section 501(c)(3) organizations in tax-exempt-bond-financed transactions. These restrictions require that a minimum number of the housing units comprising the property be continuously occupied by tenants having family incomes of 50 percent (60 percent in certain cases) of area median income for periods of up to 15 years. These same low-income tenant occupancy requirements apply to for-profit developers receiving tax-exempt private activity bond financing.

Other restrictions

The Code imposes several restrictions on private activity bonds generally that do not apply to bonds used to finance direct State and local government activities. Many of these restrictions also apply to qualified 501(c)(3) bonds.

No more than 2 percent of the net proceeds of a bond issue may be used to finance the costs of issuing the bonds, and these monies are not counted in determining whether the bonds satisfy the requirement that at least 95 percent of the net proceeds of each bond issue be used for the exempt activities qualifying the bonds for tax-exemption.

The weighted average maturity of a bond issue may not exceed 120 percent of the average economic life of the property financed with the proceeds.

A public hearing must be held and an elected public official must approve the bonds before they are issued (or the bonds must be approved by voter referendum).

If property financed with private activity bonds is converted to a use not qualifying for tax-exempt financing, certain loan interest penalties are imposed.

Both governmental and private activity bonds are subject to numerous other Code restrictions, including the following:

The amount of arbitrage profits that may be earned on tax-exempt bonds is strictly limited, and most such profits must be rebated to the Federal Government.

Banks may not deduct interest they pay to the extent of their investments in most tax-exempt bonds.

Finally, interest on private activity bonds, other than qualified 501(c)(3) bonds, is a preference item in calculating the alternative mnimum tax.

DESCRIPTION OF THE BILL

The bill would amend the tax-exempt bond provisions of the Code to conform generally the treatment of section 501(c)(3) organization bonds to that provided for bonds issued to finance direct State or local government activities. Certain restrictions, described below, that have been imposed on section 501(c)(3) organization bonds (but not on governmental bonds) since 1985, and that address specialized policy concerns, would be retained.

Repeal of private activity bond classification for section 501(c)(3) organization bonds

The concept of an "exempt person" that existed under the Code bond provisions before 1986, would be reenacted. An exempt person would be defined as (i) a State or local governmental unit or (ii) a section 501(c)(3) organization, when carrying out its exempt activities under Code section 501(a). Thus, bonds for section 501(c)(3) organizations would no longer be classified as private activity bonds. Financing for unrelated business activities of such organizations would continue to be treated as a private activity for which tax-exempt financing is not authorized.

As exempt persons, section 501(c)(3) organizations would be subject to the same limits as States and local governments on using their bond proceeds to finance private business activities or to make private loans. Thus, no more than 10 percent of the bond proceeds [2] could be used in a business use of a person other than an exempt person if the Code security interest test were satisfied, and no more than five percent ($5 million if less) could be used to make loans to such "nonexempt" persons. By classifying governmental units and section 501(c)(3) organizations into a single category, the bill would eliminate present-law impediments to common financings by eliminating the present-law need for separate bond issues—even when the activities of the parties are closely affiliated.

Repeal of most additional restrictions on section 501(c)(3) organization bonds

Present Code section 145, which establishes additional restrictions on qualified 501(c)(3) bonds, would be repealed, along with the restriction on bond-financed costs of issuance for section 501(c)(3) organization bonds (Code sec. 147(h)). This repeal of Code section 145 would eliminate the $150 million per institution limit on nonhospital bonds for section 501(c)(3) organizations.

Retention of certain specialized requirements for section 501(c)(3) organization bonds

As stated above, certain specialized restrictions on bonds for section 501(c)(3) organizations would be retained. First, the bill would retain the requirement that existing residential rental property acquired by a section 501(c)(3) organization in a tax-exempt-bond-financed transaction satisfy the same low-income tenant requirements as similar housing financed for for-profit developers. Second, the bill would retain the present-law maturity limitations applicable to bonds for section 501(c)(3) organizations, and the public approval requirements applicable generally to private activity bonds. Third, the bill would continue to apply the penalties on changes in use of tax-exempt-bond-financed section 501(c)(3) organization property to a use not qualified for such financing.

Finally, the bill would make *no* amendments, other than technical conforming amendments, to the Code arbitrage restrictions, the alternative minimum tax tax-exempt bond preference, or the provisions generally disallowing interest paid by banks on monies used to acquire or carry tax-exempt bonds.

EFFECTIVE DATE

The bill would apply generally to bonds issued after December 31, 1989.

An exception would permit bonds for which a transitional exception was provided in the Tax Reform Act of 1986 to be issued under the rules currently applicable to those bonds, unless the issuers elected to be subject to the bill's provisions. Such an election would be made on an issue-by-issue basis before the bonds were issued, and would be irrevocable once made.

Mr. DANFORTH. Mr. President, I am proud to support this legislation to aid major colleges and universities and other charitable institutions in their efforts to expand and improve their facilities.

As part of the Tax Reform Act of 1986, Congress placed a cap on the amount of tax-exempt bonds that can be issued by organizations such as charitable groups and private colleges and universities. Because of this legislation, private colleges and universities and other philanthropic institutions may not have outstanding more than $150 million of tax-exempt obligations. The $150 million cap does not apply to bonds, the proceeds of which are to be used with respect to a hospital. This bill eliminates the $150 million cap for all qualified organizations. In other words, this bill will allow private colleges and universities and other qualified charitable institutions to issue tax-exempt bonds without limitation for the purpose of building, expanding, and improving their facilities and equipment. It should be noted that these tax-exempt bonds, will be treated in the same manner as governmental bonds, and that these private institutions will receive this tax-exempt status only with respect to their exempt activities.

Mr. President, every day we are bombarded by reports of our Nation's competitive deficiencies. Our trade deficit grows, jobs are exported while goods are imported, and new technology is increasingly being developed overseas. We are told that our declining position in the world economy is due to, among other factors, a decline in our country's educational system and our research facilities. Japan produces more engineers and scientists per capita than the United States. Both Japan and West Germany spend more of their gross national product on civilian research than the United States. It is said that in order for us to be able to compete effectively with economic leaders such as Japan and West Germany, our society must place more emphasis on educating our children, and must make a bigger commitment to research.

However, it is difficult to ask Americans to make such commitments when we on Capitol Hill have taken steps to devalue such important functions as education and research. Instead of encouraging more students to continue their education, we cut back on Federal assistance to higher education, we eliminated the deductibility of interest paid on student loans, and we tax some student scholarships and fellowships. Instead of working with higher education and industry to develop a joint government-education-industry partnership to get America back on its feet, we raise business taxes, increase the cost of capital, limit incentives for private individuals to make gifts to colleges and universities, and increase the costs of research activities con-

[2] This limit would be reduced to five percent in the case of disproportionate private use as under the present-law governmental bond disproportionate private use limit.

ducted on the campuses of our major private research colleges and universities.

The bill introduced today certainly doesn't address all of these pressing issues, but it would solve one problem. This bill says that private colleges and universities, as well as other charitable institutions, will be able to seek sorely-needed financing.

In order for colleges and universities to continue to carry out their mission, they need to have access to resources sufficient to fulfill their needs. Tuition cannot be expected to pick up the slack, even though tuition has almost doubled in the 1980s. Indeed, the magnitude of the problem is such that even if tuition doubled again, the unmet facilities' needs could not be funded. Instead, colleges and universities need to be able to turn to the bond market to fund their essential projects. Unfortunately, many premier research institutions are now or will soon be at the $150 million cap. Many millions are needed to fund these schools' pressing capital needs over the next 3 to 5 years. These needs include more research space, library expansion, and rehabilitation of existing structures. Without this bill, colleges and universities will make increased interest payments instead of improving facilities and holding the line on tuition. Let's help our colleges and universities educate our children, not discourage these institutions.

Listen to the words of D. Allan Bromley, Director-designate of the Office of Science and Technology Policy, Executive Office of the President, testifying in front of the Senate Commerce Committee on July 21, 1989:

> A healthy and productive national economy is fundamental to all else that we do. Increasingly it is our know-how that constitutes our edge in an increasingly competitive global market. But to respond successfully to growing pressure from international competitors, we must continue to innovate at a rapid rate. That in turn means both continued investment in research and development, by both the federal and private sectors, and the development of policies and mechanisms to insure the rapid application of research discoveries and the maintenance of a healthy science base. We are unique among the developed nations, for example, in the demands that our private sector make upon our colleges and universities both for new fundamental knowledge and for the young minds trained to use it creatively. But after more than a decade of belt tightening, when even more than ever before is being demanded of them, these institutions find themselves with decaying infrastructures, obsolete equipment and growing shortages of both faculty and students in many important areas. These are problems that we can only ignore at our peril.

At present, at least two dozen private colleges and universities have exceeded the $150 million borrowing level. Further, the National Science Foundation [NSF] predicts that an additional three of the top Federal research and development universities will exceed the cap in the next 3 years. The White House Science Council estimated in 1986 that, at a minimum, $10 billion is needed between 1986 and 1996 for university facilities and equipment. Even more troubling, the NSF reports that for every $1 of construction that is planned, institutions are deferring about $2.50 of needed construction, and for every $1 of repair and renovation that is planned, an additional $3.60 in needed repairs and renovations is being deferred. This is not a trivial concern.

In 1989, Coopers & Lybrand's report, "The Decaying American Campus," confirmed the NSF findings. Of the estimated $60 billion needed to renew and replace aging facilities, more than $20 billion, $7.2 billion represent urgent needs of research universities. Thus, the longer we wait to help these vital institutions, the more troubling and enormous the problem will become. Already, one-third of higher education's physical plants are at least 30 years old. Let me emphasize again that this problem is not solely these institutions' problem; it is our Nation's problem.

Leaders of public colleges and universities, which would not directly benefit from this legislation, endorse the idea of extending this proposed benefit to their private counterparts. Robert L. Clodius, president of the National Association of State Universities and Land Grant Colleges has said that "* * * the cap on private universities merely increases the cost of research at U.S. institutions and must be removed if the United States is to retain its world leadership role." Dr. Hans Mark, chancellor of the University of Texas System, testifying in front of the Subcommittee on Taxation and Debt Management of the Committee on Finance on April 3, 1987, stated that "* * * in recent years, the tax exempt securities market has become an important source of funds for building new laboratories." He went on to state that the $150 million tax cap "* * * will affect many of our nation's foremost research universities, and for that reason we should all be concerned." Although Dr. Mark was testifying with respect to eliminating the cap for research facilities, his concern was based on the recognition that basic research undertaken by our colleges and universities, regardless of whether they are public or private institutions, is essential to maintaining our Nation's leadership position in a world of rapidly expanding technological capabilities. This bill would provide support for this critical activity, by allowing private colleges and universities to further all of their educational objectives more easily.

Others share this view that increased support of higher education will help solve our competitiveness problem. In 1986, the White House Science Council Panel on the Health of U.S. Colleges and Universities submitted its report, "A Renewed Partnership," to the President of the United States. This report emphasizes that increased Federal support of research conducted by our Nation's universities is critical to the health of our economy. The report states:

> We are certainly not alone in recognizing that science and technology are critical to our force. Nations everywhere are investing in these capabilities. We conclude that we must rethink and, in many ways, rebuild the critically important interaction between universities, government, and industry that has served this Nation so well in the past. The federal government-university relationship is too fundamental to the maintenance of our national science and technology base to be taken for granted, and the industry-university partnership is emerging as critical to exploiting that base in order to compete in the world marketplace.
>
> One conclusion is clear: our universities today simply cannot respond to society's expectations for them or discharge their national responsibilities in research and education without substantially increased support.
>
> The strength of the nation in trade, defense, and health has been directly related to past investments in science and technology. Our future position in global markets will similarly depend on our willingness to respond to opportunity and to mobilize our strengths today. To this end, we must promote a broad interdisciplinary approach to problem-solving by focusing on university-based centers that will improve cooperative linkages between scientists, engineers, and industry.

This bill addresses only one of the issues that needs to be dealt with as we work to regain our competitive edge in the world, but I believe that it deals with an important issue in a positive, constructive manner.

Mr. President, I join with my distinguished colleague from New York in urging the Senate to act quickly to pass this bill.

By Mr. BENTSEN (for himself, Mr. PACKWOOD, Mr. MOYNIHAN, Mr. DOLE, Mr. ARMSTRONG, Mr. CHAFEE, Mr. DASCHLE, Mr. DURENBERGER, Mr. HEINZ, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. ROTH, Mr. COATS, Mr. DECONCINI, Mr. GORE, Mr. HATCH, Mr. HUMPHREY, Mr. LEAHY, Mr. MCCONNELL, Mr. NUNN, Mr. SIMON, and Mr. THURMOND):

S. 1628. A bill to amend the Internal Revenue Code of 1986 to authorize a deduction for the expenses of adopting a special needs child and to amend title 5, United States Code, to establish a program providing assistance to Federal employees adopting a special needs child; to the Committee on Finance.

SPECIAL NEEDS ADOPTION ASSISTANCE ACT

Mr. BENTSEN. Mr. President, yesterday the Washington Post finished a

series on yet another way that children can become victims in American society. It told of a 9-year-old girl, running away from home on a cold February night, dialing 911 from a phone booth, begging the police for help; her mother was on drugs and could not feed her or her three siblings.

It described a mother who told her 7 year old she was going to "heaven to see her grandmother" then forced her to swallow an overdose of drugs. It told of a woman with drug and mental problems, who tried to give one of her babies to a security guard, and left another on the steps of a homeless shelter. It told of a 7 week old, put in her grandmother's charge, found dead—according to the autopsy—from starvation and "blunt force trauma to the head."

Mr. President, nearly a decade ago, Congress enacted legislation designed to provide a stable, nurturing, and permanent family environment for children. That legislation emphasized reunification with the child's family. When that was not possible, it encouraged adoption.

The legislation did not work as well as we hoped. As the Post series makes indisputably clear, social service agencies are swamped with cases of children in desperate circumstances—not only in Washington, but in San Antonio, or Houston, or Dallas. We need to do more to encourage adoption.

That is why I am pleased to join in sponsoring the Special Needs Adoption Assistance Act of 1989. I commend President Bush for his interest in helping these children.

Special needs children are those who are particularly difficult to place. Maybe they are too old. Or mentally handicapped. Or confined to a wheelchair. Or belong to a minority. In 1985 there were about 8,000 children with special needs, waiting to be adopted.

What is the alternative for them? If they cannot find a happy, stable home, they must spend their childhood years in foster care, without security, without continuing care, without the loving attention they need. In some States, the median waiting period for them is over 3 years.

We should encourage the adoption of special needs children. This proposal does just that. It also complements one endorsed by the administration and introduced by me earlier this year; that proposal eliminated discrimination in Social Security benefits for children who are adopted.

Mr. President, the Post article was not entirely grim. It also talked about Mae Harris, a foster mother in Prince George's County. She has four adopted children—and has taken care of as many as 10 at one time. "The kids have to have a place to say," she says.

Ms. Harris is not asking for help. She is doing this out of generosity and a loving heart. As are the families that have opened their homes to adopted children all over this country. If they are willing to help so unstintingly, we should be willing to help them. I encourage my colleagues to join me in cosponsoring this important piece of legislation, and ask unanimous consent that the text of S. 1628 be printed in the RECORD immediately following my remarks.

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

S. 1628

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 "Special Needs Adoption Assistance Act of 1989".

SEC. 2. ADOPTION EXPENSE DEDUCTION.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by redesignating section 221 as section 222 and by inserting after section 221 the following new section:

"SEC. 221. SPECIAL NEEDS ADOPTION EXPENSES DEDUCTION.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year the amount of the qualified adoption expenses paid or incurred by the individual for such taxable year.

"(b) LIMITATIONS.—

"(1) MAXIMUM DOLLAR AMOUNT.—The aggregate amount of adoption expenses which may be taken into account under subsection (a) with respect to the adoption of a child shall not exceed $3,000.

"(2) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—No deduction shall be allowable under subsection (a) for any expense for which a deduction or credit is allowable under any other provision of this chapter.

"(B) REIMBURSEMENTS.—If a taxpayer is reimbursed for any qualified adoption expenses for which a deduction was allowed under subsection (a), the amount of such reimbursement shall be includible in the gross income of the taxpayer in the taxable year in which such reimbursement was received.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED ADOPTION EXPENSES.—The term 'qualified adoption expenses' means reasonable and necessary adoption fees, court costs, attorneys fees, and other expenses which—

"(A) are directly related to the legal adoption of a child with special needs by the taxpayer,

"(B) are not incurred in violation of State or Federal law, and

"(C) are of a type eligible for reimbursement under the adoption assistance program under part E of title IV of the Social Security Act.

"(2) CHILD WITH SPECIAL NEEDS.—The term 'child with special needs' means any child determined by the State to be a child described in paragraphs (1) and (2) of section 473(c) of the Social Security Act."

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES DEDUCTIONS.—Subsection (a) of section 62 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (13) the following new paragraph:

"(14) ADOPTION EXPENSES.—The deduction allowed by section 221 (relating to deduction for expenses of adopting a child with special needs)."

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 221 and by inserting the following new items:

"Sec. 221. Special needs adoption expenses deduction.

"Sec. 222. Cross reference."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 3. REIMBURSEMENT OF SPECIAL NEEDS ADOPTING EXPENSES TO FEDERAL EMPLOYEES.

(a) REIMBURSEMENT OF SPECIAL NEEDS ADOPTION EXPENSES.—Chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5597. Reimbursement of special needs adoption expenses

"(a) For purposes of this section—

"(1) the term 'qualifying adoption expenses' means reasonable and necessary adoption and court costs, attorney fees, and other expenses, as determined appropriate under regulations prescribed by the Office of Personnel Management, which expenses are directly related to the legal adoption of a child with special needs; and

"(2) the term 'child with special needs' means a child who would be difficult to place with adoptive parents because of a factor or condition, such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical condition or physical, mental, or emotional handicaps.

"(b)(1) The Office of Personnel Management shall establish a demonstration program under which an Executive agency shall, in accordance with the provisions of this section, reimburse an employee for qualifying adoption expenses incurred by the employee in connection with the adoption of a child with special needs.

"(2) An Executive agency, in order to determine whether or not an adoptive child is a child with special needs, may require an employee who applies for reimbursement under this section to obtain certification from a State or a public or nonprofit private adoption agency that the adoptive child is a child with special needs, and the Executive agency may rely upon such certification in determining whether the employee is entitled to reimbursement of qualifying adoption expenses.

"(3) An employee may not be paid more than $2,000 under this section in connection with the adoption of each child, or more than $5,000 under this section in any calendar year if the employee adopts more than 2 children.

"(c) payment may not be made under this section—

"(1) in any adoption in which one of the adopting parents is the biological parent of the adopted child;

"(2) in any adoption of a child 18 years of age or older;

"(3) in any adoption of a child who, immediately prior to the adoption, was not a citizen or legal resident of the United States;

"(4) in any adoption in which the employee separates from the service before the adoption is final; or

"(5) made payment or for which the employee has been reimbursed under any

other adoption program of the United States or of a State of local government.

"(d) Payments under this section shall be made from the same appropriation or account that is available for the payment of the basic pay of the employee to whom payment is to be made.

"(e)(1) The Office of Personnel Management shall prescribe any necessary regulations and provide assistance to Executive agencies in the administration of this section.

"(2) The Office of Personnel Management shall transmit a report to the President and the Congress on the operation of this demonstration program under this section by October 1, 1992.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The subchapter heading of subchapter IX of chapter 55 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER IX—MISCELLANEOUS PROVISIONS".

(2) The table of sections of chapter 55 of title 5, United States Code, is amended—

(A) by striking out the item relating to subchapter IX and inserting in lieu thereof the following:

"SUBCHAPTER IX—MISCELLANEOUS PROVISIONS"; and

(B) by adding after the item relating to section 5596 the following new item:

"5597. Reimbursement of special needs adoption expenses.".

(c) EFFECTIVE DATE PROVISIONS.—(1) The amendments made by this Act shall take effect on January 1, 1990, and shall be applicable with respect to adoption expenses incurred on or after that date.

(2) The amendments made by this Act, unless extended by an Act of Congress, are repealed on December 31, 1993, and no reimbursement shall be made for adoption expenses incurred after that date.

● Mr. PACKWOOD. Mr. President, I am pleased to join the distinguished chairman of the Finance Committee, Senator BENTSEN, and several other Members on both sides of the aisle, as an original cosponsor of the President's Special Needs Adoption Assistance Act of 1989.

The legislation would establish a tax deduction of up to $3,000 to help families with the one-time costs of adopting a disabled or other "special needs" child. A special needs child is one whose disability, medical condition, race, or other characteristics have made adoption especially difficult. The bill would also establish a demonstration program under which Federal employees could be reimbursed for up to $2,000 of such costs. The Treasury Department estimates that the bill would cost the Government $3 million per year.

President Bush deserves much credit for focusing our attention on this important issue. This bill will help promote adoption of children who desperately need a stable family setting.

Mr. President, we know that there are many special needs children who languish far too long without the benefit of a permanent, loving family. Perhaps the child has a medical condition or has several brothers or sisters who also need a home. It can be difficult to find an adoptive family for such a child, who may well have lived in several different temporary foster homes.

We also know that the one-time costs of adopting a child can be high, at times exceeding $10,000. Many families may wish to adopt such a special needs child, but find the court costs, attorney fees, and other one-time expenses daunting. These families are making a long-term commitment of support for the child—financially and as loving parents. Both the children and their families would benefit from help with the one-time adoption costs. My hope is that the tax deduction will encourage more adoptions of these special needs children, for whom it is hard to find stable, permanent homes.

I will work hard to bring about enactment of this important legislation.●

By Mr. SPECTER:

S. 1629. A bill to establish clearly a Federal right of action by aliens and U.S. citizens against persons engaging in torture or extrajudicial killing, and for other purposes; to the Committee on the Judiciary.

TORTURE VICTIM PROTECTION ACT OF 1989

Mr. SPECTER. Mr. President, today I am introducing the Torture Victim Protection Act of 1989 to clearly establish a Federal right of action by both aliens and U.S. citizens against persons engaging in torture or extrajudicial killing under actual or apparent authority of any foreign nation. This legislation is identical to S. 824 which I introduced on March 24, 1987.

The House of Representatives clearly demonstrated its strong support in the 100th Congress by passing this legislation by voice vote.

While virtually every nation now condemns torture and extrajudicial killing in principle, in practice more than one-third of the world's governments engage in, tolerate, or condone such acts. A 1986 United Nations report indicates that torture remains widespread worldwide and may become "the plague of the second half of the 20th century."

These systematic and institutional violations of human rights occur in countries of every political persuasion and in every region of the world. The U.N. report involved 33 countries, including Chile, South Africa, the Soviet Union, Iran, El Salvador, Guatemala, Afghanistan, Uganda, Ecuador, Honduras, Indonesia, and Comoros, a group of islands in the Indian Ocean off Africa. Although national laws may ban torture, the report said, "this moral awakening has not yet had tangible results for everybody."

Mr. President, this bill is designed to provide tangible results—a cause of action for damages for violation of the law of nations condemning torture and extrajudicial killing.

Because of its longstanding commitment to individual rights and the rule of law, the United States has assumed a special responsibility in promoting respect for human rights throughout the world. We have long recognized that if international human rights are to be given legal effect, adhering nations must make available domestic remedies and sanctions to address abuses regardless of where they occur.

When the U.N. Convention Against Torture was adopted without a dissenting vote in the General Assembly in December 1984, Ambassador Richard Schifter, former Alternative U.S. Representative, stated that "* * * the mere setting of standards as we all know, is not enough. There is ample evidence of a wide gulf between lofty words and the unacceptable practices which continue unabated in many parts of the world. One of the most flagrant continuing violations of human rights is torture—a crude violation of everything that we understand by the word 'human.' As long as torture persists further steps are needed to translate our words into action to eliminate this abhorrent practice."

Respect for human rights has been an integral part of our foreign policy for over a decade. In 1974, Congress amended the Foreign Assistance Act to require that security assistance be terminated if the receiving country's government was engaged in human rights violations. Torture is specified as one of those violations. In 1975 the same act was amended to include section 116 which applies restrictions to economic assistance. Then, in 1977, the sale of agricultural commodities under section 112 of the Agricultural Trade Development and Assistance Act was also restricted.

In 1984, after a series of hearings before the House Foreign Affairs Committee and the Senate Foreign Relations Committee on the phenomenon of torture, Congress adopted and the President signed a joint resolution on torture. In reaffirming the United States abhorrence of the use of torture under any circumstances, the resolution calls upon the Congress to develop concrete mechanism by which the United States can combat the use of torture throughout the world. Specifically, the joint resolution calls for the "enactment and vigorous implementation of laws to reinforce the United States policies with respect to torture." Passage of the Torture Victim Protection Act would begin to fulfill that mandate.

The bill clarifies and expands existing law by clearly establishing a Federal right of action against violators of human rights and authorizing suits by both aliens and U.S. citizens who have been victims of gross human rights abuses.

Significantly, this legislation contains several important limitations. Only persons acting "under actual or apparent state authority" would be liable for damages; the courthouse door would not be opened wide to suits based upon any type of violent international crime. In addition, the courts could decline jurisdiction over such suits if it were shown by "clear and convincing evidence" that the claimant had not exhausted "adequate and available remedies" in the nation where the alleged violations took place. Thus, only a limited number of cases are likely to be adjudicated under the proposed statute each year. The legislation, therefore, would have a minimal effect on the caseload of U.S. Federal courts.

The definition of "torture" contained in the bill is derived from the widely recognized definition contained in the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United States joined the consensus of other nations from around the world in adopting this Convention.

The definition of "extrajudicial killing" is specifically derived from common article 3 of the Geneva Conventions of 1949. Several international instruments incorporate the international consensus that the right to life may not be breached by extrajudicial means—see, for example, American Convention on Human Rights, article 4; European Convention for the Protection of Human Rights and Fundamental Freedoms, article 2, International Covenant on Civil and Political Rights, article 6.

While human rights violators seldom present themselves to their victims while in the United States, providing victims of gross human rights abuses access to the courts is of both practical and symbolic importance. This provision would add a new dimension to U.S. human rights policy by serving notice to individuals engaged in human rights violations that the United States strongly condemns such acts and will not shelter human rights violators from being held accountable in appropriate proceedings. The legislation also would encourage other nations to develop and apply meaningful domestic remedies, clearly the most effective deterrent to continued human rights abuses. Finally, the proposed legislation provides individual victims with the possibility, however remote, of obtaining some measure of justice.

The proposed legislation is based on the principle that human rights violations are not an abstract problem upon which the United States can have little effect. This country can and should become a model for other nations by extending practical remedies to victims of human rights abuses. Accordingly, I urge my colleagues to join us in support of this vital human rights legislation.

I ask unanimous consent that the full 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. 1629

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Torture Victim Protection Act of 1989".

LIABILITY; LIMITATIONS ON REMEDIES

SEC. 2. (a) Every person who, under actual or apparent authority of any foreign nation, subjects any person to torture or extrajudicial killing shall be liable to the party injured or his or her legal representatives in a civil action.

(b) The court shall decline to hear and determine a claim under this section if the defendant establishes that clear and convincing evidence exists that the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred. The court shall not infer the application of any statute of limitations or similar period of limitations in an action under this section.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) the term "torture" shall include any act by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from that person or a third person information or a confession, punishing that person for an act that person or a third person has committed or is suspected of having committed, or coercing that person or a third person, or for any reason based on discrimination of any kind; and

(2) the term "extrajudicial killing" means a deliberated killing without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

By Mr. BAUCUS (for himself, Mr. CHAFEE, Mr. BURDICK, Mr. DURENBERGER, Mr. GRAHAM, Mr. JEFFORDS, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. MITCHELL, Mr. MOYNIHAN, Mr. WARNER, Mr. COHEN, and Mr. CRANSTON):

S. 1630. A bill to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient quality standards, and for other purposes; to the Committee on Environment and Public Works.

CLEAN AIR RESTORATION AND STANDARDS ATTAINMENT ACT

Mr. BAUCUS. Mr. President, it is a pleasure today to join my colleagues on the Environment and Public Works Committee in introducing the Clean Air Restoration and Standards Act of 1989.

This bill is an important first step in clearing up the air pollution that is choking our cities. It outlines a comprehensive and effective response to the very serious air pollution problems which our cities are facing.

In testimony before the committee, medical experts declared that we are dealing with a public health crisis. Over 150 million Americans, well over half of our Nation's population, now live in cities with pollution levels that are considered unsafe by EPA and medical experts.

Almost every American city violates the health standard for ozone and carbon monoxide, or both. In addition, many areas violate EPA's recently established health standard for small particulate matter.

The pollution of our air is growing. According to EPA, last summer's ozone levels were the worst in a decade. Many areas reported record high ozone levels and 28 new cities, with 15 million more Americans, violated the ozone standard. This comes at a time when many are questioning the adequacy of the current ozone standard in protecting the health of Americans, especially young children, the elderly, and those whose health is already compromised by respiratory disease.

We need tough new pollution control measures to reverse this trend. And we need them now. Unless tough new measures are adopted, air pollution levels will continue to grow.

There is no doubting that air pollution has serious health consequences. In 1987, Harvard researcher Dr. Haluk Ozkaynak testified before our committee that—

> In every epidemiological investigation that we have performed over the past 6 years, we have repeatedly found a 2- to 5-percent air pollution effect on human mortality and morbidity.

Earlier this year, Dr. Bailus Walker of the State University of New York at Albany's School of Public Health testified that without further action to combat air pollution we could expect, as a conservative estimate, another 100,000 to 150,000 premature deaths per year. This number is significantly higher than the 49,000 people who were killed last year in traffic fatalities.

The health problem is serious and it is pervasive. Ozone pollution causes a wide range of adverse consequences, including chest pains, shortness of breath, coughing, nausea, throat irritation, and susceptibility to respiratory infection. Even more troubling is the growing body of research which indicates that long-term repeated exposure to ozone pollution can permanently scar lung tissue. Ultimately, emphysema or lung cancer may result.

Ozone is particularly harmful to young children who have small, developing airways and those with existing

respiratory diseases such as asthma or emphysema.

Carbon monoxide pollution is no less serious. Carbon monoxide interferes with the ability of blood to bring oxygen to the body's tissues. It is especially harmful to the millions of Americans with heart disease and angina. Research also indicates that exposure of expectant mothers to carbon monoxide can cause permanent brain damage in fetuses.

There are those who will argue that the cost of emissions controls is prohibitive. I would argue that the cost of inaction is larger.

The American Lung Association has estimated that the health care costs of air pollution, not including the pain and suffering of those afflicted, is $40 billion annually. This number can only grow with inaction. Added to this are billions of dollars each year in crop and forest damage. Most Americans support strong pollution controls to clean up the air. It is far less expensive to clean up the air now, than pay with our lungs later.

The bill I am introducing with my colleagues today is designed to bring healthful air quality to our cities. It is an effective and practical plan. It is a bill which is supported by State and local air pollution groups. It is a bill which makes clear to industry the steps they must take to reduce air pollution.

The Clean Air Restoration and Standards Act extends the deadlines that these cities have to reach the health standards whole requiring additional control measures of these areas.

Because both motor vehicles and local sources share equally in the creation of the air pollution problem, they must each be part of the solution.

I expect this bill will cut auto emissions by 50 percent by the year 2000. Although auto manufacturers have made significant emissions reductions over the years, the number of vehicles and vehicle miles traveled continues to increase. Therefore, it is important that motor vehicles continue in their progress toward lower levels of emissions.

This bill establishes a number of measures to reduce emissions from motor vehicles. It sets new tailpipe standards for nitrogen oxides and hydrocarbons, both precursers of ozone formation. It establishes a new standard for carbon monoxide under cold weather conditions. It requires the maximum reductions in evaporative hydrocarbon emissions, both while the car is in the idle mode and while it is running.

As a first major step toward controlling greenhouse gases, the bill requires cars to meet—for the first time—a carbon dioxide standard.

Local sources are also asked to do their share. The number and severity of requirements are tailored to the extent of the area's ozone problem.

Ozone areas are divided into 4 groups—moderate, serious, severe, and extreme, and granted extensions which range from 5 to 20 years. Carbon monoxide areas are divided into two groups—moderate and serious with 5- and 10-year deadlines.

Moderate areas which receive a 5-year extension are asked to do a minimal amount. Severe areas which receive a 15-year extension are required to do significantly more. Los Angeles, the only city allowed to have 20 years to clean up its air, must implement the greatest amount of pollution controls. All but moderate areas must meet an annual percent reduction in their emissions inventory.

Areas with more severe problems are also required to prevent increased use of cars from overtaking other emissions control efforts.

Finally, our bill contains tough sanctions for those who fail to submit or implement a State implementation plan, or who fail to achieve their emissions milestones. However, it does not impose the traditional construction ban or a highway fund cut-off for areas which have acted in good faith, but have failed to achieve their attainment deadline.

I ask unanimous consent that the bill and a summary 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. 1630

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Clean Air Restoration and Standards Attainment Act of 1989".

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TITLE I—PROVISIONS FOR ATTAINMENT AND MAINTENANCE OF AMBIENT AIR QUALITY STANDARDS

DESIGNATIONS OF AREAS

SEC. 101. (a) DESIGNATIONS.—Section 107 of the Clean Air Act is amended by adding the following new subsection:

"(f)(1) Upon promulgation of a new or revised national ambient air quality standard, the Administrator shall designate as attainment, nonattainment or unclassified all areas of the country pursuant to this subsection as expeditiously as practicable, but in no case later than six months from the date of promulgation of the new or revised standard. Such period may be extended for specific areas for up to six additional months in the event the Administrator has, after making reasonable efforts to obtain the relevant information, insufficient information to make the designations. The Administrator shall designate as—

"(A) nonattainment, any area that does not meet (or contributes to ambient air quality in a nearby area that does not meet) the new or revised national ambient air quality standard for the pollutant;

"(B) attainment, any area (other than an area identified in subparagraph (A)) that meets the new or revised national ambient air quality standard for the pollutant;

"(C) unclassifiable, any area that cannot be classified on the basis of available information as having met the new or revised national ambient air quality standard for the pollutant.

"(2) A designation for an area made pursuant to this subsection shall remain in effect until the Administrator redesignates the area.

"(3) Each area which, as of the last calendar year before the date of enactment of this subsection for which data is available, did not meet the national primary ambient air quality standard for ozone or such standard for carbon monoxide averaged over an eight-hour period, is hereby designated by operation of law as nonattainment.

"(4) Until redesignation by the Administrator, each area which—

"(A) is identified in 52 FEDERAL REGISTER 29383 (August 7, 1987) as a Group I area, or

"(B) contains a site for which air quality monitoring data shows a violation of the national ambient air quality standard for PM-10 before the date of enactment of this subsection,

is hereby designated by operation of law nonattainment for PM-10. All other areas of the country not described in subparagraphs (A) or (B) are designated unclassified for PM-10, until such time as the Administrator redesignates any such area. Any designation for particulate matter (measured in terms of total suspended particulates) which the Administrator promulgated pursuant to section 107(d), as in effect before the date of enactment of this subsection, shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 163(d), until the Administrator determines that such designation is no longer necessary for such purpose.

(b) REDESIGNATION.—Section 107(d)(5) of the Clean Air Act is amended to read as follows:

"(5) (A) Based on a request for area redesignation by the Governor of any State, or at any time on the Administrator's own motion, the Administrator may revise the designation of any area or portion of an area in accordance with this section and part D.

"(B) Whenever the Administrator obtains evidence demonstrating that an area exceeds a national ambient air quality standard for any pollutant and is not designated as a nonattainment area for such pollutant pursuant to this section, the Administrator shall, within ninety days of receiving such evidence, propose, and within 180 days promugate by rule, a revised designation of such area as nonattainment for such pollutant, and where applicable, a classification of such area in accordance with part D.

"(C) The Administrator may redesignate a nonattainment area to attainment only if—

"(i) the Administrator promulgates the redesignation by rule, after notice and opportunity for comment;

"(ii) the Administrator determines that the area has attained the national ambient air quality standard;

"(iii) the Administrator has fully approved the applicable implementation plan;

"(iv) the Administrator determines that the improvement in air quality is due to permanent reductions in emissions;

"(v) the Administrator has fully approved a maintenance plan for the area as meeting the applicable requirements of section 110 and part D; and

"(vi) the State containing such area has met all requirements applicable to the area under section 110 and part D.

"(D) the Administrator shall not redesignate any area from nonattainment to unclassifiable.".

"(c) AREA BOUNDARIES.—Section 107(c) of the Clean Air Act is amended by inserting "(1)" after "(c) and by adding the following new paragraphs at the end thereof:

"(2) If an area is designated nonattainment with respect to ozone and is located within a metropolitan statistical area or a consolidated metropolitan statistical area (as defined by the Office of Management and Budget), the boundaries of such area are hereby revised by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be. Such boundary revision shall apply for purposes of any State implementation plan revision required to be submitted by any State after enactment of this paragraph.

"(3) In the case of any area which is designated as a nonattainment area for carbon monoxide and is classified as serious pursuant to section 187(a) or this section, the Administrator may, after consultation with the State in which such area is located, modify the boundaries of the area by rule to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, if the Administrator determines that such modification is necessary to attain the carbon monoxide air quality standard. Such boundary revision shall apply for purposes of any State implementation plan revision required to be submitted by the State after such modification.".

ENHANCED MONITORING AND INVENTORIES

SEC. 102. Section 108 of the Clean Air Act is amended by adding the following at the end thereof:

"(g) GUIDELINES FOR ENHANCED MONITORING AND INVENTORIES.—Not later than six months after enactment of this subsection, the Administrator shall publish the following:

"(1) guidelines for enhanced monitoring by the State or local air pollution control agencies of emissions of pollutants (or precursors thereof) for which there is a national ambient air quality standard established under section 109, including guidelines governing the frequency, location, and maintenance of monitors; and

"(2) guidelines for improving the inventories of emissions from mobile and stationary sources (including, but not limited to, emissions factors for estimating emissions from stationary sources which emit less than twenty-five tons per year and other area sources) of pollutants (or precursors thereof) for which there is a national ambient air quality standard established under section 109.

Failure by the Administrator to publish guidelines required under paragraphs (1) and (2) shall not affect other applicable deadlines under this Act, including, but not limited to requirements under section 110 or part D.".

TRANSPORTATION GUIDANCE

SEC. 103. (a) TRANSPORTATION PLANNING GUIDANCE.—Section 108(e) of the Clean Air Act is amended by deleting the first sentence and inserting in lieu thereof the following: "The Administrator shall, after consultation with the Secretary of Transportation and with State and local officials, within nine months after enactment of the Clean Air Restoration and Standards Attainment Act of 1989 and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards.".

(b) TRANSPORTATION CONTROL MEASURES.—Section 108(f)(1) of the Clean Air Act is amended by deleting all after "(f)" through the end of subparagraph (A) and inserting in lieu thereof the following:

"(1) The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies not later than one year after enactment of the Clean Air Restoration and Standards Attainment Act of 1989, and from time to time thereafter—

"(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, regarding the formulation and emission reduction potential of transportation control measures related to carbon monoxide, ozone precursors, particulate matter and toxic air pollutants, including, but not limited to—

"(i) programs for improved public transit;

"(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

"(iii) employer-based transportation management plans;

"(iv) trip-reduction ordinances;

"(v) traffic flow improvement programs that achieve emission reductions;

"(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

"(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

"(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

"(ix) transportation management plans for shopping centers;

"(x) programs to limit portions of road services or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

"(xi) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

"(xii) programs to control extended idling of vehicles;

"(xiii) programs for the conversion of fleet vehicles to cleaner engines or fuels, or to otherwise control fleet vehicle operations; and

"(xiv) programs to reduce motor vehicle emissions which are caused by extreme cold start conditions;".

GENERAL PLANNING REQUIREMENTS

SEC. 104. (a) SUBMISSION AND APPROVAL OF PLANS.—Section 110 of the Clean Air Act is amended as follows:

(a) Subsection (a)(1) is amended by striking "nine" where it appears and inserting "twenty-four" in lieu thereof and by inserting the following at the end thereof: "Whenever an area containing all or part of a metropolitan statistical area or consolidated metropolitan statistical area is designat-

ed attainment or unclassifiable with respect to a national ambient air quality standard, the Administrator shall, and in other cases may, require the State containing such area to submit an implementation plan (including such emissions inventories as the Administrator may prescribe) that provides for maintenance of such standard for at least twenty years from the date such plan is submitted. Every ten years after submission of the last twenty-year maintenance plan, the State shall submit an updated twenty-year maintenance plan.".

(2) Subsection (a)(2) is amended by striking "four" in the first sentence and inserting "twelve" in lieu thereof.

(b) SAVINGS CLAUSES AND ENFORCEABILITY OF PLANS.—Section 110(d) of the Clean Air Act is amended by adding the following at the end thereof: "Such term includes any portion of an implementation plan which has been submitted by a State and approved by the Administrator. Notwithstanding any other provision of this Act, each provision of such implementation plan (and each permit in effect under such plan) shall remain in effect, and shall be enforced under this Act, until a revision of such plan is approved by the Administrator or a plan is promulgated by the Administrator under subsection (c).".

FEDERAL IMPLEMENTATION PLANS

Sec. 105. Section 110(c)(1) of the Clean Air Act is amended to read as follows:

"(1)(A) The Administrator may, after notice and opportunity for public comment, promulgate regulations setting forth an implementation plan, or portion thereof, for a State whenever the Administrator—

"(i) finds a State has failed to submit an implementation plan or revisions as required by this section or parts C or D;

"(ii) determines that a plan, or portion thereof, submitted by a State is not in accordance with the requirements of this section or parts C or D; or

"(iii) finds that any requirement of a previously approved plan is not being implemented.

"(B) if, two years after the imposition of any sanctions under this section or part D for failure to submit a plan or portion thereof that meets the requirements of this section and part D, a State has failed to submit such a plan, the Administrator shall propose regulations setting forth a plan, or portion of a plan, assuring that the requirements of this Act are met. The plan proposed by the Administrator shall be promulgated after notice and opportunity for public hearing in the State, but not later than one year after the date of proposal, unless, within such period, the State has adopted and submitted a plan which the Administrator has determined is in accordance with the provisions of this section and part D.

"(C) Any plan proposed or promulgated pursuant to this paragraph shall meet all of the requirements of this section and part D, except that an initial plan for a nonattainment area may be promulgated without a demonstration of attainment, provided that such plan is revised by the Administrator not later than three years after the original date of proposal to include such demonstration.

"(D) If, subsequent to the promulgation of an implementation plan by the Administrator, the State adopts and submits a plan, or portion of a plan, which meets all of the requirements of this section and part D, the Administrator may approve the proposed State plan, or portion of thereof, for implementation in lieu of the plan promulgated under this paragraph.".

GENERAL PROVISIONS FOR NONATTAINMENT AREAS

SEC. 106. (a) HEADING.—Part D of the Clean Air Act is amended by inserting "SUBPART 1—NONATTAINMENT AREAS IN GENERAL" immediately after the heading "PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS."

(b) APPLICABILITY.—Subpart 1 of part D of the Clean Air Act is amended by adding a new section 170 as follows:

"APPLICABILITY

"SEC. 170. Each provision of this subpart applies as set forth herein, except to the extent it is inconsistent with a provision in another subpart, in which case the provision in such other subpart shall apply.".

(c) DEFINITIONS.—Section 171 of the Clean Air Act is amended—

(1) by amending paragraph (2) to read as follows:

'(2) The term 'nonattainment area' means, for any air pollutant, an area which is designated 'nonattainment' with respect to that pollutant pursuant to section 107.'"; and

(2) by adding at the end thereof the following new paragraph:

"(5) The term 'major stationary source' or 'major emitting facility' includes each discrete operation, unit or other activity and each combination thereof that, except as otherwise provided in this part, produces or has the potential to produce emissions of 100 tons or more per year of a pollutant or percursors of a pollutant which contribute to ambient air quality in an area that does not meet the national ambient air quality standard for the pollutant.".

(d) PERMITS.—

(1) Section 172 of the Clean Air Act is amended as follows:

(A) subsection (a) is deleted;

(B) subsection (b) is relettered "(a)", the text following "The" through "subsection (a)" in the first sentence is deleted, and the following is inserted in lieu thereof; "provisions of an applicable implementation plan for a State relating to attainment and maintenance of national ambient air quality standards in any nonattainment area"; and

(C) section 172(a)(6) (as redesignated by subparagraph (B)) is amended to read as follows:

"(6) require permits for the construction and operation of new or modified major stationary sources, and, beginning not later than three years after the date of enactment of the Clean Air Restoration and Standards Attainment Act of 1989, for the operation of all major stationary sources, in accordance with section 173 (relating to permit requirements);".

(2) Section 173 of the Clean Air Act is amended by inserting "(a) CONSTRUCTION PERMITS—" after "SEC. 173.", by deleting "and operate" in the first sentence, and by adding the following at the end thereof:

"(b) OPERATING PERMITS.—

"(1) Each operating permit issued as required pursuant to this part for a new or existing stationary source shall—

"(A) be for a fixed term not to exceed five years and shall require compliance with applicable emission limitations and with such monitoring measures as are appropriate for adequately determining compliance with such limitations;

"(B) require the permittee to submit quarterly reports to the permitting authority containing the results of the monitoring required under paragraph (1) and, no less often then every six months, certification to the permitting authority that demonstrates compliance with the permit. Any report or certification required to be submitted by a permittee under this title shall be signed by a responsible corporate official who shall certify its accuracy.

"(C) require that the permittee promptly report any violations of the permit or other requirements under this Act to the permitting authority and a program for correcting these violations including a schedule for implementation of the corrections; and

"(D) set forth inspection and entry requirements to assure compliance with the permit terms and conditions.

"(2) Applications for any permit to be issued pursuant to this part shall be accompanied by a fee sufficient to cover all direct and indirect costs of developing and administering the permit program.

"(3) Before issuing any permit pursuant to the provisions of this part the State shall provide notice of the application and an opportunity for a public hearing on the conditions to be included in the permit.

"(4) No permit may be issued pursuant to this part if the Administrator within sixty days objects to its issuance as not meeting the goals and objectives of this Act.

"(5) A copy of each permit and certification shall be submitted by the permittee, or by the permitting authority (as determined by the permitting authority), to the Administrator and shall be available to the public in the same manner as is provided for records and reports under section 114(c). No such permit may be issued unless the permitting authority or its agent has conducted a on-site inspection of the source to which such permit is issued. Not later than six months after the enactment of this subsection the Administrator shall publish guidelines for permit programs under this part. Such guidelines may be revised from time to time as the Administrator deems appropriate.".

"(e) OFFSETS.—Section 173 is further amended by adding at the end thereof the following new subsection:

"(c) OFFSETS.—A new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant by obtaining enforceable emissions reductions of such air pollutant from other sources in the same nonattainment area. Such enforceable emissions reductions shall be in effect by the time a new or modified source commences operation and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by a greater reduction in the actual emissions of such air pollutant from other sources in the area. Where specific ratios for such offsets are specified in other provisions of this Act, such ratios shall govern. Emissions reductions otherwise required by law shall not be credited as an emissions reductions for purposes of any such offset requirement.".

"(f) PLANNING PROCEDURES.—Section 174 of the Clean Air Act is amended to read as follows:

"PLANNING PROCEDURES

"SEC. 174. (a) For any ozone, carbon monoxide or PM-10 nonattainment area, the Governor of the State containing such areas and elected officials of affected local governments shall, prior to the date required for submittal of the inventories described under sections 182(a), 188(a), and 192(a)

jointly review and update as necessary the planning procedures adopted pursuant to this subsection as in effect immediately before the date of enactment of the Clean Air Restoration and Standards Attainment Act of 1989 or develop new planning procedures pursuant to this subsection, as appropriate. In preparing such procedures the State and local elected officials shall determine which elements of a revised implementation plan will be developed, adopted, and implemented (through means including enforcement) by the State and which by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. The implementation plan required by this part shall be prepared by an organization certified by the State for this purpose. Where such an organization has not been designated by agreement, within six months after such date of enactment, the Governor, after consultation with elected officials of local governments and in accordance with the determination under the second sentence of this subsection, shall designate an organization to prepare such plan. Such organization shall include elected officials of local government in the affected area, and representatives of the State air quality planning agency, the State transportation planning agency, the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, the organization responsible for the air quality attainment and maintenance planning process under regulations implementing this Act, and any other organization with responsibilities for developing, submitting, or implementing the plan required by this part.

"(b) The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation-air quality planning process described in section 108(e) shall be coordinated with the continuing, cooperative and comprehensive transportation planning process required under section 134 of title 23, United States Code, and such planning processes shall take into account the requirements of this part. The Administrator shall consult with, and make recommendations to, the Secretary of Transportation within nine months from the date of enactment of the Clean Air Restoration and Standards Attainment Act of 1989 on changes to the Department of Transportation policies and planning and programming process that will assist the planning and implementation process of this part.

"(c) In the case of a nonattainment area that is included within more than one State, the affected States may jointly, through interstate compact or otherwise, undertake and implement all or part of the planning procedures described in this section.".

(g) SANCTIONS.—Section 176 of the Clean Air Act is amended by—

(1) inserting in the heading "SANCTIONS AND" before "LIMITATIONS";

(2) deleting subsection (b) and redesignating subsections (c) and (d) as (b) and (c), respectively; and

(3) amending subsection (a) to read as follows:

"(a) SANCTIONS.—The following actions, as required or authorized by provisions of subpart 2 (relating to ozone and ozone precursors), subpart 3 (relating to carbon monoxide), or subpart 4 (relating to PM-10) are available as specified in such subparts, to the Administrator or the Secretary of Transportation:

"(1) a prohibition by the Administrator on the construction or modification of any major stationary source of the relevant pollutant or pollutants in a nonattainment area;

"(2)(A) a prohibition, applicable to a nonattainment area, by the Secretary of Transportation on the approval of any projects or awarding of any grants, under title 23, United States Code, other than projects or grants specified under subparagraph (B).

"(B) Projects or grants that may be approved, notwithstanding the prohibition in subparagraph (A), are the following—

"(i) capital programs for improved public transit;

"(ii) construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

"(iii) planning for and implementation of requirements for employers to reduce employee work-trip-related vehicle emissions;

"(iv) highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

"(v) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

"(vi) programs for inspection and maintenance of vehicles emission control systems;

"(vii) programs for the conversion of publicly-owned fleet vehicles to vehicles that use low-polluting fuels, or to otherwise control fleet vehicle operations and miles traveled;

"(viii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

"(ix) programs for breakdown and accident scene management, non-recurring congestion, and vehicle information systems, to reduce congestion and emissions; and,

"(x) such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

Notwithstanding the requirements of title 23, United States Code, or any other provision of law, any federal funds made available to a State to carry out the provisions of such title shall be available without limitation to implement the programs and provisions of this subparagraph in nonattainment areas, and the State share shall not be required to exceed 10 percent of the cost of such programs;

"(C) Nothing in this paragraph shall preclude the Secretary of Transportation from approving projects or awarding grants under title 23, United States code, for (i) elimination of highway safety hazards pursuant to sections 130, 152, and 402 of such title, or (ii) rehabilitation or replacement of deteriorated highway bridges, provided that such projects or grants will add no significant additional right-of-way and are determined by the Administrator to be consistent with maintaining air quality;

"(3) the withholding by the Administrator of all or part of the grants for support of air pollution planning and control programs that the Administrator is authorized to award under section 105.".

(h) CONFORMITY REQUIREMENTS.—Section 176(b) of the Clean Air Act (as redesignated by subsection (g)) is amended by deleting the second sentence, by striking "(1)", "(2)", "(3)" and "(4)" where they appear, by inserting "(1)" after "(b)", and by adding the following at the end thereof: "Conformity to a plan means—

"(A) conformity to a plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

"(B) that such activities will not, considering any growth likely to result from such activities—

"(i) cause or contribute to any new violation of any standard in any area;

"(ii) increase the frequency or severity of any existing violation of any standard in any area; or

"(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

"(2) Any transportation plan or program developed pursuant to title 23, United States Code, or the Urban Mass Transportation Act shall implement all relevant transportation provisions of any implementation plan approved under this Act applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to this Act and any implementation plan in effect under this Act. In particular—

"(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23, United States Code, or the Urban Mass Transportation Act, or be found to be in conformity by an air quality planning agency, department or officer until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the State's implementation plan, and that the plan or program will, considering any growth likely to result from such plan or program, conform to the requirements of paragraph (1)(B);

"(B) no metropolitan planning organization or other recipient of funds under title 23, United States Code, or the Urban Mass Transportation Act shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

"(C) no transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23, United States Code, or the Urban Mass Transportation Act, or found in conformity by an air quality planning agency, or approved, accepted, or funded by the Department of Transportation unless—

"(i) such a project comes from a conforming plan and program;

"(ii) the design, scope, and emissions from such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived;

"(iii) emissions from such a project remain consistent with emissions reduction schedules in the applicable implementation plan; and

"(iv) it is demonstrated, in any case where such a demonstration was not made during the process to determine the conformity of

the plan and program from which project derived, that the project is consistent with the provisions of paragraph (1)(B).

The determinations required by this subsection shall be made by Federal, State and local agencies as prescribed pursuant to criteria and procedures which shall be promulgated by the Administrator no later than one year after the date of enactment of the Clean Air Restoration and Standards Achievement Act of 1989. Such procedures shall include a requirement that each State containing an ozone or carbon monoxide nonattainment area shall submit to the Administrator within eighteen months of such date of enactment, a revision to its implementation plan that includes, for each such nonattainment area, criteria and procedures for assessing the conformity of any plan, program or project subject to the conformity requirements of this subsection.

(i) MAINTENANCE PLANS.—Subpart 1 of part D of the Clean Air Act is amended by adding a new section 179 as follows:

"MAINTENANCE PLANS

SEC. 179. (a) PLAN REQUIREMENTS.—The maintenance plan required under section 107(d)(5)(C) as a precondition for redesignation of an area shall—

"(1) comply with the provisions of section 110(a)(2);

"(2) provide for the maintenance of the national ambient air quality standard of the relevant air pollutant in such area for a period of twenty years after attainment; and

"(3) include the following provisions—

"(A) an identification of sources, including area and mobile sources, that are expected to contribute to increases in emissions of such pollutant after attainment of a national ambient air quality standard;

"(B) a quantitative estimate of emissions increases from such sources for each three-year period following attainment;

"(C) an identification of transportation control measures, emission control limitations or standards, or permit requirements as may be necessary to limit emissions or permissible emission increases; and

"(D) an identification of contingency measures to be implemented in the event of an exceedance of the air quality standard sufficient to correct any air pollution problem which may lead to redesignation as a nonattainment area.

"(b) PLAN REVISIONS.—Maintenance provisions required by this section shall be updated every ten years and submitted to the Administrator for approval pursuant to section 110 and this part as a revision to the implementation plan.".

ADDITIONAL REQUIREMENTS FOR OZONE NONATTAINMENT AREAS

SEC. 107. Part D of the Clean Air Act is amended by adding the following new subpart at the end thereof:

"Subpart 2—Additional Provisions Regarding Ozone Nonattainment Area

"CLASSIFICATION OF OZONE NONATTAINMENT AREAS

"SEC. 181. (a) CLASSIFICATION BY OPERATION OF LAW.—Each area that did not meet the national primary ambient air quality standard for photochemical oxidants (hereinafter "Ozone") as of the last calendar year ending before enactment of this subpart for which data are available is hereby classified by operation of law in one of the following categories based upon the percentage by which such standard is exceeded:

"Area Classification	Amount by Which Standard Exceeded
Moderate Ozone Nonattainment Area.	Not greater than 20%
Serious Ozone Nonattainment Area.	More than 20% but not more than 50%
Severe Ozone Nonattainment Area.	More than 50% but not more than 120%
Extreme Ozone Nonattainment Area.	More than 120%

"(b) DATA AND METHODS FOR CLASSIFICATION.—For purposes of determining the percentage by which the national primary ambient air quality standard for ozone is exceeded in any area—

"(1) the most recent monitoring data available shall be used; and

"(2) the same methods as are used under regulations of the Administrator for determining attainment of the standard shall be applicable (including the design value, reference methods, and guidelines for interpretation of ozone air quality standards).

Not later than thirty days after the enactment of this subpart, the Administrator shall publish a notice of the percentages by which the national primary ambient air quality standard for ozone was exceeded in each area referred to in subsection (a).

"(c) DEADLINES FOR ATTAINMENT.—The following deadlines apply to the ozone nonattainment areas classified in accordance with subsection (a):

Area Classification:	Applicable Attainment Date (in years after enactment of the Clean Air Restoration and Standards Attainment Act of 1989)
Moderate Area	5 years
Serious Area	10 years
Severe Area	15 years
Extreme Area	20 years

"(d) REFERENCES TO TERMS.—Any reference in this subpart to a 'moderate area', a 'serious area' a 'severe area', or an 'extreme area' shall be considered a reference to a moderate ozone nonattainment area, a serious ozone nonattainment area, a severe ozone nonattainment area, or an extreme ozone nonattainment area as classified under this section.

"REQUIREMENTS APPLICABLE TO ALL OZONE NONATTAINMENT AREAS

"SEC. 182. (a) INVENTORIES.—Not later than one year after the date of enactment of this subpart in the case of each State that contains a nonattainment area or portion thereof classified pursuant to section 181(a), or in the case of a State containing an area subsequently classified nonattainment pursuant to section 107 and this subpart, within eighteen months of such classification, such State shall submit to the Administrator—

"(1) for each such area, a comprehensive, accurate, current inventory of actual emissions in the calendar year of enactment of volatile organic compounds and oxides of nitrogen from all sources in such area. Each such inventory shall be prepared in accordance with the guidance required to be published by the Administrator pursuant to section 108(g)(2), if such guidance is available. Revisions of each such inventory shall be submitted every three years thereafter until the area for which the inventory is prepared is redesignated to attainment; and

"(2)(A) a revision to the State implementation plan that contains a requirement that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds within an ozone nonattainment area or portion thereof in such State provide the State with a statement in such form as the Administrator may prescribe (or the State may prescribe, if the Administrator does not) for classes or categories of sources, showing the actual emissions from that source during the previous calendar year of oxides of nitrogen and volatile organic compounds. The first such statement shall be submitted for the calendar year in which the revision referred to in the first sentence of this subparagraph was submitted to the Administrator. Subsequent statements shall be submitted at least annually thereafter.

"(B) The State may waive the application of subparagraph (A) to any class or category of stationary sources which emit less than twenty-five tons per year of oxides of nitrogen or volatile organic compounds if the State, in its submissions under paragraph (1), provides an inventory of emissions from such class or category of sources based on guidelines provided by the Administrator under section 108(g)(2) (relating to inventories).

"(b) IMPLEMENTATION OF CURRENT REQUIREMENTS.—Each State containing an ozone nonattainment area or portion thereof shall—

"(1) not later than eighteen months after the date of enactment of this subpart, fully implement all provisions of any implementation plan for the attainment of the ozone air quality standard for each such area or areas which have been approved by the Administrator prior to the date of enactment of this subpart, and

"(2) within six months after the date of enactment of this subpart, submit a revision or revisions to the applicable implementation plan to include provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 172(b) (as in effect immediately before the date of enactment of this subpart), including a requirement to implement within one year after submission reasonably available control technology with respect to all sources of volatile organic compounds in such area or areas covered by a control technique guideline issued before the date of enactment of this subpart.

"(c) PERMIT REQUIREMENT.—

"(1) Each State containing an area or portion thereof classified pursuant to section 181(a) or subsequently classified pursuant to section 107 and this subpart shall, not later than eighteen months after the date of such classification submit to the Administrator a revision to the implementation plan for each such area requiring an operating permit as provided in sections 172(a)(6) and 173(b) for each new or existing major stationary source of volatile organic compounds or oxides of nitrogen located within any such nonattainment area. It shall be unlawful to operate any such major stationary source without a permit issued pursuant to an approved implementation plan beginning thirty-six months after the date of enactment of this subpart.

"(2) For the purpose of satisfying the permit program requirement of section 173(c) (pertaining to offsets), the ratio of volatile organic compounds emissions reductions to increased emissions of such compounds in serious nonattainment areas shall be at least 1.5 to 1 and in severe and extreme nonattainment areas, 2 to 1.

"(d) AUTO REGISTRATION LANGUAGE.—Each State containing an area classified pursuant to section 181(a) or subsequently classified pursuant to section 107 and this subpart

shall, not later than eighteen months after such classification, submit to the Administrator a revision to the implementation plan for each such area providing for the collection of a fee beginning not later than six months after such date of not less than $2.00 for each vehicle registered within such nonattainment area. Such fees shall be collected by the air pollution control agency with primary authority over such sources (as determined pursuant to section 174(a)) and used to develop and implement air pollution control programs pursuant to section 110 and this part. If the Administrator determines that the fee provisions of the applicable implementation do not meet the requirements of this subsection or if the Administrator determines that such agency is not administering and enforcing the fee required under this subsection, the Adminstrator shall collect such fees, which, notwithstanding section 3302(b) of title 31, United States Code, shall be deposited into a special fund of the Treasury and shall thereafter be available for appropriation to the Environmental Protection Agency to carry out activities under this Act.

"REQUIREMENTS FOR SPECIFIC CLASSES OF OZONE NONATTAINMENT AREAS

"SEC. 183(a). REQUIREMENTS FOR MODERATE AREAS.—Each State containing an area classified as a moderate nonattainment area pursuant to section 181(a) or subsequently so classified pursuant to section 107 of this subpart, shall, with respect to the moderate area, submit to the Administrator, by the dates provided, the following revisions to the applicable implementation plan:

"(1) within one year of the date of classification, a revision that requires implementation, within one year of submission of such revision, of requirements in either paragraph (A) or (B)—

"(A) an enhanced vehicle missions control inspection and maintenance program to reduce in-use emissions of volatile organic compounds and oxides of nitrogen from motor vehicles, which program shall achieve a reduction in emissions of volatile organic compounds of at least 4700 tons per million vehicles covered and shall include each of the following elements—

"(i) require coverage of all light-duty vehicles registered in, at a minimum, each metropolitan statistical area (as defined by the Office of Management and Budget) with a population of 100,000 or more according to the 1980 Census,

"(ii) direct inspection of components of vehicle emission control systems (including evidence of misfueling) and, where such components have been rendered inoperative, the repair or replacement of such components,

"(iii) computerized emission analyzers,

"(iv) if a provision waiving the requirements for repairing the emission control system in the event of failure is included, a provision that such waiver shall apply only when the costs of repair exceed $200,

"(v) enforcement through denial of vehicle registration (except for any program in operation prior to the effective date of this section whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads), and

"(vi) any requirements the Administrator may prescribe under section 202(j)(3) (pertaining to onboard emission diagnostic systems), or

"(B) a requirement that all persons within the area transferring gasoline to a motor vehicle fuel tank from a gasoline dispensing system use a fill nozzle designed to (i) prevent discharge of hydrocarbon vapors into the ambient air, (ii) direct vapor displaced from the automotive fuel to a system where organic compounds in the displaced vapor are recovered, and (iii) prevent vehicle fuel tank overflows or spillage on fill nozzle disconnect. The requirement of this subparagraph shall apply only to facilities which sell more than 20,000 gallons of gasoline per month. The Administrator may revise or waive the requirements of this subparagraph, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this Act are in widespread use throughout the motor vehicle fleet.

Any area which is already operating a vehicle emission control inspection and maintenance program or for which the implementation plan, as of the date of enactment of this subpart, includes a specific schedule for implementation of such a program shall comply with subparagraph (A);

"(2) a revision requiring each major stationary source of emissions of volatile organic compounds located in the nonattainment area to pay an annual fee, beginning with the calendar year following the date of classification, of $25 per ton of volatile organic compounds and oxides of nitrogen emitted. Such fee shall be collected by the air pollution control agency with primary authority over such source (as determined pursuant to section 174(a)) and used to implement air pollution control programs pursuant to section 110 and this part. If the Administrator determines that the fee provisions of the applicable implementation plan do not meet the requirements of this paragraph or if the Administrator determines that such agency is not administering and enforcing the fee required under this paragraph, the Administrator shall collect such fees, which, notwithstanding section 3302(b) of title 31, United States Code, shall be deposited into a special fund of the Treasury and which shall thereafter be available for appropriation to carry out to the Environmental Protection Agency activities under this Act;

"(3) an nonattainment area for which the design value is less than .13 parts per million in the year immediately preceding enactment of this subpart shall not be required to comply with the requirements of subsection (a)(1) (pertaining to inspection and maintenance and refueling programs) unless such compliance is otherwise needed to bring the area into attainment with the primary ambient air quality standard for ozone by the date specified in section 181(c). The design value shall be calculated according to the interpretation methodology issued by the Environmental Protection Agency most recently before the date of enactment of this subpart.

"(b) REQUIREMENTS FOR SERIOUS AREAS.—For the purposes of requirements applicable to areas under subsection (c) and this subsection and sections 172 and 173, major stationary sources or major emitting facilities of volatile organic compounds are sources or facilities that produce or have the potential to produce 25 tons or more per year of such compounds. Each State containing an area classified as a serious area pursuant to section 181(a) or subsequently so classified pursuant to section 107 and this subpart shall, with respect to the serious area, make the submissions described under subsection (a) and in addition submit to the Administrator the following revisions to the applicable implementation plan and other items:

"(1) an inventory that meets the requirements of section 182(a)(1) and, where all or part of such area is in a metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA), includes emissions from all sources within such MSA or CMSA, whichever is applicable, plus the twenty-five-mile radius around such area;

"(2) no later than one year after the date of classification, a revision to provide for, and a demonstration that the plan as revised will provide for, within three years after classification, emissions reductions of volatile organic compounds of 12 per cent from actual emissions in the calendar year of classification. Emissions reductions that will occur by the applicable deadline from measures required under either the applicable implementation plan or rules promulgated by the Administrator (other than rules promulgated under section 211(h)) may be credited toward the required 12 percent reduction;

"(3) no later than three years from the date of classification a revision which demonstrates, based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective, that the plan, as revised—

"(A) will provide for attainment by the applicable attainment date; and

"(B) will result in volatile organic compound emission reductions from emissions reported in the initial inventory required under section 182(a)(1) equal to 12 percent, averaged over each consecutive three-year period beginning with the fourth year after the date of classification, and extending until the area attains the primary ambient air quality standard for ozone. Such demonstration shall explicitly quantify projections with respect to emissions and necessary emission reductions from motor vehicles, using estimates for growth in vehicle miles traveled, congestion levels, and other relevant parameters that are used by the agency or agencies responsible for transportation planning for the area. Emissions reductions may be credited towards the 12 percent reduction requirement to the extent they will occur by the applicable deadline from measures required under either the applicable implementation plan or rules promulgated by the Administrator (other than rules promulgated under section 211(h)). Any area that achieves an actual reduction in emissions in excess of that required by this subparagraph, as determined by the Administrator, may credit such excess emissions reductions toward the next three-year reduction requirement period;

"(4)(A) beginning one year after the date of classification, annual reports on measures adopted or implemented during the preceding calendar year and any failure to implement measures scheduled for implementation during such year;

"(B) Beginning with the fourth such report and in each third such report thereafter, the State shall demonstrate whether current vehicle miles traveled, congestion levels and other relevant parameters are consistent with those used for the demonstration required in paragraph (2) or for emissions projections pursuant to paragraph (3)(B)(i). Where such parameters and emissions levels exceed the levels projected for purposes of the area's three-year emissions reduction demonstration, the State shall, within one year, develop and submit a

revision to the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 108(f) that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(e) and with the requirements of section 174(b) and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections;

"(5) within one year of the date of classification, a revision that satisfies the requirements of subparagraphs (A) (pertaining to vehicle inspection and maintenance) and (B) (pertaining to vapor recovery during vehicle fueling) of subsection (a)(1);

"(6) within one year after the date of classification, a revision that contains a permit program which meets the requirements of section 172(a)(6) and section 173, except that for the purpose of satisfying the requirement of section 173(c) (pertaining to offsets) with respect to emissions reductions to increased emissions shall be at least 1.5 to 1;

"(7) a revision that complies with subsection (a)(2) (pertaining to annual emissions fee) except that the revision shall require that the annual fee shall be $100 per ton of volatile organic compounds and oxides of nitrogen emitted, and that if the emissions reductions required pursuant to paragraphs (2) or (3)(B) are not achieved in the area by the dates required by such paragraphs, the fee shall increase to $500 per ton until such time as the required emissions reductions in the area are achieved;

"(8) within twelve months of classificaton, a revision to require implementation of reasonably available control technology for all stationary sources of volatile organic compounds that are not covered by a control technique guideline or listed pursuant to section 185(a) and that have the potential to emit 25 tons or more of such compounds and for all stationary sources of oxides of nitrogen that have the potential to emit 100 tons or more per year of such pollutant. Such revision shall require the implementation of such technology no later than two years after classification and, in the case of volatile organic compounds, shall provide that reductions of 80 percent or more from uncontrolled levels be achieved unless the State determines for a category of sources that such level of reductions is not technologically or economically feasible, in which case the required reduction shall be the maximum that is technologically and economically feasible;

"(9) within one year of the date of classification, a revision that provides that if the area has failed to attain the primary ozone air quality standard by the deadline applicable to the area pursuant to section 181, each major stationary source of volatile organic compounds located in the area shall pay a fee for each calendar year until such standard is attained of $5000 per ton (to be adjusted annually for inflation consistent with changes in the Consumer Price Index) of volatile organic compounds actually emitted during each such calendar year in excess of 50 percent of such compounds actually emitted (as reported in the statement required by section 182(a)(2)) in the calendar year such area was to have attained the primary ozone air quality standard.

"(c) REQUIREMENTS FOR SEVERE AREAS.—Each State containing an area classified as a severe area pursuant to section 181(a) or subsequently so classified pursuant to section 107 and this subpart shall, with respect to the severe area, comply with the requirements of subsection (a) and (b) and in addition submit to the Administrator the following revisions to the applicable implementation plan and other items:

"(1) a revision to the applicable implementation plan that meets the requirements of subsection (b)(7) (pertaining to permit programs), except that the permit program shall require the ratio of volatile organic compound emissions reductions to increased emissions of such compounds to be at least 2 to 1;

"(2) a revision that complies with subsection (a)(2) (pertaining to annual emissions fees) except that the revision shall require that the annual fee shall be $250 per ton of volatile organic compounds and oxides of nitrogen emitted, and that if the emissions reductions required pursuant to paragraphs (b)(2) or (b)(3)(B) are not achieved in the area by the dates required by such paragraphs, the fee shall increase to $500 per ton until such time as the required emissions reductions in the area are achieved;

"(3) within two years after the date of classification, a revision that identifies and adopts specific enforceable strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(3)(B) (pertaining to periodic three-year emission reduction requirements). The State shall consider, at a minimum, measures specified in section 108(f) and if the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions;

"(4) within one year after the date of classification, a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(f) and shall, at a minimum, require that each employer of one hundred or more persons increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 20 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The revision shall also provide that any employer subject to the vehicle occupancy requirement which does not achieve the required vehicle occupancy rate increase within two years after the date the revision is submitted shall be liable to the State for payment of a fee of not less than $50 per month for each employee parking space provided or subsidized by such employer. Any revenue received by a State pursuant to this paragraph may only be spent to develop or implement an air pollution control program as required by section 110 and this part.

"(d) REQUIREMENTS FOR EXTREME AREAS.—

"(1) When all or part of an extreme area is in a metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA), the boundaries of the extreme area for the purposes of this subpart shall be defined, by operation of law, as the boundary of such MSA or CMSA, as applicable, plus twenty-five miles.

"(2) For the purpose of requirements applicable to extreme areas under this subsection and sections 172 and 173, major stationary sources or major emitting facilities of volatile organic compounds are sources or facilities that produce or have the potential to produce ten tons or more per year of such compounds.

"(3) Each State in which an extreme area or portion thereof is located shall, with respect to the extreme area, comply with the requirements of subsection (a), (b) and (c) and in addition submit to the Administrator revisions to the applicable implementation plan that complies with subsection (a)(2) (pertaining to emission fees) except that the annual fee shall be $500 per ton of volatile organic compounds and oxides of nitrogen emitted.

"(e) CERTAIN NON-SELF-GENERATING AREAS.—

"(1) Notwithstanding any other provision of section 181 or this section, a State containing an ozone nonattainment area that does not include and is not adjacent to any part of a metropolitan statistical area or, where one exists, a consolidated metropolitan statistical area (as defined by the Office of Management and Budget), which area is determined by the Administrator to be non-self-generating within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it complies with regulations promulgated by the Administrator. Such regulations shall be promulgated no later than January 1, 1991, and shall, at a minimum, require compliance with the provisions of section 182 and such other measures as the Administrator determines appropriate to provide for the attainment and maintenance of the national ambient air quality standard for ozone.

"(2) The Administrator may determine an ozone nonattainment area to be non-self-generating if the Administrator finds that sources of volatile organic compounds and oxides of nitrogen emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

FAILURE TO COMPLY OR ATTAIN

"SEC. 184. (a) FAILURE TO SUBMIT AN APPROVABLE PLAN.—Whenever a State fails to make a plan submission or revision required for a nonattainment area within such State under this subpart, or a Administrator disapproves such plan or revision in whole or significant part, the Administrator—

"(1) shall, with respect to such area, impose the prohibition of section 176(a)(1) (pertaining to new source construction);

"(2) shall notify the Secretary of Transportation who shall impose the prohibition of section 176(a)(2) (pertaining to transportation funding); and

"(3) may withhold funds as provided under section 176(a)(3) (pertaining to air pollution control program grants).

"(b) FAILURE TO IMPLEMENT A PLAN.—Whenever any requirement of an approved plan (or approved part of a plan) is not being implemented, the Administrator, with respect to the area (or areas) in which such requirement is not being implemented—

"(1) shall impose the prohibition of section 176(a)(1) (pertaining to new source construction);

"(2) shall notify the Secretary of Transportation who shall impose the prohibition

of section 176(a)(2) (pertaining to transportation funding); and

"(3) may withhold funds as provided under section 176(a)(3) (pertaining to air pollution control program grants).

"(c) FAILURE TO ACHIEVE REQUIRED EMISSIONS REDUCTIONS.—

"(1) Whenever an ozone nonattainment area fails to achieve the emissions reductions required under section 183(b)(2) or (3)(B), the Administrator shall—

"(A) impose the prohibition of section 176(a)(1) (pertaining to new source construction) and shall notify the Secretary of Transportation who shall impose the prohibition of section 176(a)(2) (pertaining to transportation funding);

"(B) perform an annual audit, until such area achieves the required emissions reductions, of the plan and its implementation in such area to determine the reasons the plan is not achieving the required reductions; and

"(C) assure that the provisions of the implementation plan required by subsections 183(b)(8) and (c)(2) (pertaining to increased emission fees) are enforced.

"(2) Whenever an ozone nonattainment area fails to achieve the emissions reductions required under section 183(b)(2) or (3)(B), the Administrator may, in the Administrator's discretion—

"(A) lower the quantity of emissions of volatile organic compounds or oxides of nitrogen, or both, that, for such area, defines a source as a major stationary source;

"(B) require, in the case of an area listed as serious under section 181(a), that such area comply with the provisions of section 183(c) (relating to severe areas) and in the case of an area listed as severe under section 181(a), that such area comply with the provisions of section 183(d) (relating to extreme areas).

"(d) FAILURE TO ATTAIN.—For any ozone nonattainment area that fails to attain the primary ozone air quality standard by the date applicable to such area pursuant to section 181, the Administrator shall—

"(1) in the case of a moderate area reclassify such area as a serious area, in the case of a serious area, reclassify such area as a severe area, and in the case of a severe area, reclassify such area as an extreme area. From the date of reclassification each such area shall be subject to the provisions of this subpart, including the attainment date, that are applicable to the classification to which the area has been reclassified; and

"(2) in the case of a serious, severe, or extreme area, assure that the provisions of the implementation plan required by section 183(b)(9) (pertaining to emissions fees for major stationary sources) are enforced.

"ADDITIONAL FEDERAL MEASURES TO CONTROL OZONE POLLUTION

"SEC. 185. (a) CONTROL TECHNIQUES GUIDELINES.—

"(1) Not later than six months after the date of enactment of this subpart, the Administrator shall publish a list of at least twelve categories of stationary sources for which control technique guidelines, in accordance with subsection 108(b), have not previously been published and which the Administrator considers to make the most significant contribution to the formation of ozone air pollution. The categories shall be divided into three groups (with an equal number of categories in each group) and the Administrator shall establish a schedule for publication of guidelines for each of such groups at the time of publication of the list of categories.

"(2) The Administrator shall publish control technique guidelines for sources within the categories listed under paragraph (1). The guidelines shall be published for the first group of such sources within the first eighteen months after publication of the list and for at least one additional group in each succeeding eighteen-month period until guidelines have been published for all listed categories.

"(3) Within thirty-six months after the date of enactment of this subpart, and every four years thereafter, the Administrator shall review and, if necessary, update control technology guidelines including those issued before the enactment of this subpart. The Administrator may publish such additional guidelines as the Administrator deems necessary.

"(b) VOLATILE ORGANIC COMPOUNDS EMISSIONS FROM LOADING AND UNLOADING OF CERTAIN VESSELS.—Within two years after the enactment of this subpart, the Administrator shall publish a control technique guideline, in accordance with section 108(c), regarding control of volatile organic compound emissions from the loading or unloading of petroleum products on to or from vessels. Such emissions shall be considered to be direct emissions of the onshore terminal for all purposes under this Act.".

"(c) CONSUMER OR COMMERCIAL PRODUCTS.—

"(1) Within two years after the date of enactment of this subpart, the Administrator shall submit to the Congress a final report on emissions of ozone precursors from consumer products which emit significant quantities of ozone precursors, and include recommendations for the control of such emissions.

"(2)(A) Within one year of submission of the report required under paragraph (1), the Administrator shall propose, and within two years of such submission shall promulgate, regulations to aid in the attainment of the ozone ambient air quality standard by decreasing emissions of ozone precursors from classes or categories of consumer or commercial products. Such regulations shall be designed to achieve reductions from the selected product categories to a level equal to the level that would be achieved by the application of reasonably available controls to each such class or category of consumer or commercial products and shall, at a minimum, achieve, within three years after promulgation, reductions in nationwide emissions of volatile organic compounds of three percent below the level of such emissions in the calendar year of enactment of this subpart.

"(B) Such regulations may include any system or systems of implementation as the Administrator may deem appropriate, including but not limited to requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or fees concerning the manufacture, processing, distributions, use, consumption, or disposal of the product.

"(C) The regulations may exempt health-use products for which the Administrator determines there are not suitable substitutes.

"(D) Any fees collected under such regulations shall be deposited in a special fund in the United States Treasury which shall thereafter be available for appropriation, to remain available until expended, to carry out activities of the Environmental Protection Agency under this Act.

"(3) Any standard established under this subsection shall be treated, for purposes of sections 113, 114, 115, 120, and 304, as a standard under section 111.

"(4) The Administrator may, pursuant to regulations, delegate to any State that so requests, administration and enforcement of the regulations promulgated under paragraph (2).

"(5) For the purposes of this subsection—

"(A) The term 'reasonably available controls' means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is reasonably achievable through the application of any equipment, processes, systems or techniques, including, but not limited to, chemical reformulation, product or feedstock substitution, repackaging, or directions for use, consumption, storage, or disposal.

"(B) The term 'consumer or commercial products' means any substance, product, or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of ozone precursors. The term does not include fuels or fuel additives as defined under section 211; and

"(C) the term 'ozone precursors' means pollutants that contribute to the ambient air concentrations of ozone.

"CONTROL OF INTERSTATE OZONE AIR POLLUTION

"SEC. 186. (a) OZONE TRANSPORT REGIONS.—The area comprising the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia, and the consolidated metropolitan statistical area including the District of Columbia is established as an ozone transport region. The Administrator may add any State or portion of a State to any region established under this subsection or establish other ozone transport regions, consisting of two or more States, when the Administrator determines that the interstate transport of air pollutants from such State or States significantly contributes to concentrations of ozone or ozone precursors in any nonattainment area in another State classified under section 181(a) as a serious, severe, or extreme area for ozone. The ozone transport commission established under subsection (b) for any ozone transport region may remove any State or portion of a State from the region if the commission determines that the control of emissions in that State or portion of a State pursuant to this section will not significantly contribute to the attainment of the primary ambient air quality standard for ozone in any nonattainment area.

"(b) OZONE TRANSPORT COMMISSIONS.—Not later than six months after enactment of this subpart, the Administrator shall establish an ozone transport region established by the first sentence of subsection (a). Not later than three months after the establishment of any other ozone transport region, the Administrator shall establish an ozone transport commission for the region. Each ozone transport commission shall be comprised of the following members—

"(1) an air pollution control official representing each State in the region, appointed by the Governor or as provided under State law;

"(2) the Administrator (or an employee designated by the Administrator from the headquarters office of the Environmental Protection Agency); and

"(3) the Regional Administrator (or an employee designated by the Regional Administrator) for each Environmental Protection Agency regional office for each Environmental Protection Agency region affected by the ozone transport region concerned. Decisions of each ozone transport commission may be made only by a majority vote of all members other than the Regional Administrators (or designees thereof).

"(c) PLAN PROVISIONS FOR STATES IN OZONE TRANSPORT REGIONS.—Not later than two years after the enactment of this subpart (or nine months after the subsequent inclusion, of a State in an established ozone transport region), each State included within an ozone transport region shall submit a State implementation plan or revision thereof to the Administrator which requires the following—

"(1) that each area in such State that is in an ozone transport region, that is not a nonattainment area, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more, comply with the provisions of section 183(a)(1)(A) (pertaining to vehicle inspection and maintenance programs); and

"(2) that each major stationary source of volatile organic compounds within such State comply with the requirements of section 182(b)(2) (relating to reasonably available control technology).

"(d) ADDITIONAL CONTROL MEASURES.—Upon petition of any State within an ozone transport region, the commission may, after notice and opportunity for comment, require additional emissions control measures to be applied within such transport region if the commission determines such measures are necessary to bring all areas in such region into attainment by the dates provided by this subpart.

"(e) EXEMPT AREAS.—Upon petition of any State within an ozone transport region, the commission may exempt any area within such State from the requirements of subsection (c) if the State demonstrates to the satisfaction of the commission that stationary or mobile sources within the area do not contribute significantly to ozone concentrations in any area classified as serious, severe, or extreme for ozone. The commission shall make a determination under this paragraph within nine months following receipt of a petition. No State may submit a petition under this paragraph after the date one year after the enactment of this subpart (or more than one year after the date on which the State or portion thereof is included within an ozone transport region).

"(f) PETITIONS.—Any State or political subdivision may petition the Administrator to make a determination that any other State or portion thereof should be included within an ozone transport region under this section. The petitioning State shall include with such petition such evidence as is available to it regarding the contribution made by sources located in (or operating in) the State (or portion thereof) which is the subject of the petition to ozone concentrations in the petitioning State. Within 120 days after receipt of any petition under this subsection and after public hearing, the Administrator shall include the State (or portion thereof) within an ozone transport region or deny the petition.

"(g) BEST AVAILABLE AIR QUALITY MONITORING AND MODELING.—For purposes of this section, not later than six months after the enactment of subpart, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes to making such determinations.".

ADDITIONAL REQUIREMENTS FOR CARBON MONOXIDE NONATTAINMENT AREAS

SEC. 108. (a) NEW REQUIREMENTS FOR CARBON MONOXIDE NONATTAINMENT AREAS.—Part D of title I of the Clean Air Act is amended by adding the following new subpart after subpart 2:

"SUBPART 3—ADDITIONAL PROVISIONS REGARDING CARBON MONOXIDE NONATTAINMENT AREAS

"CLASSIFICATION OF CARBON MONOXIDE NONATTAINMENT AREAS

"SEC. 187. (a) CLASSIFICATION BY OPERATION OF LAW.—Each area which did not meet the national primary ambient air quality standard for carbon monoxide averaged over an eight-hour period as of the last calendar year ending before enactment of this subpart for which data are available is hereby classified by operation of law in one of the following categories based upon the percentage by which the standard was exceeded in that area:

"Area Classification	Percentage Exceedance
Moderate	Not Greater than 55%
Serious	Greater than 55%

Any reference in this subpart to a "moderate nonattainment area" or a "serious nonattainment area" shall be considered a reference to a moderate or serious carbon monoxide nonattainment area as classified under this subsection (or as subsequently reclassified under this subpart). Any reference in this subpart to the "carbon monoxide air quality standard" shall be considered a reference to the national primary ambient air quality standard for carbon monoxide averaged over a eight-hour period.

"(b) DATA AND METHODS FOR CLASSIFICATION.—For purposes of calculating the percentage by which the carbon monoxide air quality standard is exceeded in any area—

"(1) the most recent monitoring data available shall be used; and

"(2) the same methods as are used under regulations of the Administrator for purposes of determining attainment of the standard shall be applicable.

Not later than thirty days after the date of enactment of this subpart the Administrator shall publish a notice identifying the percentage by which each area referred to in subsection (a) exceeds the carbon monoxide air quality standard and the classification of each area as moderate or serious.

"(c) DEADLINES FOR ATTAINMENT.—The following deadlines apply to the carbon monoxide nonattainment areas classified in accordance with subsection (a)—

"Area Classification:	Applicable attainment date (in years after enactment of this subpart)
Moderate	5 years
Serious	10 years

"(d) NEW STANDARD.—If the Administrator revises the carbon monoxide air quality standard after the enactment of this subpart, the Administrator shall, within six months after the revision, promulgate requirements applicable to all areas which have not attained the revised standard and shall require the submission of implementation plans or revisions to such plans for such areas within twenty-four months after the revision of the standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas classified under subsection (a) and shall provide for attainment of such revised standard according to a schedule which is comparable to that specified in subsection (c).

"REQUIREMENTS APPLICABLE TO ALL CARBON MONOXIDE NONATTAINMENT AREAS

"SEC. 188. (a) INVENTORIES.—Each State containing a nonattainment area classified pursuant to section 187(a) shall, not later than one year after the date of enactment of this subpart and every three years thereafter, submit an inventory of carbon monoxide emissions from stationary and mobile sources located within each such area as provided in the guidelines issued by the Administrator pursuant to section 108(g). The initial inventory shall report emissions occurring in the calendar year immediately preceding enactment of this section or the subsequent year. Any area subsequently classified nonattainment pursuant to section 107 and this subpart shall submit (and update as provided in this subsection) carbon monoxide emissions inventories beginning eighteen months after the date of classification. Guidance for inventory preparation published by the Administrator pursuant to section 108(g) shall contain factors for estimating carbon monoxide emissions from wood stoves and other small combustion sources.

"(b) MONITORING.—The enhanced monitoring program required by section 108(g) shall include the use of mobile monitors for carbon monoxide to determine the geographic extent of any nonattainment problem for such pollutant within an area. Monitoring pursuant to such guidelines shall be commenced in all areas classified pursuant to section 187(a) or subsequently pursuant to section 107 and this subpart not later than eighteen months after such classification. The Administrator may require through guidance or by rule the use of mobile monitoring devices for carbon monoxide in areas designated as attainment areas.

"(c) EXISTING COMMITMENTS.—

"(1) Not later than eighteen months after the date of enactment of this section each State containing an area classified nonattainment pursuant to section 187(a) shall fully implement all provisions of any implementation plan for the attainment of the carbon monoxide air quality standard for such area or areas which have been submitted to the Administrator for approval (whether or not approved) prior to the date of enactment of this section.

"(2) Each State containing an area classified pursuant to section 187(a) shall promptly and fully implement any additional measures not previously proposed by the State but required by subpart 1.

"(d) AUTO REGISTRATION FEE.—Each State containing an area classified pursuant to section 187(a) or which contains an area subsequently classified pursuant to section 107 and this subpart shall not later than eighteen months after such classification submit to the Administrator for approval a revision to the implementation plan for each such area providing for the collection of a tee beginning not later than six months after such date of not less than $2.00 for each vehicle registered within such nonattainment area or areas. The requirement of this section shall not be in addition to any similar fee requirement imposed on vehicle registrations in such area under subpart 2. If the Administrator determines that the

fee provisions of the applicable implementation do not meet the requirements of this subsection or if the Administrator determines that such agency is not administering and enforcing the fee required under this subsection, the Administrator shall collect such fees, which, notwithstanding section 3302(b) of title 31, United States Code, shall be deposited into a special fund of the Treasury and shall thereafter be available for appropriation to the Environmental Protection Agency to carry out activities under this Act.

"(e) STATIONARY SOURCE EMISSIONS FEE.—Each State containing an area classified pursuant to section 187(a) or which contains an area subsequently classified pursuant to section 107 and this subpart shall not later than eighteen months after such classification submit to the Administrator a revision to the implementation plan for each such area providing for the collection of a fee beginning not later than six months after the date of submission to be imposed on the owner or operator of each major stationary source of carbon monoxide emissions located within such area. The fee shall be not less than $100.00 for each ton of carbon monoxide emissions allowed in the permit issued for each such source located within a moderate nonattainment area and not less than $250.00 per ton for each source located within a serious nonattainment area. The owner or operator of each such source shall be liable to the State for payment of such fee. The liability for fees to be paid under this subsection shall be in addition to liability for any similar fees imposed under other provisions of this Act. All revenues from any fee collected under this subsection shall be used by the State (or local pollution control agency) to develop and implement air pollution control programs pursuant to section 110 and this part.

"(f) PERMIT REQUIREMENT.—

"(1) Each State containing an area classified pursuant to section 187(a) or which contains an area subsequently classified pursuant to section 107 and this subpart shall not later than eighteen months after the date of such classification submit to the Administrator for approval a revision to the implementation plan for each such area requiring an operating permit as provided in sections 172(a)(6) and 173(b) for each new or existing major stationary source of carbon monoxide emissions located within any such nonattainment areas. It shall be unlawful to operate a major source of carbon monoxide emissions without a permit issued pursuant to an approved implementation plan beginning thirty-six months after the date of enactment of this subpart.

"(2) Each permit issued pursuant to this subsection shall require the installation of continuous emission monitoring for carbon monoxide emissions from the source.

"(3)(A) For purposes of this part a major stationary source of carbon monoxide emissions is any stationary source located or to be located in a moderate nonattainment area which emits or has the potential to emit fifty tons or more of carbon monoxide per year or any such source located or to be located in a serious nonattainment area which emits or has the potential to emit twenty-five tons or more of carbon monoxide per year.

"(B) For the purpose of satisfying the requirement of 173(c) (pertaining to offsets) the ratio of emissions reductions to increased emissions in serious nonattainment areas shall be at least 1.5 to 1.

"(g) ATTAINMENT DEMONSTRATION AND MILESTONE.—

"(1) Each State containing a moderate or serious nonattainment area shall, after notice and opportunity for public comment but not later than 24 months after such area has been designated nonattainment, submit to the Administrator for approval revisions to the implementation plan for each such area which demonstrate, as provided in section 110 and this part, attainment of the carbon monoxide air quality standard by the deadline for attainment for such area or areas as provided in section 187(c).

"(2)(A) Notwithstanding the provisions of paragraph (1), revisions demonstrating attainment under this subsection shall not be required for any moderate nonattainment area for which the design value in the most recent calendar year immediately preceding enactment of this section did not exceed the carbon monoxide air quality standard by more than 10 percent, provided that, within three months after the date of enactment of this subpart the Governor of such State submits to the Administrator a detailed statement of the measures to be undertaken in such area which will assure attainment of the carbon monoxide air quality standard by not later than thirty-six months after such date of enactment.

"(B) In the event that a moderate nonattainment area for which an attainment demonstration has not been submitted pursuant to subparagraph (A) does not attain the carbon monoxide air quality standard by the date thirty-six months after the date of enactment of this subpart, the State in which such area is located shall, after notice and opportunity for public comment, submit within an additional twelve-month period revisions to the implementation plan for the area making such demonstration and such area shall be subject to all of the requirements of this subpart applicable to moderate nonattainment areas including implementation of a vehicle inspection and maintenance program pursuant to subsection (i) and the deadlines for attainment established by section 187(c).

"(3)(A) Revisions demonstrating attainment submitted to the Administrator for approval under this subsection shall contain quantitative milestones to be achieved in each year in which an inventory is required under subsection (a) until the area is reclassified attainment and which demonstrate, as defined in section 171(1), reasonable further progress toward attainment by the date applicable to the area under section 187(c). Milestones proposed for inclusion in an implementation plan under this paragraph may be stated as—

"(i) reductions in vehicle miles traveled or vehicle trips in the nonattainment area, or both, during periods when the standard is likely to be violated;

"(ii) reductions in tons of emissions of carbon monoxide emitted annually in the nonattainment area;

"(iii) reductions in the design value for carbon monoxide averaged over an eight-hour period for the area;

"(iv) reductions in the number of exceedances of the national carbon monoxide air quality standard which would be expected to occur each year; or

"(v) any combination of the above.

"(4) Revisions demonstrating attainment submitted to the Administrator for approval under this subsection shall contain one or more contingency measures sufficient to reduce (singly or in combination) carbon monoxide emissions in the nonattainment area as reported in the most recent inventory by not less than 5 percent for moderate nonattainment areas and not less than 10 percent for serious nonattainment areas. The revisions shall provide for automatic implementation of the measures in the event the area does not attain the carbon monoxide air quality standard by the date applicable to the area as provided in section 187(c). Contingency measures may be implemented only in part if all measures are not necessary to assure attainment of such standard as determined by the Administrator. Implementation of contingency measures shall not be delayed by any extension granted pursuant to section 190(d)(1).

"(5) The Administrator may not approve any revisions submitted pursuant to this subsection unless such revisions taken as a whole convincingly demonstrate attainment by not later than the dates specified in section 187(c). Notwithstanding the provisions of this paragraph, the Administrator may order that any or all requirements contained in such revisions be implemented and enforced pending submission of additional revisions of the implementation plan which can be approved as demonstrating attainment of the carbon monoxide air quality standard by the dates applicable under section 187(c).

"(h) CONTINUING AUDITS OF IMPLEMENTATION PLANS.—

"(1) The Administrator shall conduct an audit of each implementation plan for carbon monoxide for each area designated nonattainment for the carbon monoxide air quality standard to determine whether the State (or local pollution control agency) is adequately implementing and enforcing each provision of the plan and achieving the milestones established pursuant to subsection (g). Audits shall be conducted not less frequently than every three years and shall be scheduled, to the extent practicable, in years immediately following the compilation of an inventory as provided by subsection (a).

"(2) If the Administrator finds that any provision required by section 110, section 172(a) (1) through (10), section 173 or this subpart is not being adequately implemented and enforced, the Administrator shall promptly notify the State in which the area is located and shall impose the sanctions required by section 190 until such time as full implementation is achieved.

"(3) If the Administrator finds that any milestone established pursuant to subsection (g) has not been achieved by the applicable date, the Administrator shall require the State in which the area is located to promptly submit revisions to its plan, including provisions which may be identified by the Administrator, assuring achievement of the milestone as expeditiously as practicable but not later than eighteen months after the date originally scheduled for achieving the milestone. The Administrator shall also impose the sanctions required by section 190 until such time as the milestone is achieved.

"(i) VEHICLE INSPECTION AND MAINTENANCE PROGRAM.—Each State containing an area classified nonattainment pursuant to section 187(a) or which contains an area subsequently classified nonattainment and which is required to submit revisions to the implementation plan for such area demonstrating attainment pursuant to subsection (g) shall, not later than one year after the date of such classification, submit a revision to the applicable plan providing for implementation of a vehicle inspection and mainte-

nance program which achieves carbon monoxide emissions reductions of at least 52,000 tons per million vehicles inspected and includes each of the elements in clause (i) through (vi) of section 183(a)(1)(A).

"(k) OXYGENATED FUELS.—Revisions demonstrating attainment submitted pursuant to subection (g) shall contain provisions implementing and enforcing an oxygenated fuels program for each moderate or serious nonattainment area as provided in section 211(e).

"REQUIREMENTS APPLICABLE TO SERIOUS CARBON MONOXIDE NONATTAINMENT AREAS

"SEC. 189. (a) TRANSPORTATION CONTROL MEASURES.—Revisions demonstrating attainment submitted pursuant to section 188(g) for any serious nonattainment area shall contain a commitment to implement as expeditiously as practicable each of the transportation control measures specified in section 108(f) or a statement of the reasons for not including such measure in such revisions and an identification of other measures which will be taken in the area to obtain carbon monoxide emissions reductions equal to or greater than those which would have been achieved by implementation of such measure or measures.

"(b) EMPLOYER RIDERSHIP PROGRAM.—Revisions demonstrating attainment submitted pursuant to section 188(g) for any serious nonattainment area shall contain provisions requiring employers located in such area to implement programs to reduce work-related trips and miles traveled by employees. Such revisions shall be developed consistent with guidance issued by the Administrator pursuant to section 108(f) and shall, at a minimum, require that each employer of one hundred or more persons increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 20 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The revision shall also provide that any employer subject to the vehicle occupancy requirement which does not achieve the required occupancy rate increase within two years after the date the revision is submitted shall be liable to the State for payment of a fee of not less than $50 per month for each employee parking space provided or subsidized by such employer. Any revenue received by a State pursuant to this subsection may only be spent to develop or implement an air pollution control program as required by section 110 and this part.

"FAILURE TO COMPLY OR ATTAIN STANDARD

"SEC. 190. (a) FAILURE TO SUBMIT AN APPROVABLE PLAN.—Whenever a State fails to make a plan submission or revision required for a nonattainment area within such State under this subpart, or the Administrator disapproves such plan in whole or significant part, the Administrator—

"(1) shall, with respect to such area, impose the prohibition of section 176(a)(1) (pertaining to new source construction);

"(2) shall notify the Secretary of Transportation who shall impose the prohibition of section 176(a)(2) (pertaining to transportation funding); and

"(3) may withhold funds as provided under section 176(b)(3) (pertaining to air pollution control program grants).

"(b) FAILURE TO IMPLEMENT A PLAN.—Whenever any requirement of an approved plan (or approved part of a plan) is not being implemented, the Administrator, with respect to the area (or areas) in which such requirement is not being implemented—

"(1) shall impose the prohibition of section 176(a)(1) (pertaining to new source construction);

"(2) shall notify the Secretary of Transportation who shall impose the prohibition of section 176(a)(2) (pertaining to transportation funding); and

"(3) may withhold funds as provided under section 176(a)(3) (pertaining to air pollution control program grants).

"(c) FAILURE TO ACHIEVE REQUIRED EMISSIONS REDUCTIONS.—Whenever a carbon monoxide nonattainment area fails to achieve emissions reductions or a milestone required under section 188(g), the Administrator shall impose the prohibition of section 176(a)(1) (pertaining to new source construction) and shall notify the Secretary of Transportation who shall impose the prohibition of section 176(a)(2) (pertaining to transportation funding).

"(d) FAILURE TO ATTAIN.—

"(1) The Administrator shall reclassify any moderate nonattainment area failing to attain, as provided in section 187(c), the carbon monoxide air quality standard by the date five years after the date of enactment of this subpart as a serious nonattainment area, and such area shall from the time of reclassification be subject to the provisions of this subpart applicable to serious nonattainment areas. The Administrator may grant a one-year extension of the attainment date established by section 187(c) for a moderate nonattainment area before reclassification provided that the State has fully implemented all provisions in the implementation plan for the area and the area has not exceeded the carbon monoxide air quality standard by more than 10 percent in the two years prior to such date. Not more than two one-year extensions may be granted to any area under this subsection. Within twelve months of reclassification, the State shall submit to the Administrator for approval revisions to the implementation plan for such area as may be necessary to comply with the requirements for serious nonattainment areas.

"(2) In the case of an area classified as a serious nonattainment area in which the carbon monoxide air quality standard is not attained by the date provided in section 187(c), the State in which such area is located shall, after notice and opportunity for public comment, submit within twelve months after the applicable nonattainment date plan revisions which provide for attainment of the carbon monoxide air quality standard as provided in subsections (a)(2)(A)(i) and (e) of section 110, and, from the date of such submission until attainment, for an annual reduction in carbon monoxide emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

ADDITIONAL REQUIREMENTS FOR PM-10 NONATTAINMENT AREAS

SEC. 109. (a) NEW REQUIREMENTS FOR PM-10 NONATTAINMENT AREAS.—Part D of title I of the Clean Air Act is amended by adding the following new subpart after subpart 3:

"SUBPART 4—ADDITIONAL PROVISIONS FOR PM-10 NONATTAINMENT AREAS

"ATTAINMENT DEADLINES FOR PM-10 NONATTAINMENT AREAS

"SEC. 191. (a) DEADLINES FOR ATTAINMENT.—State implementation plans required for any PM-10 nonattainment area under this subpart shall demonstrate attainment as expeditiously as practicable but not later than the date five years after the date on which such area was designated nonattainment for PM-10. The attainment deadline for areas designated nonattainment pursuant to subparagraphs (A) or (B) of section 107(f)(4) shall not extend beyond December 31, 1993. The Administrator may extend the deadline applicable to any area under this subsection upon a showing by the State that—

"(1) attainment within five years is impracticable because measures or technology to reduce PM-10 emissions are not available;

"(2) the State will implement all reasonably available control measures including all measures described in any guidance issued by the Administrator pursuant to section 195; and

"(3) reasonable further progress toward attainment will be achieved and demonstrated at regular intervals until the attainment date as provided in section 192(e).

No extension provided under authority of this subsection may extend for a period beyond the date ten years after the date on which an area has been designated nonattainment.

"(b) NEW STANDARD.—If the Administrator revises the particulate matter air quality standard after the date of enactment of this subpart, the Administrator shall, within six months after such revision, promulgate requirements applicable to all areas which have not attained the revised standard and shall require the submission of implementation plans or revisions to such plans for such areas within twenty-four months after the revision of the standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment for PM-10 and shall provide for attainment of such revised standard.

"REQUIREMENTS APPLICABLE TO PM-10 NONATTAINMENT

"SEC. 192. (a) INVENTORIES.—Each State containing an area designated nonattainment pursuant to section 107(f)(4) shall, not later than one year after the date of enactment of this subpart and every three years thereafter, submit an inventory of PM-10 (and PM-10 precursors) emissions from stationary and mobile sources located within each such area as provided in guidelines issued by the Administrator pursuant to section 108(g). Any area subsequently designated nonattainment pursuant to section 107 of this subpart shall submit (and update as provided in this subsection) such emissions inventories beginning eighteen months after the date of designation. Guidance for inventory preparation issued by the Administrator pursuant to section 108(g) shall contain factors for estimating PM-10 (and PM-10 precursors) emissions from area and natural sources.

"(b) APPROVED SIPS.—Nothing in this section shall be interpreted to require preparation and submission of plan revisions for areas for which the State has submitted and the Administrator has approved a plan revision pursuant to regulations promulgated on August 7, 1987 (52 Federal Register 29383) provided that such plan revisions otherwise meet the requirements of this subpart.

"(c) STATIONARY SOURCE EMISSIONS FEE.—Each State containing an area designated nonattainment for PM-10 pursuant to section 107(f)(4) or which contains an area subsequently designated nonattainment for PM-10 pursuant to section 107 of this subpart shall not later than eighteen months

after such designation submit to the Administrator for approval a revision to the implementation plan for each such area providing for the collection of a fee beginning not later than six months after the date of submission to be imposed on the owner or operator of each major source of PM-10 or PM-10 precursor emissions located within such area. The fee shall be not less than $100 for each ton of PM-10 or PM-10 precursor emissions allowed in the permit issued for the source. The fee shall be not less than $250 per ton of PM-10 or PM-10 precursor emissions allowed in the permit for each source located in an area granted an extension for the attainment deadline pursuant to section 191(a). The owner or operator of the source shall be liable to the State for payment of such fee. The liability for fees imposed under this subsection shall be in addition to liability for any fees imposed under other provisions of this Act. All revenues from any fee collected under this subsection shall be used by the State (or local pollution control agency) to develop and implement air pollution control programs pursuant to section 110 and this part.

"(d) PERMIT REQUIREMENTS.—

"(1) Each State containing an area designated nonattainment for PM-10 pursuant to section 107(f)(4) or which contains an area subsequently designated nonattainment for PM-10 pursuant to section 107 of this subpart shall not later than eighteen months after the date of such designation submit to the Administrator for approval a revision to the implementation plan for each such area requiring an operating permit as provided in sections 172(a)(6) and 173(b) for each new or existing major source of PM-10 or PM-10 precursor emissions located within such areas. It shall be unlawful to operate a major source of PM-10 or PM-10 precursor emissions without a permit issued pursuant to an approved implementation plan beginning thirty-six months after the date of enactment of this subpart.

"(2) Each permit issued pursuant to this subpart shall require monitoring of PM-10 or PM-10 precursor emissions from the permitted source not less frequently than monthly. The owner or operator shall periodically (but not later than twenty-four hours after any violation is detected) report the results of such monitoring to the State in which the source is located.

"(3) For purposes of this part a major stationary source of PM-10 or PM-10 precursor emissions is any stationary source located or to be located in a PM-10 nonattainment area which emits or has the potential to emit fifty tons or more of PM-10 or pollutants which are precursors of PM-10 per year.

"(4) For purposes of satisfying the requirement of section 173(c) (pertaining to offsets) the ratio of emissions reductions to increased emissions in areas granted an extension of the attainment deadline pursuant to section 191(a) shall be at least 1.5 to 1.

"(e) ATTAINMENT DEMONSTRATION AND MILESTONES.—

"(1) Each State containing an area designated nonattainment pursuant to section 107 shall, after notice and opportunity for public comment but not later than 24 months after such designation, submit to the Administrator for approval revisions to the implementation plan for each such area which demonstrate attainment of the PM-10 air quality standard by the date provided in section 191(a).

"(2) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subsection shall contain quantitative milestones which are to be achieved in each year in which an inventory is required under subsection (a) until the area is redesignated attainment and which demonstrate, as defined in section 171(1), reasonable further progress toward attainment by the date applicable under section 191(a).

"(3) If a State includes in a plan revision an attainment date for an area which is after the date five years after the date of enactment of this subpart, the State shall commit to implementing each of the guidelines for control technology and measures which the Administrator promulgates pursuant to section 194 for each class or category of PM-10 or PM-10 precursor emission sources in the area. If the Administrator promulgates guidelines which are applicable to such classes and categories of sources after the date on which a plan revision is required by this subsection, the State shall further revise its plan within one year after the promulgation of such additional guidelines to provide for prompt implementation.

"(4) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subsection shall contain one or more contingency measures sufficient to reduce (singly or in combination) PM-10 or PM-10 precursor emissions in the nonattainment area as reported in the most recent inventory by not less than 10 percent. The plan revision shall provide for automatic implementation of the contingency measures in the event the area does not attain the PM-10 air quality standard by the date established pursuant to section 191(a). Implementation of contingency measures shall not be delayed by any extension granted pursuant to section 193(d).

"(5) The Administrator may not approve any revisions submitted pursuant to this subsection unless such revisions taken as a whole convincingly demonstrate attainment by not later than the dates applicable under section 191(a). Notwithstanding the provisions of this paragraph, the Administrator may order that any or all requirements contained in a plan revision be implemented and enforced pending submission of additional revisions of the implementation plan which can be approved as demonstrating attainment of the PM-10 air quality standard by the dates applicable under section 191(a).

"(f) CONTINUING AUDITS OF IMPLEMENTATION PLANS.—

"(1) The Administrator shall conduct an audit of each implementation plan for PM-10 for each area designated nonattainment pursuant to section 107(f)(4) to determine whether the State (or local pollution control agency) is adequately implementing and enforcing each provision of the plan and achieving the milestones established pursuant to subsection (e). Audits shall be conducted not less frequently than every three years and shall be scheduled, to the extent practicable, in years immediately following the compilation of an inventory as provided in subsection (a).

"(2) If the Administrator finds that any provision required by section 110, subpart 1 or this subpart is not being adequately implemented and enforced, the Administrator shall promptly notify the State in which the area is located and shall impose sanctions required by section 193 until such time as full implementation is achieved.

"(3) If the Administrator finds that any milestone established pursuant to subsection (e) has not been achieved by the applicable date, the Administrator shall require the State in which the area is located to promptly submit revisions to its plan, including provisions which may be identified by the Administrator, assuring achievement of the milestone as expeditiously as practicable but not later than eighteen months after the date originally scheduled. The Administrator shall also impose the sanctions required in section 194 until such time as the milestone is achieved.

"FAILURE TO COMPLY OR ATTAIN STANDARD

"SEC. 193. (a) FAILURE TO SUBMIT AN APPROVABLE PLAN.—Whenever a State fails to make a plan submission or revision required for a nonattainment area within such State under this subpart, or the Administrator disapproves such plan in whole or significant part, the Administrator—

"(1) shall, with respect to such area, impose the prohibition of section 176(a)(1) (pertaining to new source construction);

"(2) shall notify the Secretary of Transportation who shall impose the prohibition of section 176(a)(2) pertaining to transportation funding); and

"(3) may withhold funds as provided under section 176(b)(3) (pertaining to air pollution control program grants).

"(b) FAILURE TO IMPLEMENT A PLAN.—Whenever any requirement of an approved plan (or approved part of a plan) is not being implemented, the Administrator, with respect to the area (or areas) in which such requirement is not being implemented—

"(1) shall impose the prohibition of section 176(a)(1) (pertaining to new source construction);

"(2) shall notify the Secretary of Transportation who shall impose the prohibition of section 176(a)(2) (pertaining to transportation funding); and

"(3) may withhold funds as provided under section 176(a)(3) (pertaining to air pollution control program grants).

"(c) FAILURE TO ACHIEVE REQUIRED EMISSIONS REDUCTIONS.—Whenever a PM-10 nonattainment area fails to achieve emissions reductions of a milestone required under section 192(e), the Administrator shall impose the prohibition of section 176(a)(1) (pertaining to new source construction) and shall notify the Secretary of Transportation who shall impose the prohibition of section 176(a)(2) (pertaining to transportation funding).

"(d) FAILURE TO ATTAIN.—

"(1) The Administrator may, for any area, grant a one-year extension of the attainment date established pursuant to section 191(a) provided that—

"(A) the State has fully implemented all provisions in the implementation plan for the area;

"(B) the area does not exceed the PM-10 standard averaged annually; and

"(C) the area has not exceeded the PM-10 air quality standard averaged over twenty-four hours by more than 10 percent in the two years prior to such date. Not more than two one-year extensions may be granted pursuant to the authority of this subsection.

"(2) In the case of an area designated nonattainment pursuant to section 107(f)(4) in which the PM-10 standard is not attained by the date provided in section 191(a) (and considering any extension provided in subsection (a)), the State in which such area is located shall, after notice and opportunity for public comment, submit within twelve months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard

as provided in subsections (a)(2)(A)(i) and (e) of section 110, and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

"GUIDELINES FOR PM-10 SOURCES

"SEC. 194. (a) INITIAL GUIDELINES.—Not later than eighteen months after the date of enactment of this section, the Administrator shall promulgate control technique guidelines with respect to reasonably available control technology and best available control technology for PM-10 (and PM-10 precursor) emissions from major stationary sources. At the same time, the Administrator shall publish guidelines with respect to reasonably available control measures and best available control measures for controlling PM-10 (and PM-10 precursor) emissions from area sources which cause or contribute to PM-10 nonattainment. At a minimum, guidelines published under this subsection shall include identification of technology and measures for combustion sources including wood smoke, prescribed burning for silviculture and agriculture and urban fugitive dust.

"(b) ADDITIONAL GUIDELINES.—Not later than six months after the date for submission of plans and plan revisions pursuant to section 192(e)(1), the Administrator shall publish a list of all other classes and categories of sources of PM-10 emissions which States have indicated will prevent attainment of the PM-10 air quality standard within five years after the date of enactment of this subpart because control technology is not available. Not later than forty-eight months after the date of enactment of this subpart, the Administrator shall publish control technique guidelines and guidelines for area sources (as provided in subsection (a)) for each such class or category.".

(b) PM-10 INCREMENTS IN PSD AREAS.—Section 166 of the Clean Air Act is amended by adding the following new subsection:

"(f) PM-10 INCREMENTS.—The Administrator is authorized to substitute, for the maximum allowable increases in particulate matter specified in section 163(b) and section 165(d)(2)(C)(iv), maximum allowable increases in particulate matter with an aerodynamic diameter smaller than or equal to ten micrometers. Such substituted maximum allowable increases shall be at least as stringent in effect as those specified in the provisions for which they are substituted. Until the Administrator promulgates regulations under the authority of this section, the current maximum allowable increases in concentrations of particulate matter shall remain in effect.".

OUTER CONTINENTAL SHELF ACTIVITIES

SEC. 110. Title III of the Clean Air Act is amended by adding the following new section after section 236:

"AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES

"SEC. 327. (a) APPLICABLE REQUIREMENTS.—Not later than twelve months after the enactment of this section, the Administrator, by rule, shall establish requirements to control air pollution from outer continental shelf sources ('OCS sources'). Such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area. Such requirements shall take effect with respect to new or modified sources on the date of promulgation and with respect to existing sources on the date twelve months thereafter. The authority of this section shall supersede any inconsistent authorities established under other law. Each requirement established under this section shall be treated, for purposes of sections 113, 114, 116, 120, and 304, as a standard under section 111.

"(b) STATE PROCEDURES.—Each State adjacent to an OCS source may develop and submit to the Administrator a procedure for implementing and enforcing the requirements promulgated by the Administrator under subsection (a) for OCS sources. If the Administrator finds that the State procedure is adequate he shall delegate to that State any authority he has under this Act to implement and enforce such requirements.

"(c) DEFINITIONS.—For purposes of this section—

"(1) The term 'outer Continental Shelf' has the meaning provided by section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

"(2) The term 'corresponding onshore area' means, with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal, State, or local ambient air quality standard or to comply with the provisions of part C.

"(3) The terms 'Outer Continental Shelf Source' and 'OCS source' includes any equipment, activity, or facility which (A) emits or has the potential to emit any air pollutant, (B) is regulated or authorized under the Outer Continental Shelf Lands Act, and (C) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf. Activities include, but are not limited to, exploration, construction, development, processing, and transportation. Emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source and the corresponding onshore area, shall be considered emissions from that OCS source.".

INDIAN TRIBES

SEC. 111. Title III of the Clean Air Act is amended by adding the following at the end thereof:

"INDIAN TRIBES

"SEC. 328. (a) IN GENERAL.—Subject to the provisions of subsection (b), the Administrator—

"(1) is authorized to treat Indian Tribes as States under this Act,

"(2) may delegate to such tribes primary responsibility for assuring air quality and enforcement of air pollution control, and

"(3) may provide such tribes grant and contract assistance to carry out functions provided by this title.

"(b) EPA REGULATIONS.—

"(1) The Administrator shall, within eighteen months after the enactment of this section, promulgate final regulations specifying those provisions of this Act for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if—

"(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

"(B) the functions to be exercised by the Indian Tribe are within the area of the tribal government's jurisdiction; and

"(C) the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this title and of all applicable regulations.

"(2) Indian Tribes shall not be treated as States for purposes of the last sentence of section 105(c). For any other provision of this Act where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this Act, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of this section and such other provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary responsibility for assuring air quality and enforcement of air pollution control in a manner less protective of public health or welfare than such responsibility may be assumed or maintained by a State. An Indian Tribe shall not be required to exercise criminal jurisdiction for purposes of complying with the proceeding sentence.".

MISCELLANEOUS AND CONFORMING AMENDMENTS

SEC. 112. (a) Section 106 of the Clean Air Act is amended by inserting—

(1) after "section 107" the following: "or of implementing section 186 (relating to control of interstate ozone air pollution)";

(2) after "program costs of" the following: "any commission established under section 186 (relating to control of interstate ozone air pollution) or"; and

(3) in the last sentence after "such agency" in each place it appears the following: "or such commission".

(b) Paragraph (5) of section 110(a) and paragraph (2) of section 110(c) are hereby repealed and subsequent paragraphs are redesignated accordingly.

TITLE II—PROVISIONS RELATING TO MOBILE SOURCES

EMISSIONS STANDARDS FOR CERTAIN MOTOR VEHICLES

SEC. 201. Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(g) MODEL YEARS AFTER 1992.—(1) Effective with respect to the model years specified in tables 1 and 2 below, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), total hydrocarbons (HC), oxides of nitrogen (NO_x), carbon monoxide (CO) and particulates (PM) from motor vehicles and motor vehicle engines in the classes specified in the tables shall contain standards which provide that emissions may not exceed the levels specified in the tables.

"TABLE I.—EMISSIONS STANDARDS FOR GASOLINE AND DIESEL-FUELED LIGHT DUTY VEHICLES

Pollutant	Model years	Standards [1]
NMHC	1993 through 2002	0.25 gpm.
HC	1993 through 2002	0.31 gpm.
HC	2003 and after	0.125 gpm.
NO_x	1993 through 2002	0.4 gpm.
NO_x	2003 and after	0.2 gpm.
CO	2003 and after	1.7 gpm.
PM	1993 and after	0.08 gpm.

[1] Standards are expressed in grams per mile (gpm).

"TABLE 2.—EMISSION STANDARDS FOR GASOLINE AND DIESEL-FUELED TRUCKS AND BUSES

Vehicle or engine type	Pollutant	Model years	Standard [1]
Trucks (3750 lbs or more but less than 5750 lbs, loaded vehicle weight).	NMHC	1933 and after	0.32 gpm.
	HC	1993 and after	0.38gpm.
	NO_x	1993 and after	0.7 gbh.
	CO	1993 and after	4.4 gpm.
Heavy duty trucks	NO_x	1994–2002	4.0 gbh.
	NO_x	2003 and after	2.0 gbh.
	PM	1991–3	0.25 gbh.
	PM	1994 and after	0.1 gbh.

[1] Standards are expressed in grams per mile (gpm) or grams per brake horsepower hour (gbh).

"(2) Effective with respect to model years after 1992, any motor vehicle with a loaded vehicle weight of 3750 pounds or less, as determined by the Administrator, shall be a light duty vehicle.".

CARBON MONOXIDE EMISSIONS AT COLD TEMPERATURES

SEC. 202. Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(h) COLD CO STANDARD.—The Administrator shall promulgate regulations under subsection (a) applicable to emissions of carbon monoxide from light duty vehicles and light duty trucks when operated at 20 degrees Fahrenheit. Such regulations shall contain standards which provide that, with respect to model years 1993 through 1999, emissions of carbon monoxide in the case of light duty vehicles may not exceed 10.0 grams per mile and, in the case of light duty trucks, 13.0 grams per mile. Such regulation shall also contain standards that provide that with respect to model year 2000 and thereafter, emissions of carbon monoxide in the case of light duty vehicles may not exceed 3.4 grams per mile, and, in the case of light duty trucks, 4.4 grams per mile.".

CONTROL OF VEHICLE REFUELING EMISSIONS

SEC. 203. Section 202(a)(6) of the Clean Air Act is amended to read as follows:

"(6) The Administrator shall promulgate regulations applicable to all motor vehicles requiring that such vehicles be equipped with vehicle-based ('onboard') systems for control of evaporative emissions during refueling. Such regulations shall take effect, with respect to light duty vehicles, beginning in model year 1993, and, with respect to other vehicles, at the earliest date the Administrator determines is feasible, and shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent.".

EVAPORATIVE EMISSIONS

SEC. 204. Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(i) EVAPORATIVE EMISSIONS.—Within 18 months after the enactment of this subsection the Administrator shall promulgate regulations under subsection (a) applicable to evaporative emissions of hydrocarbons, including emissions during vehicle operation, from all gasoline-fueled motor vehicles. Such regulations shall take effect beginning in model year 1994 and shall require the greatest degree of emission reduction achievable by means expected to be available during any model year to which such regulations apply.".

ONBOARD EMISSION DIAGNOSTIC SYSTEMS

SEC. 205. (a) Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(j) ONBOARD EMISSION DIAGNOSTIC SYSTEMS—

"(1) Within 18 months after enactment of this subsection, the Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostic systems capable of—

"(A) accurately identifying emission-related systems deterioration or malfunction including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

"(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

"(C) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

"(2) The regulations required under paragraph (1) with respect to light duty vehicles and light duty trucks shall take effect no later than model year 1994.

"(3) The Administrator may by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within two years of promulgation of such regulations to provide for inspection of onboard diagnostic systems (as prescribed by regulations under paragraph (1) of this subsection) and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostic system".

(b) The last sentence of section 207(a)(3) of the Clean Air Act is amended to read: "The term 'designed for emission control' as used in the preceding sentence means a catalytic converter, a thermal reactor, an onboard diagnostic system and items monitored or diagnosed by an onboard diagnostic system (as prescribed by regulations of the Administrator under section 202(j)), or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).".

(c) The second to last sentence of section 207(b) of the Clean Air Act is amended to read: "For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term 'emission control device or system' means a catalytic converter, a thermal reactor, an onboard diagnostic system and items monitored or diagnosed by an onboard diagnostic system (as prescribed by regulations of the Administrator under section 202(j)), or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions.".

EMISSIONS OF CARBON DIOXIDE FROM PASSENGER CARS

SEC. 206. Title II of the Clean Air Act is amended by redesignating section 216 as section 219 and inserting the following new section after section 215:

"EMISSIONS OF CARBON DIOXIDE FROM PASSENGER CARS

"SEC. 216. (a) PROMULGATION OF REGULATIONS.—The Administrator shall promulgate regulations providing for standards applicable to emissions of carbon dioxide from passenger automobiles (as defined in 15 U.S.C. 2001(2)). Such standards shall require that for model years 1995 to 2002, the average of such emissions from passenger automobiles manufactured by any manufacturer shall not exceed 242 grams per mile, and for model year 2003 and thereafter, such average shall not exceed 170 grams per mile.

"(b) APPLICATION OF OTHER PROVISIONS.—The standards under this section shall be subject to the provisions of section 202(d) relating to the determination of useful life, and to the same provisions of section 206 and section 207 as are applicable in the case of standards under section 202, and shall be enforced in the same manner as standards under section 202.".

LOW-POLLUTING VEHICLES

SEC. 207. (a) DEFINITION OF LOW-POLLUTING FUEL.—Section 219 of the Clean Air Act (as redesignated by section 206) is amended by adding the following new subsection:

"(7) The term 'low polluting fuel' means methanol, ethanol, propane, or natural gas, or any comparably low-polluting fuel. In determining whether a fuel is comparably low-polluting, the Administrator shall consider both the level of emissions of air pollutants from vehicles using the fuel and the contribution of such emissions to ambient levels of air pollutants. For purposes of this subsection, the term 'methanol' includes any fuel which contains at least 85 percent methanol unless the Administrator increases such percentage as he deems appropriate to protect public health and welfare.".

(b) STANDARDS AND RELATED REQUIREMENTS.—Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(k) LOW-POLLUTING VEHICLES.—

"(1) Within 18 months after the enactment of this subsection, the Administrator shall promulgate specific standards under subsection (a) for motor vehicles which burn low-polluting fuel. Such standards shall apply to the emission of carbon monoxide, formaldehyde, hydrocarbons, oxides of nitrogen, carbon dioxide, and such other air pollutants as the Administrator may identify as a potential threat to public health or welfare. The Administrator may establish different standards for vehicles powered by each of such fuels. Such standards shall take effect in the second model year commencing after the model year in which the standards are promulgated.

"(2) Any standard referred to in paragraph (1) shall require that each vehicle which burns a low-polluting fuel use the best available technology for the control of each air pollutant referred to in paragraph (1), taking costs into account. Such standard shall not permit emissions of any such air pollutant, including evaporative emissions, to exceed the standard applicable to emissions of such air pollutant from comparable gasoline powered vehicles under subsection (a) and shall require that such emissions contribute less to ozone formation.

"(3) Nothing in this subsection shall be construed to prevent the Administrator from certifying (under section 206) any motor vehicle having a multiple fuel capability or capable of burning a mixture of fuels if the vehicle meets the standards

under this subsection for each such fuel which it is capable of burning.".

LIGHT DUTY VEHICLE USEFUL LIFE

SEC. 208. Section 202(d)(1) of the Clean Air Act is amended to read as follows:

"(1)(A) in the case of light duty vehicles and light duty vehicle engines manufactured during or before the 1994 model year, be a period of use of five years or of fifty thousand miles (or the equivalent), whichever first occurs;

"(B) in the case of light duty vehicles and light duty engines manufactured in the model year 1995 and thereafter, be a period of use of ten years or 100,000 miles (or the equivalent), whichever first occurs".

WARRANTIES

SEC. 209. Section 207 of the Clean Air Act is amended as follows:

(a) strike out "useful life (as determined under section 202(d))" in each place it appears in subsection (b) and insert in lieu thereof "the warranty period (as determined under subsection (i))";

(b) strike so much of section 207(b) as follows the third sentence thereof;

(c) add the following new subsection at the end thereof:

"(i) WARRANTY PERIOD.—

"(1) For purposes of subsection (a)(1) and subsection (b), the warranty period, in the case of light duty vehicles and light duty vehicle engines manufactured during or before the 1994 model year shall be the useful life (as determined under section 202(d)). For the purposes of such subsections, the warranty period, in the case of such vehicles and engines manufactured during model year 1995 and thereafter, shall be the first two years or 24,000 miles of use (whichever first occurs), except as provided in paragraph (2).

"(2) In the case of a specified major emission control component, the warranty period for purposes of subsection (a)(1) and subsection (b) shall be eight years or 80,000 miles of use (whichever first occurs). As used in this paragraph, the term 'specified major emission control component' means only a catalytic converter or electronic emissions control unit, except that the Administrator may designate any other pollution control device or component as a specified major emission control component if—

"(A) the device or component (except in the case of onboard emission control diagnostic equipment required by section 216) was not in general use on vehicles and engines manufactured prior to the model year 1990; and

"(B) the Administrator determines that the retail cost (exclusive of installation costs) of such device or component exceeds $200 (in 1989 dollars, adjusted for inflation or deflation as calculated by the Administrator at the time of such determination).

Nothing in this Act shall be interpreted to mean that parts other than those specified by the Administrator as major emission control components shall be construed to be warranted under this Act for eight years or 80,000 miles.

"(3) Subparagraph (A) of subsection (b)(2) shall apply only where the Administrator has made a determination that the instructions concerned conform to the requirements of subsection (c)(3).";" and

(d) amend subsection (a)(1) by adding the following at the end thereof: "In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the period of 2 years or 24,000 miles of use (whichever first occurs), except that for a specified major emission control component (as defined in subsection (i)) such warranty shall require that such component is free from any such defects for the period of eight years or 80,000 miles of use (whichever first occurs).".

NON-ROAD ENGINES

SEC. 210. (a) DEFINITIONS.—Section 219 of the Clean Air Act (as redesignated by section 206 of this Act) is amended by adding the following new subsections:

"(8) The term 'non-road engine' means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or which is not subject to standards promulgated under section 111 (pertaining to new stationary sources) or section 202 (pertaining to motor vehicles) or to regulation under Part B of this title (pertaining to aircraft emissions).

"(9) The term 'non-road vehicle' means a vehicle that is powered by a non-road engine and that is not a motor vehicle.".

(b) Subsection (1) of section 219 of the Clean Air Act (as redesignated by section 206) is amended by striking the phrase "new motor vehicles or new motor vehicle engines" every place it occurs and inserting in its place "new motor vehicles, new motor vehicle engines, new non-road vehicles or new non-road engines".

(c) The Clean Air Act is amended by adding a new section 217 as follows:

"EMISSION STANDARDS FOR NON-ROAD ENGINES AND VEHICLES

"SEC. 217. (a) LIST OF CATEGORIES.—Not later than twelve months after the date of enactment of this section and after notice and opportunity for public comment the Administrator shall publish (and from time to time revise) a list of all categories of non-road engines and non-road vehicles together with estimates of the contribution of each category to ambient ozone and carbon monoxide levels in nonattainment areas and to total particulate levels.

"(b) EMISSION STANDARDS.—

"(1) The Administrator shall promulgate emission standards for non-road engines or non-road vehicles of fifty or more horsepower in every category listed under subsection (a) and is authorized to promulgate standards for vehicles or engines of less than fifty horsepower.

"(2) Emission standards promulgated under this subsection shall, at a minimum, require that emissions of carbon monoxide, volatile organic compounds, oxides of nitrogen and particulates, from engines and vehicles covered by this section shall not be greater than the emissions of such air pollutants allowable under section 202 for motor vehicle engines of comparable horsepower using the same fuel, as determined by the Administrator. If there is not a standard for any of such air pollutants under section 202 for a motor vehicle engine of comparable horsepower using the same fuel, the Administrator shall establish standards under this section which are proportional to the standards applicable under section 202 to motor vehicle engines which are closest in horsepower and fuel use to the engine concerned.

"(c) SCHEDULE FOR STANDARDS.—The Administrator shall promulgate regulations required under subsection (b) as expeditiously as practicable, assuring that—

"(1) emissions standards for engines or vehicles of greater than fifty horsepower in at least one-third of the categories listed under subsection (a) are promulgated not later than three years after the date of enactment of this section;

"(2) emissions standards for such engines or vehicles in at least two-thirds of such categories are promulgated within four years after such date; and

"(3) emissions standards for such engines or vehicles in all such categories are promulgated no later than five years after such date.

"(d) EFFECTIVE DATE.—Each standard under this section shall take effect with respect to engines or vehicles to which the standard applies that are manufactured three years after such standard is promulgated.

"(e) ENFORCEMENT.—The standards under this section shall be subject to the same provisions of title II as are applicable in the case of standards under section 202, and shall be enforced in the same manner as the standards under section 202, with such modifications as the Administrator deems appropriate.".

PROHIBITION ON PRODUCTION OF ENGINES REQUIRING LEADED GASOLINE

SEC. 211. The Clean Air Act is amended by adding a new section 218 as follows:

"PROHIBITION ON PRODUCTION OF ENGINES REQUIRING LEADED GASOLINE

"SEC. 218. The Administrator shall promulgate regulations applicable to motor vehicle engines and non-road engines manufactured after model year 1992 that prohibit the manufacture, sale, or introduction into commerce of any engine that requires leaded gasoline.".

MOTOR VEHICLE TESTING AND CERTIFICATION

SEC. 212. (a) IDLE TEST.—Section 206(a) of the Clean Air Act is amended by adding the following new paragraph at the end thereof:

"(4) Not later than one year after the enactment of this paragraph, the Administrator shall promulgate regulations adding an idle test and idle test mode to the Federal Test Procedure for light duty vehicles. Such modified test procedure shall be used for the certification of light duty vehicles and engines manufactured during or after model year 1992.".

(b) PRODUCTION LINE TESTING.—Section 206(b) of the Clean Air Act is amended by adding the following at the end thereof:

"(3) The Administrator shall revise the regulations under this section regarding selective enforcement auditing of new light duty vehicles (as set forth in section 86.610 of Subpart G of part 86 of title 40 of the Code of Federal Regulations) such that the maximum percentage of failing vehicles that, for purposes of sampling inspection, can be considered satisfactory as a process average for purposes of such selective enforcement audits shall be 10 percent. Such revised regulations shall apply with respect to motor vehicles manufactured after the model year 1991.".

(c) REVISION OF CERTAIN TEST PROCEDURES.—Section 206 of the Clean Air Act is amended by adding the following new subsection:

"(h) Within eighteen months after the enactment of this subsection and at least every four years thereafter, the Administrator shall review and revise as necessary the regulations under subsection (a) and (b) of this section regarding the testing of motor vehicles and motor vehicle engines to insure that vehicles are tested under circumstances which reflect the actual current driving conditions under which motor vehicles are

used, including conditions relating to fuel, temperature, acceleration and altitude. Such revised test procedures shall include testing of evaporative emissions (including running losses) as well as tail-pipe emissions and shall provide for the testing of trucks with a gross vehicle weight rating of 6000 pounds or more in a loaded mode approximating such rating.".

(d) AVERAGING PROHIBITED.—Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(e) AVERAGING PROHIBITED.—Each emission standard under this section shall apply to, and be met by, each and every vehicle or engine sold, offered for sale, introduced into commerce, or imported, and may not be met or complied with by the average of the performance of various vehicles, engines, engine families, or models manufactured by the same manufacturer.".

SEC. 213. (a) USE OF INFORMATION FROM STATE PROGRAMS.—Section 207(c) of the Clean Air Act is amended by adding the following new paragraph at the end thereof:

"(4) In making determinations of nonconformity under this subsection, the Administrator shall take into account information collected under any State vehicle emission control inspection and maintenance program. Any State in which such a program is operating may petition the Administrator to make a determination of nonconformity under paragraph (1) on the basis of information collected in such program. The Administrator shall act upon such petition within sixty days of receipt of such petition.".

(b) RECALL TESTING AT MANUFACTURER'S EXPENSE.—Section 207(c) of the Clean Air Act is further amended by adding the following new paragraph:

"(5) If the Administrator has reason to believe that in-use vehicles or engines may not conform to regulations prescribed under section 202, the Administrator may require the manufacturer of such vehicles or engines to pay the costs that the Administrator incurs in procuring and testing such vehicles or engines. Such reason to believe shall be based on data or information available to the administrator, including but not limited to, field surveys, State inspection and maintenance programs and consumer complaints.".

FUEL VOLATILITY

SEC. 214. Section 211 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(h) EVAPORATIVE EMISSIONS FROM MOTOR VEHICLE FUELS.—

"(1) The Administrator shall promulgate regulations to reduce evaporative emissions from motor vehicle fuels.

"(2) Regulations under this subsection shall include a standard for gasoline volatility. The standard shall apply to all gasoline sold, or offered for sale, or introduced into commerce for use in motor vehicles during the high ozone periods of each year. Effective with respect to gasoline sold in the second high ozone period which commences after the enactment of this subsection, the standard shall require that such gasoline sold, or offered for sale, or introduced into commerce for use in motor vehicles in Class C areas (as defined by the American Society of Testing Materials as of the date of enactment of this subsection) shall not exceed a Reid Vapor Pressure of 9 pounds per square inch unless the Administrator establishes a lower number which the Administrator determines to be achievable and appropriate for purposes of protecting public health and welfare. The regulations shall require a proportional reduction in areas other than such Class C areas.

"(3) For purposes of regulations referred to in paragraph (2), the high ozone period shall be the period between May 16 and September 15 each year or such longer period as the Administrator establishes for any region to cover periods of potential ozone air pollution in excess of the standard for ozone for the region.

"(4) For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation pursuant to this subsection shall be 1.0 pound per square inch greater than the applicable Reid vapor pressure limitations established under paragraph (2): *Provided, however,* that a refiner, distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser shall be deemed to be in full compliance with the provisions of this subsection and the regulations promulgated thereunder, if it can demonstrate (by showing receipt of a certification or other evidence acceptable to the Administrator) that (A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection, and (B) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4).".

DESULFURIZATION

SEC. 215. Section 211 of the Clean Air Act is amended by adding the following new subsection to the end thereof:

"(i) DESULFURIZATION OF DIESEL FUEL.—

"(1) Effective October 1, 1993, no person shall manufacture, sell, offer for sale, dispense, transport or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.

"(2) No later than twelve months after the enactment of this subsection, the Administrator shall promulgate regulations to implement and enforce the requirements of paragraph (1). The Administrator shall require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye such fuel in order to segregate it from motor vehicle diesel fuel.

"(3) The sulfur content of fuel required to be used in the certification of 1991 through 1993 model year heavy-duty diesel vehicles and engines shall not exceed 0.05 percent (by weight). The sulfur content and cetane index minimum of fuel required to be used in certification of 1994 and later model year heavy-duty diesel vehicles and engines shall comply with the regulations promulgated under paragraph (2).".

LEAD PHASEDOWN

SEC. 216. Section 211 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(j) PROHIBITION ON LEADED GASOLINE FOR HIGHWAY USE.—Effective January 1, 1991, it shall be unlawful for any person to sell, offer for sale, or introduce into commerce, for use as fuel in any motor vehicle (as defined in section 216(2)) any gasoline which contains lead or lead additives. The Administrator may extend the January 1, 1991, deadline for up to two years, if the Administrator determines that unavailabity of gasoline containing lead or lead additives for such vehicles will reduce the availability of such gasoline for farm vehicles and that alternatives to gasoline containing lead or lead additives are unavailable for use in gasoline powered farm vehicles.".

FUEL QUALITY

SEC. 217. Section 211 of the Clean Air Act is amended by adding the following new subsection to the end thereof:

"(k) FUEL QUALITY.—

"(1) Not later than thirty-six months after the date of enactment of this subsection the Administrator shall, after notice and opportunity for public comment, promulgate regulations establishing specifications for fuel quality which will minimize, to the extent economically and technically achieveable, emissions (including evaporative emissions) of hydrocarbons, carbon monoxide, oxides of nitrogen, particulate matter and hazardous air pollutants over the useful life of vehicles and engines certified for manufacture under this title. Such regulations may prohibit the presence of fuel impurities and other substances or mandate the use of specific additives to achieve the purposes of this subsection. The regulations shall be effective for fuels sold on and after January 1, 1994. In the event that the Administrator does not promulgate the regulations required by this paragraph, effective January 1, 1994 it shall be unlawful to sell, offer for sale or introduce into commerce any fuel for use in a gasoline-powered vehicle unless such fuel contains additives effective in preventing the accumulation of deposits in fuel-injected engines.".

"(2) In order to achieve and maintain attainment of ambient air quality standards, the Administrator may promulgate regulations applicable to fuel refiners, distributors, marketers, or consumers establishing specifications for fuels (including regulations requiring the availability or sale of fuels meeting the specifications in a nonattainment area or areas) to reduce emissions of pollutants subject to a standard under this title or hazardous air pollutants from motor vehicles. In establishing such specifications and availability requirements the Administrator shall consider other environmental effects which would result from production and use of fuels meeting the specifications. The Administrator shall require as part of any specification under this paragraph that there be no increase in emissions of any other pollutant subject to a standard under this title or any hazardous air pollutant by vehicles using the specified fuel. Regulations under this paragraph shall be stated as performance standards and may be satisfied by any fuel which, as certified to the Administrator by the refiner or distributor, achieves comparable emissions reductions and otherwise satisfies the specification.

OXYGENATED FUELS

SEC. 218. Section 211 of the Clean Air Act is amended by adding the following new subsection to the end thereof:

"(l)(1) Except as provided in paragraph (2) and effective October 1, 1991 no person shall, during the period from October 1 to March 31 each year, sell, offer for sale, or introduce into commerce in any area classified as nonattainment for carbon monoxide any gasoline fuel for use in a motor vehicle unless the oxygen content of such fuel shall be 3.1 per centum or greater.

"(2) The Administrator shall, not later than nine months after the date enactment of this subsection, promulgate guidelines allowing the exchange of marketable oxygen credits between sellers of fuels with an oxygen content higher than that required by paragraph (1) and other sellers of fuels to offset the sale or use of fuels with a lower content than required, *Provided, that* such

exchanges shall not be permitted between sellers located in different non-attainment areas and that the average oxygen content of fuels sold in any area that is non-attainment for carbon monoxide be 3.1 per centum or greater.

"(3) The Administrator may waive, in whole or in part, the requirements of this subsection in any area upon a demonstration by the State to the satisfaction of the Administrator that the use of oxygenated fuels would prevent or interfere with the attainment by such area of a national primary ambient air quality standard (or a State or local ambient air quality standard) for any air pollutant other than carbon monoxide.

"(4) Any person selling oxygenated fuel at retail pursuant to this subsection shall be required under regulations promulgated by the Administrator to label the fuel dispensing system with a notice that the fuel is oxygenated and will reduce carbon monoxide emissions from motor vehicles.".

MISFUELING

SEC. 219. Section 211 of the Clean Air Act is amended by deleting subsection (g) and inserting the following new subsection:

"(g)(1) No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled 'unleaded gasoline only,' which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, which is a 1990 or later model year motor vehicle, or which such person knows or should know is a vehicle designed solely for the use of unleaded gasoline.

"(2) Beginning October 1, 1993, no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.".

ENFORCEMENT

SEC. 220. (a) TESTING. Section 203(a)(2) of the Clean Air Act is amended by inserting before the semicolon at the end thereof the following: ", or to refuse to pay for procurement or testing under section 207(c)".

(b) TAMPERING WITH VEHICLE EMISSION CONTROLS.—Section 203(a)(3) of the Clean Air Act is amended to read as follows:

"(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser except as may be temporarily necessary in the course of routine proper maintenance; or

"(B) for any person to manufacture or sell, or offer to sell, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of such part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title, and where such person knows or should know that such part or component is being offered for sale for such use or put to such use; or".

(c) CIVIL AND ADMINISTRATIVE PENALTIES.—Section 205 of the Clean Air Act is amended to read as follows:

"SEC. 205. (a) CIVIL PENALTIES.—Any person who violates paragraph (1), (2) or (4) of section 203(a) or any manufacturer or dealer who violates paragraph (3)(A) of section 203(a) of this title shall be subject to a civil penalty of not more than $25,000. Any other person who violates paragraph (3)(A) or any person who violates paragraph (3)(B) of such section 203(a) shall be subject to a civil-penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 203(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with respect to paragraph (3)(B) of such section shall constitute a separate offense with respect to each part or component. Any such violation with respect to paragraph (2) of such section shall constitute a separate offense with respect to each day of violation.

"(b) CIVIL ACTIONS.—The Administrator may commence a civil action to assess and recover any civil penalty prescribed in subsection (a) of this section, subsection (d) of section 211 (pertaining to fuels and fuel additives), subsection (b) of section 216 (pertaining to emissions of carbon dioxide), or subsection (e) of section 217 (pertaining to non-road engines and vehicles). Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has his principal place of business, and such court shall have jurisdiction to assess such civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall consider the seriousness of the violation, the economic benefit (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this title, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

"(c)(1) The Administrator may assess a civil penalty prescribed in subsection (a) of this section, subsection (d) of section 211 (pertaining to fuels or fuel additives), subsection (b) of section 216 (pertaining to emissions of carbon dioxide) or subsection (e) of section 217 (pertaining to non-road engines and vehicles), except that the maximum amount of any civil penalty assessed under this paragraph shall not exceed $200,000. Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. The Administrator may issue rules for discovery procedures or hearings under this paragraph.

(2) In determining the amount of any civil penalty assessed under this subsection, the Administrator shall consider the seriousness of the violation, the economic benefit (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this title, any good faith efforts to comply with the applicable requirements, the economic impact on the violator, and such other matters as justice may require.

"(3)(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act, except that any violation—(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or (ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection, shall not be the subject of civil penalty action under subsection (b).

"(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this Act.

"(4) An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

"(5) Any person against whom a civil penalty is assessed in accordance with this subsection may obtain review of such assessment in the United States Court of Appeals for the District of Columbia Circuit, or for any other circuit in which such person resides or transacts business, by filing notice of appeal in such court within the thirty-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice to the Administrator and the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and such court shall not impose additional civil penalties for the same violation unless the Administrator's assessment of the penalty constitutes an abuse of discretion.

"(6) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

"(A) after the order making the assessment has become final, or

"(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to 26 U.S.C. 6621(a)(2) from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

"(7) The Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued under this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, or to appear and produce documents before the Administrator, or

both. Any failure to obey such order of the court may be punished by such court as a contempt thereof.".

(c) ENFORCEMENT OF SECTION 211.—Section 211(d) of the Clean Air Act is amended to read as follows:

"(d)(1) Any person who violates subsection (a), (f), (g), (j) or (1) or the regulations prescribed under subsection (c), (h), (i), or (k) or who fails to furnish any information or conduct any tests required by the Administrator under subsection (b) shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation. Any violation with respect to a regulation prescribed under subsection (c) of this section which establishes a regulatory standard based upon a multiday averaging period shall constitute a separate day of violation for each and every day in the averaging period. Such civil penalties shall be assessed in accordance with the provisions of subsections (b) and (c) of section 205.

"(2) INJUNCTIVE AUTHORITY.—The district courts of the United States shall have jurisdiction to restrain violations of subsections (a), (f), (g), or (j) and of the regulations prescribed under subsection (c), (h), (i), or (k), to award other appropriate relief, and to compel the furnishing of information and the conduct of tests required by the Administrator under subsection (b). Actions to restrain such violations and compel such actions shall be brought by and in the name of the United States.".

TITLE III—PROVISIONS RELATING TO ENFORCEMENT

SECTION 113 ENFORCEMENT

SEC. 301. (a) Section 113(a)(1) of the Clean Air Act is amended as follows:

(1) In the first sentence, after "finds that any person", insert the words "has violated or"; and following the words "shall notify the person" replace "in violation of" with "who violated".

(2) In the second sentence,

(A) strike the words "If such violation extends beyond the thirtieth day after the date of the Administrator's notification," and insert in lieu thereof the words "At any time after the expiration of thirty days following the date on which such notice of the violation is issued,";

(B) insert after "of such plan" the following— ", may issue an administrative penalty order in accordance with subsection (d),"; and

(C) insert, at the end of the sentence, the following: ", without regard to the period of the violation. Nothing in this subsection shall preclude the United States from commencing a criminal action under section 113(c) without such notification for any such violation.".

(b) Section 113(a)(2) of the Clean Air Act is amended as follows:

(1) Strike the "or" at the end of section 113(a)(2)(A), redesignate subparagraph "(B)" as "(C)", and insert the following new subparagraph (B):

"(B) by issuing an administrative penalty order under subsection (d) of this section, or".

(2) Insert the following new sentence at the end of section 113(a)(2): "Nothing in this subsection shall preclude the United States from commencing a criminal action under section 113(c) without such notification for any such violation.".

(c) Section 113(a)(3) of the Clean Air Act is amended as follows:

(1) Insert the words "has violated or" before the words "is in violation of" in the first sentence.

(2) Strike the words "section 111(e) of this title" and all that follows down through "(relating to inspections, etc.), he" and insert in lieu thereof the following new language: "any other requirement of this title including, but not limited to, a requirement of any rule, order, waiver or permit promulgated or approved under this title or for the payment of any fee owed the United States under this Act, the Administrator:".

(3) Strike the words "or he" before the words "may bring a civil action" and insert in lieu thereof the following words: "may issue an administrative penalty order in accordance with subsection (d); or".

(4) Insert after the words "may bring a civil" the words "or criminal".

(d) Section 113(a)(4) of the Clean Air Act is amended by inserting at the end thereof: "An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State or the United States' authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any section of this Act, or a term or condition of any permit or applicable implementation plan promulgated or approved under this Act.".

(e) Section 113(a)(5) of the Clean Air Act is amended to read as follows:

"(5) Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement of the Act relating to the construction of new sources or the modification of existing sources, the Administrator may—

"(A) issue and order prohibiting the construction, modification or operation of any major stationary source in any area to which such provisions apply;

"(B) issue an administrative penalty order in accordance with subsection (d); or

(C) bring a civil action under subsection (b)(5).

Nothing in this subsection shall preclude the Administrator from filing a criminal action under section 113(c) at any time for any such violation.

(f) Section 113(b) of the Clean Air Act is amended to read as follows:

"(b) The Administrator shall, in the case of any person which is the owner or operator of a major emitting facility or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, whenever such person—

"(1) violates any requirement of an applicable implementation plan (such action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of a finding that such person is violating such requirement); or

"(2) violates any other requirement of this title or title III, including a requirement of any rule, order, waiver or permit promulgated or approved under this Act or for the payment of any fee under this Act; or

"(3) attempts to construct, modify or operate a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, and to collect any fees owed under the Act and any noncompliance assessment and nonpayment penalty owed under section 120 and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any party or parties against whom such action was brought in any case where the court finds that such action was unreasonable.

(g) Section 113(c) of the Clean Air Act is amended to read as follows:

"(c) CRIMINAL ENFORCEMENT.—

"(1) Any person who knowingly fails to pay any fee owed the United States under this title or title III shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than one year, or by both, per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(2) Any person who negligently releases into the air any hazardous air pollutant listed pursuant to section 112 of this Act or any extremely hazardous substance listed pursuant to section 11002(a)(2) of title 42, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 of the United States Code, or by imprisonment for not more than one year, or by both, per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(3) Any person who knowingly violates any requirement or prohibition of this title or title III, including but not limited to a requirement or prohibition of any rule, plan, order, waiver or permit promulgated or approved under those titles shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than five years, or by both, per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(4) Any person who knowingly—

"(A) makes any false statement, representation, or certification in, or omits material information from or knowingly alters, conceals or fails to maintain or file any notice, application, record, report, plan, or other document filed or required to be maintained or used for purposes of compliance under this Act (whether with respect to the requirements imposed by the Administrator or by a State); or

"(B) fails to notify or report as required under this Act; or

"(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this Act; shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than two years, or by both, per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(5)(A) Any person who knowingly releases into the air any hazardous air pollutant listed pursuant to section 112 of this Act or any extremely hazardous substance listed pursuant to section 11002(a)(2) of title 42, United States Code, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 of the United States Code, or by imprisonment of not more than fifteen years, or by both, per day for each violation. Any person committing such violation which is an organizations shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any hazardous air pollutant listed pursuant to section 112 for which the Administrator has set an emissions standard, a release of such pollutant shall not constitute a violation of this paragraph unless it exceeds such standard.

"(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

"(i) the defendant is responsibile only for actual awareness or actual belief possessed; and

"(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

"(C) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(D) The term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(6) For the purposes of this subsection, the term 'person' includes, in addition to the entities referred to in section 302(e), any responsible corporate officer.".

(h) Current section 113(d) of the Clean Air Act is deleted in its entirety and replaced with the following new section 113(d);

"(d) ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES—

"(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day for each violation, whenever, on the basis of any available information, the Administrator finds that such person—

"(A) violates any requirement of an applicable implementation plan (Such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person is violating such requirement); or

"(B) violates any other requirement of this title or title III, including, but not limited to, a requirement of any rule, order, waiver or permit promulgated or approved under this Act or for the payment of any fee owed the United States under this Act; or

"(C) attempts to construct, modify or operate a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than twelve months prior to the initiation of the administrative action.

"(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5 of the United States Code. The Administrator may issue rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within fifteen days of the date the notice is received by such person.

"(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under paragraph (d)(1).

"(3) The Administrator may implement through regulation, after consultation with the Attorney General, a field citation program for appropriate minor violations, which authorizes the issuance of field citations assessing civil penalties not to exceed $5,000 per day for each violation. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5 of the United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the Act, if the violation continues.

"(4) Any person against whom a civil penalty is assessed under this subsection may seek review of such assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing a notice in such court within thirty days following the date the civil penalty order is issued under paragraph (2), or the final decision in a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall promptly file in such court a certified copy, or certified index, as appropriate, of the record on which the order or final decision was issued within thirty days. Such court shall not set aside or remand such order or final decision unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any such proceedings, the United States may seek to recover civil penalties assessed under this section.

"(5) If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment or field citation has become final, or

"(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26, United States Code, from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(i) Current section 113(e) of the Clean Air Act is deleted in its entirety and replaced with the following new section 113(e):

"(e) PENALTY ASSESSMENT CRITERIA.—

"(1) In determining the amount of any penalty to be assessed under this section or section 304(a), the court shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

"(2) A penalty may be assessed for each day of each violation. For purposes of determining the number of days of violation for which a penalty may be assessed under this section or section 304(a), or an assessment may be made under section 120, the violation shall be deemed to commence on the first provable date of violation and to continue each and every day thereafter until

the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.".

REVIEWABILITY OF ADMINISTRATIVE ORDERS

SEC. 302. (a) Section 307(b)(2) of the Clean Air Act is amended by adding at the end thereof: "Orders or notices issued under section 113(a), section 167 and section 303, administrative subpoenas under section 307(a), and actions under sections 114, 206(c) and 208 of this Act are not considered final actions for purposes of this section. Such orders, notices, subpoenas and actions shall not be subject to judicial review except in a proceeding commenced by the United States under sections 113, 120, 204 or 205, or in a citizen suit commenced under section 304, to enforce the order, notice, subpoena or action. No such order, notice, subpoena or action may be challenged in any citizen suit under section 304 unless the Administrator and the Attorney General are notified in writing of such challenge.".

(b) Section 307(e) of the Clean Air Act is amended by inserting at the end thereof the following: "Orders or notices issued under section 113(a), section 167 or section 303, subpoenas issued under section 307(a), and actions under sections 114, 206(c) and 208 of this Act may only be reviewed in a proceeding commenced by the United States under sections 113, 120, 204, or 205, or in a citizen suit under section 304, to enforce the order, notice, subpoena or action.".

COMPLIANCE CERTIFICATION

SEC. 303. (a) Section 114(a)(1) of the Clean Air Act is amended by—

(1) inserting ", on a one-time, periodic or continuous basis" immediately before "to (A) establish and maintain";

(2) inserting "audit procedures" immediately before "or methods, (D)";

(3) inserting "procedures or" immediately before "methods, at such locations,";

(4) inserting "during such continuous periods" immediately before ", and in such manner as the Administrator";

(5) striking "and" immediately before subparagraph (E); and

(6) redesignating subparagraph (E) as (G) and inserting the following new subparagraphs: "(E) keep periodic or continuous records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical, (F) submit compliance certifications in accordance with section 114(a)(3); and".

(b) Section 114(a) is amended by adding the following new paragraph:

"(3) The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (i) identification of the applicable requirement that is the basis of the certification, (ii) the method used for determining the compliance status of the source, (iii) the compliance status, (iv) whether compliance is continuous or intermittent, (v) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be public information. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement the Act.".

(c) Section 307(b)(1) is amended by inserting "or revising regulations for enhanced monitoring and compliance certification programs under section 114(a)(3) of this Act," immediately before "or any other final action of the Administrator".

CONTRACTOR INSPECTIONS

SEC. 304. (a) Section 114(a)(2) of the Clean Air Act is amended by inserting "(including an authorized contractor acting as a representative of the Administrator)," immediately before "upon presentation of his credentials".

(b) Section 114(c) is amended by striking "except that such record," and all that follows in the subsection and inserting ". Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) shall be considered an employee of the United States for purposes of the provisions of section 1905 of title 18. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports or information to other officers, employees or authorized representatives of the United States (including any authorized contractor acting as a representative of the Administrator), or to any State concerned with carrying out this Act, or when relevant in any proceeding under this Act.".

ADMINISTRATIVE ENFORCEMENT SUBPOENAS

SEC. 305. Section 307 of the Clean Air Act is amended by redesignating subsection (a)(1) as subsection (a), and, in that newly designated subsection, striking "or" before "section 202(b)(5)" and inserting ", any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the Act (including but not limited to section 113, section 114, section 120, section 205, section 206, section 208, section 303 or section 306), or to otherwise carry out the provisions of the Act," immediately after "section 202(b)(4) or 211 (c)(3)".

EMERGENCY ORDERS

SEC. 306. Section 303 of the Clean Air Act, is amended by—

(a) striking "the health of persons, and that appropriate State or local authorities have not acted to abate such sources" and inserting "public health or welfare, or the environment";

(b) revising the second sentence to read "If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment.";

(c) striking the last two sentences in their entirety; and

(d) deleting subsection (b) in its entirety and redesignating subsection 303(a), as amended, as section 303.

CONTRACTOR LISTINGS

SEC. 307. Section 306(a) of the Clean Air Act is amended by—

(a) striking "(1)" after "section 113(c)"; and

(b) inserting at the end thereof "For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.".

JUDICIAL REVIEW PENDING RECONSIDERATION OF REGULATION

SEC. 308. Section 307(b)(1) of the Clean Air Act is amended by adding at the end thereof the following: "A petition for reconsideration by the Administrator of any otherwise final agency action shall not render the action nonfinal for purposes of judicial review nor extend the time within which a petition for review may be filed, and shall not postpone the effectiveness of the agency action.".

CITIZEN SUITS AND PETITIONS

SEC. 309. (a) CIVIL PENALTIES.—

(1) Section 304(a) of the Clean Air Act is amended by inserting immediately before the period at the end thereof: ", and to apply any appropriate civil penalties (except for actions under paragraph (a)(2)), including those pursuant to a consent judgment, payable to the special fund as established in subsection (g), taking into account the factors listed in section 113(e)".

(2) Section 304 of the Clean Air Act is amended by adding the following new subsection:

"(g) PENALTY FUND.—Penalties received under subsection (a) shall be deposited in a special fund in the United States Treasury for licensing and other services, which shall be available for appropriation, and remain available until expended for use by the Environmental Protection Agency to finance air compliance and enforcement activities.".

(3) Paragraph (2) of subsection 304(c) of the Clean Air Act is amended to read as follows:

"(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. In such intervention, the Administrator may substitute himself as the plaintiff with regard to any claim for civil penalties. Upon such substitution, the citizen plaintiff's claims for civil penalties shall abate. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States.".

(b) UNREASONABLE DELAY.—Section 304(a) of the Clean Air Act, as amended by subsection (a), is further amended as follows:

(1) Paragraph (2) is amended to read as follows:

"(2) against the Administrator where there is alleged a failure to act that violates one or more of the standards set forth in section 307(d)(9), or constitutes unreasonable delay, provided however that a failure to act does not include a written decision not to take action which the Administrator designates, within such decision, as a final action within the meaning of section 307(b)(1); or";

(2) by inserting after "to perform such act or duty," the following: "or to compel agency action unreasonably delayed,"; and

(3) by adding at the end thereof the following: "Where a provision of the Act mandates that the Administrator shall take specified action when certain preconditions are met, the court's power to compel the specified action under paragraph (2) shall not depend in any manner upon whether the Administrator has published in the Federal Register a proposed or final determination that the threshold preconditions are met.".

(c) NOTICE TO THE GOVERNMENT.—Section 304(c) is amended by adding the following new paragraph:

"(3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.".

(d) DEFERRED ACTIONS.—Section 307(b) of the Clean Air Act is amended by adding the following at the end thereof:

"(3) Where a final decision by the Administrator undertakes to perform an action, but defers such performance to a later time, any interested person may either challenge the deferral pursuant to paragraph (1) or bring an action at any time under section 304(a)(2) to compel such performance.".

(e) PETITIONS.—Section 307 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(h) PETITIONS.—Any person may petition the Administrator to issue, amend, reconsider, or repeal any regulation or order issued under the authority of this Act. Within twelve months the Administrator shall either grant the petition or issue a final decision denying the petition, except that in the case of a petition for reconsideration under section 307(d)(7)(B), the Administrator shall grant or deny the petition within four months. In any case in which the Administrator grants a petition, the Administrator shall take final action in response to any such petition within a reasonable time.".

ENHANCED IMPLEMENTATION AND ENFORCEMENT OF NEW SOURCE REVIEW REQUIREMENTS

SEC. 310. Section 167 of the Clean Air Act is amended by striking "the construction of a major emitting facility" and inserting "the operation, construction, or modification of a major emitting facility".

MOVABLE STATIONARY SOURCES

SEC. 311. Section 302 of the Clean Air Act is amended by adding the following subsection:

"(t) STATIONARY SOURCE.—The term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes."

REQUIREMENTS FOR OZONE POLLUTION AREAS

Classification and Deadlines

Classification of ozone nonattainment, amount by which standard exceeded, and deadlines:

Moderate: Not greater than 20%; 5 years.

Serious: More than 20% but not more than 50%; 10 years.

Severe: More than 50% but not more than 120%; 15 years.

Extreme: More than 120%; 20 years.

Inventories

Revised inventories of VOCs and NO_x are required to be submitted by all ozone nonattainment areas within one year of enactment and revisions are required every 3 years.

Current Requirements

Requirements currently in State plans must be fully implemented within 18 months and every area must implement all control technique guidelines published before the date of enactment as well as other reasonably available control technology required by the Act prior to these amendments.

Permits

Five year renewable operating permits are required for all major stationary sources of VOCs and NOx in ozone nonattainment areas.

Auto Registration Fee

Autos registered in any ozone nonattainment area must pay an annual fee of $2.00, the proceeds from which are to be used by the State or local air pollution agency to develop and implement the requirements of the Clean Air Act.

Requirements for Moderate Areas

Areas must implement within one year an enhanced motor vehicle emissions inspection and maintenance (I/M) program if an I/M program is already required or can choose between enhanced I/M or Stage II vapor recovery if no I/M program is already required. The enhanced I/M program must achieve a reduction of at least 4700 tons of VOCs per million vehicles.

Major sources of VOCs and NOx must pay a $25 per ton annual fee to support pollution control activities.

Areas with a design value of less than .13 parts per million of ozone need not implement Stage II or enhanced I/M unless these controls are needed to attain within five years.

Requirements for Serious Areas

Areas must implement all of the requirements applicable to moderate areas (including *both* Stage II *and* enhanced I/M).

The inventory of emissions must cover the entire Metropolitan Statistical Area plus a radius of 25 miles.

Major sources of VOCs area sources that emit or have the potential to emit 25 tons per year or more of VOCs.

The area must achieve, every three years, a 12% reduction in VOC emissions, taking into account growth.

Major stationary sources of NOx (those that emit or have the potential to emit 100 tons per year or more of NOx) must apply reasonably available control technology.

Within three years, the area must submit a plan that provides for attainment within the applicable deadline.

The area must file annual progress reports and, every three years, demonstrate whether transportation emissions are as projected. Where such emissions exceed such projections, the area must submit a transportation control measures program.

Offsets of 1.5 to 1 apply to VOC sources.

Emissions fees are increased to $100 per ton. Fees of $500 per ton apply in cases where the area has not achieved the required percent reduction in VOCs.

A fee of $5,000 per ton (over 50% actually emitted) applies to all major stationary sources in areas failing to meet the ozone standard within the applicable deadline.

Requirements for Severe Areas

The areas must implement all of the requirements of both moderate and serious areas.

Offsets of 2 to 1 apply to VOC sources.

Annual emissions fees of $250 per ton are required.

The area must identify and adopt measures to control emissions from transportation or explain why such measures were not adopted.

Within three years, employers of 100 or more persons must increase average passenger occupancy per vehicle for commuters by not less than 20 percent over the average area occupancy rate or pay a fee of $50 per employee parking space that is provided without cost to the employee or is subsidized.

Requirements for Extreme Areas

The area must implement all of the requirements of moderate, serious and severe areas.

The nonattainment area is defined as the (Consolidated) Metropolitan Statistical Areas plus 25 miles.

Major sources of VOCs are those sources that emit or have the potential to emit 10 tons or more per year of VOCs.

The annual emissions fee is increased to $500 per ton.

Sanctions

Failure to Submit an Approvable Plan: Three possible sanctions apply to a failure to submit an approvable state implementation plan: (1) a ban on construction of major new sources of air pollution in the nonattainment area (current law), (2) a ban on highway funds except for projects that enhance air quality or meet certain safety conditions (modified from existing law to be more explicit about the projects that quality for funding), (3) a discretionary withholding of State air grants (current law).

Failure to Implement a Plan: The same sanctions apply as for failure to submit an approvable plan.

Failure to Achieve Required Emissions Reductions: All areas except moderate areas must achieve a 12% reduction in VOC emissions over a three year period. Failure to meet this reduction requirements triggers the following mandatory sanctions: (1) ban on new source construction, (2) highway funding limitations, (3) an annual audit of the air program, and (4) increases in emissions fees. The following discretionary sanctions also apply: (1) a requirement by EPA to lower the major source definition of sources of VOCs, NO_x, or both; and (2) each area may be reclassified to the next extension area with the accompanying requirements.

Failure to Attain: Each area that fails to attain the ozone standard by the applicable deadline is automatically reclassified to the next category with accompanying deadlines and requirements and must enforce the higher emissions fees requirements.

Federal Measures

Not later than six months after enactment, EPA is required to publish a list of not less than 12 categories of stationary sources for which control technique guidelines will be published. Guidelines for the first 4 categories must be published 18 months after publication of the list and for an additional 4 categories every 18 months thereafter. Not later than two years after enactment, control technique guidelines for loading and unloading of petroleum products onto or from vessels must be published.

Not later than 2 years after enactment, EPA is required to report to Congress and not later than 5 years after enactment must promulgate regulations for control of ozone precursors from consumer or commercial products. Such regulations must achieve a 3% reduction in VOC emissions within three years of promulgation.

Ozone Transport

An east coast transport region from Virginia to Maine is created and EPA is authorized to create other such regions. Areas in such regions must implement a vehicle in-

spection and maintenance program and must implement all control technique guidelines published before enactment of the amendments.

The transport commission may require additional control measures. Areas in the region may petition to be exempt from the above requirements upon a showing by the petitioning State that the area does not contribute to nonattainment of other areas. Actions of the transport commission must be taken by a majority vote, with voting members being a representative from each State and the Administrator.

PROVISIONS RELATING TO MOTOR VEHICLES

Tailpipe Standards for Motor Vehicles

The bill sets new tailpipe emission standards for various categories of motor vehicles as shown below:

TABLE 1.—EMISSIONS STANDARDS FOR GASOLINE AND DIESEL-FUELED LIGHT DUTY VEHICLES

Pollutant	Model year	Standard [1]
NMHC	1993 through 2002	0.25
HC	1993 through 2002	.31
HC	2003 and after	.125
NO_x	1993 through 2002	.4
NO_x	2003 and after	.2
CO	2003 and after	1.7
PM	1993 and after	.08

[1] Standards are expressed in grams per mile.

TABLE 2.—EMISSION STANDARDS FOR GASOLINE AND DIESEL-FUELED TRUCKS AND BUSES

Vehicle or engine type	Pollutant	Model year	Standard [1]
Trucks (3750 lbs or more but less than 5750 lbs, loaded vehicle weight).	NMHC	1993 and after	0.32 gpm.
	HC	1993 and after	0.38 gpm.
	NO_x	1993 and after	0.7 gpm.
	CO	1993 and after	4.4 gpm.
Heavy duty trucks	NO_x	1994 to 2002	4.0 gbh.
	NO_x	2003 and after	2.0 gbh.
	PM	1991 to 1993	0.25 gbh.
	PM	1994 and after	0.1 gbh.

[1] Standards are expressed in grams per mile [gpm] or grams per brake horsepower hour [gbh].

Carbon Monoxide Emissions at Cold Temperatures

For passenger cars in model years 1993 through 1999, the bill sets an emission standard for carbon monoxide (CO) when the vehicle is operated at 20 degrees Fahrenheit at 10 grams per mile (gpm) and for light duty trucks in that same period, 13 gpm. Beginning in model year 2000, the standard would be 3.4 gpm and 4.4 gpm, respectively.

Onboard Refueling Technology

Beginning in model year 1993 all cars will be required to have onboard technology to capture refueling vapors with a 95% efficiency. The Administrator is to require this technology on other classes of vehicles at the earliest feasible date.

Evaporative Emissions

Beginning in model year 1994, all gasoline-fueled vehicles are to comply with regulations requiring the greatest possible reductions in evaporative emissions of hydrocarbons, including emissions during operation ("running losses").

Onboard Diagnostic Systems

Beginning in model year 1994 all cars and light duty trucks are to have diagnostic systems that identify malfunctions or deterioration in the emission control system and that alert the driver to the need for repair.

Carbon Dioxide Emissions

Passenger cars (as defined in the Motor Vehicle Information and Fuel Savings Act) are required to meet a fleet average standard for emissions of carbon dioxide of 242 gpm beginning in model year 1995 and beginning in model year 2002, a standard of 170 gpm. These emission requirements are roughly equivalent to fuel economy standards of 35 miles per gallon and 50 miles per gallon, respectively.

Low-polluting Vehicles

The Administrator, within eighteen months of enactment, is required to promulgate standards for vehicles that burn methanol, ethanol, propane, natural gas or any other comparably low-polluting fuel.

Useful Life Definition for Cars

Current law defines the useful life of passenger cars as 5 years or 50,000 miles, whichever occurs first. The bill changes the definition of 10 years or 100,000 miles for the purposes of the certification test and for recall period. That is, in order to be sold, auto manufacturers must show that each model is designed to meet emission standards for the longer period of time, and cars on the road are subject to recall throughout the longer time period if EPA finds that a particular model fails to meet standards in use.

Warranties

Currently manufacturers must warrant emission control systems for passenger cars for 5 years or 50,000 miles. The bill extends the warranty coverage for two components of the emission control system—the catalytic converter and computer—to 8 years or 80,000 miles and reduces the warranty period for all other emission control components to two years or 24,000 miles. The new warranty coverage would be effective beginning with model year 1995 vehicles, and the Administrator is authorized to add components to the warranty coverage if (1) a component was not in general use prior to 1990, and (2) if the cost of the component, exclusive of installation costs, is greater than $200.

Non-Road Engines

The Administrator is required to promulgate standards for non-road engines of 50 or more horsepower in phases, beginning three years after the date of enactment and completing the process within five years. The standards would be effective three years after promulgation.

Prohibition on Engines Using Leaded Gasoline

The bill prohibits the production of motor vehicle or non-road engines that require the use of leaded gasoline after model year 1992.

Motor Vehicle Testing and Certification

Idle test. The Administrator is required to promulgate an addition to the certification test procedures to require testing in an idle mode, beginning with model year 1992 vehicles.

Production line testing. The bill changes the percentage of vehicles that can fail a production line emission test before the sale of a particular model must be suspended or cancelled from 40 percent to 10 percent.

Revision of test procedures. The Administrator is required to revise the certification test procedures for cars to reflect more accurately than the current test procedure the actual conditions under which cars are driven, so as to assure that cars in use will control emissions as required by the standards.

Prohibition on averaging. The bill specifies that each and every vehicle sold must meet the applicable emissions standards.

In-Use Compliance—Recall

The Administrator is directed to take into account information from State I/M programs in determining whether a class of vehicles must be recalled to fix emissions system problems.

The Administrator is also given authority to require a vehicle manufacturer to pay the costs of procuring and testing vehicles which there is reason to believe fail to conform to standards when in actual use.

FUELS

Volatility

EPA is to issue regulations limiting gasoline volatility to not more than 9 psi RVP between May 16 and September 15 in class C areas (with proportionate reductions in other areas). The regulations shall allow fuels mixed with 10% ethanol to have an RVP 1.0 psi higher.

Desulfurization

EPA is to issue regulations limiting the sulfur content of diesel fuel sold for highway use to not more than 0.05% by weight beginning October 1, 1993. The regulations shall also include a minimum cetane index of 40 (limiting the aromatic content of diesel fuel to current levels). Heavy duty engines certified for model years 1991 through 1993 may be certified using the low sulfur fuel.

Lead Phasedown

EPA is to prohibit the sale of leaded gasoline for on-highway use beginning January 1, 1991.

Fuel Quality

EPA is to set national fuel quality specifications to minimize emissions of HC, CO, NO_x, particulates and hazardous air pollutants taking economic feasibility into account. If the regulations are not effective by January 1, 1994 all fuel for gasoline-powered engines is to contain an additive preventing the formation of deposits in fuel-injected engines.

EPA may set specifications for fuels sold in areas which have not achieved ambient air quality standards. Emissions of other pollutants may not increase as the result of using the alternative fuel. Refiners could meet the requirements using any fuel blend which could be certified as achieving comparable reductions.

Oxygenated Fuels

All gasoline fuels sold between October 1 and March 31 in any carbon monoxide nonattainment area must contain (on the average) 3.1% oxygen by weight. EPA is to establish a credit program allowing the sale of fuel with less oxygen, if offset by the sale of fuel containing more than 3.1% oxygen. EPA may waive the provision, if it would exacerbate other air pollution problems.

Misfueling

Putting leaded gasoline into cars designed for unleaded gasoline or high-sulfur diesel fuel into highway vehicles is prohibited.

REQUIREMENTS FOR CARBON MONOXIDE NONATTAINMENT AREAS

Designation, design value, and deadline:
Moderate: 14 ppm CO or less. 5 years.
Serious: More than 14 ppm CO. 10 years.

Procedural Requirement for All Areas

Each State containing a carbon monoxide nonattainment area must submit an inventory of CO emissions for the nonattainment

area within one year and update the inventory every 3 years thereafter.

All requirements in State Implementation Plans for carbon monoxide nonattainment areas previously proposed, but not yet implemented, must be implemented within 18 months.

All stationary sources emitting more than 50 tons of carbon monoxide in moderate nonattainment areas or 25 tons in serious nonattainment areas must have an operating permit within 3 years. Offsets for new sources emitting more than 25 tons in serious areas are to be at least 1.5 to 1.

The State must impose an annual fee of $2.00 on the registration of each vehicle in a carbon monoxide nonattainment area (unless the owner is already required to pay a fee because the area is nonattainment for ozone).

The State must impose an annual fee of $100 per ton for each ton of carbon monoxide emissions from any sources emitting 50 tons or more in a moderate nonattainment area. The fee is $250 per ton and applicable to source emitting 25 tons or more in serious nonattainment areas.

Control Requirements for Moderate and Serious Areas

Each State with a carbon monoxide nonattainment area must submit a revised State Implementation Plan within two years containing control requirements sufficient to attain the standard by the applicable deadline. Moderate nonattainment areas with a design value of 9.9 ppm carbon monoxide or less may choose not to submit a plan revision provided that they attain within 3 years.

Revised SIPs must include quantitative milestones for each three-year period demonstrating progress toward attainment through reductions in emissions, vehicle miles traveled, vehicle trips or lower design values.

Revised SIPs are to contain standby measures which are to be implemented immediately if an area fails to attain by an applicable deadline or fails to meet a milestone.

EPA is to audit the SIP for each nonattainment area every three years to assure that the plan is being implemented and milestones are achieved.

Each nonattainment area (except moderate areas with a design value of 9.9 ppm CO or less and attaining in three years) must implement an enhanced vehicle inspection and maintenance program achieving a carbon monoxide emissions reduction of 52,000 tons for each million vehicles inspected.

Each nonattainment area must implement an oxygenated fuels program meeting the requirements of title II (fuels sold during winter months must average 3.1% oxygen by weight).

Control Requirements for Serious Areas Only

Each area must implement transportation control measures according to guidelines issued by the Administrator (see planning requirements above) or demonstrate that other measures in the revised SIP achieve equivalent reductions.

Within three years employers of 100 or more persons must achieve average passenger occupancy per vehicle for work trips by employees of not less than 20 percent above the areawide average or pay a fee of $50 for each parking space provided to employees.

Sanctions

Sanctions for failure to submit or implement a SIP, to meet a milestone or to attain the standard are the same as those imposed under ozone nonattainment portions of the bill.

REQUIREMENTS FOR PM-10 POLLUTION AREAS

Designation for PM-10 nonattainment areas and deadlines:

All areas identified by EPA as of Aug. 7, 1987 as a Group I area and any area for which monitoring data shows a violation of NAAQS for PM-10 prior to enactment: 5 years.

In areas where attainment within 5 years is impracticable, the State will implement all reasonably available control measures and reasonable further progress toward attainment must be demonstrated: 10 years.

Inventories

Eact State containing a PM-10 nonattainment area shall submit an inventory of PM-10 emissions from stationary and mobile sources within one year of enactment and every three years thereafter.

Permits

Operating permits are required of all stationary sources emitting 50 tons or more of PM-10 annually. Areas granted an extension of the attainment deadline will be required to offset emissions from new stationary sources of PM-10 by a 1.5 to 1 ratio.

Stationary Source Emissions Fee

An emission fee of not less than $100 per ton of PM-10 emissions from major stationary sources is imposed. In areas granted an attainment deadline extension beyond five years, the fee shall not be less than $250 per ton.

Attainment Demonstration and Milestones

Each State implementation plan shall contain quantitative milestones to be achieved every three years until attainment is achieved. Areas granted an extension must implement all guidelines for control technology and measures promulgated by EPA to reduce emissions of PM-10.

Areas demonstrating attainment must identify one or more contingency measures sufficent to reduce emissions of PM-10 by ten percent from the most recent inventory. If the area is unable to reach attainment, the contingency measures will be automatically implemented.

Audits

EPA is required to audit the implementation of the plan for each PM-10 area at least every three years. If the provisions of the plan are not adequately implemented or milestones not being met, the area will be sanctioned. Areas subject to sanction must submit revised plans identifying measures assuring achievement of the milestone as expeditiously as practicable.

Failure to Comply or Attain Standard

States which fail to submit implementation plans or revisions are subject to a construction ban on new stationary sources of PM-10 emissions, highway funding and air grant sanctions. Areas failing to attain emission reduction milestones are subject to sanctions on construction of new sources and highway funding. Areas failing to attain must submit revised SIP's and reduce PM-10 emissions by no less than five percent annually.

Guidelines for PM-10 Areas

Within eighteen months, EPA is required to issue control technique guidelines for RACT and BACT for PM-10 emissions from major stationary sources. EPA is also required to issue guidelines for controlling emissions of PM-10 from area sources. EPA is directed to give priority to PM-10 problems other than rural fugitive dust.

GENERAL PLANNING PROVISIONS

Designation of Areas

Designations. The bill requires the Administrator to designate the attainment status of all areas of the country within six months of promulgating or revising a national ambient air quality standard, with a possible six-month extension to gather data needed to make designations. The bill, by operation of law, designates the attainment status of areas for ozone, carbon monoxide, and particulate matter (PM-10), based on the latest monitoring information.

Redesignation. The Administrator is required to redesignate an area as nonattainment whenever evidence demonstrates that air quality exceeds a national ambient air quality standard in the area. In order to redesignate an area from nonattainment to attainment, the Administrator must make a number of specified determinations and must approve a maintenance plan for the area.

Area boundaries. The boundaries of an ozone nonattainment area located in a metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA) are defined by operation of law to be the MSA or CMSA. The Administrator is authorized to extend the boundaries of serious carbon monoxide nonattainment areas to include the entire MSA or CMSA.

Enhanced Monitoring and Inventories

The Administrator is required to publish guidelines for enhanced monitoring of pollutants covered by national ambient air quality standards and for improved inventories of those pollutants.

Provisions Pertaining to Implemention Plans

The bill increases the time for submission of State implementation plans (SIP's) from nine to twenty-four months and the time for EPA to approve initial plan submissions from four to twelve months. The bill also clarifies that SIP provisions that have been approved by the Administrator remain in effect until a subsequent provision is approved.

Federal Implementation Plans

The Administrator is required to proposed, within two years after the imposition of sanctions in a State that has failed to submit an acceptable implementation plan for a nonattainment area, a federal implementation plan that meets the requirements of the Act with one exception: the initial FIP does not have to demonstrate attainment. A revised FIP showing attainment must be promulgated within three years after the date the initial plan is proposed. The initial plan must be promlugated within one year after proposal unless the State acts in the interim to submit an acceptable plan.

Provisions Applicable to All Nonattainment Areas

Permits. In nonattainment areas every major stationary source of a pollutant (or precursor) for which the area is nonattainment must have an operating permit. Certain conditions for permit programs are specified in the bill.

Major stationary source definition. The bill defines major stationary sources to assure that every new or modified emitter of a threshold amount of a pollutant will be subjected to the review and conditions required by law for new or modified sources.

TRANSPORTATION CONTROL MEASURES

Transportation Planning

The bill requires the Administrator to update 1978 transportation-air quality planning guidelines and to provide guidance to States and local governments as to the implementation and effectiveness of measures to reduce total emissions from motor vehicle through programs to reduce vehicle miles traveled, reduce traffic congestion that increases emissions and other measures.

The bill also requires State and local officials in areas that exceed ozone, carbon monoxide or particulate matter standards to update their air quality planning procedures, including transportation planning and directs the Administrator to consult with and recommend to the Department of Transportation (DOT) changes in its policies and procedures to improve their efficacy with respect to enhancing air quality.

Conformity with State Implementation Plans (SIP)

While current law prohibits DOT and regional transportation agencies ("metropolitan planning organizations" or MPO's) from approving any program, plan or project that does not conform to a SIP, the Act does not define what constitutes "conformity". The bill elaborates and clarifies existing law by—

(1) prohibiting MPO's from adopting transportation plans or programs (from which highway and transit projects will be selected by transportation departments for implementation) until officials have determined that emissions resulting from the plan or program are consistent with emissions estimates in the SIP;

(2) prohibiting MPO's and other recipients of funds from the Federal-aid highway program or the Urban Mass Transportation program from adopting a transportation program until officials assure that the program will implement air-quality improvement projects included in the SIP; and

(3) prohibiting the financing or approval of any project under Federal law unless the project is part of a plan and program that conforms to the SIP, and the project has not changed significantly from the time the plan and program were adopted.

Sanctions

Whenever an ozone, carbon monoxide or PM-10 nonattainment area fails to meet certain requirements of the Act that are needed to move toward achieving the health standard by the deadline set in the bill, the Secretary of Transportation is directed to approve use of Federal-aid highway funds only for the specified types of projects that will improve air quality or for limited types of highway safety projects. The State matching share for these projects need not be more than ten percent of the project cost.

Implementation of Transportation Control Measures

Listed transportation control measures. Severe and extreme ozone areas and serious carbon monoxide are required to adopt the transportation control measures listed in section 103 of the bill, including, among others, programs for improved public transit, designation of certain high-occupancy lanes or roads, employer programs to reduce vehicle miles traveled by employees, and traffic flow improvements. If an area does not adopt a specific transportation measure, it must get comparable reductions from another source.

Serious, severe and extreme ozone areas must report ever three years whether vehicle miles traveled, congestion levels, and other parameters relevant for estimating vehicle emissions are consistent with projections of vehicle emissions in the SIP. If actual emissions exceed projected levels in a serious area, that area must adopt transportation control measures from the list in section 103 of the bill.

Employer ridership programs. For severe and extreme ozone areas and serious carbon monoxide areas the bill requires employers of 100 or more employees to develop programs to increase the average vehicle occupancy by employees in commuting trips between work and home by 20 percent. Employers that do not achieve that increase in average occupancy are subject to a fee of $50 per month for each employee parking space the employer provides or subsidizes.

Mr. CHAFEE. Mr. President, I am glad to join as a chief cosponsor of legislation to clean up the air in both urban and rural areas of this country. Over 135 million people live in areas that do not meet health standards for ozone or smog. Fifty-nine urban areas exceed the carbon monoxide health standard, and anywhere from 70 to well over 100 areas—many of them rural—do not meet health standards for small particles, the so-called PM-10 standard.

The bill that my colleagues and I on the Environment and Public Works Committee are introducing today will address these problems. But to do so will not be easy or without cost.

Numerous estimates have been and will be made of the cost of various clean air proposals being considered by Congress. Some of the figures are daunting: Anywhere from $3.5 to $7 or $8 billion annually for acid rain control; $4 to $8 billion for reducing smog and carbon monoxide.

Let me put these numbers into perspective. Americans spend annually $63 billion for alcoholic beverages; $39 billion for soft drinks; $38 billion for tobacco products; $25 billion for jewelry; and $24 billion for candy. I hope that as we consider the bill being introduced and other proposals to clean up the air, we can keep these comparisons in mind.

Almost everyone is affected at one time or another by unhealthy air, and almost everyone must be enlisted in the fight to clean it up. The bill that my colleagues and I are introducing requires something of almost everyone. Auto manufacturers are required to do more, and so are stationary sources. Individuals in unhealthy areas will have to have their vehicles inspected and may find their commuting habits changed. Some products, including cars, may cost a little more. But again for comparison, keep in mind that Americans currently spend $170 billion annually on new vehicles, $80 billion on gasoline, and for all auto-related products and services, a total of $346 billion a year.

A summary of the bill's provisions has been provided by the distinguished chairman of the Environmental Protection Subcommittee. I wish to comment on only a few particular aspects of the legislation.

First, there are many similarities between this bill and the first title of the President's bill, S. 1490. Both require new controls in varying degrees depending on the severity of the ozone, carbon monoxide or particulate air quality problem in particular areas. Both have as their goal the attainment of primary ambient quality standards by stated deadlines, which are similar in the two bills. And both bills establish a regional ozone transport commission in the Northeast to address the serious problem of pollution that is produced in one State and carried into neighboring States, such as my own State of Rhode Island.

Both our bill and the President's bill provide up to 10 years for Rhode Island to attain the ozone health standard. But the State will have to meet tough standards in order to get the extension of time.

There are also differences between the President's bill and the bill my committee colleagues and I are introducing. In general, our bill is more precise in the deadlines it establishes for EPA and State and local officials, and it is more specific in the standards it sets for these officials. Our bill also establishes clear consequencs for States and areas that fail to comply with the requirements of the Act.

This greater specificity is needed if progress toward clean air is to be achieved. Where too many major decisions have been left to air pollution control agencies, progress has been slow. We can look at the 12 years since passage of the 1977 clean air amendments which anticipated that virtually all areas of the country would achieve the health standards for ozone and carbon monoxide by 1987, to see that some politically difficult decisions must be made in the law if real progress is to be achieved.

Perhaps the greatest difference between the President's bill and the committee bill is with respect to motor vehicles. The President's bill has an interesting and innovative initiative to bring about the use of vehicles fueled by alternatives to gasoline. Substantial air quality improvements are attributed to these measures. The committee intends to examine the President's proposal and alternative fuels in general very carefully, because of their great potential for cleaning up the air.

The committee bill, however, is substantially more stringent in its requirements for cleaning up conventional gasoline-powered vehicles. We have included these provisions because it is clear that gasoline-powered vehicles will be the primary vehicles on the road for the next two decades, if not indefinitely. And with the continuing increase in vehicle miles traveled,

even a tighter tailpipe emission standard in the early 1990's can be overtaken by increased vehicle use in the following decade.

Mr. President, at this point I would like to depart for a moment from ozone and carbon monoxide concerns to point out a key provision in our bill that is not in the President's bill but that takes a large step forward in addressing another major air pollution issue: global warming. Our bill attacks this problem by controlling carbon dioxide emissions—a major greenhouse gas—from automobiles.

Last June, in Toronto, a group of 300 scientists from 48 countries agreed that CO_2 emissions must be reduced 20 percent in industrialized countries by the year 2005 and 50 percent worldwide by 2050, if we are going to begin slowing down the warming of the Earth's atmosphere.

This call for action is contrasted with a sobering worldwide projection of an increase in automobile miles traveled of 2 percent per year which will result in a huge increase in CO_2 emissions from 2.5 billion tons in 1985 to 11.5 billion tons in 2025.

Since the United States contributes 25 percent of the world's global CO_2 emissions, with U.S. passenger vehicles contributing about 3 percent of the world total, we cannot realistically attain significant CO_2 reductions unless we deal with the automobile.

This legislation calls for a CO_2 standard of 242 grams per mile by 1995 and a standard of 170 grams per mile by 2002.

Although technologies are not specified as to how automakers are to meet these standards, one approach—probably the easiest and most cost-effective—is increasing fuel efficiency. The grams-per-mile standards in the bill are equivalent to a fuel economy level of 35 miles per gallon and 50 miles per gallon, respectively.

So, Mr. President, what we may really be getting here is a double benefit. Reduced CO_2 will finally put us on the road to solving the global warming problem, and increased fuel economy will save hundreds of thousands of barrels of oil per day.

No one is suggesting this will solve the entire global warming problem. But we must start somewhere. The U.S., as the world's largest emitter of CO_2, should take the leadership role on the issue. As with our current tailpipe standards, I predict other countries will also follow suit in controlling carbon dioxide.

The use of the automobile in this country is a major source of a variety of air pollution problems. And it is not enough to ask vehicle manufacturers to improve technology. Transportation planners, elected officials and individuals must all do their part to reduce their automobile's contribution to environmental pollution. And our bill takes steps to spread this responsibility. Employers in heavily polluted areas are required to develop programs to increase vehicle occupancy by employees on their commuting trips to work. Transportation planners and highway builders are required to see that transportation projects are consistent with clean air plans for an area and to fund those projects which are necessary to improve air quality. And in areas that fail to comply with the requirements of the Clean Air Act, highway funds may only be used for selected types of projects that will reduce air pollution.

There is one provision in the bill with which I am not in agreement, and that has to do with vehicle warranties. The bill reduces the warranty for emission control system components from 5 years and 50,000 miles to 2 years and 24,000 miles for all but two components. For those two, the catalytic converter and the electronic computer, the warranty is extended for 8 years and 80,000. It is the reduction in the warranty period that I believe is a disservice to the consumer and that I may propose to change when the committee considers the bill in markup.

Finally, I want to mention that the committee bill has adopted almost all of the enforcement provisions from the President's bill. These are strengthening provisions and are well thought-through to assure that those who fail to meet the law's requirements are called to account.

Mr. President, this is a big and complex bill. My colleagues and I have worked on it for several months and believe that it is a good bill. But it can be made better and will doubtless change some through hearings and markups. We look forward to hearing from other Senators and from the wide variety of interests affected by the legislation. And we look forward to reporting to the Senate a tough, realistic bill that will lead to the first comprehensive clean air legislation enacted since 1977.

Mr. BURDICK. Mr. President, as chairman of the Senate Committee on Environment and Public Works, I am happy to join my colleagues in introducing a comprehensive package of amendments concerning clean air nonattainment areas. This committee has labored for over a decade on legislation to improve the air quality of urban areas across the country. This bill is the product of that lengthy effort.

The primary objective of this bill is to improve the health of every American. This bill builds on the strides made in the past and establishes a workable strategy to bring nonattainment areas into compliance with the minimal standards established by the Clean Air Act.

Today, nearly 20 years after the enactment of the Act, more than 150 million Americans still live in areas with unhealthy air. Smog is not a problem in North Dakota, but it's a problem that concerns everyone in this Nation. Air pollution is the leading cause of lung damage. Every year over $40 billion in health care costs are associated with air pollution. Billions more are lost due to crop damage.

I am proud of the small role I played in enactment of the Clean Air Act of 1970. At that time, in the afterglow of Earth Day, we assumed that air pollution could be easily reduced. Today we know better. Air pollution is pervasive, insidious, and not conducive to quick fixes or silver bullets. This complex and comprehensive bill reflects the nature of the air pollution problems we face. It is a tough bill because we face a tough problem.

This bill is also fair. We haven't played favorites by mandating specific remedies at the expense of others. Unlike other proposals, we haven't tried to centrally plan the future composition of the automotive fleet or allocate fuel markets.

We have been able to reach this milestone because of the efforts of Senators BAUCUS and CHAFEE. Senator BAUCUS established early on a deliberative and consultative process. This bill is the result of numerous member meetings over the course of the past several months. The assistance of the majority leader has been invaluable to this effort. I want to thank all the members of the committee for their contributions. They rolled up their sleeves and made their views known concerning elements of this proposal. This bill may not be perfect, but it represents the collective wisdom of virtually every member of our committee.

This bill is in the national interest. It is vital to the health of every American. If we are truly serious about improving the quality of the air we breathe, this bill is a good starting place. Now let's get on with the task of enacting it. Thank you.

By Mr. SIMON:

S. 1631. A bill to make a technical amendment to title 11, United States Code, the Bankruptcy Code; to the Committee on the Judiciary.

RAILROAD REORGANIZATION PUBLIC INTEREST PROTECTION ACT

● Mr. SIMON. Mr. President, the rail line that is today owned and operated by the bankrupt Chicago, Missouri & Western Railway Co. was chartered in the late 1840's, and passenger service for the citizens of Illinois began moving over that line in the mid-1850's. It was the line Abraham Lincoln used to travel between Chicago and Springfield, IL, and President Lincoln's body was carried over this line to his final resting place in Springfield, IL.

Four owners have operated the line since its inception. The latest is the Chicago, Missouri & Western Railway Co., which was formed as a result of the spinoff of this rail property from the Illinois Central Railroad in April 1987.

That spinoff occurred as part of a highly leveraged transaction. The original loan was in an amount in excess of $85 million, with a total equity contribution of $50,000.

As a result, the Chicago, Missouri & Western Railway Co. was ill-fated from the date of its creation in 1987. It went into bankruptcy less than a year later on April 1, 1988. It is the first major regional railroad to enter into bankruptcy under the new Bankruptcy Code of 1978.

Prior to the enactment of the Bankruptcy Code of 1978, railroad reorganizations were governed by section 77 of the Bankruptcy Act. Many of the major railroads in this country have successfully emerged from reorganization under section 77 of the former Bankruptcy Act. For example, Conrail emerged from reorganization under section 77 of the former Bankruptcy Act, and is now, obviously, a major contributor to the economy of our country.

Section 77 of the old Bankruptcy Act proved to be a successful vehicle for railroad reorganizations in part because Congress recognized as part of section 77, that the public interest in continuing rail service was a coequal factor to be taken into account with the interest of creditors and shareholders in achieving a reorganization plan. Particularly in the early stages of the reorganization, the case law under section 77 made clear, the trustee must be permitted to issue trustee certificates to raise money to permit the railroad to continue operations until there is sufficient time to formulate a reorganization plan that would enable the bankrupt railroad to emerge successfully from reorganization.

The Chicago, Missouri & Western Railway Co. [C&MW], as the first major railroad to undergo reorganization under the new Bankruptcy Code of 1978, for the first time put the railroad reorganization provisions of the new code to the test. They have been found wanting in several respects. Most critically, the provisions relating to the ability of the trustee to borrow money to keep the railroad in operation have proven particularly troublesome.

Congress, in adopting special provisions relating to railroad reorganizations, made clear in section 1165 of the Bankruptcy Code (11 U.S.C. 1165) that with respect to specific provisions relating to railroad reorganizations, the bankruptcy court and the trustee must consider the public interest in addition to the interest of the debtor, creditors and equity security holders. By analogy to this provision, the bankruptcy court in the CM&W case held that the trustee of the CM&W was authorized to borrow up to $14 million from the State of Illinois to subsidize operations and to perform much needed maintenance in order to insure that the railroad would continue in operation. However, on appeal, the U.S. District Court for the Northern District of Illinois in *In re Chicago,* Missouri & Western Railway, Citicorp North America, Inc., and Heller Financial, Inc., v. Murray, No. 88 C 8009 (N.D. Ill. July 18, 1989), held that the public interest in continued rail service could not be considered in determining whether to approve priming loans in the earliest stages of a railroad reorganization. A primary loan is a loan that comes ahead of the existing secured and unsecured creditors of the railroad.

In making this decision, the district court relied upon the fact that Congress enumerated specific sections in section 1165 to which the public interest must apply. The district court went on to hold that the public interest could not be taken into account in other contexts except as expressly enumerated in section 1165. This represented a change from the prior law that existed under section 77 which permitted such priming loans. *See e.g., In the matter of Chicago, Rock Island & Pacific Railroad Company,* 545 F. 2d 1087 (7th Cir. 1976).

As a result of this decision, the trustee of the Chicago, Missouri & Western was cut off from all available State funding. The CM&W's lenders are now pressing to preclude the trustee from having any cash collateral availability—that is, the use of normal accounts receivable. The bankruptcy court is slated to rule on this motion shortly. It has indicated a disposition to rule against the trustee because of the decision of the district court which now binds the bankruptcy court. This would cut off all cash availability to the trustee and would compel the shutdown of the railroad.

The shutdown of the railroad would be disastrous to the State of Illinois and the entire Midwest. Amtrak operates passenger service from Chicago to Springfield to St. Louis over this line. The Illinois cities of Pontiac, Bloomington-Normal, Lincoln, Springfield, Carlinville and Alton would lose all passenger service if this line is terminated. Chicago and St. Louis would no longer be connected by passenger service; an alternative route would prove to be much more circuitous. The Amtrak route from Chicago to Springfield is one of the most heavily traveled Amtrak routes in the country.

In addition, more than 55 Illinois communities would lose all rail freight service along the Chicago, Missouri & Western. Communities throughout Missouri between St. Louis and Kansas City would also lose rail service. This would occur at a critical time when farmers in Illinois and Missouri, having just recovered from a devastating drought last summer and having benefited from more favorable weather this summer, are about to head to harvest. Without rail service across the Chicago, Missouri & Western, vital grain shipments will not be able to occur. Thus, farmers would be precluded from shipping their grain to market at the most critical time of the year.

Accordingly, I rise today to introduce a bill to amend the Bankruptcy Code of 1978 which will clarify and restate the original intent of Congress—namely, that the public interest in continued rail service is to be considered in all aspects of rail reorganizations, as it was under the Bankruptcy Code of 1978. The only exception would be with respect to railroad rolling stock equipment under section 1168 of the Bankruptcy Code, which was also an exception under prior section 77 of the Bankruptcy Act of 1898, as amended.

The purpose of this amendment is not to alter in any way existing law, but to clarify the original intent of Congress when we enacted the Bankruptcy Code of 1978. The need for this clarifying amendment is made manifest by the decision of the U.S. District Court for the Northern District of Illinois in the Chicago, Missouri, & Western Railway case which I have just described which erroneously precluded consideration of the public interest in continued rail service in determining whether to approve priming loans in railroad reorganizations. The holding of the court was contrary to our intent in enacting the Bankruptcy Code of 1978 and is inconsistent with case law on this subject under section 77 of the Bankruptcy Act, which we did not intend to overrule or displace in any way by the adoption of the Bankruptcy Code of 1978.

This is a prudent clarification in the law, even if the threat to rail passenger and freight service along the CM&W were ended tomorrow. We must give the courts clear guidance on this important point of bankruptcy law and national transportation policy. The CM&W case show the potential for havoc that could come from a misinterpretation of our intent in this area.

Mr. President, I urge my colleagues to support this bill because it represents sound policy. I hope the Senate will act promptly because rail service vital to many communities in Illinois, Missouri, and the Midwest depends on it.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD in its entirety.

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

S. 1631

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 "Railroad Reorganization Public Interest Protection Act".

SEC. 2. Section 1165 of title 11, United States Code, is amended by striking out "In applying sections 1166, 1167, 1169, 1170, 1171, 1172, 1173, and 1174 of this title," and inserting in lieu thereof "Except with respect to rolling stock equipment under section 1168 of this title, in any proceeding brought under this subchapter,".●

By Mr. CRANSTON:

S.J. Res. 197. Joint resolution to designate the month of October 1989 as "National HIV and AIDS Awareness Month;" to the Committee on the Judiciary.

NATIONAL HIV AND AIDS AWARENESS MONTH

Mr. CRANSTON. Mr. President, today I am introducing Senate Joint Resolution 197, to designate October 1989 as "National HIV and AIDS Awareness Month."

Mr. President, we are now in the 9th year of this epidemic. More than 100,000 Americans have been diagnosed with AIDS and as many as 1½ million Americans may be infected with the HIV—the virus that causes AIDS. There is no vaccine for AIDS. Our only means of preventing further spread of this insidious virus is through education—frank education about how the virus is transmitted and what can be done to prevent its transmission.

EDUCATION WORKS

The number of new infections in San Francisco has dropped dramatically following intensive education efforts. But those efforts must be continued and expanded. They must be ongoing. And, they must be tailored to individuals and populations with various cultural and ethnic backgrounds and languages.

By designating October as "National HIV and AIDS Awareness Month," we will be focusing our Nation's attention on this deadly disease. Education about AIDS is essential to preventing further spread of the disease, to encouraging greater understanding of and compassion for people with AIDS, and to marshaling our Nation's resources to fighting the AIDS epidemic on all fronts—prevention, research, care, and treatment.

Mr. President, I urge all my colleagues to join me in this effort, and I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 197

Whereas spread of infection with HIV—the virus that causes AIDS and that has already infected an estimated 1 to 1.5 million Americans—is our nation's most serious public health problem;

Whereas the Department of Health and Human Services has projected that, by the end of 1992, the cumulative total of AIDS cases in the United States will have reached 365,000 and 263,000 Americans—men, women, and children—will have died of the disease;

Whereas information, education, and sound public health measures are our primary weapons in the fight to prevent and control the spread of HIV, since today we have neither a cure for AIDS nor a vaccine against the virus;

Whereas if the epidemic of HIV infection and AIDS is not controlled in this country through a major information, education, and public health effort, the burden of human suffering and the economic impact on our society will be devastating and unprecedented;

Whereas informing and educating the American people, including our youth, about HIV infection and AIDS is crucial to preventing and controlling further spread;

Whereas informing and educating the American people will lead to greater understanding of and compassion for people with AIDS:

Whereas preventing further spread of AIDS is a critical component of a comprehensive national response to the AIDS epidemic; now, therefore, be it

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of October 1989 is designated as "National HIV and AIDS Awareness Month" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that month with appropriate activities.

By Mr. SIMON:

S.J. Res. 198. Joint resolution designating November 1989 as "An End to Hunger Education Month"; to the Committee on the Judiciary.

AN END TO HUNGER EDUCATION MONTH

Mr. SIMON. Mr. President, today I am introducing a resolution designating November 1989 as "An End to Hunger Education Month." Hunger takes the lives of 13 to 18 million people every year, and three-quarters of these deaths are children under age 5.

We must recognize that hunger and poverty are serious problems that affect all of us, not just those who experience it first hand. The resolution I am sponsoring is an effort to heighten public awareness about the extent of the hunger problem, and encourage folks to respond to the needs of hungry people in this country and around the world.

This week, at a breakfast I hosted for Illinois constituents, two representatives from the Hunger Project joined me. These Illinoisans recently returned from Moscow, where they participated in the Eighth Annual Moscow Peace Marathon on August 12. We should support their efforts, and other efforts like Hands Across America, Live Aid and Comic Relief, to name a few. We also need to recognize and support activities in our States and local communities.

I urge my colleagues to join me in designating November 1989 as "An End to Hunger Education Month."

ADDITIONAL COSPONSORS

S. 435

At the request of Mr. REID, the name of the Senator from South Dakota [Mr. PRESSLER] was added as cosponsor of S. 435, a bill to amend section 118 of the Internal Revenue Code to provide for certain exceptions from certain rules determining contributions in aid of construction.

S. 447

At the request of Mr. BOSCHWITZ, the name of the Senator from Indiana [Mr. COATS] was added as cosponsor of S. 447, a bill to require the Congress and the President to use the spending levels for the current fiscal year (without adjustment for inflation) in the preparation of the budget for each new fiscal year in order to clearly identify spending increases from one fiscal year to the next fiscal year.

S. 524

At the request of Mr. BRADLEY, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 524, a bill to amend title XVIII of the Social Security Act to provide for coverage of adult day health care under the Medicare Program, and for other purposes.

S. 720

At the request of Mr. BOREN, the names of the Senator from Nevada [Mr. REID] and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of S. 720, a bill to amend the Internal Revenue Code of 1986 to extend and modify the targeted jobs credit, and for other purposes.

S. 874

At the request of Mr. FORD, the names of the Senator from New Mexico [Mr. BINGAMAN], the Senator from Ohio [Mr. METZENBAUM], and the Senator from North Dakota [Mr. CONRAD] were added as cosponsors of S. 874, a bill to establish national voter registration procedures for Presidential and congressional elections, and for other purposes.

S. 977

At the request of Mr. DOMENICI, the names of the Senator from Alaska [Mr. STEVENS] and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of S. 977, a bill entitled the "White House Conference on Small Business Authorization Act."

S. 1207

At the request of Mr. PACKWOOD, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 1207, a bill to amend the Communications Act of 1934 to

reform the radio broadcast license renewal process and for other purposes.

S. 1308

At the request of Mr. BRADLEY, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 1308, a bill to amend title 39 of the United States Code to grant local governments the discretion to assign mailing addresses to sites within their jurisdiction.

S. 1371

At the request of Mr. SANFORD, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 1371, a bill to authorize appropriations for rural housing programs and for other purposes.

S. 1506

At the request of Mr. BENTSEN, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1506, a bill to amend the Internal Revenue Code of 1986 to limit the ability of corporations to obtain a refund of taxes by carrying back net operating losses arising from excess interest deductions allocable to transactions reducing corporate equity.

S. 1529

At the request of Mr. ROCKEFELLER, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1529, a bill to amend section 337 of the Tariff Act of 1930 to respond to the actions of countries that do not provide adequate and effective patent protection to United States nationals.

S. 1582

At the request of Mr. SIMON, the names of the Senator from New York [Mr. D'AMATO], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of S. 1582, a bill to amend the Foreign Assistance Act of 1961 to provide for certain forms of assistance to Poland to ensure the success of freedom and democracy in Poland.

SENATE JOINT RESOLUTION 4

At the request of Mr. DECONCINI, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of Senate Joint Resolution 4, a joint resolution disapproving the recommendations of the President relating to rates of pay of certain officers and employees of the executive and legislative branches of the Federal Government.

SENATE JOINT RESOLUTION 164

At the request of Mr. NICKLES, the names of the Senator from Mississippi [Mr. COCHRAN], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Joint Resolution 164, a joint resolution designating 1990, as the "International Year of Bible Reading."

SENATE JOINT RESOLUTION 186

At the request of Mr. MCCLURE, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. REID], the Senator from Iowa [Mr. GRASSLEY], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of Senate Joint Resolution 186, a joint resolution designating the week of March 1 through March 7, 1990, as "National Quarter Horse Week."

SENATE CONCURRENT RESOLUTION 60

At the request of Mr. MOYNIHAN, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from North Dakota [Mr. CONRAD], the Senator from New York [Mr. D'AMATO], and the Senator from Indiana [Mr. COATS] were added as cosponsors of Senate Concurrent Resolution 60, a concurrent resolution expressing the sense of the United States Senate that the Soviet Union should release the prison records of Raoul Wallenberg and account for his whereabouts.

SENATE CONCURRENT RESOLUTION 69—RELATING TO THE PEOPLES OF LATVIA, ESTONIA, AND LITHUANIA

Mr. KASTEN (for himself, Mr. DOLE and Mr. RIEGLE) submitted the following concurrent resolution which was referred to the Committee on Foreign Relations:

S. CON. RES. 69

Whereas the Baltic states of Latvia, Estonia, and Lithuania gained their independence from the Russian Socialist Federative Soviet Republic in 1918, a fact recognized by the government of the Russian Socialist Federative Soviet Republic in 1920;

Whereas the governments of the Latvian Democratic Republic and the Russian Socilist Federative Soviet Republic (RSFSR) signed a Treaty of Peace in Riga, Latvia on August 11, 1920, in which the RSFSR "establishes the right of self-determination for all nations, even to the point of total separation from the States with which they have been incorporated" and declares that "Russia unreservedly recognizes the independence, self-subsistency and sovereignty of the Latvian State and voluntarily and forever renounces all sovereign rights over the Latvian people and territory which formerly belonged to Russia",

Whereas similar treaties were signed by both the Republic of Estonia and the Republic of Lithuania with the RSFSR, on February 2, 1920 and July 12, 1920, respectively;

Whereas the independent republics of Latvia, Estonia, and Lithuania swiftly recovered from the ravages of World War I and became active in the World community, gaining membership in the League of Nations on September 22, 1921 and full recognition by the United States on July 28, 1922;

Whereas the sovereign rights of the independent states of Latvia, Estonia, and Lithuania were violated by the Union of Soviet Socialist Republics in a Secret Protocol to the Nazi-Soviet Treaty of Nonaggression of August 23, 1939, which divided Eastern Europe into Nazi and Soviet "spheres of influence,"

Whereas the Union of Soviet Socialist Republics coerced the governments of Latvia, Estonia, and Lithuania to sign Pacts of Mutual Assistance in October 1939, which stipulated that the "contracting parties undertake not to enter into any alliances or to participate in any coalitions directed against one of the contracting parties" and that "the carrying into effect of the present pact must in no way affect the sovereign rights of the contracting parties, in particular their political structure, their economic and social system, and their military measures";

Whereas the Union of Soviet Socialist Republics violated not only those bilateral agreements with the independent Baltic states but also international conventions on the changing of international borders by force when the Soviet Union issued ultimatums to the three independent nations on June 15-16, 1940, demanding the formation of governments to their liking, followed by armed invasions of Lithuania, Latvia, and Estonia on June 16-17, 1940;

Whereas the occupation of the Baltic states was confirmed on July 14-15, 1940, with the irregular and illegal "election" of new parliaments, which then petitioned for admission into the Soviet Union, and these petitions were accepted by the Soviet Union, as follows: Lithuania's on August 3, 1940, Latvia's on August 4, 1940 and Estonia's on August 5, 1940;

Whereas Sumner Welles, Acting Secretary of State, declared on July 23, 1940 that "the devious processes whereunder the political independence and territorial integrity of the three small Baltic republics—Estonia, Latvia and Lithuania—were to be deliberately annihilated by one of their more powerful neighbors, have been rapidly drawing to their conclusion. The people of the United States are opposed to predatory activities no matter whether they are carried on by the use of force of by the threat of force. They are likewise opposed to any intervention on the part of one state, however powerful, in the domestic concerns of any other state, however weak. The United States will continue to stand by these principles";

Whereas the Government of the United States continues its policy of standing by the 1922 recognition of the *de jure* independent governments in the Baltic states, and of refusing to recognize the forced incorporation of the Baltic states into the Soviet Union;

Whereas the peoples of Latvia, Estonia, and Lithuania have never accepted the occupation of their native lands, and have demonstrated their resolve on numerous occasions since 1940, most notably in the last three years. The most striking demonstration of the desires of the Baltic people took place on August 23, 1989, the fiftieth anniversary of the Nazi-Soviet Treaty of Nonaggression, when nearly 2,000,000 citizens of Latvia, Estonia, and Lithuania joined hands in a 400-mile human chain stretching across the Baltic states from the Estonia capital of Tallinn, through the Latvian capital, Riga, to the Lithuanian capital of Vilnius;

Whereas the people of the Baltic states, through their elected representatives in the Popular Front of Latvia, the Popular Front of Estonia, and the Lithuanian Movement in Support of Perestroika "Sajudis", have declared their desire for the restoration of independence in the Baltic states; and

Whereas even the Communist officials and regimes in each of the Baltic states have begun to respond to the drive for more autonomy: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress urges the President—

(1) to raise the issue of the political rights of the Baltic peoples in all diplomatic contacts with the Soviet Union and, more especially, in the talks between Secretary Baker and Foreign Minister Shevardnadze scheduled for later in September 1989; and

(2) to call upon the Soviet Union-

(A) to honor the international agreements it has voluntarily entered into, such as the Final Act of the Helsinki Conference on Security and Cooperation in Europe and the United Nations Declaration of Human Rights, as well as the bilateral agreements it has voluntarily entered into with the independent governments of Latvia, Estonia, and Lithuania.

(B) to allow the people of Latvia, Estonia, and Lithuania their right of self-determination, as guaranteed by the RSFSR in 1920 as well as by the current constitution of the Soviet Union,

(C) to recognize the human rights of all peoples both within the Soviet Union and under Soviet influence, and

(D) to replace the policy of aggressive industrialization in the Baltic states, which has poisoned the land, air, and water of Latvia, Estonia, and Lithuania, with one of environmental responsibility.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

Mr. KASTEN. Mr. President, I rise today to introduce a Senate resolution on U.S. policy regarding the aspirations for freedom which are being expressed by the peoples of the Baltic States.

The United States has never recognized the Soviet hegemony over the Republics of Latvia, Lithuania, and Estonia. But the illegal Soviet occupation of these countries has nonetheless remained a sad fact of life in the recent political history of Europe.

But change is coming—change inspired by the aspirations of the Baltic peoples themselves. Late last year, they formed popular fronts to push for independence; just last month more than a million of them joined hands to form a 430-mile human chain of freedom of the shores of the Baltic.

Today—joined by my distinguished colleagues, the Republican Leader and Senator RIEGLE—I am calling upon the Senate to leave no doubt where we as a legislative body stand on the issue of Baltic independence: We stand with the people.

The legitimate striving of the Baltic nations for self-determination must be a keystone of the American position in discussions with Soviet authorities. The issue of Baltic freedom must be raised with particular vigor in the talks between Secretary of State Baker and Soviet Foreign Minister Eduard Shevardnadze next week.

I personally witnessed this striving for liberty when I was in Latvia last month to deliver a lecture on the environment. I saw the people come together to discuss the challenges facing their society, and try to come to grips from the promise and the peril of the coming days of change.

I learned later that the central Communist government in Moscow had dismissed these discussions as an exploitation of openness to further what the government called extremist ends.

There is nothing extremist about human rights. There's nothing extremist about self-determination. On the contrary—these are the building blocks of civilization. And the United States ought to be making this clear in all bilateral contacts with the Soviet Union.

I would like to commend our eminent former colleague, Vice President DAN QUAYLE, for his eloquence on this issue.

Mr. President, a lot of the credit for this resolution belongs to the Latvians, Lithuanians, and Estonians who have become a part of our own American national tapestry. In particular, I'd like to compliment all the Wisconsinites of Baltic heritage who have fought to bring this issue to the forefront of our foreign policy.

To conclude, I hope that all of us in this country will speak with one voice to the Baltic peoples, as they grope haltingly yet inexorably toward the daylight of democracy.

SENATE RESOLUTION 178—COMMENDING GAIL D. FOSLER FOR HER SERVICE TO THE COUNTRY AND THE SENATE

Mr. DOLE (for Mr. DOMENICI) (for himself, Mr. DOLE, Mr. SASSER, Mr. ARMSTRONG, Mr. BOND, Mr. BOSCHWITZ, Mr. CONRAD, Mr. DANFORTH, Mr. DODD, Mr. EXON, Mr. GRAMM, Mr. GRASSLEY, Mr. HEINZ, Mr. HOLLINGS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KASTEN, Mr. MCCLURE, Mr. NICKLES, Mr. PACKWOOD, Mr. ROBB, Mr. RUDMAN, Mr. SANFORD, Mr. SIMON, Mr. SYMMS, and Mr. MCCAIN) submitted the following resolution; which was considered and agreed to:

S. RES. 178

Whereas Gail D. Fosler has served the Senate as a member of the staff on the Budget Committee for more than 11 years;

Whereas Gail D. Fosler served the Committee as Chief Economist for the Budget Committee from 1981 through 1986;

Whereas Gail D. Fosler has served since January 1987, as Deputy Staff Director and Chief Economist for the Committee's Minority Staff;

Whereas Gail D. Fosler has carried out her difficult duties and responsibilities with the highest degree of professional integrity and dedication; and

Whereas Gail D. Fosler has earned the Senate's affection and esteem: Now, therefore, be it

Resolved, That Gail D. Fosler is hereby commended for her faithful and exemplary service to her country and to the United States Senate.

AMENDMENTS SUBMITTED

DEPARTMENT OF TRANSPORTATION AUTHORIZATION

HELMS AMENDMENT NO. 744

(Ordered to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to the bill H.R. 3015, a bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1990, and for other purposes, as follows:

On page 71, line 12, before the quotation marks, insert the following:

", however, the provisions of this ban shall not apply to flights after one year unless a bill is recommended to the Senate by the Committee on Commerce, Science, and Transportation, and a similar provision is reported to the House of Representatives by the Committee on Public Works and Transportation to make the ban permanent."

HELMS AMENDMENT NO. 745

(Ordered to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to the bill H.R. 3015, supra, as follows:

On page 71, line 12, before the quotation marks, insert the following:

", however, the provisions of this ban shall not apply to flights that the airlines, using existing power, designate as all smoking flights."

HELMS AMENDMENT NO. 746

(Ordered to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to the bill H.R. 3015, supra, as follows:

At the end of the amendment, add the following:

", however, the provisions of this ban shall not apply to flights after one year unless a bill is recommended to the Senate by the Committee on Commerce, Science, and Transportation, and a similar provision is reported to the House of Representatives by the Committee on Public Works and Transportation to make the ban permanent. and"

DISTRICT OF COLUMBIA POLICE AUTHORIZATION AND EXPANSION ACT

SASSER AMENDMENT NO. 747

Mr. ADAMS (for Mr. SASSER) proposed an amendment to the bill (H.R. 1502) to authorize the appropriation of funds to the District of Columbia for additional officers and members of the Metropolitan Police Department of the District of Columbia, and to provide for the implementation in the District of Columbia of a community-oriented policing system; as follows:

On page 11, strike lines 19 through 21 and insert the following:

(a) Paragraph (3) and (3a) of section 502(d) of the District of Columbia Uniform Controlled Substances Act (sections 33-552(d)(3) and (3a), D.C. Code) are amended by—

(1) redesignating paragraph (3) as paragraph (4);

(2) redesignating paragraph (3a) as paragraph (3); and

(3) reordering the paragraphs so that paragraph (3), as redesignated, precedes paragraph (4), as redesignated.

(b) Section 502(d)(4)(B) of the District of Columbia Uniform Controlled Substances Act of 1981 (section 33-552(d)(4)(B), D.C. Code), as redesignated by subsection (a), is amended by striking "shall be

SASSER (AND BYRD) AMENDMENT NO. 748

Mr. ADAMS (for Mr. SASSER, for himself and Mr. BYRD) proposed an amendment to the bill H.R. 1502, supra; as follows:

At the end of the bill add the following new section:

SEC. 6. POLICE CORPS PILOT PROGRAM.

(a) DEFINITIONS.—For the purpose of this section—

(1) the term "academic year" means a traditional academic year beginning in August or September and ending in the following May or June;

(2) the term "Administrator" means an Administrator of the Police Corps program appointed pursuant to subsection (b);

(3) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of the baccalaureate degree; or

(B) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses;

(4) the term "participant" means a participant in the Police Corps program selected pursuant to subsections (i) and (j); and

(5) the term "participating law enforcement agency" means—

(A) in the case of a participant selected for the Police Corps program under regulations prescribed by the Administrator described in subsection (b)(1), the Metropolitan Police Department of the District of Columbia; or

(B) in the case of a participant selected for the Police Corps program under regulations prescribed by the Administrator described in subsection (b)(2), the West Virginia State Police (or such other law enforcement agency as the superintendent of the West Virginia State Police may designate).

(b) APPOINTMENT OF ADMINISTRATORS.—There shall be two Administrators of Police Corps programs pursuant to this decision, to be appointed as follows:

(1) the Chief of the Metropolitan Police Department of the District of Columbia shall appoint a person in the Metropolitan Police Department to serve as an Administrator; and

(2) the Superintendent of the West Virginia State Police shall appoint a person in the West Virginia State Police to serve as an Administrator.

(c) RESPONSIBILITIES OF ADMINISTRATORS.—Each Administrator shall be responsible for the administration of a Police Corps program pursuant to this section and shall have authority to promulgate regulations to implement this section.

(d) EDUCATIONAL ASSISTANCE.—(1) Each Administrator is authorized to pay the educational expenses of up to 25 participants in the Police Corps program, by—

(A) entering into an agreement to repay, and repaying, an educational loan of a participant; and

(B) entering into an agreement to repay, and repaying, a participant for educational expenses paid out of the participant's funds.

(2) Except for payments of interest on an educational loan, repayment under an agreement made pursuant to paragraph (1) shall be made following completion of a participant's course of educational study and service as required by this Act.

(3) Repayment of an educational loan made pursuant to paragraph (1) may be made in the form of direct payment to a lender or reimbursement of a participant for payments made to a lender.

(4) An educational loan that may be repaid under paragraph (1) is a loan made pursuant to or in connection with a Federal, State, local, or private loan or loan guarantee program designated by an Administrator and other loans that meet terms prescribed by such Administrator by regulation.

(e) ADMISSION OF APPLICANTS.—An applicant may be admitted into the Police Corps program either before commencement of or during the applicant's course of educational study.

(f) PAYMENT OF EDUCATIONAL EXPENSES.—(1) An Administrator may agree to repay an educational loan and to reimburse a participant for expenditures made prior to or after the time that a participant applies for admission to the Police Corps program.

(2) The amounts of educational expenses that an Administrator may pay under this section are limited as follows:

(A)(i) The amount of educational expenses incurred by a participant to cover the cost of an academic year of study that an Administrator may pay is limited to $10,000.

(ii) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of educational expenses incurred by a participant to cover the cost of such calendar year that an Administrator may pay is limited to $13,333.

(B) The amount of educational expenses incurred by a participant to cover the cost of undergraduate study is limited to $40,000 in the aggregate, regardless whether the time of study exceeds 4 years.

(g) ADMINISTRATOR'S OBLIGATION TO PAY.—(1) An Administrator's obligation to pay a participant's educational expenses under this section shall be void, and such Administrator shall be entitled to recover from the participant the amount of any interest on an educational loan that such Administrator has paid, if the participant fails to complete satisfactorily—

(A) the course of educational study undertaken by the participant; and

(B) service as required by subsection (o), unless the failure is the result of death or permanent physical or mental impairment.

(2) For the purpose of paragraph (1), a participant shall be deemed to have completed satisfactorily—

(A) an educational course of study upon receipt of a baccalaureate degree (in the case of educational expenses incurred to cover the cost of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of educational expenses incurred to cover the cost of graduate study); and

(B) service in a participating law enforcement agency upon completion of 4 years of service on the force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the force.

(3) As a condition to payment of educational expenses of a participant who fails to complete a course of educational study or service as a result of permanent physical or mental impairment, an Administrator may require the participant to perform appropriate alternative community service.

(h) GROSS INCOME.—For purposes of section 61 of the Internal Revenue Code of 1986, a participant's gross income shall not include any amount paid as educational assistance under this section.

(i) SELECTION OF PARTICIPANTS.—Participants in the Police Corps program shall be selected on a competitive basis under regulations prescribed by each Administrator.

(j) SELECTION CRITERIA AND QUALIFICATIONS.—(1) In order to participate in the Police Corps program, a participant must—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the participating law enforcement agency, including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the participating law enforcement agency shall not disqualify the applicant if the applicant wil be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer:

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the participating law enforcement agency;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the participating law enforcement agency before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the participating law enforcement agency, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after the date of enactment of this Act, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward

satisfaction of the participant's 4-year service obligation under subsection (o), and such a participant shall be subject to the same benefits and obligations under this Act as other participants, including those stated in paragraph (1) (E) and (F).

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of subsection (o), such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(k) RECRUITMENT OF MINORITIES.—Each Administrator shall make special efforts to seek and recruit applicants from among members of racial and ethnic groups whose representation in the participating law enforcement agency is substantially less than in the population of the District of Columbia (in the case of the Administrator described in subsection (b)(1)) or of the jurisdiction of the participating law enforcement agency (in the case of the Administrator described in subsection (b)(2)). This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (i) and (j).

(l) ENROLLMENT OF APPLICANTS.—(1) An applicant shall be accepted into the Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, an institution of higher education (as described in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)))—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(m) LEAVE OF ABSENCE.—(1) A participant in the Police Corps program who requests a leave of absence from educational study or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason, including temporary physical or mental impairment, may be granted such leave of absence.

(2) If a participant who has taken a leave of absence pursuant to paragraph (1) fails or is unable to resume educational study or service after the expiration of the leave of absence, the provision of subsection (f) shall apply.

(n) IN-STATE TUITION.—At least 50 percent of the applicants admitted to the Police Corps program must qualify for and be obligated to pay no more than the in-State tuition rates at the institutions they attend.

(o) SERVICE OBLIGATION.—(1) Upon satisfactory completion of a participant's educational course of study (in the case of a participant taking a baccalaureate degree) and prior to commencing or continuing graduate study (in the case of a participant who desires to do graduate work), and upon meeting the requirements of the participating law enforcement agency, a participant shall be sworn in as a member of the participating law enforcement agency and shall serve for 4 years as a member of such agency.

(2) A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the participating law enforcement agency, including those contained in applicable agreements with labor organizations and those provided by law.

(3) If the participating law enforcement agency subjects a participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under this section, the Administrator may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, upon satisfactory completion of that service, provide assistance pursuant to this section.

(4) The participating law enforcement agency may decline to offer a participant an appointment, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures.

(5) A participant in the Police Corps program shall, while serving as a member of the participating law enforcement agency, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the participating law enforcement agency.

(p) REPORTS TO PRESIDENT AND CONGRESS.—Not later than April 1 of each year, each Administrator described in subsection (b) shall submit a report to the President and to the Speaker of the House of Representatives and the President of the Senate. Such report shall—

(1) state the number of current and past participants in the Police Corps program administered by such Administrator, broken down according to the levels of educational study in which they are engaged and years of service they have served with the participating law enforcement agency (including service following completion of the 4-year service obligation);

(2) describe the structure and progress of the program; and

(3) discuss the perceived strength and weakness of the program and any proposals for changes in the program.

(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the District of Columbia and to the State of West Virginia to carry out this section, for fiscal year 1990, such sums as may be necessary to carry out the provisions of this Act, and for each fiscal year thereafter such sums as may be authorized in the annual authorization Act for such year.

LEVIN AMENDMENT NO. 749

Mr. ADAMS (for Mr. LEVIN) proposed an amendment to the bill H.R. 1502, supra, as follows:

On page 9, line 15, strike out "of the authorized" through "4,055" on page 9, line 16, and insert in lieu thereof "of 4,355".

DISTRICT OF COLUMBIA APPROPRIATIONS, 1990

WILSON AMENDMENT NO. 750

Mr. WILSON (for himself and Mr. KOHL) proposed an amendment to the bill (H.R. 3026) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1990, and for other purposes; as follows:

At the end of the bill add the following new section:

SEC. . TASK FORCE ON SUBSTANCE ABUSING PREGNANT WOMEN AND INFANTS EXPOSED TO MATERNAL SUBSTANCE ABUSE DURING PREGNANCY.

(a) IN GENERAL.—The Director of the Department of Human Services of the District of Columbia (referred to as the "Director" shall establish a task force, to be known as the District of Columbia Task Force for Coordinated Service to Drug-Exposed Infants (referred to as the "Task Force"), to develop a plan for the most efficient and effective delivery of services to substance abusing pregnant women and infants who were exposed to maternal substance abuse during pregnancy, including recommendations to ensure maximum cooperation between service providers.

(b) MEMBERS.—(1) The Director shall appoint no more than 15 persons to serve on the Task Force, including persons with experience in treating substance-exposed infants, representing the following organizations and disciplines:

(A) Child protection and welfare.

(B) Local hospitals.

(C) Health care professionals, including drug treatment specialists, public health experts, primary care providers, and child development specialists.

(D) Public safety and justice.

(E) Public education.

(F) Community-based organizations serving substance abusing pregnant and post partum women and their infants.

(G) Public housing officials.

(H) Other human support services.

(2) In addition to the members of the Task Force appointed pursuant to paragraph (1), the U.S. Attorney or a designee of the U.S. Attorney shall be a member of the Task Force.

(3) The Director or the designee of the Director shall act as chairman of the Task Force and provide such clerical support as the Task Force requires.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act the Task Force shall submit a report to Congress making findings and recommendations for legislative or other action, and including a specific plan detailing how the District will provide for the care of abandoned or otherwise abused infants for whom foster homes have not been found within 6 months of birth; and a timetable for implementing its recommendations.

(d) TERMINATION.—The Task Force shall terminate on submission of its report in accordance with subsection (c).

ARMSTRONG AMENDMENT NO. 751

Mr. ARMSTRONG (for himself and Mr. HELMS) proposed an amendment to the bill H.R. 3026, supra; as follows:

At the appropriate place in the bill insert the following new section:

SEC. . (a) This section may be cited as the "Nation's Capital Religious Liberty and Academic Freedom Act".

(b) Section 1-2520 of the District of Columbia Code (1981 edition) is amended by adding after subsection (2) the following new subsection:

"(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory

practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition—

(A) the use of any fund, service, facility, or benefit; or

(B) the granting of any endorsement, approval, or recognition, to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.".

HELMS AMENDMENT NO. 752

Mr. HELMS proposed an amendment to the bill H.R. 3026, supra, as follows:

Strike all beginning on page 6, line 6, through the colon on line 15, and insert the following: "*Provided further,* that an additional $150,000 out of local funds shall remain available until expended, to close open air drug markets, increase police visibility, and provide for speedier court processing of drug-related violent cases.".

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Thursday, September 21, 1989, at 9:30 a.m., in SR-301, to receive testimony on the nominations of Joan D. Aikens, of Pennsylvania, and John Warren McGarry, of Massachusetts, to be members of the Federal Election Commission for terms expiring April 30, 1995. Both nominations are reappointments.

For further information regarding this confirmation hearing, please contact Mr. Jack Sousa, chief counsel of the Rules Committee, on 224-5648.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON WATER AND POWER

Mr. ADAMS. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate September 14, 1989, 2 p.m., for a hearing to receive testimony on four reclamation bills: S. 53, the Cedar Bluff Unit Reformulation; S. 486, the authorization to construct the Lake Meredith salinity control project in New Mexico and Texas; S. 202, the Lake Andes-Wagner/Marty II project; S. 1121, the authorization for additional appropriations for the Buffalo Bill Dam; and S. 1275, the Leadville Mine Water Treatment Plant.

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

COMMITTEE ON THE JUDICIARY

Mr. ADAMS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, September 14, 1989, at 2 p.m., to hold a hearing on the physical desecration of the flag.

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

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. ADAMS. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 14, at 10 a.m., to hold a hearing on Slepak principles: Guidelines for United States businesses investing in the Soviet Union.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ADAMS. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, September 14, at 9:30 a.m., for a hearing on S. 1165, congressional civil rights bill.

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

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

Mr. ADAMS. Mr. President, I ask unanimous consent that the Subcommittee on Mineral Resources Development and Production of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, September 14, 1989, 10:15 a.m. for an oversight hearing to receive testimony from the Federal Energy Regulatory Commission concerning the potential producing sector impacts of the Commission's proposed policy statement on gas inventory charges [GIC's].

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

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. ADAMS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Thursday, September 14, 1989, at 10 a.m. to hold hearings on the nomination of Richard C. Breeden, of Virginia, to be a member of the Securities and Exchange Commission for the term expiring June 5, 1993.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. ADAMS. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on September 14, 1989, beginning at 2 p.m., in 485 Russell Senate Office Building, on S. 1270, to provide an Indian mental health demonstration grant program.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. ADAMS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, September 14, 1989 at 2 p.m. to hold a closed meeting on intelligence matters.

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

ADDITIONAL STATEMENTS

"RED SKIES OF '88"

● Mr. BAUCUS. Mr. President, during the summer of 1988, we witnessed the most disastrous wildfire season ever recorded in Montana and the Northern Rockies since the first white explorers, Lewis and Clark, came through the area in 1805. It could be 300 years before this phenomenon happens again.

Photographers, writers, and filmmakers from around the country have tried to capture the events of 1988 and explain why they happened. Much of this attention, understandably, centered around Yellowstone National Park. I applaud these people for the excellent work they have done.

I also would like to call attention to a publication that looks at the overall fire scene of 1988. "Red Skies of '88," published by Pictorial Histories in Missoula, MT, provides the basic information readers need to understand wildfire in both its creative and destructive forms. It also provides a history of wildfire in the West.

I believe this book is especially valuable for those of us who will be considering the future fire policy for our public lands. It contains information on managing wildfire for positive results and explains techniques for fighting wildfire.

"Red Skies of '88" brings us the thoughts and feelings of the folks who were on the line fighting fire. It outlines the dangerous conditions that can confront firefighters and tells us how they are trained to safely handle those conditions. It also lays out the cooperative arrangements that have been forged among Federal, State and local agencies that deal with fires.

I certainly will recommend "Red Skies of '88" for anyone who would like to know more about last summer's events.●

FLOYD VOSLER—OLDEST SURVIVING SEABEE

● Mr. WALLOP. Mr. President, "The difficult we do immediately, the impossible just takes a little longer," is a motto my constituent, Floyd Vosler at the age of 95, invokes quite frequently. Throughout his long life, he has lived up to the challenge of this motto with gusto and determination. To the best

of my knowledge, Floyd Vosler is the oldest surviving Seabee in the United States.

During World War II, Floyd was among the experienced carpenters, plumbers, electricians and engineers who were contracted to build naval facilities in the Pacific. In 1942, folks like Floyd were organized into the U.S. Navy construction battalions [CB's] when the use of civilian labor during war was deemed inappropriate. Trained in both construction and combat, the 258,000 Seabees made a notable impact on the war. Because of their importance, the Seabees were retained as part of the postwar naval organization. The Seabees showed their unique origins by wearing the insignia of a flying bee with a sailor's cap, carrying a tommy gun, a wrench and a hammer. In honor of those Seabees who died in war, a special memorial has been erected at the entrance to Arlington National Cemetery.

But, what is most important to Floyd Vosler, however, is the pride and honor felt by his 15 children, 65 grandchildren, 85 great-grandchildren and 10 great-great-grandchildren. They are all very proud of him—as am I. At the age of 95, he is no doubt the oldest surviving Seabee in the State of Wyoming and most likely in the Nation. Just recently, the Vosler family shared with me the following article about Floyd's life and his service to our Nation as a Seabee. Mr. President, I ask that the article be inserted into the RECORD as my colleagues will undoubtedly enjoy learning about Floyd Vosler as much as I have.

The article follows:

THE OLDEST SURVIVING SEABEE? CHEYENNE'S OWN FLOYD L. VOSLER

(By H.E. Remster)

Floyd was born in Techumseh, Nebraska, on January 12, 1894, according to his family's Bible. He left home at the age of 14 because he had to keep quitting school to help his father on the farm so he could save two cents a bushel on the corn. His dad gave him "an education that afternoon when he said 'you can do anything anybody else can do—just do it a little better and take a little longer at it,'" according to Floyd. That has been his motto ever since.

Floyd married Valborg Christensen in Cheyenne. They became the parents of 15 children, during which time Floyd was in the construction business working as a carpenter and contractor.

At the close of World War I, when Floyd was returning home via the troop train, Floyd played dice with other soldiers who were being assigned to Fort Warren in Cheyenne. With his skill and a little luck, Floyd lightened the other soldiers' pockets of quite a few silver dollars. But, after overhearing remarks made by three of the soldiers as to how they would retaliate upon reaching the fort, Floyd stepped off the train at the old Russell Avenue crossing and lit out for the Chistensen Dairy on foot arriving there at 1:00 a.m. with legs worn raw from walking with those silver dollars in his pockets for six miles.

During early military preparations for World War II, Floyd was working as an inspector at the Army Air Base in Pueblo, Colorado, with George Cole, a Cheyenne brick contractor. When their work was finished, they were to be transferred to New Mexico. The Naval Construction Battalion in New Mexico was in the process of being commissioned and opening ratings for experienced construction men was a high priority. Floyd was among the first to enlist. But, a few things precluded his enlistment—not only did he lack a formal education, he was 48 years old with nine children under the age of 18. Nevertheless, he was an experienced construction man, well versed in the trade, and he knew how to lead men. That was what the Navy was looking for—he was appointed as a Carpenter Chief Petty Officer. He took a draft of 20 men from Cheyenne—who were referred to as "the dead end kids"—to Virginia Beach and immediately was told to build a post office. The base was just a prairie then with hardly any buildings. But the motto of the Seabees was, "The difficult we do immediately, the impossible just takes a little longer."

Upon completion of boot training, Floyd and his battalion were shipped to Casabalanca, Morocco—it was the same day that General Rommell was pushed out. The Chief and his men were billeted in an old camel barn with the eating facilities about a couple miles away. They were put to work building airfields and hospitals, which were often bombed the same day they were built. They also laid oil/fuel pipe lines from the beach over the sand for several miles inland. The first airfields were built from perforated steel matting.

The Seabees were not exempted from enemy attacks. Bombs hit the camel barn and three Seabees were killed, but Chief Vosler was not there at the time.

Chief Vosler later transferred down the coast via troop movements to Agadir, Morocco, where he again built airfields, but this time out of poured concrete. Concrete tanks were also built, using Arab labor. They picked out the biggest men and kept them working. They all carried a #10 can with a wire bail on it, filled with wet concrete, to the top of the scaffolding and dumped them into the forms. That is the way the tanks got built.

After finishing the African Campaign with the 20th Battalion, Floyd was sent to Davisville, Rhode Island with the 17th Battalion for a few months. From Rhode Island, he was able to travel to New York and spend some liberty time with his son, Albert, who was then on duty at the Brooklyn Navy Yard.

Chief Vosler was discharged in 1944, and his wife, Valborg, came east to meet him. Together, they went to New York where Albert was able to "show them the sights" for a time before their return to Cheyenne.

Floyd Vosler is a very genial man, well loved by his family and friends, who visit with him at his daily coffee klatsch at his home. Valborg was a charter member of the Cheyenne Navy Mothers Club, and was a faithful attender of meetings at the Naval Reserve Center until she passed away. The club still meets there.

At 95, Floyd is still active and well—busy with his large family and his yard work. To Wyoming's oldest Seabee, I say, "Well done, Chief!"●

THERESA FREDERICKS, POPLAR, MT

● Mr. BAUCUS. Mr. President, too often, it is easier to dwell on the negative stories we hear about young people rather than on the good things. But today I would like to share with the Senate the story of a courageous young woman who deserves our respect and praise.

Fourteen-year-old Theresa Fredericks, of Poplar, MT, was babysitting the evening of July 8, 1989. At 7 p.m., she smelled smoke and saw sparks coming from an electrical outlet. She immediately gathered the two children she was caring for and took them out of the house to safety.

Theresa then reentered the house, called for help and used a fire extinguisher to douse the flames as much as possible. Using skills she learned in Girl Scouts, she unplugged appliances around the fire, being careful not to touch them with her hands. Throughout the entire ordeal, she remained calm—which no doubt helped save the lives of the children and lessen the damage to the house which could have occurred without her actions.

I would like to commend Theresa for her selfless actions. She is an excellent example of a responsible young adult and one we should all be very proud of.

I would also like to commend the thousands of young men and women who participate in scouting today. These people, along with their leaders, are helping our communities by becoming better informed and learning skills which will be useful throughout their lives. In an era when drug use and juvenile crime seems to be on the rise, it's refreshing to see people involved in such a worthwhile activity.●

THE AMERICAN FLAG

● Mr. ARMSTRONG. Mr. President, a friend of mine recently sent me a copy of Monsignor William F. O'Donnell's editorial about the desecration of the American flag. This editorial clearly reflects my feelings concerning this matter. Flag burning is an act of violence against our country. I believe that Monsignor O'Donnell has done a commendable job of illustrating this issue of principle. I ask that this be printed in the RECORD.

The editorial follows:

A VETERAN'S VIEW

For the people of the Old Testament, the ancient Israelites, a person's name was the extension of the person himself. To disparage the name was to disparage the person. It is for this reason that the second of the Ten Commandments, God's divine law, requires us to respect God's name. We obey the Second Commandment by not only showing reverence to God but by showing reverence for His Holy Name. The two cannot be separated.

For all Americans and particularly veterans, our national flag not only represents the nation but in a true sense is an extension of the nation itself. To desecrate the flag is to desecrate the nation. In a recent U.S. Supreme Court decision, the court ruled by a narrow majority (5 to 4) that the deliberate burning of our nation's flag as a form of protest is protected by the freedom of speech clause of the First Amendment. For us such a view is incomprehensible. We see the deliberate destruction of the flag in this manner as directed toward the destruction of the nation. The two cannot be separated.

There are those who would disagree with our view as to what our flag represents. But for those of us who were privileged to serve our nation in the military services, and who with the passage of time have come to realize, more and more, that it was a privilege and not just a duty to serve, the flag is the nation. We recall saluting the flag each time we passed it and it passed us. We recall the solemn moment when the flag was raised, and more particularly when it was lowered at formal retreat parades. We recall seeing it snapping in the wind at sea or on a flagstaff at a newly liberated town or city. When we saw the flag we saw America.

As Americans we repect the right of each person to have and to express freely his own views, even those views that might be in complete variance with ours. But we believe that the deliberate desecration of the flag is something more than the simple expression of free speech. We believe that it is intended to be, and is an act of violence against the nation. We hope and pray that lawmakers and the courts will soon restore the flag of our nation to the pinnacle from which it has been lowered.

Monsignor William F. O'Donnell,
VBOB Chaplain.●

SOUTH AFRICA—ECONOMICS AND POLITICS

● Mr. SIMON. Mr. President, former Senator Dick Clark—a previous and distinguished chairman of the Senate Foreign Relations Subcommittee on African Affairs—brought to my attention the following remarks by Mr. Azhar Cachalia, national treasurer for the United Democratic Front [UDF]. Mr. Cachalia was in the United States in July with the delegation led by Albertina Sisulu, cofounder of the UDF and wife of imprisoned antiapartheid leader Walter Sisulu.

In these remarks, delivered at the Carnegie Endowment for International Peace, Mr. Cachalia presents an illuminating overview of the economic crisis in South Africa, as well as a probing look at the South African Government's political strategy. I urge my colleagues to read them.

The remarks follow:

VERBATIM REMARKS AT CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, WASHINGTON, DC, BY AZHAR CACHALIA, NATIONAL TREASURER FOR THE UNITED DEMOCRATIC FRONT, SOUTH AFRICA, JULY 6, 1989

INTRODUCTION

Azhar Cachalia was born in Scotland in 1956. He came to South Africa when he was about five or six and was educated in South Africa. He earned his law degree at the University of Witwatersrand, Johannesburg. After graduation, Cachalia went to the Legal Resources Center on a fellowship for one year and then he served for two years in a law firm doing a clerkship. He became a partner of Ishmail Ayob, the lawyer for the Mandela family. After one year Cachalia joined the firm of Cheadle, Thompson and Haysom specializing in human rights law. He was a student activist in the late '70s and in the course of his political career has been arrested five times, detained three times, and restricted and banned several times. The last restriction order was lifted just before Cachalia undertook a trip to the United States in late June, 1989, to accompany Mrs. Albertina Sisulu in an official delegation that met with President Bush. Cachalia became a member of the Transvaal Indian Congress and a leading officer of the UDF when it was established in August 1983. He was very active in the movement opposing the tri-cameral elections in 1984 and in 1985 he was elected national treasurer of the Transvaal region of the UDF. He has held that position ever since. He is also the Johannesburg chairperson of the National Association of Democratic Lawyers which is an organization of progressive lawyers playing a role in the pursuit of democracy.

AZHAR CACHALIA: I firstly would like to thank members of the Carnegie Endowment and Pauline in particular for allowing me this opportunity to share some of my ideas with you and some of our feelings on what's going to happen in South Africa, the possibilities. I'm particularly pleased because it's the first time since February 1988 that I am addressing a gathering of more than ten persons having been restricted for the last two years of talking with groups of more than ten. I'm informed that I am a dangerous person so I hope that when people leave here you leave in an orderly way because it will vindicate the South African Embassy's view of some of us if you cause trouble in the streets outside.

I thought I'll use my time this morning to talk about the context in which de Klerk is going to become president. We have heard a lot, I think, in recent weeks, I've heard this in the United States, that this is a new man, that is a younger man in government, that he's got new ideas and he needs to be given a chance and I want to argue that it is vitally important that one understands why the South African government and de Klerk in particular are making some of the sounds they are making at the moment, failing which I think that some very serious mistakes will be made in approaching the South African question particularly for people in the foreign offices around the world.

Now, we believe that South Africa today faces a very serious and mounting economic crisis. It is crisis which has been deepening for the last four years behind a conspiracy of silence but which has now reached a level so critical that it is no longer for the authorities to cover up. As recently as about two months ago, the Minister of Finance, in attempting to justify the introduction of an unpopular package of fiscal measures, responded to his critics warning against the dangers of seeing South Africa's meager foreign reserves disappear altogether and the country sliding into the status of a banana republic. It is a crisis of such proportion that demands drastic action on the part of the regime if it's going to survive. Such action necessitates measures to restore foreign investor confidence and bring foreign capital flowing into the country again. A new strategy is already underway to promote a cleaner image to the outside world but simultaneously to evolve lower key, more subtle forms of oppression in order to maintain physical control of an increasingly dissident population. It is important to understand the nature of this crisis in order to come to grips with its evolving strategy. The origins of its economic crisis are of course intimately linked with the political crisis in the country. Its roots go back many years but more particularly to the mass rejection, political rejection, by the masses of South Africa's people to the tri-cameral parliament and the black local authorities in South Africa. This rejection was expressed by mounting resistance since that time and which was followed by armed invasion of the townships by security forces and that in turn led to the declaration of the first emergency on the 21st of July, 1985.

International reaction was swift, especially within the ranks of the world banking community and other financial systems. Foreign investors moved quickly to sell out their gold shares on the Johannesburg stock exhange and to withdraw accumulated profits, dividends, and interests where possible. Foreign bankers served notice that all loans due for payment would not be rolled over and that no new loans would be considered until political stability had returned to South Africa. These actions of course were undoubtedly influended be general antiapartheid sentiment but it is certain that the usual criteria applied by the international banking community to guard their interests played a dominant role in their decision. What happened next confirmed the international community's worst fears about the security of their funds in South Africa. Barely six weeks after the declaration of the emergency, South Africa unilaterally announced a moratorium on debt payments and South Africa's once proud credit plummeted to rock bottom where it remains today. Discussions with some major and smaller international banks eventually resulted in South Africa gaining a partial but temporary reprieve until July 1990. About 14 billion dollars of short term debt fell within a stand still arrangement calling for limited repayment until mid-1990, while 10 billion of long term debt fell outside of that standstill net. As of the end of 1988 the total debt in dollar terms had come down from 24 billion to 21.5 billion. But in rand terms it still stands at the 1985 figure of around 61 billion due to the declining value of the rand. What lies ahead are existing repayments obligations of some 5 billion dollars during the period 1989, 1990, and 1991 as well as facing new negotiations when the present arrangement expires around mid 1990, which is next year.

The question, of course, is whether South Africa can meet these obligations, if not it faces bankruptcy. To assess the answer to this questions we need to examine a few factors. The first is that the huge capital outflow which has occurred since the declaration of the emergency in July 1985. South Africa, of course, is normally a capital importing country needing foreign capital for the financing of its industrial growth. Over the last four years it has become, by force of circumstance, a net exporter of capital to the tune of 25 billion dollars. The capital starvation is having serious consequences for economic growth and the potential to provide employment. Yet there seems to be no way to stop the flight of capital while the world wants its loans and investments

repaid and lacks confidence in South Africa as a secure investment area.

I would just want to make a point that much has been said about the sanctions campaign, a significant number, a significant amount of percentage of the funds which are being transferred outside the country has in fact occurred because of what South African businessmen are doing, legally and illegally transferring funds outside the country because of their own lack of confidence in the system.

The outflow of capital can come from two sources. Firstly, the balance of payment surpluses on foreign trade and secondly, from foreign reserves. South Africa's balance of payments position at present, a struggle to keep its head above water. The surplus decline from 6.1 billion rand in 1987 to 2.9 billion rand in 1988, a drop of 52%. This was brought about by flagging exports in the face of international trade sanctions and by rising imports, largely of capital goods needed to replace obsolete and worn out parts and machinery. The balance of payment surpluses over the last four years have been insufficient to service South Africa's foreign debt payments and as a result it has been necessary to dip into its foreign reserves. These reserves consist of gold holdings and foreign currency. During the last year the foreign reserves have dwindled by 26% in dollar value and presently stands at 5 billion rand or just under 2 billion dollars. Estimates place this value as representing five to six weeks of imports, a level that only can be described as critically close to bankruptcy. But even this situation is not the whole story. Analysts point out that the South African reserve bank responsible for holding the foreign reserves is itself in debt on a short term outside the standstill net basis to the tune of 1 billion dollars. Thus, the net reserves are not 2 billion dollars but only 1 billion dollars. It is significant that the gold component of foreign reserves has fallen at times recently from 80% to 60%. This indicates the necessity to sell or swap gold for other foreign currencies. Gold holdings dropped from 12 million ounces in 1980 to only 3.5 million ounces at the end of 1988, that's valued at about 1.4 billion dollars. The value of the rand on the foreign exchange market reflects the state of the South African economy in general, and the disastrous level of the foreign reserves in particular. Since 1984 the value of the rand against the U.S. dollar has dropped to less than half. In the last 18 months alone it has lost 34% of its value. The fall in the gold prices is not helping either. The gold price influences both the balance of payments and the value of foreign reserves. Since gold exports account for about 25% of total exports, the gold price is a strong factor. It is estimated that a drop of 50 dollars in the gold price represents a loss to South Africa of 1 billion dollars in foreign exchange earnings annually. The last 18 months has seen a drop in the gold price of over $100. The impact of the gold price and the value of foreign reserves is even more important since gold holdings account for about three-quarters of the reserves. It is also important to note that South Africa is losing its preeminence as the Western World's leading gold exporter, its share having dropped from 75% ten years ago to only 40% at present. On the domestic front the important indicators present an even more dismal story. The official inflation rate stands at about 14%, unofficially figures of as much as 34% have been predicted. The growth rate for 1988 was reported at about 3% and expectations for 1989 are about 2%. Given a population growth rate of 2.5% per annum, growth rate per capita is therefore static. Most authorities agree that a real growth rate of 5% at least is necessary just to absorb the 200,000 new job seekers coming on to the market annually. With an estimated 35% of the population unemployed already nothing but a massive injection of foreign capital to stimulate growth and job creation will avert this disastrous situation.

But of course no economic analysis of South Africa would be complete without referring to the extraordinary costs of running apartheid. An examination of the 1988 budget shows that approximately one third of the budget went into the security apparatus, that would be defense, police, prisons, and so on. If you add to this cost the elaborate cost of just running apartheid, running 14 different education systems, running several different parliaments, running several different bantustans, duplicating and triplicating the administration throughout the country. Then, a conservative estimate is that 50% of our budget is consumed simply by fueling apartheid.

In summary, the apartheid government of South Africa then faces a dilemma, it is a crisis of survival. On the one hand it is reluctant to lift the state of emergency and run the risk of losing its grip of control of what it calls the revolutionary situation, no more than a euphemism, of course, for the popular resistance. On the other hand, it cannot afford to continue the state of emergency and so faces certain economic collapse. There can be no doubt that the economic imperatives have already dawned on this government and that they have the struggle to resolve what appears to be an irreconcilable problem, irreconcilable conflict. How do you satisfy foreign investors on the one hand without conceding to the demands of the majority of South Africa's people for a majoritarian democracy on the other?

So, it is quite apparent that a political strategy has already been evolved, having at its end the creation of the impression that apartheid is being dismantled and that the political aspirations of the black majority are being accommodated. But, it can be no more than an impression for there is as yet absolutely no evidence that there is any intention on the part of the nationalist government to give up or even share power. And, this is even apparent after the announcement of a so-called, de Klerk's so called, five year plan.

In discussion later on we may go into this if some people feel we'd like to deal with this area.

So, we would argue that the strategy in operation is twin tracked in its approach. The one track, high profile ostensibly enlightened actions and the other track, low profile repressive actions of a more covert nature than has hitherto been the case. One of the prime examples of this approach is what happened in Namibia. Faced with a severe economic problem, faced with a situation where as a result of the arms embargo and other things that the military balance, at least at the level of air force power had shifted in Angola, the South Africans were then forced to negotiate their way out of that situation and, of course, Namibia is now on track for independence. At the same time, of course, what is not being reported is how the counter insurgency unit in Namibia Koevoet have really changed their uniforms and they are now operating under the banner of the Southwest Africa police, operating in Ovamboland, intimidating, generally causing a whole lot of problems in that area. We understand that Mr. Ahtisaari has raised this with the administration. We don't know what's happening. On the domestic political front, encouraging statements, designed really for external consumption, are being made by cabinet ministers to the effect that the nationalist government is committed to dismantling apartheid and that racial discrimination must be abolished. Simultaneously for the benefit of internal white voter consumption the concept of majority rule is categorically rejected by F.W. de Klerk. Interestingly enough a few weeks ago Secretary of State Baker met with, I don't know if he met or just bumped into, Pik Botha somewhere in Europe and Botha said to him that the South African government is committed to ending apartheid, it's committed to ending white domination and that its going to campaign on that ticket.

On the issue of political prisoners, hopes have been raised after the much publicized releases of Govan Mbeki and Harry Gwala as well as Zeb Mothopeng of the Pan Africa Congress. Nelson Mandela, of course, remains in prison. The leadership of the United Democratic Front that had lead nonviolent opposition to South Africa's policies has just been sentenced a few months ago to periods of 12 and 10 years of imprisonment. There is, at a low key level, systematically a criminalizing of all political activity. I mean in that people like me who are restricted are getting charged, as I left South Africa people were being charged for breaking their restriction orders, for not being at home at 6 o'clock in the evening when the police were there. That, too, has become a political offense in South Africa.

The government responds to worldwide pressure and commutes the sentences in the Sharpville six. More than eighty people are languishing in South Africa's death row prisons in this very moment awaiting execution for one or other offenses, political offenses.

Repression of political opposition is changing in character in response to this twin track approach. This is clearly discernable, there is a clearly discernable drift away from formal state repression towards a reliance on what has, in other countries, come to be known as low intensity conflict involving shadowy vigilante groups, right wing groups, abductions, disappearances, and political assassinations both inside and outside South Africa. Indeed the era of the death squads has arrived in South Africa reminiscent of Chile and Argentina.

Activists who have become internal refugees who are restricted to their homes at night have literally become sitting ducks. Before we left, a month before we left an activist in the Natal area, Mr. Chris Ntuli, who was required to report daily to the police at particular times, walked out of the police station and was gunned down and killed.

So, detention without trial under the emergency regulations has almost ceased. There were few people still being held in terms of a formal state of emergency when we left. It is, of course, that detainees themselves through their mass hunger strike forced the issue but nevertheless official opposition to their release was relatively slight. In fact, Minister Vlok even agreed to meet with dangerous people like me to solve the hunger strike. But this too was done in the interest, I would argue, of a more enlightened image. Arbitrary detention, however. . . . However, arbitrary detention in

cells was converted into arbitrary detention at home by means of restriction orders involving more severe curtailment of movement, association, speech and political activity. The South Africans look very reasonable when foreign governments approach them and say "look we're dealing with a revolutionary situation, we'll release the people but you must understand we've been reasonable, we want these people to be integrated into society" (this is the way Mr. Vlok talks incidentally, I mean I must admit I was temporarily seduced by that as well) "so that you must understand that we have a problem so we'll release these people but we are going to have to restrict them." And, of course, foreign governments in wanting desperately and in families and friends of detainees who want people out will say, adopt the attitude alright look release them, we will take the next battle the next time. So that then becomes a major victory and South Africa has then made a major concession to the international community by releasing detainees but in fact the whole tact or the whole purpose of keeping political activity, opposition political activity under the raps in South Africa, under tight control, and there is absolutely no shift from that.

In addition to that, of course, detention under security legislation which we have forgotten still continues behind the usual veil of secrecy, that's under the provisions of section 29 of the Internal Security Act, which also allows for detention without trial.

You will find another thing is that organizations no longer get banned in South Africa and the new euphemism is that they get restricted. So Mr. Vlok in announcing restriction on the UDF will say they're not banned, he hastens to add "they're not banned, they can still keep their books," he says—they can't make any speeches but they can still keep their books. And interestingly enough, he then restricts the national treasurer of the UDF, myself, from even keeping the book of the UDF. In addition, organizations that are not restricted frequently find themselves arrested by security police raids or the victims of bombings, fires, and burglaries. The funeral of a very close friend of mine, Dr. David Webster, assassinated on the first of May 1989 attracted a great deal of international attention which is undoubtedly one of the determining factors in the decision not to restrict or ban the funeral in any way but the very next week the funeral of another unknown activist in Dube, a township of Soweto, was heavily restricted. That funeral probably would not have attracted more than two and a half thousand people, but that was restricted. All other funerals in the townships get restricted. So one may well get the impression that after three years of emergency rule to see a major anti-apartheid demonstration through the cities, through Johannesburg street is, in fact, perhaps an opening up under the emergency. In fact, the reality in our townships is quite a different situation.

Meetings of a political nature which in the past have been banned are broken up by the police. New things happen there. You have a little tea party, attended by something like lets see 50 people, a few ex-detainees and their families. Two hundred police will raid that—videos, heavy weapons and so on. They'll walk into the place and they'll sit, they'll invite themselves. They'll walk around while the proceedings are on, they'll video each and every person. They'll put people up against the wall, and their their names and say "we're not stopping the meeting, you carry on, we're just doing our duty." Now that happens consistently.

So, finally coming to the crucial issue of the state of emergency itself, ironically the fateful step which precipitated the economic crisis facing the apartheid government now caught in its own trap. Can the twin track approach be applied to this situation as well? And in fact the mechanism is already in place for that, assuming that the emergency is lifted in a few months time which may well be possible. Just before the emergency was declared, the Public Safety Amendment Act was passed. The Public Safety Amendment Act allows for the declaration of what they call an "administrative emergency." You declare an unrest area in the Johannesburg area which really allows the security forces the same emergency powers they have under the state of emergency. In fact, to use the words of the preamble to the bill, it says that the Public Safety Amendment at that stage can be used without the declaration, I quote "without the declaration of a state of emergency and the concomitant consequences." So, in fact the stage has already been set for the high profile lifting, the possible high profile lifting, of the state of emergency while all the other mechanisms—the Public Safety Act, all the detention provisions under the Internal Security Act—remain intact. In fact, it is not only arguable, it is a fact that South Africa never really needed the state of emergency to deal with these thousands of activists who have been jailed. What the emergency has really done is, I would argue, imposed a climate of terror in the country, to allow the security forces, it's given them the impression and it's also given them the power to actually do what they want. When I was detained in 1986, one of the first things the police said to me was, "look Mr. Cachalia you are in our hands and you know that we can do whatever we want." And, in fact, at one level that has been the purpose of the state of emergency. Secondly, of course, it gives unfortunately perhaps one of the most uninformed electorates in the world—the white community in South Africa—it gives them a completely false sense of security. We have an emergency, read no evil, see no evil, hear no evil. Don't worry we've got everything in control.

So the emergency is then likely to be lifted in a few months time and at that point—and we can develop this in questioning just now—the internal opposition to apartheid will not only be as strong as it has been but stronger than it has ever been. And we ask where will the international community be on that day? Not, we hope, blinded by the smoke screen of track one with its fine words and seemingly positive actions. Not to be mislead by the apparent reasonableness of de Klerk. Rather, we hope fully alert to the realities of track two and its attempts to hold tightly on to political power. A choice lies before the international community either to sit back passively and watch the steady decline of that society or intervene actively to precipitate the early capitulation of the apartheid government to the process of negotiations in a genuine nonracial democracy. And that can be done while the economic structure of South Africa is still in tact. It lies within the power of the international community, including the United States of America, to pursue the second option and that is to use all possible pressure on the apartheid government.

Thank you.●

ADA, MENTAL IMPAIRMENTS, AND THE PRIVATE SECTOR

● Mr. ARMSTRONG. Mr. President, last Thursday the Senate passed S. 933, the Americans With Disabilities Act of 1989. Before passage, the Senate adopted an amendment of mine (amendment number 722) that will exclude from the definition of "disability" certain sexual disorders, impulse control disorders, and drug-related disorders. Intervening events prompt me now to say something about the history of, and necessity for, that amendment.

In brief, S. 933 protects individuals who have disabilities against discrimination because of those disabilities. Private employers, employment agencies, labor organizations, hotels, restaurants, theaters, stores of all types, schools, and day care centers are covered by the bill. Under the bill, a person has a "disability" if he or she: First, has a physical or mental impairment that substantially limits one or more of the major life activities of such person; second, has a record of an impairment that substantially limits one or more of the major life activities of such person; or third, is regarded as having an impairment that substantially limits one or more of the major life activities of such person.

The language of the bill is comprehensive. All physical and mental impairments that substantially limit a major life activity; for example, caring for oneself, performing manual tasks, seeing, walking, working) are covered, including contagious and infectious diseases. My amendment focused on mental disorders, however.

In its report, the Committee on Labor and Human Resources said:

> A physical or mental impairment means * * * any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
>
> It is not possible to include in the legislation a list of all the specific conditions, diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future. The term includes, however, such conditions [and] diseases * * * as * * * mental retardation, emotional illness, specific learning disabilities, drug addiction, and alcoholism." S. Rpt. no. 101-116 [to accompany S. 933], 101st Cong., 1st Sess. 22 (1989).

The explanation adopted by the committee is essentially identical to current regulations that govern the Rehabilitation Act of 1973 and which define "physical or mental impairment" to mean "any mental or psychological disorder." 29 CFR 1613.702(a) (1987).

In sum, the bill protects "mental impairments", and "mental impairments" means "any mental or psychological disorder." What then is a

mental or psychological disorder? The committee refuses to say, but the American Psychiatric Association [APA] is less reticent.

The APA publishes a great, fat book called the "Diagnostic and Statistical Manual of Mental Disorders" that summarizes some of the diagnostic criteria for mental disorders that are used by the psychiatric and mental health professions. The latest version of the Manual is the revised third edition published in 1987 and known as DSM-III-R. The complete list of DSM-III-R classification categories and codes is attached to this statement, but the main categories are as follows:

I. Disorders usually first evident in infancy, childhood, or adolescence;

II. Organic mental disorders;

III. Psychoactive substance use disorders;

IV. Schizophrenia;

V. Delusional (paranoid) disorder;

VI. Psychotic disorders not elsewhere classified;

VII. Mood disorders;

VIII. Anxiety disorders;

IX. Somatoform disorders;

X. Dissociative disorders;

XI. Sexual disorders;

XII. Sleep disorders;

XIII. Factitious disorders;

XIV. Inpulse control disorders not elsewhere classified;

XV. Adjustment disorder; and

XVI. Personality disorders.

When psychiatrists talk of mental disorders they mean the kinds of disorders categorized here. And when psychiatrists testify about the disorders categorized here, judges—who are charged by law with determining what is or is not a "mental impairment"—listen to the psychiatrists.

The Diagnostic and Statistical Manual is cited regularly by judges in various contexts, including, for example, cases dealing with the mental competency of criminal defendants. Relevant "disability rights" cases that have cited DSM include *Doe* v. *New York Univ.*, 666 F.2d 761, 768 (2d Cir. 1981); *Rezza* v. *U.S. Dept. of Justice*, 46 FEP Cases 1366, (E.D. Penn. 1988); *Drew P.* v. *Clarke Co. School Dist.*, 676 F. Supp. 1559, 1561 n.3 (M.D.Ga. 1987); and *Schmidt* v. *Bell*, 33 FEP Cases 839, 846 (E.D.Penn. 1983).

The fact that a "condition" does not appear in DSM does not mean that such condition is not a mental disorder. DSM-III-R's introduction (page xxvi) says, "[C]onditions not included in the DSM-III-R's classification may be legitimate subjects of treatment or research efforts. ***" And, at page xxix, "These diagnostic criteria and the DSM-III-R classification of mental disorders reflect a consensus of current formulations of evolving knowledge in our field but do not encompass all the conditions that may be legitimate objects of treatment or research efforts."

Appendix A of DSM-III-R lists three proposed diagnostic categories that were proposed for inclusion (disorders associated with the menstrual cycle; sadistic personality disorder; and self-defeating personality disorder) that were not included because further study was necessary. The next edition of the manual may include these three diagnoses (or others) as APA-recognized mental disorders, and the next edition may exclude diagnoses that are included in this edition. The idea and definition of "mental disorder" or "mental impairment" is not static.

Similarly, the inclusion of a diagnosis in DSM is not supposed to have any particular meaning for the law:

> The purpose of DSM-III-R is to provide clear descriptions of diagnostic categories in order to enable clinicians and investigators to diagnose, communicate about, study, and treat the various mental disorders. It is to be understood that inclusion here, for clinical and research purposes, of a diagnostic category such as Pathological Gambling or Pedophilia does not imply that the condition meets legal or other nonmedical criteria for what constitutes mental disease, mental disorder, or mental disability. The clinical and scientific considerations involved in categorization of these conditions as mental disorders may not be wholly relevant to legal judgments, for example, that take into account such issues as individual responsibility, disability determination, and competency. DSM-III-R at p. xxix.

Nevertheless, as we have seen, DSM is used and it will continue to be used unless psychiatrists and their combined professional judgments respecting mental disorders are barred from the courtroom.

The Americans With Disabilities Act covers all mental impairments that substantially limit a covered person's major life activities. A private entity that wishes to know what the act might mean with respect to mental impairments would do well to turn to DSM-III-R because that is one reputable place where mental disorders are listed category-by-category, name-by-name. The Senate, and the committee, refused to list the mental impairments that are covered by the act; however, neither the Senate nor the committee left any doubt that the act is intended to cover "any mental or psychological disorder."

Psychiatrists are not the only persons who can define a mental disorder; judges do it all the time. We have, therefore, not only DSM-III-R but a substantial body of case law that defines "mental impairment." S. 933 proposes to take this case law (developed in cases involving the Federal Government or recipients of Federal financial assistance) and apply it throughout the private sector.

In the reported cases, persons with mental impairments often lose their cases because they are found not to be "otherwise qualified" for the position or benefit they seek. On the other hand, sometimes they win. In either case, S. 933 gives persons with mental impairments a statutory basis for a lawsuit whenever a private employer or private provider of public accommodations takes an action that the impaired persons believes is to his or her detriment and based on his or her disability. As the following examples make clear, a statute that protects all mental impairments that substantially limit a major life activity will have the most far-reaching and potentially disruptive effects on private decision-makers.

Lawsuits based on a person's disability are, in virtually every case, tied tightly to the facts. In asking, "what constitutes impairment?" " is there a substantial limit on a major life activity?" "what makes a person "otherwise qualified?" and, "what constitutes reasonable accommodation?" every fact can be important.

> The question of who is a handicapped person under the Act is best suited to a "case-by-case determination," *E.E. Black, Ltd.*, v. *Marshall*, 497 F. Supp. 1088, 1100 (D.Hawaii 1980), as courts assess the effects of various impairments upon varied individuals. The definitional task cannot be accomplished merely through abstract lists and categories of impairments. The inquiry is, of necessity, an individualized one—whether the particular impairment constitutes for the particular person a significant barrier to employment. * * * *Forrisi* v. *Bowen*, 794 F.2d 931, 933 (4th Cir. 1986).

In the cases that follow, a different fact might have produced a different result. For example, in Forrisi, the case just cited, the employee himself testified that his impairment did not and had not limited his life's activities. A different employee, or a better coached witness, well might produce a different result.

If S. 933 is enacted, private entities that take no Federal financial assistance can be expected to face the same kinds of lawsuits that have been brought already under the Rehabilitation Act. Private employers, prepare yourselves for lawsuits based on the following types of mental conditions!

1. COMPULSIVE GAMBLING

In *Rezza* v. *U.S. Dept. of Justice*, 46 FEP Cases 1366 (E.D. Penn. 1988), the court refused to say that compulsive gambling is not an impairment under the Rehabilitation Act. The Department of Justice, probably in a state of incredulity, moved for reconsideration and lost again. 698 F. Supp. 586. The Department then saw the handwriting on the wall and settled the case, but the terms of the settlement are secret. In *Rezza*, the largest law firm in the world (the Department of Justice) and the richest client in the world (the Government of the United States) had to settle a case rather than carry on a

dispute over whether compulsive gambling was a covered disability.

I will have more to say about the Rezza case later in my remarks.

2. ACROPHOBIA (FEAR OF HEIGHTS)

In *Forrisi* v. *Bowen*, 794 F.2d 931 (4th Cir. 1986), the appellate court affirmed the district court's finding that Forrisi's acrophobia did not make him a handicapped individual within the meaning of the act becasue there was no evidence that his condition substantially limited a major life activity. Forrisi had simply testified that he had not been limited by his acrophobia. In other cases, of course, the result will turn on the particular facts and testimony. There are dozens or hundreds of phobias. In addition to heights, the most common simple phobias involve animals (particularly dogs, snakes, insects and spiders, and mice), witnessing blood or tissue injury (blood-injury phobia), closed spaces (claustrophobia), and air travel. In *Barnes* v. *Barbosa*, 494 N.E.2d 619, 40 FEP Cases 1490 (App.Ct.Ill. 1986), a State court applying State law agreed with the State's human rights commission and a lower court that a bus driver with "carbon monoxide phobia" is mentally handicapped.

3. DEPRESSIVE NEUROSIS

In *Doe* v. *Region 13 Mental Health-Mental Retardation Comm'n*, 704 F.2d 1402 (5th Cir. 1983), all parties and courts agreed that, because of depressive neurosis, Doe was handicapped within the meaning of the Rehabilitation Act. The jury found for Doe, but both the district court and the appellate court entered judgment for the defendants because they held that Doe (a mental health worker) was not otherwise qualified. *Doe* is particularly interesting because it pitted a health worker against a health provider; Doe swore she was qualified, Region 13 swore she was not. Who is a judge to believe?

4. PARANOID SCHIZOPHRENIA

In *Franlin* v. *Postal Service*, 687 F. Supp. 1214, 1219 (S.D.Ohio 1988), the court held, "A person suffering from the condition of paranoid schizophrenia that is controllable by the ingestion of medication who does not take such medication is not an 'otherwise qualified' handicapped person." This statement implies that a paranoid schizophrenic who can control his or her condition by medication and who does take such medication would be otherwise qualfied.

In *Swann* v. *Walters*, 620 F. Supp. 741 (D.D.C. 1984), a paranoid schizophrenic who had been dismissed from his job when he lost his security clearance (because he had been convicted of felony sexual child abuse) sued under the Rehabilitation Act. He lost his case because his security clearance had been yanked because of his conviction and he needed the clearance to be "otherwise qualified" for his job. However, the plaintiff was offered another position (not requiring a security clearance) so that his employer could meet the requirement of "reasonable accommodation". If the original position had not required a security clearance or if the plaintiff had never been tried (perhaps witnesses would not agree to testify, for example), the plaintiff presumably would have remained unmolested in his original position because he was protected by Federal civil rights law.

5. MANIC DEPRESSION

In *Matzo* v. *Postmaster General*, 46 FEP Cases 869 (D.D.C. 1987), a manic depressive employee was held not "otherwise qualified" because of her inability to report for work and remain on duty. In *Balzac* v. *Columbia Univ. Press*, 39 FEP Cases 830 (N.Y. App. Div. 1985), a State court applying State law and section 504 held that summary judgment for the employer was not appropriate where an employee was fired on the day he returned to work after being treated for manic-depressive illness. Now, private employers that do not receive Federal financial assistance do not need permission from a Federal judge to deal with a manic depressive employee. ADA will change that.

6. BORDERLINE PERSONALITY DISORDER

In *Doe* v. *New York Univ.*, 666 F.2d 761 (2d Cir. 1981), the court of appeals reversed a lower court order that a medical school admit a student who had a long history of mental problems and was diagnosed as having borderline personality disorder and chronic, neurotic depression. One would think that a medical school had some expertise in admissions criteria and mental illness, but the district court disputed the school's expertise and overruled the school's decision. The court of appeals then disagreed with the medical expert who sat on the lower court and upheld the decision of the school. In *Fields* v. *Lyng*, 48 FEP Cases 1036 (D.C.Md. 1988), the EEOC held that an employee diagnosed as having borderline personality disorder (with obsessive compulsive features and side effects of travel anxiety and kleptomania) was a handicapped person under the Federal law. The district court "refrained from deciding" the issue because the employee was not "otherwise qualified," the court said.

7. SCHIZOID PERSONALITY DISORDER

In *Guerriero* v. *Schultz*, 31 FEP Cases 196, (D.D.C. 1983), a foreign service officer was held not "otherwise qualified" because he could not accept overseas assignments because of his therapy. Persons with schizoid personality disorders who do not have the burdens and responsibilities of a foreign service officer may well be "otherwise qualified" for their positions if the EEOC or a Federal judge says so.

8. SEXUAL DISORDERS: TRANSVESTISM AND TRANSSEXUALISM

In *Blackwell* v. *U.S. Dept. of the Treasury*, 639 F. Supp. 289, 656 F. Supp. 713 (D.D.C. 1986), the district court held that transvestism was covered under the Rehabilitation Act. ("The Department of the Treasury acknowledges that transvestism is recognized by the American Psychiatric Association as a mental disorder. Plaintiff has alleged that the position he sought was eliminated because Treasury officials regarded the fact that he is a transvestite as a handicap. This is enough to state a claim under the Rehabilitation Act." 639 F. Supp. at 290.) The court of appeals vacated the district court's second reported opinion (656 F. Supp. 713) because the lower court misinterpreted the law governing the employee's giving notice of his or her handicap to the employer. *Blackwell* v. *U.S. Dept. of the Treasury*, 830 F.2d 1183, 1183-84 (D.C. Cir. 1987). The appellate court did not disturb the rationale that held tranvestism to be a covered impairment, however.

In *Doe* v. *U.S. Postal Service*, 37 FEP Cases 1867, 1869 (D.D.C. 1985), the court found "that the plaintiff ha[d] state[d] a claim of handicap discrimination under the Rehabilitation Act of 1973" where the plaintiff was a transsexual.

9. STRESS DISORDERS

In *Boyd* v. *U.S. Postal Service*, 32 FEP Cases 1217 (D.W.Wash. 1983), the court assumed that the plaintiff, who may have been suffering from a post-traumatic stress disorder, was a handicapped person under the Act but held that the plaintiff was not a "qualified" handicapped person because of his poor record at work. In *Schmidt* v. *Bell*, 33 FEP Cases 839 (D.E.Penn. 1983), the employee also suffered from post-traumatic stress disorder (or post-Vietnam syndrome) and was held not "otherwise qualified" because of his record of violence. The ADA will provide all employees who are seriously impaired by stress with a Federal cause of action.

10. MISCELLANEOUS MENTAL DISORDERS

In *Majors* v. *Housing Authority of Co. of DeKalb Georgia*, 652 F.2d 454 (5th Cir. 1981), the court of appeals ordered a trial in a case involving a resident of a housing project who was said to be "psychological[ly] and emotional[ly] dependen[t] upon her pet dog." The project had a "no pet" rule. The case was "remanded for a trial on the questions of whether Ms. Majors suffers from a handicap, whether the handicap requires the companionship of the dog and what, if any, reasonable accommodations can be made." Id. at 458.

Earlier I cited the *Rezza* case, the compulsive gambling case. That case provides an excellent example of the way in which a judge approaches the

question of mental impairment. In *Rezza*, Judge Ludwig of the U.S. District Court for the Eastern District of Pennsylvania had before him a case involving a former FBI agent who took government money—received by him as part of an undercover operation—and gambled it away in Atlantic City. The agent was dismissed and then sued, alleging that he had been discriminated against on the basis of his handicap of compulsive gambling.

After reviewing the statute, the regulations, and some court interpretations, Judge Ludwig wrote:

Within this [Rehabilitation Act] framework, the issue is whether plaintiff is an "individual with a handicap." According to affidavits of plaintiff and Robert L. Custer, M.D., a leading expert in the field, plaintiff appears to be a compulsive gambler. Compulsive gambling is now widely recognized as a mental disorder. The most recent Diagnostic Manual of the American Psychiatric Association (DSM-III-R) classifies "pathological gambling" as a disorder, having certain essential features:

"'[C]hronic and progressive failure to resist impulses to gamble, and gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits. The gambling preoccupation, urge, and activity increase during periods of stress. Problems that arise as a result of the gambling lead to an intensification of the gambling behavior. Characteristic problems include extensive indebtedness and consequent default on debts and other financial responsibilities, disrupted family relationships, inattention to work, and financially motivated illegal activities to pay for gambling.' American Psychiatric Association, "Diagnostic and Statistical Manual of Stress [sic] Disorders" (3d Ed. Revised 1987)." 46 FEP Cases at 1368 (footnotes omitted).

The judge simply dismissed precedents of the Merit Systems Protection Board which had twice held that compulsive gambling was not a covered impairment. Those "decisions are conclusory," wrote the judge, "and have no precedential value." Id.

As so often happens in these cases, the judge deferred a ruling until he held a trial and obtained more testimony. He gave every indication, however, of being ready to hold that compulsive gambling was a covered disability. Judge Ludwig wrote:

While "compulsive gambling" or "pathological gambling" may come within the abstract definition of "psychological impairment," the effect upon the person must also be evaluated to determine if there is actual impairment. Here, the facts though not extensively developed, suggest that "major life activities" were affected. Plaintiff's condition is alleged to have required residential treatment. In Arline, hospitalization was considered "a fact more than sufficient to establish that one or more * * * life activities were substantially limited by * * * impairment." Arline, —— U.S. at ——, 107 S.Ct. at 1127. Even so, because the evidence of actual impairment is largely inferential and because a statutory issue persists whether plaintiff was "otherwise qualified"—to continue to be an FBI agent—a ruling on impairment will be deferred." Id (footnote omitted).

Although a final ruling on impairment was deferred, the Department of Justice could see which way the judge was headed and, because litigation is costly and time consuming, the U.S. Government settled the *Rezza* case after first losing its motion for summary judgment and then losing a motion for reconsideration. Unfortunately, we do not know and cannot know the terms of the settlement because they are secret.

Mr. President, if ADA is enacted the private sector will be swamped with mental disability litigation. My amendment excludes some of the mental disorders that would have created the more egregious lawsuits, but my amendment does no more than brush away a handful of the vast numbers of mental disorders and potential mental disorders.

My amendment is not based on hypothetical situations or unlikely scenarios; it is based on the clear language of the bill, the diagnostic knowledge of the psychiatric profession, and numerous legal precedents under the Rehabilitation Act. The amendment is narrow and necessary. If it has a shortcoming it is that it is too narrow, for my amendment will not address many of the mental disorders that are discussed in this speech.

The listing of classification categories and codes follows:

DSM-III-R CLASSIFICATION: AXES I AND II CATEGORIES AND CODES

I DISORDERS USUALLY FIRST EVIDENT IN INFANCY, CHILDHOOD, OR ADOLESCENCE

Developmental Disorders

Mental Retardation (28)

317.00 Mild mental retardation
318.00 Moderate mental retardation
318.10 Severe mental retardation
318.20 Profound mental retardation
319.00 Unspecified mental retardation

Pervasive Developmental Disorders (33)

299.00 Autistic disorder (38) Specify if childhood onset
299.80 Pervasive developmental disorder NOS

Specific Developmental Disorders (39)

Academic skills disorders:
315.10 Developmental arithmetic disorder (41)
315.80 Developmental expressive writing disorder (42)
315.00 Developmental reading disorder (43)
Language and speech disorders:
315.39 Developmental articulation disorder (44)
315.31* Developmental expressive language disorder (45)
315.31* Developmental receptive language disorder (47)
Motor skills disorder:
315.40 Developmental coordination disorder (48)
315.90* Specific developmental disorder NOS

Other Developmental Disorders (49)

315.90* Developmental disorder NOS

Disruptive Behavior Disorders (49)

314.01 Attention-deficit hyperactivity disorder (50)
Conduct disorder, (53):
312.20 Group type
312.00 Solitary aggressive type
312.90 Undifferentiated type
313.81 Oppositional defiant disorder (56)

Anxiety Disorders of Childhood or Adolescence (58)

309.21 Separation anxiety disorder (58)
313.21 Avoidant disorder of childhood or adolescence (61)
313.00 Overanxious disorder (63)

Eating Disorders (65)

307.10 Anorexia nervosa (65)
307.51 Bulimia nervosa (67)
307.52 Pica (69)
307.53 Rumination disorder of infancy (70)
307.50 Eating disorder NOS

Gender Identity Disorders (71)

302.60 Gender identity disorder of childhood (71)
302.50 Transsexualism (74) Specify sexual history: asexual, homosexual, heterosexual, unspecified
302.85* Gender identity disorder of adolescence or adulthood, nontranssexual type (76) Specify sexual history: asexual, homosexual, heterosexual, unspecified
302.85* Gender identity disorder NOS

Tic Disorders (78)

307.23 Tourette's disorder (79)
307.22 Chronic motor or vocal tic disorder (81)
307.21 Transient tic disorder (81) Specify: single episode or recurrent
307.20 Tic disorder NOS

Elimination Disorders (82)

307.70 Functional encopresis (82) Specify: primary or secondary type
307.60 Functional enuresis (84) Specify: primary or secondary type Specify: nocturnal only, diurnal only, nocturnal and diurnal

Speech Disorders Not Elsewhere Classified (85)

307.00* Cluttering (85)
307.00* Stuttering (86)

Other Disorders of Infancy, Childhood, or Adolescence (88)

313.23 Elective mutism (88)
313.82 Identity disorder (89)
313.89 Reactive attachment disorder of infancy or early childhood (91)
307.30 Stereotypy/habit disorder (93)
314.00 Undifferentiated attention-deficit disorder (95)

II ORGANIC MENTAL DISORDERS (97)

Dementias Arising in the Senium and Presenium (119)

Primary degenerative dementia of the Alzheimer type, senile onset, (119):
290.30 With delirium
290.20 With delusions
290.21 With depression
290.00* Uncomplicated
290.1x Primary degenerative dementia of the Alzheimer type, presenile onset,—— (119)
290.4x Multi-infarctdementia,——(121)
290.00* Senile dementia NOS
290.10* Presenile dementia NOS

Psychoactive Substance-Induced Organic Mental Disorders (123)

Alcohol:
303.00 intoxication (127)
291.40 idiosyncratic intoxication (128)
291.80 Uncomplicated alcohol withdrawal (129)
291.00 withdrawal delirium (131)
291.30 hallucinosis (131)
291.10 amnestic disorder (133)

291.20 Dementia associated with alcoholism (133)
Amphetamine or similarly acting sympathomimetic:
305.70* intoxication (134)
292.00* withdrawal (136)
292.81* delirium (136)
292.11* delusional disorder (137)
Caffeine:
305.90* intoxication (138)
Cannabis:
305.20* intoxication (139)
292.11 delusional disorder (140)
Cocaine:
305.60* intoxication (141)
292.00* withdrawal (142)
292.81* delirium (143)
292.11* delusional disorder (143)
Hallucinogen:
305.30* hallucinosis (144)
292.11* delusional disorder (146)
292.84* mood disorder (146)
292.89* Posthallucinogen perception disorder (147)
Inhalant:
305.90* intoxication (148)
Nicotine:
292.00* withdrawal (150)
Opioid:
305.50* intoxication (151)
292.00* withdrawal (152)
Phencyclidine (PCP) or similarly acting arylcyclohexylamine:
305.90* intoxication (154)
292.81* delirium (155)
292.11* delusional disorder (156)
292.84* mood disorder (156)
292.90* organic mental disorder NOS
Sedative, hypnotic, or anxiolytic:
305.40* intoxication (158)
292.00* Uncomplicated sedative, hypnotic, or anxiolytic withdrawal (159)
292.00* wtihdrawal delirium (160)
292.83* amnestic disorder (161)
Other or unspecified psychoactive substance (162):
305.90* intoxication
292.00* withdrawal
292.81* delirium
292.82* dementia
292.83* amnestic disorder
292.11* delusional disorder
292.12 hallucinosis
292.84* mood disorder
292.89* anxiety disorder
292.89* personality disorder
292.90* organic mental disorder NOS
Organic Mental Disorders associated with Axis III physical disorders or conditions, or whose etiology is unknown. (162)
293.00 Delirium (100)
294.10 Dementia (103)
294.00 Amnestic disorder (108)
293.81 Organic delusional disorder (109)
293.82 Organic hallucinosis (110)
293.83 Organic mood disorder (111) Specify: manic, depressed, mixed
294.80* Organic anxiety disorder (113)
310.10 Organic personality disorder (114) Specify if explosive type
294.80* Organic mental disorder NOS

III PSYCHOACTIVE SUBSTANCE USE DISORDERS (165)

Alcohol (173):
303.90 dependence
305.00 abuse
Amphetamine or similarly acting sympathomimetic (175):
304.40 dependence
305.70* abuse

Cannabis (176):
304.30 dependence
305.20* abuse
Cocaine (177):
304.20 dependence
305.60* abuse
Hallucinogen (179):
304.50* dependence
305.30* abuse
Inhalant (180):
304.60 dependence
305.90* abuse
Nicotine (181):
305.10 dependence
Opioid (182):
304.00 dependence
305.50* abuse
Phencyclidine (PCP) or similarly acting arylcyclohexylamine (183):
304.50* dependence
305.90* abuse
Sedative, hypnotic, or anxiolytic (184):
304.10 dependence
305.40* abuse
304.90* Polysubstance dependence (184)
304.90* Psychoactive substance dependence NOS
305.90* Psychoactive substance abuse NOS

IV SCHIZOPHRENIA (187)

Code in fifth digit: 1=subchronic, 2=chronic, 3=subchronic with acute exacerbation, 4=chronic with acute exacerbation, 5=in remission, 0=unspecified.
Schizophrenia,
295.2x catatonic, ——
295.1x disorganized, ——
295.3x paranoid, —— Specify if stable type
295.9x undifferentiated, ——
295.6x residual, —— Specify if late onset

V DELUSIONAL (PARANOID) DISORDER (199)

297.10 Delusional (Paranoid) disorder
Specify type: erotomanic, grandiose, jealous, persecutory, somatic, unspecified.

VI PSYCHOTIC DISORDERS NOT ELSEWHERE CLASSIFIED (205)

298.80 Brief reactive psychosis (205)
295.40 Schizophreniform disorder (207) Specify: without good prognostic features or with good prognostic features
295.70 Schizoaffective disorder (208) Specify: bipolar type or depressive type
297.30 Induced psychotic disorder (210)
298.90 Psychotic disorder NOS (Atypical psychosis) (211)

VII MOOD DISORDERS (213)

Code current state of Major Depression and Bipolar Disorder in fifth digit:
1=mild
2=moderate
3=severe, with psychotic features
4=with psychotic features (specify mood-congruent or mood-incongruent)
5=in partial remission
6=in full remission
0=unspecified
For major depressive episodes, specify if chronic and specify if melancholic type.

Bipolar Disorders

Bipolar disorder, (225):
296.6x mixed, ——
296.4x manic, ——
296.5x depressed, ——
301.13 Cyclothymia (226)
296.70 Bipolar disorder NOS

Depressive Disorders

Major Depression, (228):
296.2x single episode, ——
296.3x recurrent, ——
300.40 Dysthymia (or Depressive neurosis) (230) Specify: primary or secondary type
Specify: early or late onset
311.00 Depressive disorder NOS

VIII ANXIETY DISORDERS (OR ANXIETY AND PHOBIC NEUROSES) (235):

Panic disorder (235):
300.21 with agoraphobia Specify current severity of agoraphobic avoidance. Specify current severity of panic attacks
300.01 without agoraphobia Specify current severity of panic attacks
300.22 Agoraphobia without history of panic disorder (240) Specify with or without limited symptom attacks
300.23 Social phobia (241) Specify if generalized type
300.29 Simple phobia (243)
300.30 Obsessive compulsive disorder (or Obsessive compulsive neurosis) (245)
309.89 Post-traumatic stress disorder (247) Specify if delayed onset
300.02 Generalized anxiety disorder (251)
300.00 Anxiety disorder NOS

IX SOMATOFORM DISORDERS (255)

300.70* Body dysmorphic disorder (255)
300.11 Conversion disorder (or Hysterical neurosis, conversion type (257)
300.70* Hypochondriasis (or Hypochondriacal neurosis) (259)
300.81 Somatization disorder (261)
307.80 Somatoform pain disorder (264)
300.70* Undifferentiated somatoform disorder (266)
300.70* Somatoform disorder NOS (267)

X DISSOCIATIVE DISORDERS (OR HYSTERICAL NEUROSES, DISSOCIATIVE TYPE) (269)

300.14 Multiple personality disorder (269)
300.13 Psychogenic fugue (272)
300.12 Psychogenic amnesia (273)
300.60 Depersonalization disorder (or Depersonalization neurosis) (275)
300.15 Dissociative disorder NOS

XI SEXUAL DISORDERS (279)

Paraphilias (279)

302.40 Exhibitionism (282)
302.81 Fetishism (282)
302.89 Frotteurism (283)
302.20 Pedophilia (284)
Specify: same sex, opposite sex, same and opposite sex
Specify if limited to incest
Specify: exclusive type or nonexclusive type
302.83 Sexual masochism (286)
302.84 Sexual sadism (287)
302.30 Transvestic fetishism (288)
302.82 Voyeurism (289)
302.90* Paraphilia NOS (290)

Sexual Dysfunctions (290)

Specify: lifelong or acquired
Specify: generalized or situational
Sexual desire disorders (293):
302.71 Hypoactive sexual desire disorder
302.79 Sexual aversion disorder
Sexual arousal disorders (294):
302.72* Female sexual arousal disorder
302.72* Male erectile disorder
Orgasm disorder (294):
302.73 Inhibited female orgasm
302.74 Inhibited male orgasm
302.75 Premature ejaculation
Sexual pain disorders (295):
302.76 Dyspareunia
306.51 Vaginismus
302.70 Sexual dysfunction NOS

Other Sexual Disorders

302.90* Sexual disorder NOS

XII SLEEP DISORDERS (297)

Dyssomnias (298)

Insomnia disorder:
307.42* related to another mental disorder (nonorganic) (300)

780.50* related to known organic factor (300)
307.42* Primary insomnia (301) Hypersomnia disorder
307.44 related to another mental disorder (nonorganic) (303)
780.50* related to a known organic factor (303)
780.54 Primary hypersomnia (305)
Other dyssomnia:
307.45 Sleep-wake schedule disorder (305)
307.40* Dyssomnia NOS

Parasomnias (308)

307.47 Dream anxiety disorder (Nightmare disorder) (308)
307.46* Sleep terror disorder (310)
307.46* Sleepwalking disorder (311)
307.40* Parasomnia NOS (313)

XIII FACTITIOUS DISORDERS (315)

Factitious disorder:
301.51 with physical symptoms (316)
300.16 with psychological symptoms (318)
300.19 Factitious disorder NOS (320)

XIV IMPULSE CONTROL DISORDERS NOT ELSEWHERE CLASSIFIED (321)

312.34 Intermittent explosive disorder (321)
312.32 Kleptomania (322)
312.31 Pathological gambling (324)
312.33 Pyromania (325)
312.39* Trichotillomania (326)
312.39* Impulse control disorder NOS (328)

XV ADJUSTMENT DISORDER (329)

Adjustment disorder:
309.24 with anxious mood
309.00 with depressed mood
309.30 with disturbance of conduct
309.40 with mixed disturbance of emotions and conduct
309.28 with mixed emotional features
309.82 with physical complaints
309.83 with withdrawal
309.23 with work (or academic) inhibition
309.90 Adjustment disorder NOS

XVI PERSONALITY DISORDERS (335)

Note: These are coded on Axis II.

Cluster A

301.00 Paranoid (337)
301.20 Schizoid (339)
301.22 Schizotypal (340)

Cluster B

301.70 Antisocial (342)
301.83 Borderline (346)
301.50 Histrionic (348)
301.81 Narcissistic (349)

Cluster C

301.82 Avoidant (351)
301.60 Dependent (353)
301.40 Obsessive compulsive (354)
301.84 Passive aggressive (356)
301.90 Personality disorder NOS●

FSX CODEVELOPMENT PROJECT

● Mr. ADAMS. Mr. President, I rise in opposition to the President's veto of the conditions Congress voted to attach to the FSX plane agreement with Japan. The agreement with the Japanese government to codevelop and coproduce the FSX fighter aircraft is misguided, as is President Bush's veto of the conditions authored by Senator BYRD.

The United States originally proposed the Japanese purchase existing American built F-16's, but they refused. Consequently, the FSX agreement threatens the future of our industrial base and our ability to maintain competitive leadership in key sectors of our economy that offer high-quality jobs.

There are long-term implications in the technology transfer that takes place when the United States agrees to codevelop and coproduce a highly sophisticated military aircraft. Aerospace technology is one of the few areas where this country retains its place as an undisputed world leader. We have an air defense that ranks second to none. But that does not mean we can afford to become complacent. Nor does it mean we should send messages to our trading partners that they can use our mutual defense commitments to their commercial advantage.

I voted against the FSX agreement when the Senate considered it in May. Although our efforts to kill the agreement failed by a narrow margin, the Senate overwhelmingly adopted a set of reasonable conditions to the terms of the sale. The President vetoed the resolution containing those conditions, claiming they unconstitutionally restrict the Executive's prerogatives in negotiating foreign agreements. On the contrary, I believe it is Congress' duty to participate in the formulation of agreements such as this which so profoundly affect our economy and national defense. I urge my colleagues to override the President's veto, to protect America's national security and to ensure that America's workers will continue to have good jobs.●

GIVING SOLIDARITY A FIGHTING CHANCE

Mr. SIMON. Mr. President, during the August recess, I had the opportunity to visit Poland and meet with officials of the new Government. In my weekly column, I have written an account of my trip and ask to have it reprinted in the RECORD.

The article follows:

GIVING SOLIDARITY A FIGHTING CHANCE

On a rare occasion every decade or so, you instinctively know that history is being made in a dramatic way.

That was the case when President Anwar Sadat visited Jerusalem.

And that is the case today in Poland, where there is a chance for a dramatic breakthrough in the nature of government in Eastern Europe.

For the first time ever, a Communist government with the powers of a dictatorship has permitted a free election to take place, and for the opposition Solidarity party to assume much of the responsibility for governing.

Will the new government have the courage to tackle the difficult inflation problem that plagues Poland?

There are still many unanswered questions. And what has been handed over peacefully by the Communists could be taken away, if the present experiment fails.

That's where the United States comes in. We have to help show that this experiment can work.

I spent six days in Poland, my third trip to Poland over the years but my first trip to Poland since being elected to Congress in 1974. I went there this time with the sense that something shattering in its significance had happened, and I came back with that feeling reinforced.

I also came back with the impression that the present experiment could fail if the United States and other nations do not recognize quickly our great opportunity for freedom and peace. If the experiment succeeds, the result could be a dramatic improvement in the quality of life for people everywhere, particularly for the two superpowers (the United States and the Soviet Union) now engaged in an arms race.

Policy making in Poland is now in the hands of Solidarity. The guns are in the hands of the Communists.

I talked to everyone from Lech Walesa, the outgoing, yet thoughtful and reflective Solidarity leader, and the new Prime Minister, Tadeusy Mazowiecki, to the two top Communist officials, President Wojciech Jaruzelski, and the immediate past Premier, Mieczyslaw Rakowski.

Primarily, I visited with Solidarity leaders among the government officials, as well as a number of people not directly tied to the government. The quality of the Solidarity leadership is the most impressive. My instinct is that no government has ever been formed by people of greater talent and perspective since our own nation was founded. Because so many of the new leaders of government were jailed by the Communists, they had an unusual chance to reflect on what they might do if the opportunity to govern ever came their way.

And now it has.

I have suggested a program costing slightly more than $300 million a year. A great deal of money but much less than we are providing to several other countries. And it is one-tenth of 1 percent of our defense budget.

Another way to put it is that its cost is slightly more than one-half the cost of one B-2 bomber. Is freedom in Poland worth that gamble? Of course it is.

If the Polish experiment succeeds, Hungary will soon follow a similar path, and the Soviet Union itself is likely to be changed toward greater freedom.

But we must act quickly.

It is easy to change history for the worse. Now we have a sudden and dramatic chance to change it for the better.●

COMMENDING GAIL D. FOSLER FOR HER SERVICE TO THE COUNTRY AND THE SENATE

Mr. DOLE. Mr. President, I send a resolution to the desk on behalf of Mr. DOMENICI and ask for its immediate consideration.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

The PRESIDING OFFICER. There was a unanimous consent propounded by the majority leader.

Mr. BYRD. Mr. President, I wanted to reserve the right to object, which I, of course, will not. I have parliamentary inquiry as to what the business before the Senate is.

The PRESIDING OFFICER. The business before the Senate is H.R. 3015, the Transportation appropriations bill.

Mr. BYRD. Has that bill been temporarily laid aside?

The PRESIDING OFFICER. It has been laid aside for consideration of two other measures, which have been disposed of.

Mr. BYRD. So it is technically before the Senate. Once the Senate returns to legislative session, it does not—in other words, we will no longer have any morning business, et cetera. The business before the Senate will be the Transportation appropriations bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I thank the Chair.

Mr. MITCHELL. Mr. President, before proceeding to the resolution, was the unanimous-consent request which I made regarding recessing until tomorrow morning agreed to?

The PRESIDING OFFICER. Hearing no objection to that request, it is so ordered.

Mr. MITCHELL. I thank the Chair.

The PRESIDING OFFICER. The resolution will be stated.

The assistant legislative clerk read as follows:

S. RES. 178

Whereas Gail D. Fosler has served the Senate as a member of the staff on the Budget Committee for more than 11 years;

Whereas Gail D. Fosler served the Committee as Chief Economist for the Budget Committee from 1981 through 1986;

Whereas Gail D. Fosler has served since January 1987, as Deputy Staff Director and Chief Economist for the Committee's Minority Staff;

Whereas Gail D. Fosler has carried out her difficult duties and responsibilities with the highest degree of professional integrity and dedication; and

Whereas Gail D. Fosler has earned the Senate's affection and esteem: Now, therefore, be it

Resolved, That Gail D. Fosler is hereby commended for her faithful and exemplary service to her country and to the United States Senate.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOMENICI. Mr. President, it was that famous economist John Maynard Keynes who once observed that, "practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist."

That is true. I am now a recipient of Keynes' pronouncement because, today, I am losing the assistance of an economist, one whose theories, interpretations, and analyses, have influenced my thinking deeply on how the great American economy works.

That individual is Gail Fosler, who has been with the Senate Budget Committee for over 11 years. Gail joined the Senate staff to work for our former colleague, Henry Bellmon, when he was ranking minority member.

In 1981, she became the chief economist for the Budget Committee. Later, she served as chief economist and deputy staff director for the Committee's minority.

Gail Fosler now departs to become the chief economist for the internationally respected Conference Board in New York City. Gail has served the Budget Committee—indeed the entire Senate—with distinction over these many years. She will be missed, not only by me and her fellow staff members, but by many others who have come to depend on her insights, her wit, and her invariably optimistic outlook for this great country. Indeed for one who has plied her trade in the field known as the dismal science, Gail has been anything but dismal in her observations and perspectives on how this economy works.

And guess what? She has been right.

I am not sure if cause and effect applies here, but I cannot help but observe that when Gail Fosler came to work at the Senate Budget Committee back in 1978, inflation was running at nearly 10 percent and unemployment exceeded 6.1 percent. Today, as Gail leaves the Senate, inflation is below 3 percent and unemployment is about 5 percent.

If being a slave to "defunct economists" results in these kind of results, then I will gladly remain indebted to Gail D. Fosler.

Mr. President, many Members of the U.S. Senate—principally, though not exclusively those on the Budget Committee, on both sides of the aisle—have shared the experience of learning from the economic head of the Budget Committee's minority staff, Gail Fosler.

She has a master's degree in economics from USC and a vast amount of practical experience. Frankly, I can say for myself it was truly a privilege to be briefed by her regularly about what was happening to the American economy. Her suggestions and her predictions were about as accurate or more so than many economists on the American scene who obviously get an awful lot more notoriety than she did.

She is leaving to take a very significant job in the private sector. A number of Senators—Senator SASSER, the chairman of the committee; Senator ARMSTRONG; Senator BOSCHWITZ; Senator DOLE—and many others, who are listed on this resolution, join me today in asking the Senate to adopt a resolution thanking Gail Fosler for her work. We want to commend her for the many, many months of diligent commitment and service to her country through the Budget Committee and the other committees that sought her advice and through Senators who sought her advice individually.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 178) was agreed to.

The preamble was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 322. John C. Weicher, to be an Assistant Secretary of Housing and Urban Development;

Calendar 323. Sherrie S. Rollins, to be an Assistant Secretary of Housing and Urban Development;

Calendar 324. Skirma A. Kondratas, to be an Assistant Secretary of Housing and Urban Development;

Calendar 325. Quincy M. Krosby, to be an Assistant Secretary of Commerce;

Calendar 327. Kenneth B. Kramer, to be an associate judge of the U.S. Court of Veterans Appeals; and

Calendar 328. John J. Farley III, to be an associate judge of the U.S. Court of Veterans Appeals.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

John C. Weicher, of the District of Columbia, to be an Assistant Secretary of Housing and Urban Development, vice Kenneth J. Beirne, resigned.

Sherrie Sandy Rollins, of Virginia, to be an Assistant Secretary of Housing and Urban Development, vice Harry K. Schwartz, resigned.

Skirma Anna Kondratas, of Virginia, to be an Assistant Secretary of Housing and Urban Development, vice Jack R. Stokvis, resigned.

DEPARTMENT OF COMMERCE

Quincy Mellon Krosby, of New York, to be an Assistant Secretary of Commerce, vice G. Philip Hughes, resigned.

U.S. COURT OF VETERANS APPEALS

Kenneth B. Kramer, of Colorado, to be an associate judge of the U.S. Court of Veterans Appeals for the term of 15 years. (New position—P.L. 100-687)

U.S. COURT OF VETERANS APPEALS

John J. Farley III, of Maryland, to be an associate judge of the U.S. Court of Veterans Appeals for the term of 15 years. (New position)

STATEMENT ON THE NOMINATIONS OF KENNETH B. KRAMER AND JOHN J. FARLEY III, TO BE ASSOCIATE JUDGES OF THE U.S. COURT OF VETERANS APPEALS

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I am delighted to rise today to urge the confirmation of Kenneth B. Kramer and John J. Farley III, to be associate judges of the U.S. Court of Veterans Appeals. It was just yesterday morning that the committee held a hearing on these two nominations, and I and my fellow committee members were impressed with their qualifications, their insights, and their obvious desire and excitement to begin the historic mission of the new Court of Veterans Appeals.

Yesterday's hearing brought us another step closer to the realization of a dream that began in the Senate over a decade ago—to provide for judicial review of VA decisions denying claims for benefits. Now, as we consider the two nominations in this body, we stand at the threshold of completing the process. These nominations, if confirmed, will allow the court to begin operating and fulfill the long-awaited function of serving as a source of justice for veterans.

BACKGROUND

The sustained effort in the Senate over the past 14 years to provide judicial review of VA decisions denying benefits claims has involved tremendous amounts of work by the committee; so, the new court is of special significance to those of us privileged to serve on that committee. I believe that all of the members of our committee, both past and present, who have been involved in the legislation that created the court, and surely the many veterans who have contacted the committee and VA for information about the new court, share the common desire to see the court functioning as soon as possible.

It was just a week ago that the nomination of Mr. Farley was referred to the committee, and we appreciate the speed with which he completed the committee's questionnaires and responded to the prehearing questions which were submitted. Former Representative Kramer, whose nomination was referred to the committee on May 9, returned his responses to the prehearing questions on August 14, during the last Senate recess. Because the law provides for the court to begin operations upon the confirmation of three judges and there is at present only one confirmed judge—Chief Judge Frank Q. Nebeker—we wanted to move forward rapidly with this hearing on the two current nominees.

Regarding the two nominees, many aspects of their respective backgrounds qualify them for the position of associate judge on the new veterans court.

KENNETH KRAMER

Kenneth Kramer, a graduate of the Harvard Law School, served in Congress as the Representative of Colorado's Fifth Congressional District from 1979 to 1986. During that time, he spoke articulately and effectively on behalf of our Nation's veterans and supported legislation to assist them. His time as a U.S. Congressman, as well as his 5 years as a Colorado State representative, has given Ken Kramer ample opportunity to utilize his legal skills within the legislative process.

Currently, Mr. Kramer is serving as the Assistant Secretary of the Army for Financial Management. His responsibilities as chief financial officer of the U.S. Army include the formulation and execution of the Army's $80 billion budget and serving as liaison with Senate and House Defense Appropriations Subcommittees—roles which have also drawn on his previous legislative experience. Of particular pertinence is the responsibility he carries out in deciding upon the settlement of tort claims against the Army. He testified persuasively at our hearing about his special interest in ensuring that the Government is fair and appears to be fair and recounted actions he had taken regarding a particular claim to ensure that all aspects of the claimant's case where thoroughly developed and considered in the administrative process.

Mr. Kramer has also combined his military service with his interest in the rights of veterans. While a captain in the U.S. Army JAG, he gained substantial experience with the broad range of legal problems to which soldiers and their families are exposed.

JOHN J. FARLEY III

Mr. Farley's qualifications are in a different arena but no less impressive. Since he first joined the Department of Justice in 1973, he has gained wide experience and expertise while representing the United States in various tort cases. He said of his work, "the Government, perhaps more so than other litigants, has a duty and a responsibility to compensate those injured by the acts of its employees." He expanded upon this concept at the hearing.

Working his way up through the Civil Division of the Justice Department, Jack Farley, in 1978, was assigned responsibility for the representation and defense of individual Federal employee defendants, which exposed him to the particular needs of individuals who find themselves thrust into the court system. In addition, for much of the past decade, while serving as Director of Justice's Tort Branch, Mr. Farley has served on the faculties of various Federal legal training institutions and has delivered hundreds of presentations on constitutional and common law torts to thousands of Federal officials and employees.

His writings and lectures reflect the legal scholarship which made him first in his class and editor-in-chief of the Hofstra Law School Law Review.

As to his record of military service, while it is certainly a long way from Fort Jackson, SC, where Mr. Farley received his basic training in 1966, to the halls of the Justice Department, where he practices his profession today, the journey has been negotiated with distinction. As a veteran who lost a leg is Vietnam, he knows well the sacrifices made by so many to keep our land free. His four Bronze Star Medals, two Purple Hearts, and the Army Commendation Medal speak volumes about his own personal sacrifices.

Committee examination: I note that the nominees have each completed the committee's extensive nomination and special judicial questionnaires and have answered prehearing questions. Their published writings have been reviewed by committee staff, who have also talked with attorneys with and against whom the nominees have practiced. I reviewed their FBI reports. Nothing was found to bar the confirmation of either nominee.

CONCLUSION

Mr. President, assuming that the Senate votes in support of these nominations—which I certainly do assume—I look forward to the court beginning its work in the very near future.

The new Court of Veterans Appeals symbolizes the fact that those whose service has preserved our government of laws, not of men, are entitled to a full measure of justice in their relations with their Government. I urge the Senate to confirm these nominations in order to allow the court to begin functioning as a testament to the principle that our Nation is indeed intent on providing this further protection to those who have so bravely protected us.

STATEMENT ON THE NOMINATION OF KENNETH B. KRAMER TO THE COURT OF VETERANS APPEALS

Mr. DOMENICI. Mr. President, I am honored to support the nomination of the Honorable Ken Kramer to the new U.S. Court of Veterans Appeals.

I have known Ken Kramer for many years. He is a man of the highest integrity and character, with an outstanding record of public service in the U.S. Army and as a Member of the U.S. House of Representatives.

I know that on the Court of Veterans Appeals, Ken Kramer will serve with honor and distinction.

This new court is good news for veterans. It will provide an opportunity to review VA regulations while preserving the well-regarded VA appeals system. Ken's experience and expertise in these fields will prove an invaluable tool for veterans everywhere.

Let me tell you a little about Ken Kramer. After graduating from Harvard Law School, he served as an Army captain in the Judge Advocate General's Corps, service that earned him the Army Commendation Medal.

After leaving the Army, he was elected to four terms in the House, representing Colorado's Fifth Congressional District. While in the House, Mr. Kramer dedicated himself to national defense matters, gaining a Veteran of Foreign War voting record of 87 percent.

Ken Kramer currently holds the post as the chief financial management officer of the U.S. Army, with responsibility for the Army's $80 billion budget, plus liaison with the House and Senate Defense Appropriations Subcommittees.

Ken Kramer is the founder of the U.S. Space Foundation, a charitable organization seeking to encourage America's future in space. This foundation sponsors symposia of world space leaders as well as a national $25 million public service campaign to explain how the NASA space program benefits us in our daily lives.

Ken Kramer has been involved in politics at every level. He was a member of the Bush for President National Steering Committee, and its Colorado cochair.

I believe this experience and dedication will benefit the Court of Veterans Appeals and the veterans the court will serve.

Mr. President, I am pleased and honored to support this nomination, and I urge my colleagues in the Senate to join me in voting in favor of Ken Kramer's nomination to the new Court of Veterans Appeals.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ORDERS FOR TOMORROW

RECESS UNTIL TOMORROW AT 9:30 A.M.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. tomorrow, Friday, September 15; and that following the time for the two leaders there be a period for morning business not to extend beyond 10:30 a.m., with Senators permitted to speak therein for up to 5 minutes each.

It is my hope, Mr. President, that at 10:30 we will be able to proceed to the consideration of H.R. 3012, the military construction appropriations bill.

I inquire of the distinguished Republican leader as to whether he will be able to indicate his assent to that tomorrow morning.

Mr. DOLE. I say to the majority leader that I hope I will be in a position to do that. I think we are having our joint meeting at 10, as I understand it, and that would give me an opportunity to discuss that with my colleagues.

Mr. MITCHELL. Fine.

RECESS UNTIL TOMORROW AT 9:30 A.M.

Mr. MITCHELL. Mr. President, if the distinguished Republican leader has no further business, and if no other Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess under the previous order until 9:30 a.m. tomorrow, Friday, September 15, 1989.

There being no objection, the Senate, at 8:15 p.m. recessed until Friday, September 15, 1989, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 14, 1989:

DEPARTMENT OF AGRICULTURE

ADIS MARIA VILA, OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF AGRICULTURE, VICE JOHN J. FRANKE, JR., RESIGNED.

NATIONAL LABOR RELATIONS BOARD

DENNIS M. DEVANEY, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 16, 1989, VICE MARSHALL B. BABSON, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE RECESS OF THE SENATE FROM OCTOBER 22, 1988, TO JANUARY 3, 1989.

U.S. INFORMATION AGENCY

WILLIAM P. GLADE, OF TEXAS, TO BE AN ASSOCIATE DIRECTOR OF THE U.S. INFORMATION AGENCY, VICE MARK N. BLITZ, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR PERMANENT PROMOTION IN THE U.S. AIR FORCE, UNDER THE PROVISIONS OF SECTION 628, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

CHAPLAIN

To be colonel

HENCY C. IRVIN, [redacted]

JUDGE ADVOCATE

STEPHEN P. DONOHUE, [redacted]

BIOMEDICAL SCIENCES CORPS

To be major

NICHOLAS D. BOLEY, [redacted]

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT AS PERMANENT PROFESSORS AT THE U.S. MILITARY ACADEMY UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 4333(B):

JAMES L. KAYS, [redacted]
FLETCHER M. LAMPKIN, JR., [redacted]
LANSE M. LEACH, [redacted]
DANIEL M. LITYNSKI, [redacted]

CONFIRMATIONS

Executive nominations confirmed by the Senate September 14, 1989:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

JOHN C. WEICHER, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

SHERRIE SANDY ROLLINS, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

SKIRMA ANNA KONDRATAS, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF COMMERCE

QUINCY MELLON KROSBY, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF COMMERCE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

U.S. COURT OF VETERANS APPEALS

KENNETH B. KRAMER, OF COLORADO, TO BE AN ASSOCIATE JUDGE OF THE U.S. COURT OF VETERANS APPEALS FOR THE TERM OF 15 YEARS.

JOHN J. FARLEY III, OF MARYLAND, TO BE AN ASSOCIATE JUDGE OF THE U.S. COURT OF VETERANS APPEALS FOR THE TERM OF 15 YEARS.

WITHDRAWAL

Executive nomination withdrawn by the President from further Senate consideration, September 14, 1989:

NATIONAL LABOR RELATIONS BOARD

DENNIS M. DEVANEY, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 16, 1989, VICE MARSHALL B. BABSON, WHICH WAS SENT TO THE SENATE ON JANUARY 3, 1989.