SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

For purposes of this Act, existing appropriated funds should be utilized to the greatest extent possible. However, there are authorized to be appropriated such sums as are necessary, not to exceed for each office $500,000 for the fiscal year ending September 30, 1978.

SEC. 14. EFFECTIVE DATE.

(a) This Act shall take effect sixty calendar days following the date on which this Act is approved, or on such earlier date as the President shall prescribe and publish in the Federal Register.

(b) Any of the officers provided for in this Act may (notwithstanding subsection (a)) be appointed in the manner provided for in this Act at any time after the date of the enactment of this Act. Such officers shall be compensated from the day they first take office at the rates provided for in this Act.

SEC. 15. SEPARABILITY.

If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality and effectiveness of the remainder of this Act and the applicability thereof to any person and circumstances shall not be affected thereby.

SEC. 16. TERMINATION.

(a) This Act shall terminate five years after the effective date of this Act, and the several Offices of Consumer Counsel and the Division of Consumer Protection and Advocacy of the Department of Justice shall be abolished as of the date of such termination.

(b) The President shall—

(1) commencing two years prior to the date of termination specified in subsection (a), conduct a review of these Offices' overall performance including, but not limited to, a study of the Offices' effectiveness in accomplishing their general purposes and promoting the general welfare; and

(2) not later than twelve months prior to the termination date specified in subsection (a), make public and submit to each House of Congress a report on the finding of the investigation conducted pursuant to paragraph (1), such report to include a recommendation that the authority of this Act be or that the authority of this Act be allowed to lapse.

(c) The committees of the House and of the Senate having primary oversight responsibility with respect to the Offices shall, not later than six months prior to the termination date specified in subsection (a), conduct an inquiry into the performance and effectiveness of the Offices and make public a report of their findings, conclusions, and recommendations, including proposed legislation for such extension or reorganization of these Offices as they deem appropriate.

H.R. 9718

By Mr. HOLLENBECK:

Section 9(d), on page 19, line 11, strike out the period and insert in lieu thereof the following: ", nor shall anything in this Act be construed to authorize the Administrator to request or direct the testing of a consumer product or service when testing has been completed on the performance of that consumer product or service or a substantially identical consumer product or service within 18 months of the Administrator's request, unless a significant hazard to the consumer can be demonstrated."

SENATE—*Friday, October 28, 1977*

(Legislative day of Friday, October 21, 1977)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. PATRICK J. LEAHY, a Senator from the State of Vermont.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Lord, as we go to our work this day, help us to go with joy in our hearts and peace in our souls. Show us clearly what our duty is and help us to be faithful in doing it. Preserve us from impatience and depression. Increase our faith, sharpen our intellect, mellow our judgment, deepen our spiritual insight. Keep our vision high and our goals clear. Grant us some part in the fulfillment of Thy mighty purpose in the world.

In the Master's name, we pray. 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. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 28, 1977.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PATRICK J. LEAHY, a Senator from the State of Vermont, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

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

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of yesterday, Thursday, October 27, 1977, be approved.

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

Mr. ROBERT C. BYRD. Mr. President, I yield briefly to the Senator from Connecticut.

ORDER REFERRING S. 2236 JOINTLY TO THE COMMITTEE ON COMMERCE AND THE COMMITTEE ON FOREIGN RELATIONS

Mr. RIBICOFF. Mr. President, I ask unanimous consent that when the Committee on Governmental Affairs reports S. 2236, a bill to effect certain reorganization of the Federal Government to strengthen Federal programs and policies for combating international and domestic terrorism, it be simultaneously and jointly referred to the Committee on Commerce and the Committee on Foreign Relations for a period of 30 days.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I have no further need for my time.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I have no need for my time under the standing order. I yield it back.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Alabama (Mr. ALLEN) is recognized for not to exceed 15 minutes.

Mr. ALLEN. I thank the Chair.

CONSUMER PROTECTION AGENCY PREDICTIONS COME TRUE

Mr. ALLEN. Mr. President, in June of this year I noted that support for the proposed Agency for Consumer Advocacy, sometimes called the Consumer Protection Agency, was on the wane. I pointed out that the proponents of this agency, faced with growing concern in the Congress over adding to the Federal bureaucracy, had begun to trade principles for votes by exempting first one, then another area of Government regulatory activity of concern to consumers, by placing whole segments of the economy beyond the reach of the proposed advocate, and by publicly downplaying the considerable powers which the proposed new agency would be given.

Since June, this process has accelerated. Today, I would like to share two examples of this with my colleagues and the American public in these closing days of this 1st session of the 95th Congress, the 9th consecutive session of Congress in which efforts to create this unnecessary agency have failed.

The compromised compromise, I call this, for, as in previous years, a "new proposal" is being floated in an attempt to salvage the consumer agency. Some proponents are trying to sell it as a "compromise" in the House of Representatives in the hope of gaining a majority vote there prior to the adjournment of the current session of the Congress.

The new proposal calls for an Office of Consumer Representation, reflecting yet another in a long history of name changes designed to obscure the fact that proponents wish to create yet another independent agency and enlarge the Federal bureaucracy. The proposal would specify the consolidation of existing programs—a consolidation already anticipated in the existing bill—so long as the new agency could keep the money appropriated for these programs—in addition, I repeat, in addition to the full appropriations of the new agency. It also

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

would excise some of the objectionable snooping powers which have been proposed for the agency. It would, however, leave intact the vast powers of the agency to freely intervene in the affairs of sister Federal agencies and appeal their final decisions, which is the heart of the proposed legislation and long its most objectionable feature.

Nevertheless, the "new proposal" reflects another retreat for proponents of the consumer agency, the most recent retreat in a long line of such retreats which have made the legislation almost useless when compared with the original bills which so-called consumer advocates unequivocally have stated in the past were necessary to the concept of a Consumer Protection Agency. In 1972, at the very height of congressional support for the concept of an independent consumer agency and before all of the backsliding, exempting, and compromising which has now whittled it down into an Office of Consumer Representation, Mr. Ralph Nader even then called a similar compromise bill a "fraud on the consumer." In June of this year, I said that that 1972 bill was vastly superior to what its proponents would now be willing to accept. The "new proposal" has borne out that prediction.

In this new proposal, we have loopholes within loopholes. There is one area where proponents of the legislation do not seem the slightest bit embarrassed about minimizing the role which the new consumer champion will play. That area, of great concern to consumers, is international trade. This is downplayed, I can safely assume, to avoid exciting our friends in big labor who decided to support this legislation once they secured for themselves a major exemption which they thought protected their interests. Critics of the legislation, myself included, have pointed out that this exemption amounts to a loophole in the bill which threatens the interests of consumers and smacks of a political payoff.

Unhappily for big labor, however, it is becoming increasingly clear that the loophole has a loophole. The big labor exemption covers "labor disputes" and "labor agreements." While international trade resulting in increased foreign imports is a big labor problem—and certainly something that directly concerns me and the people I represent, the good people of Alabama—it is hardly a "labor dispute" or "labor agreement" within the meaning of the exemption.

This presents quite a problem for the proponents of the legislation, since they have been depending upon big labor support for passage of the bill at just the time that big labor and working men and women are becoming increasingly exercised over the loss of U.S. jobs to overseas manufacturers. In my own State of Alabama, steel and textile imports and shoes as well are having considerable impact on both manufacturers and jobs. Other industries are likewise suffering in almost every sector of our Nation.

It is especially timely, therefore, that we get a clear focus on the proposed new agency's expected role in such areas as determinations and recommendations on antidumping duties, countervailing duties, the escape clause, and even the advisory and negotiation process for tariffs and quotas. In short, this legislation would give the consumer advocate a role in the entire range of governmental activity which establishes our international trade policy, and we should have an idea of what its proponents expect will be the result of granting such authority to the new agency.

This is not a new question, it is just more important now. The preponderance of the testimony which the Congress has heard on this question indicates clearly that the consumer agency is expected to advocate increasing importation of foreign goods.

How, Mr. President, could labor support such a proposal as this?

For instance, the responses of Mr. Peter Schuck of Consumer's Union to questions asked by Congressman FUQUA in House hearings are enlightening:

Mr. SCHUCK. We are for more imports. We do not think the law should restrict imports. If it is economically justified to import, then people should be allowed to do so.

Mr. FUQUA. If you were the head of CPA, would you follow that line?

Mr. SCHUCK. In general, I think it is fair to assume that the CPA (Consumer Protection Agency) would tend to be in favor of free trade. I think that that is an interest that consumers do have and is a legitimate interest. It seems to me that there is ample scope for those other groups which are adversely affected by imports to make their views known.

So, Mr. President, we cannot look for the Consumer Protection Agency to meet the views of the working men and women of this country who are losing their jobs as a result of the importation into this country of foreign goods.

I suggest that the "other groups" which Mr. Schuck mentions include labor unions. A response which the noted consumer advocate, Betty Furness, gave to me during hearings on a consumer protection bill in this Chamber was quite explicit on this point. I had asked her about imports, quotas, and American jobs. She replied:

Miss FURNESS. It seems to me that the consumer interest is clear there. The consumer interest is to make available the goods at a lesser price.

What about the American working man or woman?

If the consumer does not want to buy those goods because of his loyalty to the labor movement, that is the consumer's decision. My decision would be to make the goods available.

Senator ALLEN. Let them come in, close U.S. plants and throw American workers out of jobs.

Miss FURNESS. That is a matter that is then regulated by the public in its own conscience. I think the goods should be available. I am not saying close the plants. I am saying, make the goods available and let the public decide whether they want to buy those goods or other goods.

As big labor's anxieties grow over imports, it is hardly surprising that proponents of this legislation have begun to downplay such viewpoints.

Mr. President, relevant to the matter of imports and the loss of U.S. jobs is the bill recently passed in the Senate to extend the basic operating authority of the Overseas Private Investment Corporation. I ask unanimous consent to have printed in the RECORD at this point a letter I received from the chief lobbyist of the American Federation of Labor and Congress of Industrial Organizations, Mr. Andrew J. Biemiller, urging me to vote against the OPIC bill, S. 1771, because of its practice of insuring foreign factories that manufactured products which subsequently find their way into American markets causing high unemployment and factory shutdowns.

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

OCTOBER 25, 1977.

Hon. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: The AFL–CIO urges you to vote against S. 1771, the extension of the Overseas Private Investment Corporation (OPIC). OPIC is a government agency which insures private investment abroad against losses from political risks. OPIC should be ended this year.

OPIC has continued to insure foreign factories that make textiles, steel, auto parts, sheet glass, TV parts, garments, leather goods and other products. Imports of these products are now flooding American markets. Thus OPIC insurance encourages the expansion of industries abroad, while American cities and towns are suffering high unemployment and lost tax bases from factory shutdowns at home.

OPIC continues to place the U.S. worker at a competitive disadvantage by insuring job-exports to low-wage countries where labor rights are denied and free unions do not exist. The six countries heading GAO's analysis of the high-concentration of OPIC insurance are countries where trade union rights are limited or non-existent. Such a policy of insuring the investment risks of some of our largest companies in such countries is not a justifiable Federal policy on behalf of U.S. labor.

OPIC has failed to carry out the 1974 Congressional mandate to transfer this insurance of private profit-making enterprise to private insurers. Instead, S. 1771 makes the United States government and, therefore the United States, the ultimate insurer of private investment abroad.

AFL–CIO urges you to vote against S. 1771, the extension of OPIC for another four years.

Sincerely,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

Mr. ALLEN. Mr. President, although Mr. Biemiller's letter arrived in my office sometime after the Senate passed S. 1771 on October 25, I had already determined that the provisions of the legislation and many of the practices carried on under the auspices of OPIC were contrary to the interest of our domestic economy, and I voted against the bill. I should like to say, however, that if Mr. Biemiller and other officials of big labor feel that the Overseas Private Investment Corporation carries on policy contrary to the interest of U.S. jobs, then they are in for a real shock when the Agency for Consumer Advocacy or whatever it may be called goes into action. I urge big labor to study

the many ramifications upon our economy and upon U.S. jobs if the Agency for Consumer Advocacy bill is adopted. There will be no restrictions on the agency to intervene with our trade agencies, including the U.S. Department of State and, perhaps more important, the Office of the Special Representative for Trade Negotiations in the White House itself. When viewed in its entirety, I would not be surprised to see a labor-supported, anti-import amendment added to the discredited consumer agency bill, just for good measure.

AWAIT THE HOUSE

In June, I expressed some concern that proponents of the consumer agency would attempt to revive the bill by bringing it up first in the Senate, on the assumption that there is more support for the bill in this body. While skepticism in the Senate about this legislation may now have reached a level comparable with that in the House, I still believe that the Senate should not go forward until the House has acted.

I am gratified that the distinguished majority leader has publicly agreed with this view. All Senators and the American public should be grateful to him for sparing the Senate the careful, intense, and comprehensive scrutiny which I can guarantee that any consumer agency bill will receive here.

THE PANAMA CANAL TREATIES—NO. 21

Mr. ALLEN. Mr. President, on Tuesday, I talked at some length about the repressive character of the Panamanian Government and the impropriety of propping up the current Panamanian dictator through Senate advice and consent to a new treaty relationship which would tend to perpetuate the dictator's regime and which would be rightfully subject to repudiation by a later legitimate Panamanian Government. I emphasized that subsequent repudiation of these proposed treaties by a legitimate Panamanian Government was not in the least conjectural, but was instead a matter of plain record, inasmuch as leading Panamanian exiles have already testified to the House Committee on International Relations that, after the downfall of Dictator Torrijos, these treaties would not be worth the paper on which they are written.

To refresh the memory of Senators on this point, I will quote again from the remarks made before the House committee by Dr. Winston Robles, the chief spokesman for the Panamanian exile community here in the United States. Dr. Robles stated the matter in this fashion:

> Sooner or later the dictator will fall. Then the treaty is going to be rejected by Panamanians and their governments, and all the resentment against the dictatorship will be reflected in future relations between Panama and the United States.

Mr. President, Dr. Robles' remarks ought to be heeded. They foretell the great danger for the prospect of long-term friendship with the Republic of Panama and they foreshadow dire problems for the United States should Dictator Torrijos fall from power and thereby cease to be the guarantor of these treaties. The good will of Dictator Torrijos cannot be the linchpin of good relations with the people of Panama.

So, Mr. President, Dr. Robles' remarks ought to be taken into account. Since these treaties depend—and let us face the matter honestly—since these treaties depend only on the word of a smalltime gangster dictator, will we not soon see a vested interest in guaranteeing that this same smalltime dictator remains in power, or that his successor regime remains in power, in perpetuity? Do we not run the risk in ratifying these treaties of becoming in perpetuity the champions of a repressive government, rather than the consistent and active proponents of human rights in Panama, in the United States, and in all countries? Certainly, even a casual student of these proposed treaty arrangements would recognize that the United States, after ratification of these treaties, would have a heavy stake in seeing continued the Torrijos dictatorship, since virtually every provision of significance does depend on the continuance in power of the military regime now dominating Panama.

This latter point has not been lost on commentators who have followed this debate. Last Friday, the Washington Star carried a particularly perceptive editorial by Charles Bartlett which was entitled, "The Case for Delay on Panama." Mr. Bartlett suggests a third alternative to ratification or rejection of the Panama Canal treaties. Of course, Mr. President, in my judgment, these treaties should be promptly rejected, out of hand and without embarrassment, because these treaties are so laden with substantive and technical defects as to make them unworthy of favorable action in the Senate and, indeed, except for the gravity of the situation, unworthy even of efforts to correct by amendment the many obvious errors and the even more numerous latent flaws. But, Mr. President, notwithstanding my own opinion on this subject, I do feel that the third option suggested by Mr. Bartlett should receive close scrutiny inasmuch as his suggestion would at least prevent the United States from assuming the role of guarantor of the Torrijos dictatorship, one of the most repressive regimes ever to govern a nation in the Western Hemisphere. Mr. Bartlett suggests simply that the Senate defer action on the Panama Canal treaties until Torrijos loosens his death grip on the people of Panama.

Mr. President, Charles Bartlett describes his idea—and this may well, indeed, also be the idea of others, including some Members of the Senate—he describes his idea in this fashion:

> This strategy contemplates a delay as long as the three years which preceded Senate approval of the 1936 treaty. It has its roots in varied doubts on the character and intentions of President Omar Torrijos.

Mr. Bartlett apparently feels that delayed action on the treaties could cause some semblance of basic human rights to be reestablished in Panama. I, for one, believe it will take more than a delay in ratification of these treaties to reestablish democracy in Panama, but perhaps delay would cause some steps in the right direction to be initiated. In reviewing the recent public relations offensive launched by Dictator Torrijos, Mr. Bartlett seems to doubt that any significant steps have in fact been taken by the dictator to improve human rights in Panama, and he notes that the so-called free debate which preceded the plebiscite held last Sunday "could be the start of a new era or a mere gesture to propitiate the U.S. Senate." Mr. Bartlett rightfully suspects this plebiscite was held strictly for stage effect here in the United States, and in further discussing the dim prospects for real progress in improving human rights in Panama, he goes on to point out the following:

> The signs are not encouraging. Gerardo Gonzalez, the former Communist leader who is now Torrijos' vice president, has asserted in recent days that Panamanians would not have had a new treaty if they had persisted in "the farce which in the past they considered democracy." He termed elections "a complex and repudiated system" which divided Panamanians into groups.

So, Mr. President, the Vice President of Panama, Gerardo Gonzalez, a former Communist, is not impressed with an electoral process which tends to divide voters into groups—presumably into groups not enamored of Torrijos' pro-Marxist regime. Former Communist Gonzalez—I assume he is no longer a Communist because that is what Mr. Bartlett reports—former Communist Gonzalez would undoubtedly prefer to see these treaties promptly ratified here in the Senate without delay so that the pro-Marxist regime now in power can fully consolidate its authority on the cash and prestige thereby bestowed. This last factor is also noted by Mr. Bartlett, who describes the matter this way:

> If the treaty is ratified and the government begins to draw the $80 million per year which it anticipates in tolls and fees, the regime will have no further need to consider democratization. The national guard, already badly corrupted in the top ranks, will be expanded to snuff out the last resistance to a left-wing dictatorship.
>
> * * * * *
>
> The great virtue of delay is that it will oblige Torrijos to show more of his hand. "I am one of the most radical of men," he has been saying in Europe. He has certainly been radical in visiting upon a small republic such authoritarian exotica as torture, forced expatriations and a blackout of free expression. Relentless greed is his only major shortcoming as a hardline Marxist.

Mr. Bartlett concludes with this thought:

> A Marxist dictatorship would be a poor epitaph for the saga of America's role in Panama, and the best hope of avoiding it may be foot-dragging by the Senate.

Indeed, Mr. President, perpetuation of a Marxist, pro-Castro dictatorship in Panama is not a result many Members

of the Senate, if any, would wish to see as our country's crowning achievement in the Isthmus of Panama, and I do, therefore, respectfully commend to my colleagues for active consideration Mr. Bartlett's thesis that prolonged delay—perhaps delay on the order of the Senate's wise and lengthy consideration of the genocide treaties—prolonged delay of that order might be the best method of stimulating Panama's political evolution toward freedom and might, additionally, be the best way of preserving the national security interests of the United States in this strategic and vital waterway.

Mr. President, I yield back the remainder of my time and I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold his suggestion?

Mr. ALLEN. I am delighted to.

Mr. ROBERT C. BYRD. I believe the Senator from Wyoming is ready to proceed under his order.

Mr. HANSEN. Mr. President, first, let me compliment the distinguished Senator from Alabama for his very perceptive observations and comments this morning. I hope that Senators will take time to read in the RECORD what our good friend from Alabama has so succinctly observed this morning.

Mr. ALLEN. I thank the distinguished Senator.

THE SENATE ETHICS CODE

Mr. HANSEN. Mr. President, recently, several of my colleagues filed suit in the U.S. Supreme Court challenging the constitutionality of the ethics code which was passed by the Senate in April of this year. They were joined in the suit by the Committee for the Survival of a Free Congress.

Those who filed the suit believe, and I agree, that the new ethics code is unconstitutional. Our Founding Fathers, in drawing up our Constitution, envisioned only three requirements of those who seek election to the U.S. Senate. Those requirements are that a person be at least 30 years of age, have been a U.S. citizen for at least 9 years, and reside in the State in which he or she seeks election.

The plaintiffs contend that the new Senate ethics code, which limits outside earned income, is an addition to the only qualifications for election set down in the Constitution. The suit also contends that any such new qualifications imposed upon candidates for the Senate would require an amendment to the Constitution. This clearly has not been done and their claim is that the new rule is, therefore, null and void.

In briefest summary, the suit contends that as a result of enforcement of the new rule, plaintiffs would be deprived of their rights to serve as U.S. Senators, and to meaningfully support candidates for the U.S. Senate. Such a result, they say, infringes upon their freedom of expression, unnecessarily discriminates against them, limits their right to earn a living and also to serve in the U.S. Senate, and deprives them of property without just compensation.

I could not agree more. I have no doubt that strict enforcement of this code will have serious ramifications during the coming years.

As some may recall, I voted against the code. I believe the legislation was an illegitimate legislative reaction to a number of legitimate problems and concerns. The resulting code falls short of addressing the true issues, and in fact, creates greater concerns for the future of our elected representatives.

As I have said before, as a legislative body, our greatest problem in recent years is our loss of credibility with the people of this country. We have failed to legislate effectively in areas of major ongoing economic problems. We have been divided for several years over the energy situation. Our entire health, welfare and education systems are in need of long overdue reforms. And individual members of both the legislative and executive branches have in the past violated the trust of the American people. But we cannot buy back that lost faith and confidence with this ethics code. We will have to earn it.

As I noted on the floor of the Senate during debate on the code, I question the extent to which we in Congress will go in legislating alleged reforms. As restrictions and guidelines increase we may slowly move toward a completely subsidized legislative bureaucracy, whose members are elected with Government funds and whose salaries are limited and closely regulated by statute. Our means of contact with our constituents are becoming more regulated all the time and our isolation from them is increasingly apparent.

In addition to the restrictions which are placed on Congressmen and Senators, enforcement of the new code will affect everyone as private citizens. It will curtail an individual's right to offer compensation should one wish to engage any representative for a speech or similar activity. It will further infringe upon an individual's right to elect anyone who has earned or anticipates earning more outside income than proscribed in the code. It usurps those constitutional powers reserved for the States and each individual citizen in deciding who shall represent their interests. And, it will discourage all who may consider running for a senatorial seat by imposing financial limitations which will make it more difficult, if not prohibitive, to maintain those most vital contacts with constituents.

We cannot have an elected body composed of only those wealthy persons who find no need for earning outside income. The idea that monetary compensation for lectures and speeches made in one's capacity as an elected representative somehow constitutes a conflict of interest and a threat to one's moral and ethical character, is beneath serious contemplation. I have supreme confidence in the ability of the American people to make decisions with respect to the moral character of the men and women they elect to represent them.

Enforcement of this code will discourage initiative, and with it we will sacrifice freedom of choice and we will submerge ingenuity. The provisions of this code will certainly discourage people with ability from seeking public office. From my vantage point, this code is unconstitutional.

QUORUM CALL

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, before we begin on the unfinished business, I ask unanimous consent that the Senate proceed to the immediate consideration of certain measures that have been cleared for action by unanimous consent. They are as follows: Calendar Nos. 472, 480, 481, 482, and 483; and, on the Unanimous-Consent Calendar, all measures shown.

Mr. BAKER. Mr. President, reserving the right to object—and I will not object—as I previously advised the majority leader, these items as he describes them are cleared on our calendar for consideration and passage, and we have no objection to them.

Mr. ROBERT C. BYRD. I thank the minority leader.

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

CIBOLA NATIONAL FOREST BOUNDARY

The Senate proceeded to consider the bill (S. 553) to enlarge the boundary of the Cibola National Forest, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 4, line 6, strike "3,111.60" and insert "1,400";

On page 4, line 7, strike "4,076.31" and insert "3,820";

On page 4, line 9, strike "2,172" and insert "150";

On page 4, line 10, strike "6,578.13" and insert "6,423".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the exterior boundary of the Cibola National Forest in New Mexico be modified to include the following described lands:

1. A tract of land in townships 13 and 14 north, range 16 and 17 west, of the New Mex-

ico principal meridian in New Mexico, beginning at a point from which the southwest corner of section 34, township 14 north, range 17 west, bears north 89 degrees 52 minutes west 1,717.32 feet;

thence south 0 degrees 56 minutes east 1,307.46 feet to the southwest corner of the Fort Wingate Army Depot;

thence south 89 degrees 45 minutes east 897.60 feet;

thence south 89 degrees 57 minutes east 2,643.30 feet;

thence north 89 degrees 48 minutes east 5,272.08 feet;

thence north 89 degrees 51 minutes east 6,596.70 feet to the southeast corner of Fort Wingate Army Depot which bears north 89 degrees 51 minutes east 1,320.66 feet and south 1,328.58 feet from the northwest corner of section 6, township 13 north, range 16 west;

thence north 0 degrees 42 minutes west 12,945.12 feet; then due west 15,175.51 feet to the west boundary of the Fort Wingate Army Depot;

thence south 0 degrees 35 minutes west 2,598.32 feet;

thence south 0 degrees 23 minutes west 5,195.52 feet;

thence south 0 degrees 32 minutes west 3,-872.88 feet to the point of beginning, containing an area of 4,556 acres, more or less. The southwest and southeast corners of Fort Wingate Army Depot mentioned in the above description are the same as was installed as of November 19, 1971, and mentioned in the Mann survey, United States Department of the Interior, Bureau of Land Management plat dated September 9, 1957.

2. Township 14 north, range 15 west, section 3, all lying south of Interstate 40; section 4, all lying south of Interstate 40; section 5, all; section 8, all; section 9, all; section 10, all lying south of Interstate 40; section 11, all lying south of Interstate 40; section 12, all lying south of Interstate 40; section 13, all lying south of Interstate 40; section 14, all; section 15, all; section 16, all; section 17, all; section 20, all; section 21, all; section 22, all; section 23, all; section 24, all; section 25, all; section 26, all; section 27, all; section 28, all; section 29, all; section 32, east half; section 33, all; section 34, all; section 35, all; section 36, all; containing 14,476.06 acres, more or less.

3. Township 10 north, range 4 east, section 2, south half northeast quarter, southeast quarter; section 11, northeast quarter, north half southeast quarter, southeast quarter southeast quarter; containing 520 acres, more or less.

4. That portion of the Elena Gallegos grant lying east of a line described as beginning at the closing corner between sections 35 and 36 of township 11 north, range 4 east, on the south boundary of said grant and extending north 2,700 feet, thence east 1,515 feet, thence north 1,260 feet, thence east 3,160 feet, thence north 4,125 feet, thence north 42 degree east 4,480 feet, thence north 1,710 feet, thence west 3,235 feet, thence north 19 degrees west 2,350 feet, thence west 1,400 feet, thence north 3,820 feet to a point on the north boundary of said grant, thence south 81 degrees 30 minutes east 150 feet along said grant boundary to the 7½ mile corner, containing 6,423 acres, more or less.

SEC. 2. Subject to valid existing rights, all lands owned by the United States in the areas described in section 1 of this Act are hereby added to the national forest, and shall be administered in accordance with the laws, rules, and regulations applicable thereto.

SEC. 3. For the purposes of section 6 of the Act of September 3, 1964 (78 Stat. 903), the boundary of the Cibola National Forest, as modified by section 1 of this Act, shall be treated as if it were the boundary of that forest on January 1, 1965.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-516), explaining the purposes of the measure.

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

EXCERPT

PURPOSE

S. 553 would enlarge the boundaries of the Cibola National Forest in New Mexico to include four separate tracts adjacent to the forest.

BACKGROUND AND SUMMARY OF PROVISIONS

The four tracts to be added to the national forest comprise approximately 25,975 acres.

The first tract contains 4,556 acres of federally owned land. This land had national forest status from 1912 to 1954 when it was transferred to the Department of the Army and became part of the Fort Wingate Army Depot. The Army Corps of Engineers has declared the land excess to its needs and the land is presently being considered for return to the administrative jurisdiction of the Bureau of Land Management. The land has potential for timber production and recreation. It is bounded on the east and south by U.S. Forest Service lands, on the west by Indian lands, and on the north by Fort Wingate.

The second tract contains 14,476 acres—9,760 acres of land; administered by the Bureau of Land Management; 1,280 acres of State land; and 3,463 acres of private land. Most of this land was reconveyed to the United States through exchanges under the Taylor Grazing Act, as amended, for the benefit of the U.S. Forest Service. The lands have value for wildlife, grazing and timber production. The present Cibola National Forest boundary adjoins these lands on the west and south.

The third tract contains 520 acres owned by the city of Albuquerque. The city purchased the tract to prevent commercial or residential development.

The fourth tract contains 6,578 acres of privately owned land (known as the Elena Gallegos grant lands).

This land cannot be acquired without enactment of S. 553 because of the provisions of two laws. Although amendments to the Land and Water Conservation Fund Act (section 7 of the act of September 28, 1976, 90 Stat. 1318, 16 USC 1601) have increased the area which the Forest Service can acquire outside a national forest boundary from 500 to 3,000 acres, the term boundary is defined as the boundary which existed on the effective date of the Land and Water Conservation Fund Act, January 1, 1965. Furthermore, extension of national forest boundaries in New Mexico, except by an act of Congress, is prohibited by the act of June 15, 1926 (44 Stat 745).

S. 553 would extend the national forest boundary statutorily to include the four tracts discussed above and state that that boundary for purposes of the Land and Water Conservation Fund Act would be treated as if it were the boundary on January 1, 1965.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

FORT UNION TRADING POST NATIONAL HISTORIC SITE, NORTH DAKOTA AND MONTANA

The Senate proceeded to consider the bill (S. 491) to amend the act entitled "An Act to authorize establishment of the Fort Union Trading Post National Historic Site, North Dakota and Montana, and for other purposes," approved June 20, 1966 (80 Stat. 211), and for other purposes, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

That the first section of the Act entitled "An Act to authorize establishment of the Fort Union Trading Post National Historic Site, North Dakota and Montana, and for other purposes", approved June 20, 1966 (80 Stat. 211), is amended to read as follows:

"That, in order to commemorate the significant role played by Fort Union as a fur trading post on the upper Missouri River, the Secretary of the Interior may acquire by donation, purchase with donated or appropriated funds, or otherwise, the historic remains of Fort Union in the States of North Dakota and Montana, as he may deem necessary to accomplish the purposes of this Act: *Provided*, That the total areas so acquired shall not exceed four hundred and fifty acres.".

SEC. 2. The Act is further amended by repealing section 4 in its entirety and by adding the following new section 4:

"SEC. 4. The Secretary may not expend more than $73,000 from the Land and Water Conservation Fund for land acquisition nor more than $8,427,000 for the development of facilities at the site: *Provided*, That no funds for the development of said facilities shall be authorized prior to October 1, 1978: *Provided further*, That no funds may be expended for reconstruction of historic remains for Fort Union unless the Secretary of the Interior has determined, on the basis of historical documentation satisfactory to him, that such reconstruction can be accomplished with a minimum of conjecture.".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

PAUL H. DOUGLAS NATIONAL LAKESHORE

The assistant legislative clerk read as follows:

A bill (S. 1045) to change the name of the Indiana Dunes National Lakeshore to the Paul H. Douglas National Lakeshore.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that that measure remain on the calendar for the time being.

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

LEGIONVILLE NATIONAL HISTORIC SITE, PA.

The Senate proceeded to consider the bill (S. 1104) to direct the Secretary of the Interior to establish the Legionville National Historic Site in the State of Pennsylvania, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 1, line 5, strike "Secretary of Interior is authorized shall acquire by gift, purchase, or otherwise, the real property described in subsection (b) for the" and insert "Secretary of the Interior is authorized to acquire by donation, purchase, or exchange, the real property described in subsection (b) for the";

On page 2, beginning with line 17, insert the following:

Sec. 3. (a) The Secretary may not expand more than $50,000 from the Land and Water Conservation Fund for land acquisition nor more than $500,000 for the development of essential facilities: Provided, That no funds for the development of essential facilities shall be authorized prior to October 1, 1978.

(b) Within three years from the effective date of this Act the Secretary shall develop and transmit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Interior and Insular Affairs of the House of Representatives a general management plan for the use and development of the site consistent with the purposes of the Act, indicating—

(1) the lands and interests in lands adjacent or related to the site which are deemed necessary or desirable for the purposes of resource protection, scenic integrity, or management and administration of the area in furtherance of the purposes of this Act and the estimated cost thereof;

(2) the number of visitors and types of public use within the site which can be accommodated in accordance with the protection of its resources; and

(3) the location and estimated cost of facilities deemed necessary to accommodate such visitors and uses.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in order to preserve and interpret for the benefit of present and future generations the site of the first military training camp established in the United States, the Secretary of the Interior is authorized to acquire by donation, purchase, or exchange, the real property described in subsection (b) for the establishment and administration of a national historic site.

(b). The real property referred to in section (a) is that real property in Beaver County, Pennsylvania, containing twenty-two acres more or less, in the northernmost part of Harmony Township, adjacent to Baden Borough, which is bordered by Duss Avenue, State Highway 65, and Logan Lane.

SEC. 2. The property acquired under the first section of this Act shall be known as the Legionville National Historic Site, and it shall be administered by the Secretary of the Interior, acting through the National Park Service, in accordance with the Act of August 25, 1916, entitled "An Act to establish a National Park Service, and for other purposes" (16 U.S.C. 1, 2–4) and the Act of August 21, 1935, entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461–467).

SEC. 3. (a) The Secretary may not expend more than $500,000 from the Land and Water Conservation Fund for land acquisition nor more than $500,000 for the development of essential facilities: Provided, That no funds for the development of essential facilities shall be authorized prior to October 1, 1978.

(b) Within three years from the effective date of this Act the Secretary shall develop and transmit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Interior and Insular Affairs of the House of Representatives a general management plan for the use and development of the site consistent with the purposes of the Act, indicating—

(1) the lands and interests in lands adjacent or related to the site which are deemed necessary or desirable for the purposes of resource protection, scenic integrity, or management and administration of the area in furtherance of the purposes of this Act and the estimated cost thereof;

(2) the number of visitors and types of public use within the site which can be accommodated in accordance with the protection of its resources; and

(3) the location and estimated cost of facilities deemed necessary to accommodate such visitors and uses.

Mr. HEINZ. Mr. President, I want to express my strong support today for S. 1104, the pending bill, which would establish the Legionville National Historic Site in Beaver County, Pa. This bill is similar to one I introduced in the other body last year, but unfortunately no action was taken at that time.

In addition to the support of my Pennsylvania colleague, Senator SCHWEIKER, the effort to establish Legionville as a national historic site has received the support of numerous organizations and historical groups around the United States, including the American Legion and the Anthony Wayne Historical Society.

One of America's greatest heritages is its rich historical past. Throughout the country there exists a wide variety of historically significant locations or structures. Frequently, as event or series of events of such import occurs at a given site to warrant special national recognition. Legionville, Pa., is such a site.

Situated along the Ohio River just 20 miles northwest of Pittsburgh, Legionville served as the first military training camp in the United States, and was the base for the first "Legion of the United States" under Gen. Anthony Wayne. Today's American Legion derives its name from this original campsite in Pennsylvania.

In the late 1700's, settlement of the United States had progressed as far as Pittsburgh, and remained effectively halted there because of Indian attacks. Two separate attempts were made to solve this problem. An expedition led by Harman and a later one by St. Claire were both badly beaten by the Indians, and the area remained closed to further expansion.

In 1789, the newly drafted Constitution permitted the National Government to raise a standing army. President Washington's objective was to form a regular army under a commander aggressive enough to solve the attack problem, and he chose Gen. Anthony Wayne for the post. Men were recruited and stationed at Fort Pitt under Wayne, who soon moved his army to the site of an old Indian village, Logstown, where he kept them for 2 years of intensive and uninterrupted military training. The camp immediately became known as Legionville because of the presence of the first "Legion" of the United States. The Legionville training was sufficient to form a crack fighting force, and the protection the Legion was able to provide allowed westward expansion to resume successfully.

As an important center for the military in our Nation's early history, Legionville drew to it many famous individuals. Among those serving under General Wayne were William Henry Harrison, aide-de-camp to Wayne and later President of the United States; Lt. William Clark, who served at Legionville long before he volunteered for his famous expedition under President Jefferson; and Zebulon Pike, who served as one of the generals during the War of 1812 and for whom Pike's Peak is named. It is a sad reflection on our Nation that, in spite of its historical significance, Legionville is one of the few remaining major Indian and Revolutionary era historical sites still undeveloped and unrestored in the United States.

I believe there is no question that the part Legionville played in the opening years of our Nation's history is of national significance. Passage to the northwestern territories was severely hampered until the first U.S. Army was formed and then trained at Legionville. It paved the way for our westward expansion, and for that alone deserves our recognition, as a commemoration to the roots of our country.

Unfortunately, efforts at the State level have not been sufficient to protect and preserve this historic location. As of now, this land where Presidents and generals walked is zoned for industrial use, and its owner has placed it on the market. Unless designated as a national historic site and taken over by the National Park Service, Legionville may well be lost to future generations of Americans.

S. 1104 will establish Legionville as a national historic site, authorize purchase of the land and begin the process of restoring the site. This legislation will bring well-deserved recognition to an important location in our Nation's history, and I urge its adoption.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendments be considered and agreed to en bloc.

There being no objection, the amendments were agreed to en bloc.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–526), explaining the purposes of the measure.

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

PURPOSE

S. 1104 would provide for the establishment of the Legionville National Historic Site in Beaver County, Pa. This 22-acre site would be administered by the Secretary of the Interior as a unit of the national park system.

BACKGROUND AND NEED

The proposed Legionville National Historic Site is situated on the Ohio River, northwest of Pittsburgh, Pa. This area is generally considered to be the site of the first military training camp in the United States and a prototype for American armies of the future.

Some of the officers trained at Legionville included Zebulon Pike; Lieutenant William Clark of Rogers and Clark; and William Henry Harrison, aide-de-camp to General Wayne and later President of the United States. Wayne himself was schooled during the American Revolution by Baron von Steuben who disciplined Washington's Army at Valley Forge. Anthony Wayne is acclaimed as America's first native-born military genius. During his military career he served with the Polish general, Count Pulaski in New Jersey and under Lafayette in the Yorktown campaign against the British. In 1783 he retired from the army with the brevet rank of major-general.

In 1792, President Washington decided both to reopen negotiations for peace with the western Indians and to build an army capable of imposing United States authority if the peace negotiations failed. To carry out these plans, Anthony Wayne was appointed as major-general in 1792 to command a new American army, called the Legion of the United States. He set up a training camp at the proposed Legionville site where he drilled and trained his soldiers to create a reliable and effective force.

LEGISLATIVE HISTORY

S. 1104 was introduced by Senator Heinz on March 23, 1977. The Subcommittee on Parks and Recreation held a hearing on June 28, 1977.

COST AND BUDGETARY CONSIDERATIONS

In accordance with subsection (a) of section 255 of the Legislative Reorganization Act, the following is a statement of estimated costs which would be incurred in the implementation of S. 1104, as ordered reported:

S. 1104 authorizes $500,000 for land acquisition and $500,000 for development of essential facilities at the site.

The Secretary of the Interior would be authorized to expend no more than $500,000 from the land and water conservation fund for land acquisition. The development money may not be authorized prior to October 1, 1978.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

CONVEYANCE OF HOMESITES WITHIN THE CHUGACH AND TONGRAS NATIONAL FORESTS, ALASKA

The ACTING PRESIDENT pro temport. The next bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2118) to authorize the Secretary of Agriculture to convey certain homesites within the Chugach and Tongass National Forests, Alaska.

The Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, I welcome this opportunity to commend my colleagues for acting promptly in passing S. 2118. This legislation authorizes the Secretary of Agriculture to convey certain homesites within the Chugach and Tongass National Forests of Alaska.

Alaska, one-fifth the size of the entire United States, consists of 375 million acres of land and 90 percent of that total is still owned by the Federal Government. More specifically, 20.7 million acres of this land is national forest property and, therefore, is generally closed to private settlement.

Currently, more land is owned by the Federal Government in Alaska than in any other State; yet Alaskans traditionally have used Alaska's public lands to a greater extent than local residents of other States. Excluding Native land, only 1 percent of Alaska's land is privately owned. Due to the abundant Federal ownership of Alaskan land, little remains for private settlement. This is particularly true in southeastern and parts of southcentral Alaska, where the vast majority of land is national forest property.

In an effort to make more land available for private ownership, the Homesite Act was enacted into public law (43 U.S.C. 687a). The Homesite Act enabled the Department of Agriculture to issue special use permits for 5 acre homesites within the Chugach and Tongass Forests to individuals meeting National Forest Service requirements. Once the 3-year residency and improvement requirements are met, the National Forest Service requests the Department of the Interior to issue a public land order eliminating the land from forest status. The homesiter then applies to the Secretary of the Interior for a land patent.

The Federal Land Policy and Management Act of 1976 (Public Law 94-579) eliminated the authority of the Secretary of the Interior to issue such public land orders based on a congressional desire to retain public land in public ownership. Section 9 of this act prevents the Secretary of the Interior from excluding these lands from the national forest.

While I understand and appreciate the rationale of this section, Senator GRAVEL and I submitted this legislation to correct the inequities that it imposed on eight of our constituents. Mr. President, the rules of the game were changed at halftime and several Alaskans have been caught holding the ball. They have in good faith invested their time and money in complying with the rules and regulations imposed by the Homesite Act. Enactment of this legislation will allow these individuals to obtain title to land that they would have received prior to enactment of Public Law 94-579.

Again, I thank my colleagues for their favorable and prompt consideration of this legislation.

Mr. GRAVEL. Mr. President, I would like to make a few brief remarks on the bill which I have sponsored which is now under consideration by the Senate. S. 2118 would authorize the Secretary of Agriculture to convey eight homesites within the Chugach and Tongass National Forests in Alaska. These homesite occupants have met every provision of law applicable to this type of land entry but were caught in a kind of legislative crossfire. The provisions of the National Forest Management Act of 1976 provided that no further land withdrawals could be made from the national forests without congressional action. Unfortunately, due to administrative delays not all of the valid homesites within the two forests in Alaska were conveyed to the applicants by the time of the 1976 act.

This bill does not in any way undermine the language of the National Forest Management Act, nor does it allow any unwarranted disposition of national forest lands. This bill has been endorsed by the U.S. Forest Service and by the Energy and Natural Resources Committee. I urge my colleagues to pass this measure today.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-527), explaining the purposes of the measure.

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

PURPOSE

S. 9118 would authorize the Secretary of Agriculture to convey eight homesites ranging in size from 1½ to 3 acres, within the Chugach and Tongass National Forests in Alaska.

BACKGROUND AND SUMMARY OF PROVISIONS

The act of May 14, 1898, as amended (669 Stat. 444, 48 U.S.C. 371), by extending the application of the homestead laws to Alaska, permitted the conveyance of public domain homesites to entrymen in that State. Prior to the enactment of the National Forest Management Act of 1976 (90 Stat. 2949, 16 U.S.C. 1600), the Forest Service engaged in a cooperative procedure with the Bureau of Land Management to convey homesites on national forest lands. Those homesites were transferred administratively from the national forests to public domain administered by the BLM and were then conveyed by the BLM under the 1898 act.

Section 9 of the National Forest Management Act of 1976 (90 Stat. 2957, 16 U.S.C. 1609) prohibited the transfer of national forest land to public domain except by act of Congress. This provision foreclosed continued use of the cooperative procedure for conveying homesites on national forest lands in Alaska.

The committee, when it reported the 1976 act jointly with the Committee on Agriculture and Forestry, was not aware of this cooperative procedure. Although the committee fully endorses section 9 of the 1976 act, it does wish to rectify the unintended prohibition on conveyance of homesites to individuals who had fully qualified for conveyance prior to passage of the 1976 act.

Enactment of S. 2118 would make possible the conveyance of eight valid homesite claims. The claimants have met the requirements of the 1898 act; namely occupancy for not less than 5 months each year for at least 3 years. Under S. 2118, the claimants would pay $2.50 per acre or a minimum of $10.00. This is the same payment required by the 1898 act.

The acreage stated in S. 2118 is approximate only and could change slightly in the

conveyance process. It is the intent of S. 2118 that the parcels identified by the survey numbers be conveyed regardless of whatever minor acreage variances may be required. By law, the homesites can be no larger than 55 acres each.

LEGISLATIVE HISTORY

S. 2118 was introduced on September 21, 1977, by Senator Gravel, for himself and Senator Stevens. The Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources held a hearing on the measure on September 22, 1977.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business meeting on October 10, 1977, by a unanimous voice vote of a quorum present, recommended that the Senate pass S. 2118, without amendment.

COST AND BUDGETARY CONSIDERATIONS

Set forth below is an October 18, 1977, Congressional Budget Office cost estimate on S. 2118:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., October 18, 1977.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2118, a bill to authorize the Secretary of Agriculture to convey certain homesites within the Chugach and Tongass National Forests, Alaska.

Based on this review, it appears that a small amount of revenue would be received, and no additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN,
Director.

REGULATORY IMPACT EVALUATION

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2118.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little if any additional paperwork would result from the enactment of S. 2118.

The ACTING PRESIDENT pro tempore. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is authorized to convey the following tracts of national forest land in Alaska, occupied as homesites, to the present occupants of said lands or their lawful successors in interest: *Provided,* That such persons would otherwise qualify to purchase said lands under the requirements of the Act of May 14, 1898, as amended (43 U.S.C. 687a):

Chugach National Forest

Homesite numbered 222, Clear Lake group, lot 3, United States survey numbered 4979, containing 1.58 acres.

Homesite numbered 205, Clear Lake group, lot 1, United States survey numbered 4979, containing 1.68 acres.

Homesite numbered 208, Heney Creek group, lot 46, United States survey numbered 3601, containing 3.03 acres.

Homesite numbered 210, Heney Creek group, lot 46, United States survey numbered 3601, containing 1.75 acres.

Homesite numbered 225, Lakeview group, lots M and LL, United States survey numbered 3533, containing 2.15 acres.

Homesite numbered 224, Lawing Extension group, lot 4, United States survey numbered 3532, containing 1.60 acres.

Homesite numbered 186, Snug Harbor group, lot 3, United States survey numbered 3531, containing 1.58 acres.

Tongass National Forest

Homesite numbered 1144, Gartina Game Creek group, lot 9, United States survey numbered 2414, containing 3.03 acres.

SEC. 2. Such conveyances shall be for the same consideration as established by the Act of May 14, 1898, as amended (43 U.S.C. 687a).

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

USE OF PROCEEDS FROM DISPOSITION OF CERTAIN REAL PROPERTY IN HAWAII

The Senate proceeded to consider the bill (S. 1318) to permit the State of Hawaii to use the proceeds from the sale, lease, or other disposition of certain real property for any public purpose, which had been reported from the Committee on Energy and Natural Resources with an amendment. On page 1, line 10, after the period, insert "Such sale, lease, or other disposition shall comply with the laws of the State of Hawaii relating to public lands.";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 4(a) of the Act entitled "An Act to provide for the transfer of title to certain land at Sand Island, Territory of Hawaii, to the Territory of Hawaii, and for other purposes", approved August 25, 1958, the State of Hawaii may use for any public purpose the revenue or proceeds from the sale, lease, or other disposition of the lands held by it under a transfer made by Executive Order Numbered 10833 under such Act on August 25, 1959. Such sale, lease, or other disposition shall comply with the laws of the State of Hawaii relating to public lands.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-515), explaining the purposes of the measure.

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

PURPOSE

S. 1318 would remove a Federal restriction on the use of 202 acres of State-owned land on Sand Island so that such land can be leased or sold for industrial purposes.

BACKGROUND

The Act of August 25, 1958 (72 Stat. 850) authorized the President to convey by executive order not more than 202 acres of the Sand Island Military Reservation to the Territory of Hawaii, and among other things, it required that after receiving the land the Territory must use all revenues from the lease or sale of the land for the support of the University of Hawaii. The lands were transferred to Hawaii in August 1959 by Executive Order Number 10837.

This tract, formerly part of the Sand Island Military Reservation, forms the protective seaward perimeter of Honolulu Harbor. The tract contains prime industrial sites. Potential uses include improved maritime facilities, bulk fuel storage for Honolulu International Airport, and expansion of the foreign trade zone. There is a pressing shortage of industrial land on Oahu, the State's most populous island. Use of the tract would partially alleviate the land shortage.

Industrial use cannot be made of land, however, because of a condition set forth in the 1958 law authorizing the land transfer. That condition prevents using revenues from lease or sale of the lands for purposes other than the support of the University of Hawaii. Since the passage of the 1958 law, Hawaii has become a State and the University of Hawaii is now funded directly from the State's general fund.

SUMMARY OF PROVISIONS AND COMMITTEE AMENDMENT

S. 1318 would permit the use by the State of Hawaii of proceeds from the sale, lease, or other disposition of the 202 acres of State-owned land on Sand Island for any public purpose, notwithstanding the provision in section 4(a) of the Act of August 25, 1958 limiting such use to support the University of Hawaii. Hawaii State law generally requires the disposition of public lands through a public notification and auction procedure. However, a 1970 amendment to the applicable state statute reads as follows:

Disposition of public lands for airline, aircraft, marine and maritime operations may be negotiated without regard to (the public notification/auction stipulation), (under certain conditions).

Because the State does intend to use the land in part for such operations, the Committee amendment would assure that any future disposition of the 202 acres will be governed by State law.

LEGISLATIVE HISTORY

S. 1318 was introduced on April 20, 1977, by Senator Matsunaga. The Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources held a hearing on the measure on September 22, 1977.

COST AND BUDGETARY CONSIDERATION

Enactment of S. 1318, as amended, would not result in any significant expenditure of Federal funds and would have no Federal budget impact.

REGULATORY IMPACT EVALUATION

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1318, as amended.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little if any additional paperwork would result from the enactment of S. 1318, as amended.

Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

LAND INTERESTS IN ADAMS COUNTY, MISS.

The bill (H.R. 1403) to authorize the Secretary of the Interior to convey the interest of the United States in certain lands in Adams County, Miss., notwithstanding a limitation in the Color-of-Title Act (45 Stat. 1069, as amended; 43 U.S.C. 1068), was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–517), explaining the purposes of the measure.

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

PURPOSE

H.R. 1403 would convey the interest of the United States in over 1,000 acres in Adams County, Miss., to Weathersby Godbold Carter, Jr., and Richard T. Harris III. The lands are described as section 28 township 5 north, range 2 west, Washington, Meridian, Adams County, Miss.

BACKGROUND AND SUMMARY OF PROVISIONS

Since the 1900's, the land in question was presumed to be a confirmed private land claim, title to which passed to the purported confirmee, pursuant to applicable law. However, a study of the plat and other available data does not show any clear corroboration that this private land claim was surveyed as section 28, or that a patent was ever issued therefor. Consequently, title is considered vested in the United States. The present claimants have expended considerable amounts of money in the purchase and improvement of this property, acting in good faith and without actual or record notice of any adverse claim by the United States.

The Color of Title Act, which established the basic policy in situations such as these, limits the amount of property which may be patented to 160 acres and further provides that consideration of not less than $1.25 per acre be received. The tract in question exceeds 1,000 acres. H.R. 1403 would remove the acreage limitations for purposes of this case and would permit the Secretary to process the application pursuant to the other requirements in the act. The Bureau of Land Management testified that there was enough information on hand to suggest the strong possibility that the beneficiaries of this bill would meet all the requirements for relief under the act, except for the 160-acre limitation on conveyance.

H.R. 1403 requires that application for conveyance be made within 1 year of the effective date of the bill.

Payment for the conveyance would be made according to the provisions of the Color of Title Act which provides for a minimum fee of $1.25 per acre, the exact amount to be determined by the Secretary after considering the equities.

Section 3 of the Color of Title Act provides that if the claimant requests that the patent not contain a mineral reservation and can establish that he or his predecessors have complied with the act for a period commencing not later than January 1, 1901, no mineral reservation shall be made unless the lands are, at the time of issuance of the patent, either within a mineral withdrawal or subject to an outstanding mineral lease.

About 980 acres are presently covered by an oil and gas lease with a primary term expiration date of September 30, 1982. There are two producing oil wells on it. If the current lessee does not relinquish the lease, and issuance of the patent proceeds in a routine fashion, there would be an outstanding mineral lease at the time of patent and the beneficiaries would be precluded from receiving the mineral interests under section 3 of the Color of Title Act. However, if through some unexpected occurrence, no lease was outstanding at that time, the beneficiaries could receive valuable mineral rights far in excess of what the Color of Title Act contemplates unless limiting provisions are included. Consequently, H.R. 1403 would reserve the mineral interest in the United States with the right of the Secretary to convey that interest only if the criteria of section 209 of the Federal Land Policy and Management Act of 1976 are met.

LEGISLATIVE HISTORY

In the 94th Congress a similar measure, H.R. 12575, passed the House of Representatives on September 23, 1976, but was not considered by the Senate.

H.R. 1403 passed the House on May 3, 1977. The Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources held a hearing on the measure on September 22, 1977.

COST AND BUDGET ACT COMPLIANCE

Enactment of H.R. 1403 would not result in any significant expenditure of Federal funds and would have no Federal Budget impact.

REGULATORY IMPACT EVALUATION

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1403.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little if any additional paperwork would result from the enactment of H.R. 1403.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

CONVEYANCE OF CERTAIN LANDS IN THE SIERRA NATIONAL FOREST, CALIF.

The bill (H.R. 2527) to authorize the Secretary of Agriculture to convey certain lands in the Sierra National Forest, Calif., to the Madera Cemetery District, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–518), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 2527 is to authorize the Secretary of Agriculture to convey a 20-acre tract in the Sierra National Forest, Calif., to the Madera Cemetery District.

BACKGROUND TO, AND NEED FOR, H.R. 2527

The 20-acre tract to be conveyed pursuant to H.R. 2527 has been used for burial purposes from as far back as 1890 when the land was homesteaded. The Forest Service has been issuing a special use permit to the Madera Cemetery District for 17.5 acres of the total 20-acre tract, Gravesites occupy about 10 acres of the land.

The 20-acre tract of land is isolated from other national forest system lands. The present and projected use of the land for cemetery purposes affords little opportunity for the furtherance of national forest system purposes. As landowners, the United States must bear the costs of administering the special land use permit. By transferring this 20-acre tract, the Forest Service would be relieved of the burden and expense of administering the special use permit.

SUMMARY OF PROVISION OF H.R. 2527

Section 1 authorizes the Secretary of Agriculture to convey all right, title, and interest of the United States in and to a 20-acre tract of land in the Sierra National Forest to the Madera Cemetery District, Calif. This section also provides the description as the south one-half of the northeast quarter of the northwest quarter of section 19, township 8 south, range 23 east, Mount Diablo meridian.

Section 2 reserves easements for existing facilities such as roads, telephone lines, pipelines, electric power transmission lines; and such easements for roads as the Secretary of Agriculture finds necessary to assure access to lands of the United States or to meet public needs.

Section 3 stipulates that the conveyance will only be made if the Madera Cemetery District makes payment for the tract of land within 1 year after the date of this act. The purchase price it to be fixed by the Secretary of Agriculture through appraisal or otherwise, after he takes into consideration the purpose for which the lands are to be used.

LEGISLATIVE HISTORY

In the 94th Congress, a similar measure, H.R. 2743, passed the House of Representatives, but was not considered by the Senate.

H.R. 2527 passed the House on May 2, 1977. The Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources held a hearing on the measure on September 22, 1977.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business meeting on October 10, 1977, by a unanimous voice vote of a quorum present, recommended that the Senate pass H.R. 2527, without amendment.

COST AND BUDGETARY CONSIDERATIONS

Enactment of H.R. 2527 would not result in any significant expenditure of Federal funds and would have no Federal budget impact.

REGULATORY IMPACT EVALUATION

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2527.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little if any additional paperwork would result from the enactment of H.R. 2527.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

CONVEYANCE OF CERTAIN LANDS IN THE WENATCHEE NATIONAL FOREST, WASH.

The bill (S. 2033) to provide for conveyance of certain lands in the Wenatchee National Forest, Wash., by the Secretary of Agriculture, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any requirement or limitation therein with respect to the location of lands that may be conveyed, the Secretary of Agriculture is authorized to convey as a townsite lands in the Wenatchee National Forest, Washington, known as the Liberty Townsite, pursuant to and in accordance with the provisions of the Act of July 31, 1958 (72 Stat. 438; 7 U.S.C. 1012a) as amended by section 213 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 3760).

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-519), explaining the purposes of the measure.

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

PURPOSE

S. 2033 would authorize the Secretary of Agriculture to convey as townsite lands 17.4 acres in the Wenatchee National Forest in the State of Washington.

BARKGROUND AND SUMMARY OF PROVISIONS

S. 2033 would remove an inequity created by the enactment of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 43 U.S.C. 1701). S. 2033 would permit the applicants for a townsite under a townsite law repealed by the 1976 act to complete their application under a still valid townsite law.

The now repealed trustee townsite laws (Revised Statutes 2387-2389, 43 U.S.C. 717-723 (1970 ed.)) provided that, in the case of an unincorporated entity, public lands occupied as a townsite could be entered by the judge of the county court at the minimum price of $1.25 per acre in trust for the benefit of the occupants. The disposal of the lots was to be conducted under the regulations of the State in which the land was located. The laws further provided that entry of the land shall be made, or a declaratory statement of the purpose of the inhabitants to enter the land as a townsite shall be filed with the officer of the proper land office. They also provided that no title to any valid mining claims could be acquired.

An application on behalf of the occupants of the unincorporated town of Liberty was filed on July 23, 1976, by a judge of the superior court of Kittitas County, Wash.

The Liberty townsite application included the declaratory statement of the judge, and alleged that the townsite had been in existence since 1883. The townsite is within a portion of the Wenatchee National Forest which was withdrawn for national forest purposes on March 2, 1907, by proclamation.

In 1893 a mining claim was staked covering part of the town. The claim was abandoned in the early 1900's and relocated in 1918 and renamed the "New Discovery". The Government contested the claim and the patent application was withdrawn. In 1966, one of the owners of the claim attempted to mine the area. The residents of Liberty refused to move, the matter went to the Washington State Supreme Court and the residents prevailed. In July 1976 a decision that the mining claim was null and void was reached by the Interior Board of Land Appeals, but a petition for reconsideration was filed.

On October 21, 1976, the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 43 U.S.C. 1701), section 703(a) of which repealed the townsite laws, became law before any action could be taken on the application of the townsite residents. On May 27, 1977, the Bureau of Land Management rejected the application of Liberty townsite on the basis that the townsite application is not a valid existing right under section 701 of the Federal Land Policy and Management Act. While section 701(h) of that act protects valid existing rights, the Bureau of Land Management determined the Liberty applicants had no rights to protect since mere filing of a declaratory statement neither constituted an entry of the lands nor created any right to a conveyance of the townsite. Appeal has been taken from the BLM decision and the case is now pending before the Interior Board of Land Appeals.

S. 2033 authorizes the Secretary of Agriculture to make the conveyance pursuant to the Act of July 31, 1958 (national forest townsite law), as amended by section 213 of the Federal Land Policy and Management Act which provides for conveyance of national forest lands at fair market value to meet community objectives if certain criteria are met. S. 2033 would merely waive certain requirements of this act to permit the Forest Service to convey the lands in question even though they are not "located adjacent to or contiguous to an established community" and even if it were found that they do not in fact comprise "a tract of national forest system land."

LEGISLATIVE HISTORY

S. 2033 was introduced on August 5, 1977, by Senator Jackson, for himself and Senator Magnuson. The Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources held a hearing on the measure on September 22, 1977.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business meeting on October 10, 1977, by a unanimous voice vote of a quorum present, recommended that the Senate pass S. 2033, without amendment.

COST AND BUDGETARY CONSIDERATION

Enactment of S. 2033 would not result in any significant expenditure of Federal funds and would have no Federal budget impact.

REGULATORY IMPACT EVALUATION

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2033.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little if any additional paperwork would result from the enactment of S. 2033.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

WHITE RIVER NATIONAL FOREST BOUNDARY, COLO.

The bill (S. 2101) to modify the boundary of the White River National Forest in the State of Colorado, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the exterior boundary of the White River National Forest in the State of Colorado is hereby modified to include the following described lands, containing 2,416 acres more or less:

(1) Township 10 south, range 85 west, sixth principal meridian:

Section 1, lots 1-7; and

(2) Township 10 south, range 84 west, sixth principal meridian:

Section 5: entire;

Section 6: north half, and southeast quarter except that part platted as a portion of the Red Mountain subdivision;

Section 7: east half of the east half, and that part of lot 27 outside the east half of the east half;

Section 8: entire;

Section 17: east half, north half of the northwest quarter, and lots 1, 3, and 6.

Section 18: that part of the northeast quarter of the northeast quarter bounded by M.S. 3905, 6120, and M.S. 6899.

SEC. 2. Subject to valid existing rights, all lands owned by the United States in the areas described in section 1 of this Act are hereby added to the White River National Forest, and shall be administered in accordance with the laws, rules, and regulations applicable thereto.

SEC. 3. For the purposes of section 7 of the Act of September 3, 1964 (78 Stat. 903, as amended; 16 U.S.C. 4601-9), the boundary of the White River National Forest, as modified by section 1 of this Act, shall be treated as if it were the boundary of that forest on January 1, 1965.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

CONVEYANCE OF CERTAIN PUBLIC AND ACQUIRED LANDS TO THE COUNTY OF MINERAL, NEV.

The Senate proceeded to consider the bill (H.R. 4979) to direct the Secretary of the Interior to convey certain public and acquired lands in the State of Nevada to the County of Mineral, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

That (a) the Secretary of the Interior, hereinafter referred to as the "Secretary", shall issue to the county of Mineral, State of Nevada, a patent or other instrument of conveyance for the land owned by the United States and comprising approximately two thousand six hundred and twenty acres described in this section, or any portion thereof, upon payment into the Treasury of the United States the appraised value of the parcel to be conveyed, plus the costs of appraisal, surveys and extinguishing adverse claims: *Provided,* That any of the land described in this section which remains unconveyed to the county of Mineral on and after five years from the date of approval of this Act shall no longer be subject to conveyance under this Act.

(b) The following described lands situated in the State of Nevada are hereby made subject to this Act:

(1) The west half of the northwest quarter of section 26, township 8 north, range 30 east; the part of the northwest quarter of the southwest quarter of section 26, town-

ship 8 north, range 30 east, that is south of the highway 95 right-of-way.

(2) The northwest quarter of the northeast quarter and the east half of the east half of section 25, township 8 north, range 29 east; all of sections 29 and 30, township 8 north, range 30 east; the north half of the southeast quarter of section 28, township 7 north, range 30 east.

(3) The part of section 21, township 7 north, range 30 east, that is west of Nevada State Highway Route 31; the north half of the northwest quarter and the southeast quarter of the northwest quarter of section 28, township 7 north, range 30 east; the part of the northeast quarter of section 28, township 7 north, range 30 east, that is west of Nevada State Highway Route 31; the part of section 27, township 7 north, range 30 east, that is west of Nevada State Highway Route 31; the east half of the northwest quarter and the north half of the southeast quarter of section 34, township 7 north, range 30 east; the part of the northeast quarter of section 34, township 7 north, range 30 east, that is west of Nevada State Highway Route 31; the part of section 35, township 7 north, range 30 east, that is west of Nevada State Highway Route 31.

SEC. 2. Upon receipt of a request from the county of Mineral, State of Nevada, for the purchase of a tract of the lands described in section 1, the Secretary shall cause the same to be appraised and, upon completion of such appraisal shall notify the county of Mineral of the appraised value of such tract and the county shall have six months from the date of such notice to complete the purchase of such tract by payment of the appraised value into the Treasury of the United States whereupon the Secretary shall issue a patent or other instrument conveying such tract to such county. Any such patent or other instrument of conveyance shall be issued in accordance with the provisions of section 208 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2757; 43 U.S.C. 1718); shall be subject to valid existing rights and easements of record; and shall contain any reservation necessary to protect use by the United States of real property owned by the United States that is adjacent to the tract conveyed. In addition, conveyance of section 29, township 8 north, range 30 east, shall be made only in accordance with the provisions of section 209 of the said Federal Land Policy and Management Act of 1976 (90 Stat. 2757; 43 U.S.C. 1719).

SEC. 3. All moneys received from the conveyance of lands under the terms of this Act shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received as reimbursement for costs of appraisal, surveys, and extinguishing adverse claims may be used by the Secretary for said purposes without appropriation.

SEC. 4. Subject to valid existing rights on the effective date of this Act, the lands described in section 1 which are subject to conveyance pursuant to this Act are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. Such withdrawal shall terminate automatically with respect to a particular tract upon conveyance of that tract pursuant to this Act. Such withdrawal shall terminate upon publication of an order in the Federal Register by the Secretary no sooner than five years from the effective date of this Act, with respect to any lands or interest remaining in the United States at the conclusion of such five-year period.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-522), explaining the purposes of the measure.

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

PURPOSE

H.R. 4979 would direct the Secretary of the Interior to convey for fair market value 2,540 acres of land within the jurisdiction of the Bureau of Land Management to Mineral County, Nev.

BACKGROUND

The 2,540 acres were withdrawn along with other lands by several Executive orders for exclusive use as a Naval Ammunition Depot at Hawthorne, Nev. On November 1, 1972, the Department of the Navy declared the subject property excess and requested that the lands be transferred to the Bureau of Land Management, subject to easements granted for a power distribution line and appurtenances, and rights-of-way for a service road. About three-quarters of the adjoining lands are in non-Federal ownership or in the withdrawn area still needed by the Navy Department. The subject lands are thus effectively isolated from other public lands. They may be difficult and uneconomic to manage if they are returned to BLM management. Moreover, there is no need for the lands for any BLM program.

The lands are wanted by the county of Mineral for resale to attract industrial and commercial business. A large portion of the employment in Mineral County was dependent upon the naval ammunition depot. In December 1972, total civilian employment at the naval depot was 1,515 workers; in March 1975, the total number of workers employed at the depot was 795, a loss of 720 jobs or 48 percent of the 1972 total. This trend in employment levels at the ammunition depot is expected to continue. Thus, Mineral County has a disciplined work force, an increasingly severe unemployment level, and no space on which to locate private employers, since 98 percent of the land in the county is federally owned.

H.R. 4979 would give Mineral County 5 years after the date of enactment in which to purchase portions of or all the parcels described in section 1. At the end of the 5-year period, any lands which were not conveyed would no longer be subject to conveyance under H.R. 4979.

Officials of Mineral County do not want to purchase all of the parcels at once as it would cause a financial hardship to pay for the entire 2,620 acres at one time. Under the bill, the county would submit a request for a parcel described in section 1, an appraisal for that specific tract would be prepared, and the county would have 6 months after notice of the appraisal to purchase the tract at the fair market value based on comparable land sales in Mineral County. By appraising each parcel as it is requested, the possibility of windfall profits to the county would be eliminated in the event the land value increases during the 5-year period. This also eases the financial burden for the county by allowing it to purchase the land over the 5-year period.

The U.S. Geological Survey indicates that the lands in this bill are without value for locatable or leasable minerals, except for section 29, township 8 north, range 30 east, which is prospectively valuable for sodium and potassium.

There is an existing easement which was granted to the Sierra Pacific Power Co. for a power distribution line and appurtenances on parcel A of the lands in question (see map attached to Interior report); and another powerline and service road in parcel C for which there is an existing right-of-way of record. The language contained in H.R. 4979 in section 2 would protect valid existing rights and easements of record.

At the Subcommittee on Public Lands and Resources hearing on H.R. 4979, the administration witness supported enactment of the measure, if amended in the manner discussed in the Department of the Interior report printed in the Executive communications section of this report. During the markup of the proposal, Senator Laxalt offered, and the committee accepted, the administration-suggested changes. The amendment in the nature of a substitute contains those and several technical changes.

The principle substantive changes provide a new withdrawal procedure in section 4, a reservation of interests necessary to protect use of adjacent Federal land in section 2, a requirement in section 2 that the section of land which is possibly mineralized be conveyed only subject to section 209 of the Federal Land Policy and Management Act (90 Stat. 2757, 43 U.S.C. 1719) concerning conveyance of mineral interests, and a requirement in section 1 that the county pay costs of appraisal, surveys and extinguishing adverse claims.

LEGISLATIVE HISTORY

A similar measure was passed by the House late last Congress. H.R. 4979 passed on August 1, 1977, and a hearing was held on the measure by the Public Lands and Resources Subcommittee of the Committee on Energy and Natural Resources on September 22, 1977. The counterpart proposal, S. 299, was introduced by Senators Cannon and Laxalt on January 18, 1977.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business meeting on October 10, 1977, by a unanimous voice vote of a quorum present, recommended that the Senate pass H.R. 4979, if amended as described herein.

COST AND BUDGETARY CONSIDERATIONS

Set forth below is an October 11, 1977, Congressional Budget Office cost estimate for H.R. 4979, as amended:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., October 11, 1977.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 4979, a bill to direct the Secretary of the Interior to convey certain public and acquired lands in the State of Nevada to the County of Mineral, Nev.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ROBERT A. LEVINE,
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE, OCTOBER 11, 1977

1. Bill number: H.R. 4979.

2. Bill title: A bill to direct the Secretary of the Interior to convey certain public and acquired lands in the State of Nevada to the county of Mineral, Nev.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, October 10, 1977.

4. Bill purpose: The bill directs the Secretary of the Interior to sell 2,620 acres to land to the county of Mineral, Nev., at fair market value, provided that any part which remains unsold after 5 years shall no longer be subject to conveyance under this act.

5. Cost estimate: The bill will result in additional revenues to the Government, estimated as follows:

[In thousands of dollars]

Fiscal year:	Estimated revenues
1978	40
1979	40
1980	40
1981	40
1982	40

6. Basis for estimate: Mineral County, Nev., wants to purchase this land for resale in order to attract business and development to the county and expand the community. The county wants to buy the entire 2,620 acres, but they will purchase the land as they can afford to, which will depend on how fast they can resell and get the money to purchase additional acreage. Thus they will probably buy in smaller parts over the 5-year. It is assumed that they will purchase an equal amount of acreage, 524 acres, in each year due to this money constraint. The land in question has not yet been appraised, but based on past appraisals in that area, the land will sell for approximately $80 per acre. Five percent of the revenue from the land sales will be allocated to the State and the remainder will go to the Treasury. The land values are not expected to inflate over the next 5 years. The outlays by the Government for the appraisal of the land will most likely be reimbursed by Mineral County in the same year, so there is no budget impact.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 20, 1977, CBO transmitted an estimate with identical cost figures to the House Committee on Interior and Insular Affairs. The Senate committee's technical amendments are unlikely to change the costs of this bill.

9. Estimate prepared by: Marilyn K. Moore (225-7760).

10. Estimate approved by:

C. G. NUCKOLS,
(For James L. Blum,
Assistant Director for Budget Analysis).

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

DISPOSITION OF CERTAIN RECREATIONAL DEMONSTRATION PROJECT LANDS BY THE STATE OF OKLAHOMA

The Senate proceeded to consider the bill (S. 920) relating to the disposition of certain recreational demonstration project lands by the State of Oklahoma, which had been reported from the Committee on Energy and Natural Resources with an amendment on page 3, beginning with line 10, strike through and including line 13, and insert the following:

(1) the fair market value, as determined by the Secretary of the Interior of the reversionary interest of the United States in the lands, as compensation for the release of any conditions providing for a reversion of title to the United States; and

(2) the administrative costs of issuance of the new deed: *Provided*, That such costs shall be paid to the agency which rendered the service, and deposited to the appropriation then current.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding section 3 of the Act entitled "An Act to authorize the disposition of recreational demonstration projects, and for other purposes", approved June 6, 1942 (56 Stat. 326; 16 U.S.C. 459t), the State of Oklahoma is hereby authorized to convey oil and gas mineral leases to the following described lands in Carter County, Oklahoma: those lands situated within the project designated and known as the Lake Murray Recreational Demonstration Area, said project lands being more particularly described in a quit-claim deed of the United States of America executed on February 1, 1943, by Harold L. Ickes, Secretary of the Interior approved on February 2, 1943, by Franklin D. Roosevelt, President of the United States, and recorded in book 186, pages 312 through 320 of the records of Carter County, Oklahoma. Any conditions providing for a reversion of title to the United States that may be contained in the conveyance of such lands by the United States to the State of Oklahoma are hereby released as to oil and gas exploration and development affecting the lands herein to be leased. The State of Oklahoma shall surrender the present deed of conveyance by the United States of the lands described in this Act and the United States shall issue a new deed to the State of Oklahoma for those lands, which new deed shall include oil and gas exploration and development as permitted uses of such lands: *Provided, however*, That it shall be a condition of such new deed that oil and gas exploration and development shall take place on the lands described in this Act only pursuant to plans which have been reviewed (such review to include preparation of a detailed statement of the type specified in section 2(a) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(c)), and approved by the Secretary of the Interior and which will assure that such exploration and development shall be carried out in a manner which to the maximum extent possible will assure the preservation of the natural, scenic, and recreational values of the demonstration area: *And provided further*, That the State of Oklahoma shall continue to use such lands in the Lake Murray Recreational Demonstration Area primarily for park, recreational, and conservation purposes.

SEC. 2. The issuance of the new deed described in section 1 of this Act shall take place only upon payment to the Secretary of the Interior by the State of Oklahoma of the following:

(1) the fair market value, as determined by the Secretary of the Interior of the reversionary interest of the United States in the lands, as compensation for the release of any conditions providing for a reversion of title to the United States; and

(2) the administrative costs of issuance of the new deed: *Provided*, That such costs shall be paid to the agency which rendered the service, and deposited to the appropriation then current.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-523), explaining the purposes of the measure.

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

PURPOSE

S. 920 would authorize the State of Oklahoma to convey oil and gas leases on some 2,257 acres of land situated within the project designated as the Lake Murray Recreational Demonstration Area.

BACKGROUND

The lands in question were acquired by the United States in the 1930's as part of a program of retiring submarginal agricultural land from the production, and were conveyed by quitclaim deed by the United States to the State of Oklahoma pursuant to the act of June 6, 1942 (16 U.S.C. 459t). The act authorized the Secretary of the Interior to convey or lease certain lands to the States or their political subdivisions, without consideration, for exclusive use for public park, recreational or conservation purposes. Although it is the present policy of the Congress and the Interior Department to reserve to the United States the mineral rights in any land conveyance of the type involved, in this particular conveyance to the State of Oklahoma no reservation of the mineral estate was made by the United States. The 1942 Act requires and the quitclaim deed contains a reverter which provides that any lands so conveyed or leased are subject to reversion to the United States if such lands are not used in compliance with the 1942 Act during a period of more than 3 years. The Solicitor's Office in the Interior Department has advised that the exclusive use restrictions on this land would exclude oil and gas development.

SUMMARY OF PROVISIONS AND COMMITTEE AMENDMENT

The purpose of S. 920 is to remove this legal impediment to oil and gas leasing of the lands. The State of Oklahoma would, however, be required to meet certain conditions. The existing deed of conveyance would be surrendered and a new deed issued by the United States which would allow for oil and gas exploration and development as a permissible use. Any oil and gas exploration and production would have to be accomplished pursuant to a plan (to include an environmental impact statement prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969) reviewed and approved by the Secretary of the Interior and which will assure, to the maximum extent possible, the preservation of the natural, scenic and recreational values of the Demonstration Area. S. 920 would require that the subject lands be continued to be used primarily for park, recreational and conservation purposes. The State of Oklahoma would be required to pay the administrative costs associated with issuance of the new deed.

At the September 22, 1977, hearing on S. 920, the Administration witness testified in favor of enactment of S. 920, if amended to provide for payment of fair market value for the reversionary interest. During the October 1977, markup of S. 920, Senator Bartlett offered, and the Committee on Energy and Natural Resources accepted, the amendment suggested by the administration.

LEGISLATIVE HISTORY

S. 920 was introduced on March 4, 1977, by Senator Bartlett. The Subcomittee on Public Lands and Resources of the Committee on Energy and Natural Resources held a hearing on the measure on September 22, 1977.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business meeting on October 10, 1977, by a rollcall vote of a quorum present, recommended that the Senate pass S. 920 if amended as described herein.

COST AND BUDGETARY CONSIDERATION

Enactment of S. 920, as amended, would not result in any significant expenditure of Federal funds and would have no Federal Budget impact.

REGULATORY IMPACT EVALUATION

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 920, as amended.

The bill is not a regulatory measure in the sense of imposing Government-estab-

lished standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little if any additional paperwork would result from the enactment of S. 920, as amended.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

UNANIMOUS CONSENT CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are certain measures on the General Orders Calendar that have been cleared for action by unanimous consent. The distinguished minority leader and I have consulted about these. I ask that the clerk transfer the following Calendar Orders Nos. 485 through 489, inclusive, to the Unanimous Consent Calendar.

The ACTING PRESIDENT pro tempore. The measures will be so transferred.

AUTHORITY FOR THE SECRETARY OF THE SENATE TO MAKE TECHNICAL AND CLERICAL CORRECTIONS—S. 920

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 920.

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

ENERGY PRODUCTION AND CONSERVATION TAX INCENTIVE ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the unfinished business, H.R. 5263, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5263) to suspend until the close of June 30, 1980, the duty on certain bicycle parts.

The Senate resumed the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 10:05 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 9:35 a.m., recessed until 10:05 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. RIEGLE).

ENERGY PRODUCTION AND CONSERVATION TAX INCENTIVE ACT

The Senate continued with the consideration of H.R. 5263.

Mr. BAKER. Mr. President, most of the principals involved in the pending matter are in conference in an effort to expedite the proceedings of the Senate. With that in view, the majority leader and I have determined the best course of action at this point would be to recess once again so those conferences can continue. I think it would expedite the proceedings of the Senate today on this matter if we were to recess.

RECESS UNTIL 11:06 A.M.

I therefore ask unanimous consent that the Senate stand in recess for a period of 1 hour.

There being no objection, the Senate, at 10:06 a.m., recessed until 11:06 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. DECONCINI).

LEGISLATIVE PROGRAM

Mr. ROBERT C. BYRD. Mr. President, some few days ago I stated that it was the intention of the leadership to finish the energy tax bill, to work on the energy tax bill today and, if that cannot be completed today, then the Senate would be in tomorrow.

I should like to state now, and I shall yield shortly to the distinguished minority leader for his comments, that it is the intention of the leadership to finish this bill today if at all possible. This means we can be in session until 11 o'clock tonight, or midnight. If we are unable to finish it then, we will be in tomorrow, and Saturday will be a long day, in an effort to complete action on this bill.

There are other matters that have to be taken up. I would hope we would be able to complete action on the social security financing bill, on the supplemental appropriation bill, and on the Al-Can pipeline bill. These constitute an ample platter to demand our full attention next week, and it is my hope, as I have said heretofore, that the Senate can complete its floor work on those measures before the close of business Saturday a week from tomorrow.

To do that, we just have to complete action on this bill this week. So the leadership hopes that the cloakrooms will so notify the offices of Senators, to expect a long day today, because it is our determination to complete action on this bill today, and if not today then tomorrow; and the more we get done today the less we will have to do tomorrow.

I now yield to the distinguished minority leader.

Mr. BAKER. Mr. President, I thank the majority leader for yielding. I am sure I am no happier than anyone else to entertain the prospect of a late session today or a session tomorrow, but I agree that under the circumstances it is necessary.

I think we also ought to understand that this is not going to produce a slackened workweek next week. For instance, I am convinced that Monday will in fact be a busy day, and that next week will be a relatively busy week.

I think, Mr. President, that I need not repeat what I have said on this floor previously, except in brief form: I am not among those who think we cannot pass a bill. I think we can pass an energy package. I am aware of the fact that I am probably not going to like the bill that finally comes out of conference. I rather suspect that President Carter may not like the bill that finally comes out of conference either. But I think we have an obligation to do our best, and to do it as promptly as possible, because I think there is a serious, indeed a grave energy crisis in prospect.

We ought to be in late today and finish this bill as soon as we can and get it to conference. When it comes back from conference, we all reserve our rights. We may not like the bill that comes back from conference, but I think this is our best chance, and a better chance than any other I have seen.

Mr. President, I join the majority leader in suggesting that this is the appropriate schedule for the Senate. As much as I hate to say so and as much personal inconvenience I know it will cause many Senators, I do believe it is necessary.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader.

By way of a postscript, I think I should state that it is imperative, in my judgment, that from this time forward many necessary measures be completed by the close of business Saturday a week. Otherwise, the conferees are constantly harassed in their efforts to work out final bills in conference dealing with energy—and we already have four measures in conference dealing with energy—and there are measures in conference which deal with other matters. As long as the conferees have to stop their work and run back and forth to answer quorum calls, rollcalls, by either House or both Houses, they cannot complete their work in conference.

This is, I think, a demanding reason as to why we should endeavor to complete our work by Saturday a week, so that those conferees can spend their full time in conference to complete action on measures there before we adjourn for this session.

With all that in mind, I believe it is absolutely imperative that we complete action on this bill this week. I join with the distinguished minority leader in his comments.

Nobody is completely satisfied with this bill, but the Finance Committee did its best and I believe it should be commended for bringing out a bill under the circumstances. The bottom line is that the final bill will be molded, at least as far as its finishing touches are concerned, in the conference. That is always the way we operate. The differences between the two Houses are resolved in conference. But Senators have to get to the conference and they have to have time which is uninterrupted to deal with the very complex, complicated, and controversial questions. As long as they are

having to run back to the floor of the two Houses they cannot get their work done.

The minority leader and I and the managers of the bill on both sides are trying to look ahead down the road to the problems and attempting, in association, to work in the way that we can best consummate our work and fulfill our responsibilities to the American people by enacting an energy package and putting it on the President's desk. That is our responsibility. We are derelict in our responsibility if we do not do that.

I thank the distinguished minority leader and the ranking Members on that side of the aisle for the fine cooperation we have had and are having in attempting to finalize action on this measure this week.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

UP AMENDMENT NO. 984

Mr. DECONCINI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI), for himself, Mr. GOLDWATER, Mr. HART, Mr. HAYAKAWA, and Mr. BENTSEN, proposes an unprinted amendment numbered 984.

On page 11, line 12, strike "or"

On page 11 between lines 12 and 13, insert the following: "(xi) an evaporative cooling device, or

On page 11, line 13, strike "(xi)" and insert in lieu thereof "(xii)"

Mr. DECONCINI. Mr. President, this amendment is in behalf of myself, Senator GOLDWATER, Senator HART, Senator HAYAKAWA, and Senator BENTSEN. The amendment does several things.

Mr. President, conservation of energy lies ultimately with the individual: His residence; his method of transportation; and his choice of recreation. Of these, the most important is the residence. The average citizen of the United States spends 80 to 90 percent of his time inside a building, and the family residence is occupied at least three quarters of the day.

The residential energy credits, as contained in both the House bill and the bill reported by the Finance Committee, have not been controversial, but I believe this lack of controversy does not diminish their importance; perhaps it underscores it. I think we all agree that the principle of offering a tax credit to achieve a generalized social goal can be self-defeating if misdirected. However, if a limited tax credit is directed at a specific, quantified, energy objective, the tax credit can be an effective tool to reduce energy consumption voluntarily.

In reviewing the energy-conserving components now listed in the bill, I have become aware, along with many of my western colleagues, that there are possibilities for great energy savings not addressed in the pending legislation.

In many areas of the country, especially the 11 Western States, energy consumption is often much greater in home cooling than that consumed in residential heating. The amendment we are offering will include a component that could contribute to a significant annual energy savings. This component is the evaporative air cooler.

Evaporative coolers use the ancient and simply efficient principle of natural cooling. Water is pumped over pads of straw or shredded aspen. Fresh air, drawn by a blower is cooled and filtered as it flows through the pads and then through the house. Because of the simple design, Mr. President, the coolers are comparatively inexpensive and have low operating and repair costs.

A recent study focused on residential cooling in the 11 Western States. It was determined that 32 million people, occupying 8 to 9 million residences, do, or could, utilize evaporative coolers. It was further determined that approximately 50 percent of these residences have some form of cooling system. Of this 50 percent, about two-thirds or 3 million residences have air-conditioning, and only one-third or 1.5 million homes have evaporative air coolers.

This preliminary study of energy savings with the evaporative air cooler was conducted by Gordian Associates, Inc., of New York. Its major finding is that because the evaporative cooler is powered by a one-half horsepower motor and consumes about one-fourth the kilowatts of an air-conditioner, it contributes a 70 to 75 percent energy savings per site. Currently operating evaporative coolers save roughly 6 million barrels of oil per year. If just half of the potential users switched to an evaporative cooler, 18 million barrels of oil a year would be saved.

Historically, because of the low cost of electricity and the climate conditions of the West, home insulation has been underutilized, and is often totally inadequate. It is estimated that 48 percent of those below the poverty level live in houses with little or no insulation, and would benefit from the low cost cooling. And although the Western States have only 20 percent of the country's population, 30 percent of all mobile homes are located in the West. Mr. President, a great percentage of mobile home residents are retirees, are on a fixed income, or otherwise subsist on a low income. Evaporative coolers are ideally suited for the low cost cooling of mobile homes, which are very susceptible to the summer heat.

And although the Gordian study was limited to the Western States, manufacturers indicate a large potential for energy savings throughout the United States.

In concluding, Mr. President, I would like to commend the distinguished floor manager for his efforts to bring a legislative proposal to the Senate floor, and for his willingness to consider those amendments that will ultimately bring the Members of the Senate closer to an agreement on this difficult but crucially important legislation.

Mr. HART. Will the Senator yield?

Mr. DECONCINI. In one moment.

I ask unanimous consent at this time to have printed in the RECORD a statement from the Senator from California, Mr. HAYAKAWA.

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

STATEMENT BY SENATOR HAYAKAWA

I am pleased to join as a cosponsor of this amendment which would include evaporative coolers as energy conserving devices.

One of the purposes of the bill we are debating is to encourage the installation of energy-conserving components in or on a taxpayers residence. However, the bill specifically encourages only those components which increase the efficiency of home heating systems.

In the Southwest United States over half the energy expended in homes is used for cooling rather than heating. When temperatures rise as high as 115 degrees this cooling is a necessity, not a luxury.

As my distinguished colleague from Arizona pointed out, Gordian Associates, Inc. of New York recently completed a study evaluating the energy and cost effectiveness of evaporative air cooling in comparison to electric heat pumps and mechanical air conditioning for residential buildings in the Western United States.

The results showed that the evaporative cooler conserved about 68–74% of the electricity and saved two-thirds of the energy cost in comparison to the heat pump and conventional air conditioner.

In addition, evaporative coolers presently installed in the Western United States are estimated to save approximately six million barrels fuel oil equivalent per year in comparison to alternative cooling systems. If 50% of the remaining estimated residential cooling market in those states where evaporative cooling technology is applicable, installed evaporative coolers savings would amount to 18 million barrels per year.

The Lawrence Berkeley Laboratory in California reached basically the same conclusions as the Gordian study. They also found that energy conservation advantages of evaporative coolers further increase in homes with poor insulation. This clearly benefits low income families who traditionally have the least effective insulation.

This is a simple amendment which clearly encourages energy conservation. Therefore, I hope the distinguished floor managers will accept it.

Mr. HART. Will the Senator yield?

Mr. DECONCINI. I yield to the Senator from Colorado.

Mr. HART. As cosponsor of this amendment I thank the Senator from Arizona for bringing this matter to the attention of Senators. It does capitalize on a natural phenomenon of our part of the world, and that is the arid, dry nature of the climate, and seeks to use that natural phenomenon as a means of conserving energy. That is the kind of thinking the Congress has to engage in if we are to solve the energy problem.

This measure obviously will not solve that problem by itself, but it is through a series of steps which seek to reverse the trend created in this country over the past several decades of cheap energy which will have the greatest impact on our total overall consumption of energy in this country, and reverse the very serious difficulties in which we find ourselves as a result of the wasteful decades in which we have all participated.

I believe the Senator has brought a small but very important measure before us. I support him wholeheartedly. I hope the distinguished floor manager accepts this amendment. I believe it will make a great deal of difference in our part of the country in energy consumption.

Mr. DECONCINI. I thank the Senator from Colorado.

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

Mr. LONG. Mr. President, the Senator's amendment will add an additional item to the residential tax credit. It is one that had not been considered by the committee. It obviously has merit, and I am pleased to take the amendment to conference and ask that it be considered along with the other provisions involving the same residential question.

Mr. DECONCINI. I thank the Senator from Louisiana.

Mr. HART. Mr. President, I favor the amendment to give incentives for evaporative cooling devices—rather than have households invest in the usual refrigeration type of air conditioner.

Evaporative cooling devices can save substantial amounts of energy in parts of the country where there is a lot of dry heat. In Denver, Colo., the average humidity is below 30 percent virtually all the time when the temperature is over 90 degrees. These climatic conditions are particularly appropriate for using evaporative coolers.

The energy savings from using evaporative coolers can amount to 81 percent when they are used in an insulated house.

When used in an uninsulated house the energy savings are even greater, they are 87 percent.

In hot climates the cost savings are in the range of $75 per summer when these devices are used in an insulated house; and are about $180 when used in an uninsulated house.

This amendment will not only save energy, but it will help lower income people, who tend to live now in uninsulated houses and trailers, to save both energy and money.

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

The amendment was agreed to.

AMENDMENT NO. 1526

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, I call up at this time amendment No. 1526.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. GARN) proposes an amendment numbered 1526.

Mr. GARN. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 5, line 23, replace the period with a comma, and insert the following: "plus,

"(3) the qualified hydrogen energy expenditures.".

On page 6, line 16, add a new subsection (3) as follows, and renumber subsequent subsections accordingly:

"(3) HYDROGEN ENERGY.—In the case of any dwelling unit, the qualified hydrogen energy expenditures are 20 percent of so much of the hydrogen energy expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $2,000.".

On page 9, line 17, insert the following subsection (3), and renumber subsequent subsections accordingly:

"(3) HYDROGEN ENERGY EXPENDITURES.—

"(A) IN GENERAL.—The term 'hydrogen energy expenditures' means an expenditure made on or after April 20, 1977, by the taxpayer for hydrogen energy property and installation installed in connection with a dwelling unit—

"(i) which is located in the United States, the Virgin Islands, or Guam, and

"(ii) which is used by the taxpayer as his principal residence.

"(B) ITEMS INCLUDED.—The term 'hydrogen energy expenditures' includes only expenditures for—

"(i) hydrogen energy property,

"(ii) labor costs properly allocable to the onsite preparation, assembly, or installation of hydrogen energy property, or to the modification of conventional property for the use of hydrogen as a fuel.".

On page 12, line 17, add the following: "or in the production of electricity,".

On page 12, line 19, following the word "dential," add the words "or transportation".

On page 13, line 13, add a new subsection (6) as follows, and renumber subsequent subsections accordingly:

"(6) HYDROGEN ENERGY PROPERTY.—The term 'hydrogen energy property' means property—

"(A) which, when installed in connection with a dwelling—

"(i) uses hydrogen as a fuel for the purpose of heating or cooling such dwelling or providing hot water for use within such dwelling, or

"(ii) is used in the electrolysis of water for the production of hydrogen,

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 5 years, and

"(D) which meets the performance and quality standards, if any, which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the property.".

Mr. GARN. Mr. President, this amendment is very simple. Essentially, what it does is provide equal treatment to one of the cleanest forms of energy available to the American public. I am speaking of hydrogen energy.

In the bill as it stands before us, a tax credit is provided for homeowners who install energy conserving devices and materials or devices which use renewable energy sources. The purpose of this provision is to encourage the shift away from home heating and cooling by oil and natural gas, and the substitution of cleaner, more plentiful and more efficient energy sources.

Hydrogen is cleaner and more plentiful and since it can be made from coal, as a byproduct of oil refining, and from common water, it is as plentiful a fuel as exists. My amendments would encourage its use in the heating and cooling of homes, and in powering automobiles.

The technology for the use of hydrogen is available. What is not available is a reliable source of bulk hydrogen. Potential producers of such hydrogen need the same kind of encouragement that we are providing for the producers of solar equipment, and the flue dampers and so on, that can conserve scarce energy. In fact, hydrogen can be used in connection with these other forms of energy conservation.

The amendment would simply provide the same tax credit of 20 percent of the first $2,000 for the installation of hydrogen equipment that we are providing for energy conservation installation. As with that credit, if homeowners do not install this equipment there will be no revenue loss. If they do install it, the country will get the advantage of fuel savings, and a cleaner environment. Since there are very few bulk producers of hydrogen right now, and revenue loss would be extremely small to begin with, and would increase as hydrogen heating and cooling increased in popularity.

The amendment provides the credit against the expense of buying and installing water heaters, furnaces, heat pumps and so on that use hydrogen as a fuel, or for converting existing units to hydrogen combustion.

Mr. LONG. Mr. President, this amendment deserves to be considered by Congress. It was not raised in the committee, but it is very much in line with other things that were done in the committee. I hope that the Senate will agree to it so that we can take it to conference and consider it there.

Mr. CURTIS. If the Senator will yield I concur with the distinguished chairman of the committee.

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

The amendment was agreed to.

UP AMENDMENT NO. 985

Mr. GARN. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read as follows:

The Senator from Utah (Mr. GARN) proposes unprinted amendment numbered 985.

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

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

The amendment is as follows:

On page 42, line 8, insert after the word "electric" the words "or hydrogen".

On page 42, line 12, strike the words "motor vehicle" and insert the following: "or hydrogen motor vehicle, or the cost of converting a gasoline-powered vehicle to the use of hydrogen".

On page 42, line 24, insert before "motor vehicle" the words "or hydrogen".

On page 43, line 16, add "or which uses hydrogen as a fuel,".

On page 43, line 23, insert following the word "electric" the words "or hydrogen".

Mr. GARN. Mr. President, this amendment relates to the use of hydrogen in transportation. The bill before us provides a $300 tax credit for the purchase of an electric vehicle. My amendment would provide a similar credit for purchase of a hydrogen-powered vehicle, or for the conversion of a gasoline-powered vehicle to hydrogen.

Hydrogen technology for automobiles is already well advanced. It is possible right now for the individual homeowner to use his house current to produce hydrogen for a personal automobile.

Unfortunately, hydrogen produced in that way is relatively expensive; it compares to $4 per gallon for gasoline. In order to make hydrogen a viable technology, a mass market needs to be created which will make it profitable for oil refiners, coal gasifiers, and so on, to provide the stable bulk supplies of hydrogen that are needed. At that point, hydrogen will compare with gasoline at about 17 cents per gallon, according to a study by Battelle Institute. Other estimates are slightly higher, but all are well below current prices of gasoline, and certainly below what we can expect in the future.

In this matter, Mr. President, I am not asking for special treatment. The bill provides a credit for electric vehicles. All I am saying is that hydrogen should be treated in the same way. The technologies are at a similar stage of development, and it is unwise for us to substitute our wisdom for that of the marketplace. Let us treat both forms equally.

Right now a hydrogen car costs about $10,000. These are prototypes, and the cost will come down radically in a few years. The credit in this bill phases out in 1985.

Within about 2 years, there will be a conversion kit on the market for about $700. The hydrogen engine is considerably more efficient than gasoline. The weight of the tank is an argument against it. But still, even with the weight of a hydrogen tank, it is more efficient than a gasoline engine.

Hydrogen is safer than gasoline.

I make some personal references to the fact that a young engineer in Provo, Utah, has developed a hydride process for utilizing hydrogen in automobiles. He has converted several automobiles that have been driven for 2 or 3 years on hydrogen. He has had a bus that was converted to hydrogen energy operating in the Provo municipal system for the last couple of years. Last year, he drove one of his buses to Washington and had it on display here.

This is something that is not far into the future. Hydrogen technology is available. All I am asking in this amendment is that the tax credit be the same for hydrogen as it would for some of the others, such as electric cars.

Mr. TALMADGE. Will the Senator yield?

Mr. GARN. Yes.

Mr. TALMADGE. I have examined the Senator's amendment. The bill already provides a tax credit for electric motor vehicles. The Senator's amendment would be broadening the amendment of the Committee on Finance. It provides another alternative to imported fuel. As far as the Senator from Georgia is concerned, I am prepared to take it to conference.

Mr. CURTIS. Will the Senator yield?

Mr. TALMADGE. I yield.

Mr. CURTIS. I concur with the distinguished manager of the bill.

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

The amendment was agreed to.

UP AMENDMENT NO. 986

Mr. GARN. Mr. President, I send one more unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. GARN) proposes unprinted amendment No. 986.

Mr. GARN. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 90, line 9, insert following the word "shale" the words "or tar sands".

On page 90, line 10, following the word "shale" insert the words "or tar sands".

On page 91, line 12, following the words "'oil shale'," insert the words "'tar sands',".

On page 91, line 19, following the words "'oil shale property'" a comma and the words "'tar sands property',".

Mr. TALMADGE. Mr. President, as I understand, the Senator from Utah proposes to add a tax credit for the development of petroleum from tar sands as well as oil shale. I was the principal author of the amendment on oil shale. I concur fully that it meets the standard that the Senate Finance Committee considered when it considered alternative sources of fuel. I think that oil shale offers tremendous potential for the development of petroleum in this country. I am prepared to take it to conference.

Mr. GARN. I appreciate that.

Mr. CURTIS. Mr. President, I think it is a good addition and should be accepted.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. The Senator from Colorado intends, at an appropriate time, to move to strike portions of the bill providing tax credits for oil shale development. The Senator from Colorado merely wants to determine that it will be in order to modify his amendment to accommodate this change if, in fact, the tar sands are accepted.

The amendment is at the desk. It is amendment 1520. I have no objection to this amendment. I just want to make sure it will not prejudice my amendment.

The PRESIDING OFFICER. One provision of the Senator's amendment would not be in order if this amendment is agreed to; namely, the provision on page 2, lines 10 and 11.

Mr. HART. But it would be in order for the Senator from Colorado to seek unanimous consent to attempt to modify?

The PRESIDING OFFICER. Yes, it would be.

Mr. HART. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah.

The amendment was agreed to.

UP AMENDMENT NO. 987

Mr. SCHMITT. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. SCHMITT) proposes an unprinted amendment numbered 987, as follows:

On page 73, line 12, insert the following: after "industrial": "(including water purification or desalinization)"

Mr. SCHMITT. Mr. President, it is important to recognize that the term "cogeneration" should not be defined in an overly restrictive manner.

Mr. TALMADGE. Will the Senator yield?

Mr. SCHMITT. I am happy to.

Mr. TALMADGE. I think what the Senator's amendment does is clarify language already in the Finance Committee bill. We think it is already included and we certainly have no objection to the Senator's amendment and are prepared to take it.

Mr. SCHMITT. I appreciate that very much.

I think it is important to note very briefly that the problem of water purification is an important problem in the Southwestern United States. It is a growing problem throughout the country, and this amendment would recognize that problem and also recognize the use of waste heat is one of the hopes we have in solving our growing need for fresh water, providing for those needs.

There are so many possible applications for waste heat that it would be a fruitless effort for us to try to list each one. For that reason the committee has, on page 73 of the bill, listed major areas where cogeneration would yield important energy savings.

I believe that the purification and desalinization of water is important enough to be among those applications listed. The future need for pure, fresh water and the fact that waste heat would be easily and directly applied to this need make this all the more attractive to those of us facing potentially severe water problems in the future. The Southwest and the more arid coastal regions can vastly improve their water situations by desalting their ample supplies of brackish or salty water. Our large population centers will continue to be plagued by the problems of maintaining high water purity in an environment beset by the polluting agents of man in a growing society. Cogeneration can be an answer to these two problems. I urge my colleagues to demonstrate our foresight in recognizing water as the national problem it indeed will be within the next decade.

The Southwestern United States has tremendous supplies of brackish or salty water underground. We hope someday in the not-too-distant future to be able to utilize that, and the use of waste heat may well be the answer.

I appreciate the committee's willingness to accept this clarification.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment was agreed to.

UP AMENDMENT NO. 988

Mr. SCHMITT. Mr. President, I send another unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. SCHMITT) proposes an unprinted amendment numbered 988.

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

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

The amendment is as follows:

On page 61, line 23, insert the following: Delete "(M) any other property of a kind specified by the Secretary by regulation," and add

"(M) a fuel cell, gas turbine, or external combustion engine which the Secretary determines to have a fuel efficiency such that the device would have significant energy savings.

"(N) any other property of a kind specified by the Secretary by regulations."

Mr. SCHMITT. Mr. President, it is difficult for any of us to envision a day when oil and gas are not the basis for our energy economy.

However, we are trying to do so.

I commend Senator GARN for his emphasis in his amendments on the material hydrogen, or the molecule hydrogen, and for the great potential that that element has in the future as our primary fuel. Perhaps in the next century or so we will see oil and gas as much a novelty as hydrogen is today, used only in a small number of unusual or specialty applications. But until that future time, they will remain the lifeblood of our industrialized Nation and of our industrialized societies.

For that reason I believe it is equally important to encourage highly efficient use of oil and gas, for those applications which have no near- or mid-term substitutes, as it is to encourage replacement where substitutes are available, and development of alternative energy.

Mr. TALMADGE. Will the Senator yield?

Mr. SCHMITT. I am happy to.

Mr. TALMADGE. Mr. President, I have examined the Senator's amendment. It adds an additional item for the 10-percent investment tax credit, fuel cell, gas turbine, or external combustion engine which the Secretary determines to have a fuel efficiency such that it would have significant energy savings.

It is in line with other items that we have already included in the bill. I personally think it is already included in the bill, but, in order to make certain, I am prepared to take it to conference.

Mr. SCHMITT. I appreciate the committee's desire on this point.

Currently the bill provides for a 40-percent investment credit when new nonoil and gas burning equipment is purchased. The amendment I have offered will provide a 10-percent credit incentive for capital investments in equipment which is substantially more efficient in its use of oil and gas.

It is important to understand that the increase in efficiency, as required in the amendment, should be a significant engineering improvement. For example, electrical generators used for load peaking are often gas turbines which have an average efficiency of about 25 percent. This amendment would offer an investment incentive to utilities which purchase oil and gas burning equipment having an efficiency of perhaps, 35 percent or greater. In areas where environmental air quality will not permit a shift to coal, utilities could apply, again under this amendment, for an investment credit for a 43-percent efficient fuel cell or a 37-percent efficient advanced design high temperature turbine.

I urge my colleagues to accept this amendment because it will provide a new burst of support for the small developing companies as well as large which provide innovation in our economic system. We need imaginative new ideas for the best utilization of our dwindling oil and gas reserves, just as much as we need them to shift to renewable sources of energy.

The PRESIDING OFFICER. The Senator's language in his amendment attempts to put language on an amendment that was adopted yesterday. Senator PERCY's amendment. Is it the intent of the Senator to now strike that language?

Mr. SCHMITT. Mr. President, in order that we may examine——

The PRESIDING OFFICER. It would take unanimous consent to do that.

Mr. SCHMITT. I would hesitate to do that until we see exactly what the Chair is referring to, so perhaps we can lay this aside temporarily until that is done.

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

The amendment will be laid aside and the Senator from New Mexico is recognized for an additional amendment.

UP AMENDMENT NO. 989

Mr. SCHMITT. Mr. President, I have a third unprinted amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. SCHMITT) proposes an unprinted amendment numbered 989:

On page 43, line 10, delete: "4-wheeled".

Mr. SCHMITT. Mr. President, I think this, very obviously, is a simple amendment. The main purpose is to not exclusively limit the development of battery-powered or electrical to four-wheel vehicles.

Mr. President, in studying the provisions of H.R. 5263 and its accompanying report, I was surprised to note that only "four-wheeled" electric vehicles would be eligible for the tax credit of section 1028. That particular restriction seems unnecessarily narrow. There could well be a number of applications in which a three-wheeled vehicle might be more appropriate or cheaper. Given the signals in this bill, however, we would end up with a lot of inappropriate or expensive four-wheeled vehicles.

I would like to suggest, therefore, that we delete the requirement for vehicles to be "four-wheeled" and express more directly classes of vehicles which would not be eligible for the credit.

The language in the bill, I believe, already prevents any undue advantage being taken of this measure in that some fear golf carts and other light vehicles might come under the provisions. That has been adequately taken care of by the bill language.

I think it is important to recognize that light weight is one of the most important features of battery-powered cars and three-wheeled vehicles.

Mr. TALMADGE. Will the Senator yield?

Mr. SCHMITT. I am happy to.

Mr. TALMADGE. I understand the Senator's amendment is to authorize tax credit for electrical vehicles, even if they do not have four wheels.

Mr. SCHMITT. Yes.

Mr. TALMADGE. I have no objection and am prepared to take it to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment was agreed to.

UP AMENDMENT NO. 988

The PRESIDING OFFICER. The Senator's amendment that was laid aside has been modified by the staff of the Finance Committee and the amendment now is in order, if the Senator would like to return to it.

Mr. SCHMITT. Yes, I would like to return to that amendment.

The amendment, as modified, is as follows:

On page 61, after line 24, insert the following:

(O) a fuel cell, gas turbine, or external combustion engine which the Secretary determines to have a fuel efficiency such that the device would have significant energy savings.

Mr. TALMADGE. Mr. President, I repeat, I am prepared to take it to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment, as modified, was agreed to.

Mr. SCHMITT. Mr. President, that is the completion of my amendments. I thank the committee for their indulgence.

UP AMENDMENT NO. 990

(Purpose: To permit extension of gasoline tax whether or not tax incentives are finally adopted as part of the bill.)

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an unprinted amendment numbered 990.

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

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

The amendment is as follows:

On page 96, line 9, after the word "tax" insert the following: "(other than the tax imposed by Section 1021 of this Act (relating to tax on gasoline))."

Mr. BUMPERS. Mr. President, I have cleared this amendment with the managers of the bill, but for the record, it is a very simple proposition.

The first sentence of section 1054 is unclear as to whether or not the extension of the 4 cent gasoline tax would be included in those taxes that could be used for incentive purposes as tax expenditures.

Mr. TALMADGE. Mr. President, I am glad to take the amendment of the Senator from Arkansas to conference, because that was not the intention of this language.

Mr. BUMPERS. I feel sure the language was not clear, and that was the purpose of the amendment.

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

The amendment was agreed to.

The PRESIDING OFFICER. What is the pleasure of the Senate?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. TALMADGE. 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. JACKSON. Mr. President, I thank the Senator from Georgia.

ENDANGERED PUBLIC LANDS

Mr. JACKSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 3454.

The PRESIDING OFFICER. (Mr. GRAVEL) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 3454) to designate certain endangered public lands for preservation as wilderness, to provide for the study of additional endangered public lands for such designation, to further the purposes of the Wilderness Act of 1964, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. JACKSON. I move that the Senate insist upon its amendments and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. JACKSON, Mr. CHURCH, Mr. METCALF, Mr. ABOUREZK, Mr. MATSUNAGA, Mr. HANSEN, Mr. HATFIELD, and Mr. MCCLURE conferees on the part of the Senate.

ENERGY PRODUCTION AND CONSERVATION TAX INCENTIVE ACT

The Senate continued with the consideration of the bill (H.R. 5263).

Mr. TALMADGE. 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. TALMADGE. 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. TALMADGE. Mr. President, I ask unanimous consent to temporarily lay the pending matter aside.

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

SCHOOL LUNCH PROGRAM—CONFERENCE REPORT

Mr. TALMADGE. Mr. President, I submit a report of the committee of conference on H.R. 1139 and ask for its immediate consideration.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the conference report is fully cleared, and we are ready to proceed with it at this time. We have no objection to laying aside the pending question for that purpose.

The PRESIDING OFFICER. The report will be stated.

The 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. 1139) to amend the National School Lunch Act and the Child Nutrition Act of 1966 to revise and extend the summer food service program for children, to revise the nonfood assistance program, 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 all 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 October 14, 1977.)

Mr. TALMADGE. Mr. President, H.R. 1139 makes important changes in the National School Lunch Act and the Child Nutrition Act of 1966. Under these acts, programs have been developed to improve the health and well-being of our Nation's children.

As amended by the committee of conference, the major provisions of H.R. 1139 would—

First, extend the summer food service program for children through September 30, 1980, with needed changes designed to eliminate abuses of the program and otherwise strengthen the administration of the program;

Second, extend through September 30, 1982, the authority of the Secretary of Agriculture to purchase agricultural commodities for donation to the child nutrition programs when acquisitions under other agricultural authorities are not available. The bill also requires the Secretary to establish procedures to assure that donations of agricultural commodities to the child nutrition programs are more responsive to the problems and needs of local school districts. Schools are permitted to refuse to accept delivery of not more than 20 percent of the total value of commodities and other foods tendered and may receive other commodities if they are available in the State;

Third, require the Secretary of Agriculture to conduct pilot projects—including no more than 10 cash-in-lieu of commodities projects—and a study of the effect on the child nutrition programs of making cash payments in lieu of commodities. New, more economical, efficient, healthful, and reliable methods of food delivery and preparation can now be tested and evaluated before they are implemented nationally;

Fourth, revise the special milk program to provide that in schools and institutions participating in the school lunch, school breakfast, or child care feeding program, free milk may be provided to children eligible for free school meals only at times other than the regular school lunch or school breakfast serving period. This change will eliminate difficulties in administering the program and result in estimated cost savings of over $30 million annually;

Fifth, revise the school breakfast program to increase the Federal maximum reimbursement for especially needy schools and require States to establish the standards, subject to the Secretary's approval, under which schools in severe need may receive 100 percent of their operating costs;

Sixth, revise the authority under which equipment funds are furnished schools to give strong preference to on-site or central kitchen preparation of school meals;

Seventh, permit junior high and middle school students in schools participating in the school lunch program, if approved by the governing school body, to refuse to accept offered foods they do not intend to eat. Currently, only senior high school students have this option.

Eighth, amend the special assistance provisions in two ways:

In any school in which at least 80 percent of the children are eligible for free or reduced price lunches, special assistance payments for these lunches can be made for the school year following the school year in which the children's eligibility determination is made, if the school requests the payments; and

In any school that elects to serve children free lunches for 3 years and pays for the lunches for "nonneedy" children from sources other than Federal funds, special assistance payments for free and reduced price meals are to be made to that school for a period of 3 years based upon its number of children determined eligible for free and reduced price meals during the first year;

Ninth, revise the authority under which States are provided administrative expenses for carrying out certain child nutrition programs to require that a specific amount—based on a percentage of the State's total costs—be made available for the 1978 through 1980 fiscal years;

Tenth, authorize a nutrition education and information program under which grants would be made to State educational agencies for the purpose of encouraging effective dissemination of scientifically valid information about food and nutrients to children participating in the school lunch and related child nutrition programs; and

Eleventh, require the Secretary of Agriculture to approve the competitive foods that may be offered for sale at the same time and place as school meals are served.

SENSIBLE ADMINISTRATION OF THE PROGRAM

I would like to make four additional points that I believe will lead to more sensible administration of the programs amended by H.R. 1139.

I.

The conference substitute authorizes substantial additional funds for State administrative expenses in operating the child nutrition programs. Smaller increases are authorized for State administrative funds for the summer food service program for children. In those instances where a State is properly administering its other child nutrition programs, and has unused State administrative funds available, the State may use these funds for administration of the summer food service program if the Secretary approves that use. This allocation of unused State administrative funds will help insure strengthened administration of the program. Improved management of the program for children may thus be attained without requiring the appropriation of any additional funds.

II.

The conference substitute requires the Secretary of Agriculture to make funds available to States administering the child care food program to defray the cost of conducting audits. The term "audits" should be construed to include overall administrative reviews of a sponsor's operations to assure effective program operation.

III.

The conference substitute, as I have noted, authorizes a nutrition education and information program.

The grants to the States would be based on a rate of 50 cents for each child enrolled in schools or other educational institutions in each State. The Congressional Budget Office, using data found in the "projection of educational statistics to school year 1985–86," published by the Center for Educational Statistics of the Department of Health, Education, and Welfare, calculates for fiscal year 1978, the following number of eligible children: 49,021,000 children in school grades kindergarten through 12; 2,003,000 children in independent nursery schools and kindergartens; and 1,300,000 children in other educational institutions. Therefore, there would be about 52,400,000 children enrolled in schools and other educational institutions at the elementary and secondary level that would be counted toward the States' grants.

IV.

As I have noted, the conference substitute requires the Secretary of Agriculture to approve the competitive foods that may be offered at the same time and place as school meals are served.

Very frankly, this amendment gave me a considerable amount of trouble, because it involved a balancing of strong equities on both sides of the question.

Certainly, everyone is in favor of improving the nutrition of our schoolchildren, particularly those in the elementary grades who may not have sufficient maturity to make intelligent dietary choices on their own. However, the sale of so-called "competitive foods" has provided local school systems with desperately needed supplemental revenues over the years. The demise of the neighborhood school has increased the already existing financial problems of our public school system. As the children of one family travel farther and farther to attend two or three separate schools, parental support of those schools diminishes.

Part of this gap has been filled by the proceeds which are realized from the sale of soft drinks and other snack foods in school vending machines. These funds have been used to purchase band uniforms, athletic uniforms, supplementary equipment for the schools, and other items that enable students to participate in beneficial school-related activities.

In many cases, the athletic program of a school is the cement which holds the student body together. The same can be said for the pride which students take in a good school band. The list goes on and on.

Mr. President, it is not the intent of H.R. 1139 to bring about a wholesale cancellation of the beneficial activities which I have listed. The only reasonable course to follow here is one of balance and sensible compromise. It is to be hoped that this is a law the Secretary of Agriculture will apply with discretion and restraint, realizing the potential impacts which are involved. What we want to avoid is the development of inflexible standards, rigidly applied.

I would hope, for example, that if a local school official demonstrated to the Department of Agriculture that the list of approved competitive foods was resulting in the cancellation of important and worthwhile programs in the school the Department would be willing to amend their regulations and allow the continued sale of items in special circumstances so long as the regular school lunch and breakfast programs were not jeopardized.

I happen to believe that, as a general rule, the local person who is on the scene has a deeper and more practical insight into school problems than Government officials in Washington, and that the Secretary should give careful consideration to the views of local school officials in the development of the list of approved foods.

Mr. President, I believe that the conference substitute before the Senate is sound legislation. If the legislation is intelligently administered, it can do great good.

Mr. President, I ask unanimous consent that a statement of the distinguished chairman of the Subcommittee on Nutrition of the Committee on Agriculture, Nutrition, and Forestry, Senator McGOVERN, be printed in the RECORD at this point.

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

STATEMENT BY SENATOR McGOVERN

I am very pleased that the Senate is today taking final action on H.R. 1139, the National School Lunch Act and Child Nutrition Act Amendments of 1977, Conference Report.

This report emerged from the conference committee containing the strongest and best of the Senate provisions, as were passed by the Senate in June of this year. I believe the conferees were quite successful in blending the various House/Senate provisions to produce a conference report supported by all of the conferees.

This bill represents an attempt by both Houses of Congress to do some "fine tuning" of various federal food programs. Several of these food programs have experienced problems either administratively or in reaching those that are eligible. This bill is designed to correct those problems, and make revisions and updates where necessary.

The cornerstone of this bill is the provision for nutrition education. Nutrition education has been a component missing from our federal food programs. For the first time a federal program will be abe to provide the link between food, nutrition, and health—that link being education in nutrition and its relationship to good health.

NUTRITION EDUCATION AND TRAINING

The legislation sets up a system of grants to the states for nutrition education and training based on a formula of 50¢ for every child enrolled in schools or educational institutions within a state. Schools would include both public and private non-profit schools through the secondary level; institutions would include non-profit institutions engaged in educational activities through the secondary level.

The Congressional Budget Office using data found in the "Projection of Educational Statistics to school year 1985–86," published by the Center for Educational Statistics of the Department of Health, Education, and Welfare, calculates for fiscal year 1978, the following number of eligible children: 49,021,000 children in school grades kindergarten through twelfth grade; 2.003,000 children in independent nursery schools and kindergartens; and 1,300,000 children in other educational institutions; for a total of 52,400,000 children enrolled in schools and educational institutions at this elementary and secondary level.

The nutrition education funds are to be used for the purpose of developing nutrition education curriculum, training teachers and food service personnel in nutrition education, and training food service personnel in food service management.

During the initial development of this legislation and as the legislation moved through the legislative process, one concept became clear. The concept being that educating in nutrition did not simply mean the teaching of the four food groups. Rather, it should mean the teaching of the relationship between nutrition and health.

This new nutrition education program should go beyond the four food groups, beyond the teaching of the established bodily needs for nutrients in food, and move far beyond the crisis approach to nutrition. Nutrition education should, instead, examine the relationship between nutrition and health; it should aim to equip children with useful consumer skills for making wise food choices, who can then adjust their food selection to a changing food supply; it should examine food as it fits into the full range of people's lifestyles; where they are obtaining food, how they prepare it, and what values and priorities are placed on food in the context of the day's activities.

USDA must now move quickly on the development of the regulations for this program to guarantee that the nutrition education funds will be available to the states, as intended by this legislation.

Special Milk Program

The Child Nutrition bill passed by the Senate contained a provision which corrected an administrative problem in the

Special Milk Program The savings caused by this corrective action were then applied to totally absorb the cost of nutrition education. The conference committee accepted this special milk provision. The provision should ease the administrative problems schools have been experiencing in the Special Milk Program.

State Administrative Expenses

The bill is also intended to provide additional financial assistance to the states for administrative expenses in child nutrition program areas where federal assistance has been deficient in the past. The programs included under the State Administrative Expense (SAE) provision are school lunch and breakfast, child care food, special milk and equipment assistance. The formula for SAE funds is tied to total program expenditures within a state, thereby keeping administrative expenses at an equal pace with total program expenditures and responsibilities.

It would also be possible for any state, after (1) making the SAE funds available to the programs for which they were intended; (2) accounting for SAE expenditures; and (3) ensuring that the programs, specified in section 14 of this legislation, were not in any way being deprived of SAE funds; to utilize the state's own SAE money for administrative expenses associated with other child nutrition programs having a deficit.

COMPETITIVE FOODS

I am very pleased that the conference committee accepted a provision which will enable the Secretary of Agriculture to approve what foods may be sold in competition with the school lunch and breakfast programs. It is counterproductive for the Federal Government to attempt to provide nutritious, health supporting meals through the child nutrition programs, and, at the same time, permit foods of low nutritional value to compete directly with nutritious meals. The foods sold should be foods which will develop sensible food preferences (in terms of health), and which broaden a child's exposure to a variety of conventional foods.

Foods which naturally have a low nutrient to calorie density should not be acceptable. Foods fortified with vitamins and minerals are often too high in sugar and caloric content to be wholesome, and therefore, should not be acceptable just because they are fortified.

The fundamental purpose of the school lunch program is to provide school children with nutritious meals that promote good health, making full use of the nation's agricultural abundancies. The best way to accomplish this is by encouraging the consumption of conventional nutritious agricultural commodities—fruits, vegetables, dairy products, meat, poultry, whole grain cereals, nuts, and so forth.

I hope the Secretary will take this as an opportunity to review and approve competitive foods, *and* as an opportunity to reassess the foods which can be served as part of the Type A meal pattern.

COMMODITY DISTRIBUTION PROGRAM

The bill approved by the conferees also strengthens the commodity distribution program. Mandatory procedures for responding to state and local commodity needs are prescribed to make USDA more accountable to the states and local schools. In addition, more flexibility is granted for making up the short fall in each state of the commodities distributed. The Congress has developed these two legislative actions with the intent that the commodity distribution program be improved and strengthened. Internal, administrative actions within the Department of Agriculture to strengthen this program are certainly also in order.

SCHOOL BREAKFAST

An adjustment in especially needy breakfast reimbursement rates is included in this legislation. The increased rates are intended to assist those schools participating in the breakfast program with high proportions of low income children, and to serve as an incentive for schools to develop breakfast programs.

SUMMER FOOD PROGRAM

The bill makes several needed revisions in the Summer Food Program which are designed to clearly spell out federal, state and local responsibiilties for administering the program.

Finally, the bill specifies the priority scheme for equipment assistance funds. Priority will be given to on-site preparation, including central kitchens. Schools *currently* using frozen pre-plated meal systems would not be denied funds. However, schools newly entering the program who wanted to use frozen pre-plated meals would have to consider other types of meal service first, and then justify why other types of meal service were not the most sensible and practical in the long run.

This legislation takes a significant step forward in the area of nutrition education. A step which is long overdue. We must now proceed with the effort to tie these federal food programs to the promotion of good health, and sound nutrition habits.

I am very proud of this legislation. I believe it embodies much of the information assembled over the years by the Senate Select Committee on Nutrition and Human Needs. This legislation represents the new role that nutrition and food are playing and will continue to play in our agricultural and health policies. At the same time, the legislation refines, improves, and updates several of our federal food programs.

I urge that the Senate move quickly to enact this legislation, as the House has, and forward it to the President for signing.

Mr. TALMADGE. Mr. President, I yield to the Senator from New York.

Mr. JAVITS. I understand in the other body there was a colloquy between Congresswoman HOLTZMAN and the manager of the conference report which related to the transfer of certain moneys both for fiscal year 1977 and future years for additional costs for administration. As my own State would qualify for some of the 1977 money, the question arises of the degree to which there had been proper servicing in New York in the summer lunch program.

Congresswoman HOLTZMAN has been extremely critical of the administration of the summer lunch program.

Mr. TALMADGE. In response to the question of the Senator from New York, there was a colloquy on the floor of the House on October 27, beginning on page 35417. Congresswoman HOLTZMAN and Chairman PERKINS had such a colloquy.

I think I handled that in my statement, and I will repeat it for the Senator.

The conference substitute authorizes substantial additional funds for State administrative expenses in operating the child nutrition programs. Smaller increases are authorized for State administrative funds for the summer food service program for children. In those instances where a State is properly administering its other child nutrition programs, and has unused State administrative funds available, the State may use these funds for administration of the summer program if the Secretary approves that use. This allocation of unused State administrative funds will help insure strengthened administration of the summer program. Improved management of the summer food service program for children may thus be attained without requiring the appropriation of any additional funds.

Is that the matter to which the Senator from New York made reference?

Mr. JAVITS. The Senator is exactly right. That and the matter concerning the reallocation of unused money under present law, to pay for additional administration expenses of this past summer's feeding program.

Mr. TALMADGE. May we have order in the Senate, Mr. President.

The PRESIDING OFFICER (Mr. ZORINSKY). The Senate will be in order.

Mr. JAVITS. May I say to the Senator I would like to interest myself in this question because I am very sympathetic to Congresswoman HOLTZMAN's inquiries which have unearthed some very irresponsible operation with respect to this particular program in prior years in my own city, let alone State. What worried me was the fact that the moneys were not utilized properly and that fact, therefore, had a tendency perhaps to prejudice the whole program, which is terribly unfortunate.

I, therefore, want to be sure that the record is clear: First, that it will not help anybody if inadequacies in the administration of the program result in material curtailment or stopping of the program. This summer in New York many of the problems associated with past years were corrected but fewer children were served. I assume this was only a 1-year decrease and that next summer many more of the very needy children in New York will be served.

Second, I shall undertake, as I have done in the past, to collaborate in any effort by the department concerned and by Congresswoman HOLTZMAN to bring about additional suitable and appropriate corrections so that the Senate may, with confidence, allow this program to continue.

Mr. TALMADGE. The Senator is entirely correct. We found that in our development of the bill both at the hearing and in marking up the bill in the committee and in conference, and we did not want to destroy the program. We wanted to correct the abuses therein.

Mr. JAVITS. I just wanted to pledge myself, Senator TALMADGE, to dig into it with Congresswoman HOLTZMAN, and I hope Senator MOYNIHAN will do the same, in order to do her own correcting so that it may deserve the kind of support it deserves and needs, but which could be hampered and interfered with if it is badly run.

Mr. TALMADGE. The Senator is entirely correct, and that is true of the members of our committee.

Mr. JAVITS. I thank my colleague.

Mr. TALMADGE. I thank my distinguished friend from New York.

Mr. DOLE. Mr. President, I am proud to be associated with this conference report—the 1977 amendments to the school lunch and child nutrition programs—which is being presented to the full Senate today. Conference managers were committed to coming up with a bill which would continue to enhance the goals of

school meal programs, to "safeguard the health and well-being of the Nation's children, and to encourage the domestic consumption of nutritious agricultural commodities and other foods."

SUMMER FOOD SERVICE PROGRAM

A major portion of this legislation amends the administrative procedures of the summer food program for children, whose fiscal 1977 expenditures were over $150 million and projected 1978 expenditures are some $230 million. We are all too familiar with reports of poor meal quality, fraud, and mismanagement associated with this program a couple of summers ago. I am happy to report a vast improvement in the administration of this program in my own State of Kansas this past summer.

Particular emphasis in this bill has been given to a more careful look at the selection of sponsors, the content of contracts, procedures for handling contracts, and periodic food inspection. These actions should guarantee better administered programs as well as more nutritious and higher quality meals for children from economically depressed areas served by this program.

The Senate introduced a provision for program sponsors to seek out and use small businesses and minority-owned enterprises in the summer meal program. Such action should certainly improve the Federal Government's assistance to the small businessman. And I urge the Department to make positive efforts to use small and minority-owned business enterprises in the summer food program.

OFFER VERSUS SERVE PROVISION

The conferees adopted the House language which authorizes local school districts to permit junior high and middle school children to refuse foods which are offered to them. That is, they are offered five menu items and can accept—or be served—only three items. This provision prevails in senior high schools now. Since reimbursement rates are based on the foods offered students rather than the foods actually served students, I urge local school districts to recognize that this provision is "optional" and does not have to be implemented.

Based on testimony and discussion I have had in recent months—including pertinent testimony on the second day of the conference—with persons very close to the local school scene, I find myself questioning whether taking the offer versus serve provision down to the junior high school level—which means the fourth grade in some States—was a wise decision on the part of the conference.

School meal programs can serve as a focal point for developing sound food habits among young people. Particularly in view of the upcoming nutrition education activities. To eat better, students must learn to accept the wide variety of foods offered to them.

It seems to me that if students were offered a wider choice of high quality and nutritional foods, offer versus serve would not be necessary. I certainly would like to hear more evidence that this provision reduced plate waste—to a greater extent that it develops good food habits. I plan to get more input from my Kansas constituents and other cafeteria supervisory personnel from around the country on this issue between now and the time this legislation comes up for review again.

CASH OR COMMODITIES IN SCHOOL MEALS

The Department of Agriculture has been asked to choose a mix of localities to study, once and for all, the effects of providing cash payments in lieu of commodities for school meals. The Department study will include an assessment of the administrative feasibility and nutrition impact of cash payments in lieu of donated foods, including a look at the impact on food quality served, and impact on plate waste.

I hear there is lots of concern in the food industry that these pilot projects or studies will be biased—in favor of commodities. My response to them has been that I have faith in the Department's ability to carry out this research. And I trust that the Department recognizes the concerns of the industry, and will assure the Congress that every effort will be made to undertake a completely unbiased study and provide us with valuable and reliable data.

Within 18 months the Department is to report its findings back to the Congress, and this will help us make recommendations on the use of commodities and cash in State and local school districts.

TRAINING AND NUTRITION EDUCATION

In committee hearings we have heard a great deal over the past several months about the important relationship between what we eat and how we feel, and about nutrition's vital role in any preventive health strategy.

In this first session of the 95th Congress, I feel good that we have responded well in initial steps toward preventative health care associated with the food assistance programs. Better than ever before. But mind you, there's still a long way to go.

I supported these efforts: First, citing more nutrition education language than ever before. Second, funding to provide training for cafeteria personnel in preparing and serving higher quality meals. Third, instructing teachers in the principles of nutrition education. And finally, teaching students about the relationship between what they eat and their health and general well-being.

For 2 years, the legislation guarantees grants to States, based on 50 cents for each child enrolled in schools or institutions in the State. In reaching all of these children—and in training the cafeteria personnel and teachers—the States may call upon land grant colleges like my Kansas University, other institutions of higher education, and nonprofit institutions.

COMPETITIVE FOODS

We have tried to bring a semblance of order and sanity around the sale of foods sold in competition with school meals.

This provision is not intended to be against vending, against school revenue, or against specific foods per se. It is an effort to make more wholesome and nutritious foods available to students. In every way, these food sales would support the nutritional goals and integrity of school meals.

In conclusion, I would like to urge that the language in the Senate conference report surrounding S. 1420 and the June 30, 1977, CONGRESSIONAL RECORD statements covering this bill serve as further reference to the Department of the legislative intent of this document, particularly the new sections on training, nutrition education, and competitive foods.

I am pleased to have been a manager of this significant piece of legislation governing our school lunch and other child nutrition programs.

Mr. HUMPHREY. Mr. President, I am pleased to express my full support for the conference report on H.R. 1139, the Child Nutrition Act of 1977.

I applaud the leadership of the Senator from South Dakota (Mr. MCGOVERN) and the chairman of the Committee on Agriculture, Nutrition, and Forestry, Senator TALMADGE, for shaping a legislative package that could gain such broad support from this body.

Indeed, this is very important legislation for there is nothing more precious than the health of the Nation's children. Certainly our investment in their well-being today will be essential to this country's strength tomorrow.

I would like to offer a few comments on one of the more significant provisions, the section which concerns nutrition education.

There are few matters with which I have dealt in this body which I view to have more importance. The facts are simple. Too many of the children of America simply do not know what constitutes a good diet.

The results are staggering. Health and dental bills for the American family are soaring, with no relief in sight. The prospects for improvement are bleak, and it is becoming increasingly obvious to me that something must be done to reverse this situation.

It was in just this atmosphere that I introduced S. 720, the National Child Nutrition Information Act. I am both fortunate and proud to say that major provisions of that bill are included in the legislation that we have before us.

By enacting this bill, we will be taking a step along the road to facing up to the fact that there is a lot of nutrition education in America today. Children are exposed to scores of hours of television advertisements promoting the latest chewing gums, candies, and pops. Is this the only nutrition education we will allow our children to receive? I hope not.

The things I say here have been documented time and time again by several witnesses before many committees of the Congress, particularly the Senate Select Committee on Nutrition and Human Needs. Dozens of witnesses for the better part of the past decade have demonstrated beyond all reasonable doubt the need for a program of sound nutrition education for America's schoolchildren.

The program of nutrition education that this legislation contains will cost approximately $27.5 million. States will

develop their own plans, subject to final approval by the Department of Agriculture. This is important. I did not envision a monolithic approach, but a variety of programs that have been spawned by creative and imaginative nutritionists at the local level.

The nutrition education section of this bill is written as an entitlement program. There has been considerable criticism of this approach. In my view, it is critical that nutrition education be an entitlement program. The reason lies in the need for continuity. I have received letters from dozens of States pointing out the need for both nutrition education and for making this an entitlement program. Without an entitlement, our States simply cannot plan in a meaningful fashion.

Fortunately, the conferees saw the wisdom of this approach and decided to go with the entitlement for 2 years, followed up by appropriations for the third year. At that time, Congress will review the effectiveness of this program.

It is my understanding that the President will sign this important legislation. Soon after this bill becomes law, I hope that the Department of Agriculture issues the necessary regulations for getting the new provisions, particularly the nutrition education segment, underway. Given the fact that we are already 4 weeks into the fiscal year, it is important the Department move with great speed.

Mr President, I would like to summarize by saying that I am greatly pleased with the legislation. It is a bold step in improving the lives and this Nation's most important asset, its children. Mr. President, I urge that my colleagues adopt the conference report on H.R. 1139, the Child Nutrition Act of 1977.

Mr. CLARK. Mr. President, with passage of H.R. 1139, the Child Nutrition Act of 1977, Congress has expanded and improved the Federal Government's commitment to good nutrition among this country's schoolchildren. I am pleased that I had an opportunity to contribute to this important legislation as a member of the conference committee that resolved the differences between the House and Senate bills.

The major elements of the conference report on H.R. 1139, as approved by both houses, are:

First, the summer food service program for children has been extended for an additional 3 years, and sponsors and vendors of this program must abide by stricter requirements to prevent fraud;

Second, in order to make the commodity distribution program more responsive to local needs, schools are given the right to refuse up to 20 percent of the offered commodities. In addition, the Kansas "cash-in-lieu-of-commodities" experiment will be analyzed.

Third, the Secretary of Agriculture will be required to approve competitive foods, which are offered by local schools at the same time and place of the school lunch program.

And fourth, a new nutrition education program is established for 3 years, providing funds to support programs for all elementary and secondary students.

I am most pleased that Congress retained the provisions pertaining to competitive foods and nutrition education, which are meant to improve children's dietary habits.

In 1972, the prior authority of the Secretary of Agriculture to regulate competitive foods was curtailed. This step permitted schools to offer foods that make no contribution to nutrition and which actually undermine the school lunch program.

Over the past several months, I have received numerous communications from physicians, dentists, nutritionists, and others whose knowledge of nutrition I respect, all of whom have urged me to restore this authority to regulate competitive foods. For example, the Iowa Dental Association stated that "the Iowa Dental Association has long suggested the removal of sugar rich snack foods and drinks that compete with meals provided under school lunch programs". I ask unanimous consent that the letter be inserted in the RECORD.

Another significant improvement will entitle all 52 million schoolchildren to educational programs in proper nutrition. The Department of Agriculture will distribute grants to State education agencies for this purpose, at a rate of 50 cents per child.

I am convinced that efforts of this sort are sound investments that this country cannot afford to postpone. All would agree that dietary habits are shaped in the early years of life. Our Nation wastes literally billions of dollars each year on the costly health problems that are a direct result of poor nutrition—obesity, heart and vascular disease, and tooth decay. Therefore, this legislation, if implemented well, will represent an effective effort to contain health costs in the future.

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

IOWA DENTAL ASSOCIATION,
Des Moines, Iowa, August 30, 1977.

Senator DICK CLARK,
Congress of the United States,
Washington, D.C.

DEAR SENATOR CLARK: Iowa dentists have followed the "National School Lunch and Child Nutrition Act Amendments of 1977" and the inclusion in the Senate bill of the Case-Dole Amendment.

Without going into depth, the Iowa Dental Association has long suggested the removal of sugar rich snack foods and drinks that compete with meals provided under school lunch programs. Basically "junk foods"—

1. Are not in interest of good total health.

2. Poor nutritional "eating habits" are established by the presence of junk foods. These eating habits are carried into adult life and medical complications from nutritional deficiencies.

3. The ingestion of sugar rich snack foods at school leads to a high percent of tooth decay and periodontal disease.

Dr. Clarence Hosford, a Monticello, Iowa dentist and member of the Iowa State Board of Dental Examiners, has been very successful in removing sugar rich snack foods from vending machines in Monticello.

We encourage your support in legislation that would remove "jump" (sugar rich snacks) from school vending machines.

Sincerely,

DALTON W. RICHEY, D.D.S.,
Executive Director.

Mr. TALMADGE. Mr. President, unless there be further questions, I move that the conference report be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

ENERGY PRODUCTION AND CONSERVATION TAX INCENTIVE ACT

The Senate continued with the consideration of H.R. 5263.

Mr. TALMADGE. Mr. President, I move now that we return to the unfinished business. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. 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. MOYNIHAN. Mr. President, I call up my amendment No. 1525.

I am informed that the Senator from New Hampshire has an amendment, and I am happy to defer to him.

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from New Hampshire?

Mr. MOYNIHAN. The Senator from New York yields to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 1521

(Purpose: To make certain wood-burning equipment eligible for the residential energy credit.)

Mr. McINTYRE. Mr. President, I call up my amendment No. 1521.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. McINTYRE), for himself, Mr. ANDERSON, Mr. GRAVEL, Mr. HATHAWAY, and Mr. STENNIS, proposes amendment numbered 1521.

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

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

The amendment is as follows:

On page 12, line 24, strike out "or".

On page 12, between lines 24 and 25, insert the following:

"(iv) is an item (other than a fireplace) which is designed to use wood as a fuel for space heating, the heating of water or cooking of food, or any combination thereof, including any controls, ducts, stovepipes, footing, or other item (other than a chimney) necessary for the safe and efficient operation of any such item, or".

On page 12, line 25, strike out "(iv)" and insert in lieu thereof "(v)".

On page 15, between lines 2 and 3, insert the following:

"(9) ENVIRONMENTAL RESTRICTIONS ON CERTAIN WOOD-BURNING ITEMS.—No credit shall be allowed under subsection (a) for expenditures with respect to any items described in paragraph (5)(A)(iv) which are to be installed in any metropolitan or other area after the date on which—

"(A) the Administrator of the Environmental Protection Agency certifies to the Secretary that the emissions from such items would cause air quality in such area to be in violation of any Federal law, or

"(B) the Secretary of Agriculture certifies to the Secretary that additional consumption of wood in connection with such items would endanger forests in that area.".

Mr. McINTYRE. This is a simple amendment, which would clarify the intention of the Senate that wood-burning home heating appliances are qualified for the residential energy credit in this bill.

Before I continue with my statement, I ask unanimous consent that the Senator from Vermont (Mr. LEAHY) and the Senator from North Carolina (Mr. HELMS) be added as cosponsors of this amendment.

I shall not make a long statement, Mr. President. I submitted an extensively documented statement when I introduced the amendment on Wednesday. That statement and documentation appear on pages 35186 to 35196 of the CONGRESSIONAL RECORD of Wednesday, October 26.

Let me summarize that statement, however, in a few points.

First, the wood heating appliance tax credit is cost effective. According to figures supplied by the Wood Energy Institute, this credit would cost the Treasury $550 million by the year 1985. For this investment of tax dollars, it would save 360,000 barrels of oil a day by 1985.

There is strong evidence that this estimate of oil savings is conservative. Already in New Hampshire, for example, one study showed that 52 percent of the people use wood for at least part of their heat. They used 300,000 cords of wood last winter, the equivalent of 30 to 60 million gallons of home heating oil.

Another point is that the Federal Regional Council of New England, an organization of 15 Government agencies, has recommended in a new report that wood energy receive the same credit as other forms of renewable energy.

There are important environmental considerations involved in the use of wood energy. Therefore, this amendment proposes to give both the Environmental Protection Agency and the Forest Service of the Department of Energy the authority to review whether this particular credit should be applied in specific areas of the Nation.

If the air quality would be seriously impaired by the increased use of wood-burning appliances, or if forests would be endangered, then the credit would not be offered in that area.

Finally, there is the question of standards. The Nation's most prestigious testing laboratory, Underwriters Laboratories, Inc., has already developed safety standards and testing procedures for wood equipment. The Wood Energy Institute, an association of industries and others interested in the use of wood, is now developing performance standards.

Therefore, Mr. President, I urge the committee to accept this amendment.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. McINTYRE. I yield.

Mr. TALMADGE. I have examined the amendment of the distinguished Senator. He attempts to make investment tax credit available for the utilization of wood-burning products as a fuel, and also peat, and I am happy, on behalf of the Committee on Finance, to accept it. I think it is already included in the bill by implication, but this makes it specific. We are prepared to take it to conference.

Mr. McINTYRE. I will modify the amendment to conform to the suggestion of the Senator from Alaska by adding the word "peat" and also the suggestion of the managers of the bill that we modify the amendment so that it will be considered as an energy-conserving component under this bill rather than a renewable energy system. This proposal would have the effect of granting a 20 percent tax credit for wood-heating appliances rather than a 30-percent tax credit. I accept both of the modifications and yield at this time to my good friend from North Carolina.

The PRESIDING OFFICER. Will the Senator send the modification to the desk.

The modification is as follows:

On page 11, after line 12, strike out "or."

On page 11, between lines 12 and 13, insert the following:

"(xi) is an item (other than a fireplace which is designed to use wood and peat as a fuel for space heating, the heating of water or cooking of food, or any combination thereof, including any controls, ducts, stovepipes, footing or other item (other than a chimney) necessary for the safe and efficient operation of any such item, or

On page 11, line 13, strike out "(xi)" and insert in lieu thereof "(xii)".

On page 15, between lines 2 and 3, insert the following:

"(9) Environmental restrictions on certain wood and peat burning items.—No credit shall be allowed under subsection (a) for expenditures with respect to any item described in paragraph (4) (A) (xi) which are to be installed in any metropolitan or other area after the date on which—

"(A) the Administrator of the Environmental Protection Agency certifies to the Secretary that the emissions from such items would cause air quality in such area to be in violation of any Federal law, or

"(B) the Secretary of Agriculture certifies to the Secretary that additional consumption of wood in connection with such items would endanger forests in that area.".

Mr. HELMS. Will the Senator yield for a question? I would like to ask the Senator a question or so.

In Asheville, N.C., we have a company named Smoky Mountain Enterprises, Inc., which manufactures a new energy-saving device called the buck stove. This wood burning stove is an energy conserving component which significantly reduces the amount of fuel consumed as a result of increased combustion efficiency.

This device is normally installed into a standard fireplace, although it can be installed separately if a home lacks a fireplace. A low watt, high power fan rapidly circulates air over the walls of the firebox to absorb the heat while keeping the walls cool. The cool walls maximize the flow of heat to the walls thereby minimizing the flow of heat up the flue.

The operation of the buck stove utilizes 80 percent of the heat available in the firebox, which, I understand, is a substantial increase in efficiency over many other wood burning stoves, and a vast increase over the standard fireplace which utilizes only about 10 percent of the heat produced by the burning wood.

My question is: Would this type of energy conserving, increase efficiency device be the type of stove that would be included within the ambit of your amendment?

Mr. McINTYRE. I want to assure the Senator from North Carolina that it would be included both within the language and spirit of my amendment.

Mr. HELMS. The Senator's amendment, as introduced, states that a fireplace would not be eligible for a credit. I assume that this means a fireplace of stone or brick or other construction materials?

Mr. McINTYRE. That is correct.

Mr. HELMS. Is it my understanding that a stove which is a metal wood stove but fits into a fireplace would be eligible, and would not be ruled out on the basis that it might be considered a fireplace?

Mr. McINTYRE. Yes; this type of wood-burning stove would be fully qualified for the credit under my amendment.

Mr. HELMS. I thank the able Senator, and I appreciate his adding me as a cosponsor to his amendment.

Mr. McINTYRE. As the Senator knows I have added him as a cosponsor.

Mr. President, I want to thank the distinguished Senator from New York for yielding to me in order to present this amendment.

I ask unanimous consent to add the distinguished Senator from West Virginia (Mr. RANDOLPH) as a cosponsor at this time.

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

Mr. McINTYRE. Mr. President, I move that the amendment, as modified, be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from New Hampshire.

Mr. TALMADGE. We are prepared to take it to conference.

The amendment was agreed to.

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

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1525

(Purpose: To provide a tax credit related to increased refined petroleum product duties or fees.)

Mr. MOYNIHAN. I call up my amendment 1525.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN), for himself, Mr. RIBICOFF, Mr. JAVITS,

and Mr. HATHAWAY, proposes amendment numbered 1525.

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

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

The amendment is as follows:

On page 99, between lines 14 and 15, insert the following:

(c) RELIEF TO RESIDENTIAL AND CERTAIN INSTITUTIONAL USERS OF REFINED PETROLEUM PRODUCTS.—

(1) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowed) is amended by inserting immediately after section 44G the following new section:

"SEC. 44H. REFINED PETROLEUM PRODUCT IMPORT ADJUSTMENT CREDIT.

"(a) GENERAL RULE.—There is allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the products of—

"(1) the adjustment amount (as determined under subsection (b)) with respect to a refined petroleum product for each calendar quarter ending with or within the taxable year, multiplied by

"(2) the number of units (as defined by the Secretary) of such refined petroleum product used by the taxpayer for each such calendar quarter in a qualified use.

"(b) DETERMINATION OF ADJUSTMENT AMOUNTS.—For each calendar quarter beginning after the effective date of action taken by the President under section 232 (f) of the Trade Expansion Act of 1962 to adjust imports of refined petroleum products by the imposition of, or an increase in, a duty or fee, the Secretary shall determine an adjustment amount for each such product by dividing the total revenues from the imposition of the duty or fee, or the net increase in revenues from an increase in a duty or fee, for the calendar quarter by the total number of units of that refined petroleum product sold for use during that calendar quarter. The adjustment amount for each calendar quarter shall be determined not less than 30 days before the beginning of that quarter on the basis of estimates, and the adjustment amount for subsequent quarters shall be adjusted to the extent necessary to compensate for errors of estimate for preceding quarters.

"(c) QUALIFIED USE.—The term 'qualified use' means use in a residence for residential purposes, a hospital, a church, or an educational institution. In the case of use in a residence for residential purposes, the Secretary shall provide by regulations for the application of this section to condominium management associations (within the meaning of section 528(c)) or members of such associations, tenant-stockholders in cooperative housing corporations (as defined in section 216), and landlords and tenants in such a fashion that the amount allowed by subsection (a) is allowed, whether by allocation, apportionment, or otherwise, to the person paying, directly or indirectly, for the refined petroleum products so used.

"(d) PERSONS NOT SUBJECT TO INCOME TAX.—For purposes of this section, a hospital, cooperative hospital service organization, church, association or convention of churches or an educational institution exempt from taxation under this chapter by section 501(a) shall be treated as if it were a taxpayer liable for tax under this chapter.".

(2) REFUND OF EXCESS CREDIT.—

(A) Section 6401(b) (relating to amounts treated as overpayments) is amended—

(i) by striking out "and 44F (relating to certain energy-related depreciable property)," and inserting in lieu thereof "44F (relating to certain energy-related depreciable property), and 44H (relating to refined petroleum product import adjustment credit),", and

(ii) by striking out "and 44F" and inserting in lieu thereof "44F, and 45H".

(B) Section 6201(a)(4) (relating to assessment authority) is amended—

(i) by striking out "or 44F" in the caption thereof and inserting in lieu thereof ", 44F, or 44H",

(ii) by striking out "income) or section 44C" and inserting in lieu thereof "income), section 44C", and

(iii) by inserting "or section 44H (relating to refined petroleum product import adjustment credit)," after "credit),".

(3) ADVANCE QUARTERLY REFUNDS OF CREDIT.—

(A) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application for abatements, credits, and refunds) as amended by adding at the end thereof the following new section:

"SEC. 6430. ADVANCE QUARTERLY REFUND OF SECTION 44H CREDIT.

"(a) GENERAL RULE.—Upon application made by a taxpayer eligible to claim the credit allowed by section 44H for the taxable year, the Secretary shall pay to the taxpayer, as a refund in advance, an amount equal to one-fourth of the taxpayer's tentative credit for the taxable year. For purposes of this subsection, the term 'tentative credit' means the amount of the credit the taxpayer expects to be allowed under section 44H for the taxable year based on the best estimates and data available to the taxpayer as of the filing date of the application.

"(b) RULES.—

"(1) APPLICATIONS.—The taxpayer shall submit a separate application for each calendar quarter for which he wishes to receive a payment under subsection (a) stating the amount of the credit under section 44H allowable to him with respect to qualified uses (as defined in section 44H(c)) by him for that calendar quarter. No payment shall be made under subsection (a) for any calendar quarter unless the application is filed during the 30-day period beginning 15 days before the beginning of such quarter. Each such application shall contain, or be verified by, a written declaration that the statements in the application are made under penalties of perjury and that every material matter asserted in the application is believed to be true and correct.

"(2) PAYMENTS.—The Secretary shall make each payment described in subsection (a) within 30 days after the date on which he receives the application for the payment.

"(c) CROSS REFERENCES.—

"For penalties applicable to fraud and false statements, see section 7206.

"For treatment of excess claims as underpayments of tax, see subchapter A of chapter 68.".

(4) CLERICAL AMENDMENTS.—

(A) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately after the item relating to section 44G the following new item:

"SEC. 44H. REFINED PETROLEUM PRODUCT IMPORT ADJUSTED, CREDIT.".

(B) The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"SEC. 6430. ADVANCE QUARTERLY REFUND OF SECTION 44H CREDIT.

(5) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1976.

Mr. MOYNIHAN. This is an amendment which has been in principle agreed to within the Committee on Finance.

It is submitted on my behalf and that of Senator JAVITS, my senior colleague, the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Maine (Mr. HATHAWAY).

Section 1055 of the Finance Committee bill maintains the President's authority to impose tariffs on imports of refined petroleum products only. Imported crude oil is now exempted from that previous Presidential power.

This provision, the maintenance of the power to impose tariffs on refined petroleum products, was proposed to protect domestic refiners from foreign imports. This Presidential prerogative nonetheless poses an ominous threat to States such as mine, that of New York, and the Northeast generally, which are dependent, and in some cases almost totally dependent, on imports of refined petroleum products.

To speak only of my State of New York, New York imports 20.8 million barrels of home-heating oil per year, which is 36.6 percent of the 56.7 million barrels imported in a year by the entire country. New York's imports of home-heating oil represents 20 percent of the State's total consumption of home-heating oil. U.S. imports of home-heating oil, by comparison, represent only 5.4 percent of total national consumption of that product.

New York is particularly dependent on imports of residual oil, used primarily by industry and utilities. We import 131.7 million barrels of residual oil per year, 29.5 percent of national yearly imports of residual oil. The truly striking figure, however, is that New York's imports represent 90 percent of its yearly consumption of residual oil, as compared with 49.9 percent nationally.

The import of all refined petroleum products by New York shows a similar relationship to national imports. New York's imports of refined products represent 34.7 percent of its yearly consumption of all petroleum products. This compares with only 12 percent nationally. New York's annual imports of all refined petroleum products are 31.4 percent of the Nation's total yearly imports of refined products.

These are not especially inspiring statistics, Mr. President, but they represent a stricture on the economy of New York, and thus on the Northeast generally, which is quite different from that of the Nation, and which inspires us to this particular amendment.

The point about section 1055 is that it will afford protection to American oil refiners, but it will do this at the expense notably of one region—my region—and in some cases, our region will not only bear the cost relatively, but absolutely.

As I stated a moment ago, the United States imports 56.7 million barrels of home-heating oil each year, and that New York accounts for 36.6 percent of those imports. New York, New Jersey, and New England collectively import 54.3 million barrels per year, 96 percent of the Nation's annual imports of home-heating oil

The amendment I offer today is to provide a limited measure of relief in the event that the President should exercise this authority. This amendment will re-

bate any increase in tariffs on imported heating oil to residences, schools, chuches, and hospitals. Industrial users of imported refined petroleum products, and the only users of residual oil, would not qualify for rebates. We consider this a minimum amount of relief, should the program ever come into effect, because the problem of the Northeast's almost total dependence on imported residual oil is not addressed. I realize, however, that this problem must be solved in steps, perhaps small steps.

Mr. President, on behalf of my senior colleague and myself, I ask the committee's support and the Senate's support for this measure.

Mr. RIBICOFF. Mr. President, I am pleased to join with my distinguished and able colleague from New York, Senator MOYNIHAN, in offering this amendment. Should the President impose an import duty on refined petroleum products, the consequences for New England and the Northeast will be disastrous.

New England's energy situation continually weakens as this Nation becomes more dependent on foreign sources of oil. Last year foreign sources accounted for 79 percent of New England's oil demand and 23 percent of our petroleum requirements were direct product imports. Sixty-nine percent of New England's distillate fuel oil is from the foreign market.

Because we have virtually no energy resources of any significance in New England, we are more dependent on oil than other regions. Seventy-one percent of all New England buildings are heated by oil and 74 percent of the population heat with oil. In Connecticut, for example, 72 percent of the population—some 2.2 million people—depend on oil for space heating. Over 1 million buildings in my State are heated with oil.

Energy prices in our region are 31 percent higher than the United States as a whole. Since the 1973 oil embargo, the price of fuel has nearly tripled. During the past four heating seasons the cost of heating oil has increased more than 150 percent.

Two years ago New England's Governors agreed on the goal of reducing our region's oil dependence by 20 percent. We have made significant progress. The New England Fuel Institute estimates that the average home in the region has reduced fuel oil usage by at least 15 percent. The State of Connecticut, joined by many major industries, has taken a number of meaningful initiatives to achieve energy savings.

If an import duty on refined petroleum products—which includes No. 2 middle distillates—is imposed, our region will bear an unjust share of America's energy crisis. Senator MOYNIHAN's amendment will afford some protection to the average homeowner by insuring that they are insulated against price increases which an import duty may generate. The New England and Northeast consumer cannot be expected to sustain a disproportionate share of energy cost increases—particularly when users of natural gas and electric space heating will receive certain advantages. The Moynihan amendment will restore equity in energy pricing and I urge its adoption.

Mr. LONG. Mr. President, I am prepared to accept the amendment.

Mr. MOYNIHAN. I thank the distinguished chairman of the committee. I understood that to be the case.

Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the name of Senator RANDOLPH, the distinguished chairman of my subcommittee, be added as a cosponsor of the amendment.

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

The senior Senator from New York is recognized.

UP AMENDMENT NO. 992

Mr. JAVITS. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an unprinted amendment numbered 992:

On page 80, line 21, add the following new paragraph——

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

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

The amendment is as follows:

On page 80, line 21, add the following new paragraph (4) by adding at the end of subparagraph (E) the following:

"and facilities for the production of electric energy by a duly authorized agency of a state government which energy is sold pursuant to such authority for consumption within the territory of such state."

Mr. JAVITS. Mr. President, this amendment, which I offer on behalf of myself and Senator MOYNIHAN, would end an existing discrimination in the Internal Revenue Code caused by an arbitrary Treasury Department regulation. In the code, there exists an exemption from inclusion of interest on industrial development bonds which are "for the local furnishing of electric energy or gas." The purpose of that exemption was to allow public authorities and municipalities to develop electric energy facilities for legitimate development purposes in their areas. But the term "local" in that statutory exemption was restrictively and arbitrarily defined in the Federal tax regulations to mean no more than two contiguous counties.

It will be immediately seen that this runs afoul of our situation in a city like New York, which, because of a situation dating from the time of the American Revolution, has five separate counties, and yet there is no doubt that it is but a single locality in every sense of the term.

The definition is as follows:

Reg. 1.103-8(e)(2)(iii) the term "facilities for the local furnishing of electric energy or gas" means property which—

(a)

(b)

(c)

(d) Is a part of a system providing service to the general populace of one or more communities or municipalities, but in no event more than two contiguous counties (or a politicial equivalent) whether or not such counties are located within a single state.

For purposes of this subsection, a city which is not within, or does not consist of, one or more counties, shall be treated as a county.

This interpretation has resulted in a gross discrimination against the utility consumers of New York State, and possibly of other States as well. Our premier city, New York City, as most of my colleagues know, consists of five separate counties.

For example, we have only a single board of education for four counties, a single police department, a single fire department.

The local utility—and it is local in every sense of the term to New York—serves the entire city and Westchester County. But the definition imposed by the regulations precludes a public authority from selling power to that utility, and thus to its 10 million customers. These customers are being deprived of benefits that most other utility consumers in the Nation can enjoy.

Mr. President, New York has the highest utility rates of any city in the country. Although this is primarily due to the high price of residual fuel oil and other fuels, as well as the enormous tax burdens that these utilities face, we have here an opportunity to provide somewhat less expensive power to these millions of consumers. The Power Authority of the State of New York, which was established by State law to provide power primarily to public facilities, is now precluded from selling excess power to Consolidated Edison, which serves the New York City metropolitan area, and to most of the other utilities in New York State, because of the restrictive two county interpretation of the industrial development bond interest exemption.

The power authority has no choice but to finance its facilities with exempt industrial development bonds, the costs are far less, but the regulation severely limits their ability to use the power they generate most efficiently and effectively. In fact, the regulation is causing, and will cause, excess generating capacity to be built that would not otherwise be necessary. This will result in the use of more precious fuels, whether they be oil and gas or other fuels, and it will exacerbate capital shortage problems in the electric utility industry and in the Nation for no useful reason.

Moreover, it will cause needless environmental damage from more plants that would otherwise be necessary to serve the legitimate needs of New Yorkers. If the power authority had the flexibility it needs to sell its excess power to consumers within its legal jurisdiction, it could distribute its power where it is most needed and serve its own public consumers as well as the special needs of private consumers within the State.

If this amendment is agreed to, PASNY estimates that existing plants for the construction of two powerplants in the

New York area could save utility consumers approximately $100 million in finance costs over the life of the plants. In addition, these new nonoil and gas fired plants would save precious energy resources and save many millions in fuel costs. PASNY estimates that the fuel savings alone from one of its proposed new plants would yield utility consumers approximately $200 million/year by 1990.

This amendment has been fashioned very narrowly to avoid any significant revenue loss. It will not permit the Power Authority of New York State to construct powerplants with exempt bonds that it would not otherwise be able to construct. With or without this amendment, PASNY will build its needed new powerplants under the exempt provision. But this amendment would allow PASNY to pass on its savings to the millions of utility consumers in the New York City area. It will give the power authority, and others similarly situated, the flexibility it needs in dealing with electric power needs and new generating capacity. It will need the arbitrary discrimination against the New York City area that results from the treasury regulation limiting local power distribution to a two county area.

I urge my colleagues to accept this amendment.

Mr. MOYNIHAN. Will the Senator yield?

Mr. JAVITS. I yield.

Mr. MOYNIHAN. Mr. President, I associate myself with the remarks of my senior colleague. I would like to make another point which might be of interest to the Senate. That is that the beginnings of a national energy policy in this Nation can be dated from the establishment, under the then Gov. Franklin D. Roosevelt, of the Power Authority in the State of New York. It was that experience of providing a public yardstick, a measure for private utilities which, among other things, has made public utilities an economically successful and politically viable form of activity in terms of national monopoly.

Governor Roosevelt went on to become President, and we commenced the Bonneville and TVA, the whole series of public power policies which began in the 1930's.

It is a curiosity, indeed a perversity, of our Internal Revenue regulations that this same power authority cannot see fit to do the normal development that one would expect of such an enterprise by selling independent industrial development bonds.

In the aftermath of our having since acquiesced to a provision in this bill which retains a provision which would be potentially calamitous to us who are such great importers of oil, we would think it simple equity to allow the State of New York to do what other States already do and to accept this amendment. I am happy to join my senior colleague in this matter.

Mr. JAVITS. I thank my colleague very much for his statement.

I point out that this amendment is extremely narrow in terms of what kind of credit or how the State agency, to wit, the power authority, may use the industrial bonds issue exemption. The only thing the amendment affects is what may it do with this power after it has actually built a plant, which would be built anyhow. I want to make that clear. This will result in no new plants, no new enterprises, or anything else, which would not happen otherwise, but relates only to the fact that when it does have the power, and if it does have a surplus, it may sell that surplus within the State.

This, as I point out, is critically important to the biggest city in the United States, which, by some freak of history, has five counties. I hope very much the Senator from Louisiana and the Senator from Nebraska see fit to take the amendment to conference. If there are any problems with it, I am sure they can be dealt with.

Mr. LONG. Mr. President, this is a proposal to allow the power authority of the State of New York to sell electricity in New York State without limitation by the two contiguous counties' regulation. I cannot guarantee that the House will go along with this. For that matter, I am plagued by what oftentimes happens to a manager of a bill, that every sponsor of an amendment is the best expert in the Senate on the amendment. I would suggest the Senator receive that information from his colleague, the junior Senator from New York, who is our best expert at the moment. I would certainly be willing to go to conference and discuss the matter with the House to see what we can work out.

Mr. JAVITS. I thank my colleague very much.

Mr. CURTIS. I concur with the chairman.

Mr. JAVITS. I thank the Senator. We are ready for a vote.

Mr. MOYNIHAN. May I express my thanks to the distinguished chairman of the committee as well as the distinguished Senator from Nebraska.

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

The amendment was agreed to.

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

Mr. MOYNIHAN. Mr. President, 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 Maine is recognized.

AMENDMENT NO. 1519

(Purpose: To delete the tax credit for production of oil and gas from nonconventional sources.)

Mr. HATHAWAY. Mr. President, I call up amendment No. 1519 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maine (Mr. HATHAWAY, for himself, Mr. CLARK, and Mr. HART), proposes an amendment numbered 1519.

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

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

The amendment is as follows:

On page 89, beginning with line 20, strike out through line 9 on page 93.

Mr. HATHAWAY. Mr. President, the amendment which I have called up, cosponsored by Senators HART and CLARK, is an amendment to strike the production credit from section 1044 of the bill. In the bill there is a provision for $3 a barrel tax credit for oil produced from shale rock, and 50 cents per Mcf for geopressurized methane gas and gas produced from tight rock formation. The energy tax bill provides tax incentives enough, I believe, for methane gas. It provides for a percentage depletion for gas produced from salt water wells; it provides for the intangible drilling deductions and for the expensing of geological and geophysical costs.

The same incentives are provided for natural gas produced from tight rock formations in Devonian shale.

Shale oil rock is already, under law, entitled to percentage depletion. It is entitled to the intangible drilling deduction and further entitled to the geological and geophysical deductions.

It seems to us that we do not need further economic incentives through the tax code at this time. We would be setting a bad precedent to establish a permanent tax credit for subsidies to the companies producing this energy. If further incentives are really needed, we think that they should be handled by a direct Government program. At this time, let us wait and see just what would happen with the already generous incentives which have been included in this bill.

Mr. President, there have been no hearings in regard to the $3 a barrel tax credit or the 50 cents per Mcf credits which this amendment would strike. It may very well be that such production credits are warranted. But, certainly, it seems to us that the amount that has been chosen is a somewhat arbitrary amount. Whether it is needed or not, I do not believe has been shown, except by someone who offered the amendment in the Finance Committee, how much is required. They have said it would be a nice thing for these people to have this extra credit. There is no basis for the oil companies coming in, or any of the producers coming in, and saying, "This is how much we need and we can show, dollarwise, why it comes out to $3 or why it comes out to 50 cents."

Perhaps we should consider it and perhaps we should include it. But for the present time, it seems to me that the tax breaks that these energy producers already get, either under existing law or under this bill, should be sufficient; or at least, we should wait and see to determine whether or not they are sufficient. If they are not sufficient, then, at a later time, we can give them whatever other assistance we think is necessary in order to produce this type of energy.

I do not think there is any doubt that we need as much oil and other sources of energy as we can possibly get. But simply and arbitrarily to say that, for oil shale, they should get $3 per barrel as a production incentive or to get the gas with an incentive of 50 cents per mcf seems to me to be a very poor way to legislate. We should defer such additional tax breaks

until such time as we have had hearings and an opportunity to determine just what, if any, additional tax breaks are necessary.

Senator HART of Colorado wanted to participate in this debate, Mr. President; I believe that he has been detained elsewhere but will be here shortly. Unless the manager of the bill would like to speak, I shall suggest the absence of a quorum.

Mr. LONG. Mr. President, first, let me suggest that, just because the Senate wants to legislate, and this is a significant amendment, this Senator would like to know when we can vote. Let me suggest a time limitation so that we can divide time on whatever basis the Senator from Maine would like. It is all right with me to let the Senator call his own signals on that, but I think we ought to have a limitation so we can know when we shall vote.

How much time would the Senator require?

Mr. HATHAWAY. If the Senator will yield, I should be happy to enter into a time agreement, but I think we should wait until the Senator from Colorado can be here, because I think he has a lot to say on this subject. I do not know what time he will agree to, but I am sure he will agree to a time limitation. Why not have a quorum call at this time?

Mr. LONG. I hope that perhaps we could end the rollcall prior to reading all the way through, but just call the quorum long enough to get the Senator in here.

Mr. HATHAWAY. He has been called and is on his way. He should be here very shortly. If the Senator wants to use this time to answer——

Mr. LONG. Let me speak on the subject briefly. Then I shall join the Senator in asking for a quorum.

Mr. President, this amendment is in the bill because testimony by Atlantic Richfield, and evidence obtained from other sources, indicates to us that there is a fantastic potential to produce additional fossil fuel from sources that are not presently in production.

In the Western States, the shale that is there is estimated to be enough to provide energy needs for hundreds of years if we simply develop the process to make the shale into oil.

The Senator from Georgia (Mr. TALMADGE) was very much impressed by the evidence and the testimony before the committee, and he made this point to Secretary Schlesinger and many others: If they would provide a production incentive to say that they would, for example, add $3 a barrel to the world price for selling shale oil, oil made from shale. If it does not work, it is not going to cost taxpayers anything. This is something that has already been developed to the pilot stage. We know it can be done. But when a taxpayer puts his money into it, there is a question: Can he make it produce on a commercial scale?

If it works, we then have a resource that is worth, perhaps, a trillion dollars or more. If it does not work, it does not cost the Government anything. The investor just loses money. Perhaps he can write some of it off as a tax loss, but in the conventional sense, we do not think of that as a loss to the Government, that a man tries to do something and spends money and fails.

If he is successful, because we provide an incentive to someone who hopes to make some money or profit, this Nation then has an invaluable resource, worth, perhaps, a trillion dollars, or maybe a lot more than a trillion dollars to this country.

The rock is there, the resource is there; it is just not doing us any good. It is a lot like that red clay we have in Louisiana. You could make something out of it, but unfortunately, they have some red clay in Arkansas that has a little higher quality for bauxite purposes, and they have red clay elsewhere that is better for making steel. So the result is that because somebody else has something better, more commercially feasible, what we have is valueless. If we could make this shale yield oil the way some people think it can, that could solve our whole energy problem.

Mr. TALMADGE. Mr. President, will our distinguished chairman yield at this point?

Mr. LONG. I yield.

Mr. TALMADGE. I wonder if we could get a time agreement on this amendment?

Mr. HATHAWAY. If the Senator will yield, I believe we can enter into an agreement. I believe the Senator from Colorado would like about 15 minutes to talk. I think we could agree to vote in about half an hour.

Mr. TALMADGE. I would like about 20 minutes, Mr. President.

Mr. HATHAWAY. Let us make it 40 minutes altogether.

Mr. TALMADGE. Twenty minutes to a side.

Mr. LONG. Mr. President, I ask unanimous consent that there be 40 minutes, equally divided between the manager of the bill and the Senator from Maine.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. TALMADGE. Mr. President, the House sent us a bill that was heavily loaded with taxes, the overwhelming majority of which would be rebated to the citizens of the United States. It was primarily a conservation measure. It did little or nothing to develop alternative sources of energy.

Conservation is well and good. But in the final analysis, if we depend on conservation alone, this Nation will ultimately die.

Why? Because we are now importing about 47 percent of the energy that we use in this country. And what is the cost, Mr. President? The present cost is $45 billion a year. It is increasing day after day, week after week, month after month.

What is it doing at the present time? Our dollar deficit for the United States of America this year will be a minimum of $25 billion, and probably as much as $30 billion.

What is it doing to our dollar? Every day, the lead item on the financial pages, if not the front page, is this: The dollar declines against the yen, the dollar declines against the mark, the dollar declines against the Swiss franc.

Mr. President, that is going to continue as long as this Nation has to import energy at the rate that we are importing it at the present time.

When the bill came to the Committee on Finance, it was immediately obvious to every member of the Committee on Finance, Democrats and Republicans alike, that the bill was weak because it did not do anything to develop alternative sources of energy.

Now, what are the alternative sources of energy?

No. 1 is coal. We have enough coal in the United States of America to last for 300 to 500 years. It constitutes a third of the total energy supplies of the world. Coal can be gasified. Coal can be liquefied. The Germans did it very effectively in World War II. That is how Hitler ran his war machine. But it is a high cost energy.

Mr. President, in addition to relying on coal, we must rely on other alternative sources of energy, and what is No. 1?

I hold in my hand a little piece of shale rock, found largely in the Rocky Mountains of this country. Do you know how much we have out there, Mr. President? Almost 2 trillion barrels of petroleum can be made from shale rock in the Rocky Mountains.

Here is the petroleum that comes out of shale rock. That, too, Mr. President, is high-cost energy.

There is one little plant operating out there now, Occidental, in situ process, where I understand they heat the shale and then drain oil from it, but the plant is producing a minimum amount now.

Dr. Schlesinger, the Secretary of Energy, when he was before the Finance Committee, testified that shale rock petroleum could be produced at a cost of $18 to $20 a barrel.

What is the cost when we import petroleum from overseas now, from OPEC?—$14.40 a barrel. So the thought occurred to me: If we could subsidize the production of our shale, we could become energy sufficient.

We had one witness, Atlantic Richfield, testify that if they could get a $3 tax credit, they would build a plant costing $1.2 billion and start to mine some shale rock, start producing petroleum from shale rock, and they would not want one thin dime of Federal money.

I have in my hand a telegram here from the chairman and president of Union Oil Co. of California. It reads, in part, as follows:

> Union Oil Company has previously indicated that it is willing to proceed with a commercial oil shale venture on its fee properties in Colorado provided it had reasonable Federal price guarantees and access to cost loans to assist in the construction. As we understand it, the proposed Federal energy development corporation would be capable of providing low-cost loans, but it appears unlikely that it can provide the price guarantees. We believe that a simpler and preferable alternative approach is the $3.00 a barrel tax credit that was approved last week by the Senate Finance Committee. If such a credit were to become law, we are prepared to move forward immediately with a $100.00 plus million commercial oil shale venture, using Union Oil's proved oil shale mining, retorting, and refining technology, under the tax credit approach.

Mr. President, I will not read it all. I ask unanimous consent that the telegram be printed at this point in the RECORD.

There being on objection, the telegram was ordered to be printed in the RECORD, as follows:

Senator HERMAN E. TALMADGE,
Washington, D.C.:

Union Oil Company has previously indicated that it is willing to proceed with a commercial oil shale venture on its fee properties in Colorado provided it had reasonable federal price guarantees and access to cost loans to assist in the construction, as we understand it, the proposed federal energy development corporation would be capable of providing low cost loans, but it appears unlikely that it can provide the price guarantees. We believe that a simpler and preferable alternative approach is the $3.00 a barrel tax credit that was approved last week by the Senate Finance Committee. If such a credit were to become law, we are prepared to move forward immediately with a $100.00 plus million commercial oil shale venture, using union oil's proved oil shale mining, retorting, and refining technology. Under the tax credit approach, all the risks of technology and financing would be borne by the provide companies, since the credits could not be claimed until shale oil was actually being produced. This approach offers a low risk and administratively simple way for the nation's taxpayers to assist bringing this vital alternative energy resource into commercial operation.

FRED L. HARTLEY,
Chairman and President, Union Oil Co. of California.

Mr. TALMADGE. Now, what are we talking about here? We are talking about trying to provide with a minimum amount of money additional sources of petroleum in this country.

The Senator's amendment is so broad it strikes not only the oil shale amendment, but the amendment agreed to this morning offered by the distinguished Senator from New Mexico, and also the provision that was inserted in the Finance Committee bill to try to get some of this high cost gas out of hard rock.

But I will deal primarily in my argument here with the shale provision, because it is the most cost effective. I will read first what the revenue effect would be, and I refer the Members of the Senate to the Finance Committee report, page 102:

REVENUE EFFECT

The credit for shale oil production will reduce revenues about $4 million in fiscal 1978, $19 million in fiscal 1979, and $327 million in fiscal 1985. The credit for geopressurized methane gas production will have no impact on revenues in fiscal years 1978 and 1979; it will reduce revenues by $52 million in fiscal 1985. The credit for tight rock formation gas production will not affect revenues in fiscal years 1978 and 1979; it will reduce revenues by $194 million in fiscal 1985.

This shale rock provision of this amendment would produce, according to Dr. Schlesinger's energy department, 200,000 barrels of petroleum daily by 1985. And how many barrels does that amount to in the course of a year, Mr. President? Seventy-three million barrels by 1985. That is about 10 percent of all we import at the present time. Every time we would produce one barrel, we would lose a tax credit of $3 and gain $11.40 that we did not have to send to Saudi Arabia.

Mr. President, that is the issue before the Senate.

I think the fundamental issue is whether or not this Nation has the courage, whether we have the will, whether we have the good sense, to face this issue and develop alternative sources of energy.

It is going to require a resolve like this Nation had when we developed synthetic rubber in World War I. It is going to require a resolve like this Nation had when we developed the atomic bomb in World War II. It is going to require a resolve like we had when we put a man on the Moon in 1970. This is just a first step.

If we want to die as a nation, we can sit here and do nothing. If we do, OPEC will starve us to death. Unemployment lines will be throughout the country. We will be without energy. We will be taking in each other's washing for a living.

But if we will use the resources and manpower that we are capable of, we can and we must make this Nation self-sufficient in energy.

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

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I completely agree with the first and last parts of the Senator from Georgia's argument.

There is no question we have got a serious energy problem on our hands, and that we have got to take more aggressive actions to resolve it. There is no question that we are going to have to mount a substantial national effort, that a number of steps have to be taken.

The real question is the middle part of his argument as to whether this is the right step or the right resource at the right time. Unfortunately, it is not. It is the wrong step, the wrong resource, at the wrong time.

The Senator from Colorado happens to have a little interest in this since about 80 percent of the oil shale deposits are presently located in the State of Colorado, and any major development of an oil shale industry, whether overnight or over a short period of time, is going to have a substantial effect on the State of Colorado. Therefore, I think the constituents I represent have a substantial interest in this measure.

Mr. President, let us look at the facts that are put forward to justify a $3 a barrel subsidy for the oil shale industry to bring shale into production.

First of all, I think it is important to note that oil shale was not recently discovered either by the Finance Committee or anybody else. It has been around for a number of decades, and as far as people know is a potential resource.

So there is nothing new about oil shale and there is nothing new about the rocks that have been shown the Senate and the shale oil produced from those rocks. We have known about them for a long time.

The real question is the economics, the technology, and the impact on the area resulting from that production.

What did the Finance Committee have before it when it decided to offer this $3 a barrel subsidy? First of all, it had testimony by Mr. Daniels, of the Atlantic Richfield Corp., who suggested that a $3 a barrel subsidy for pioneer plants only, not for a full-scale industry, over the entire future—he gave no data to back the assertion that a subsidy of $3 a barrel is necessary to support commercial production and development.

The second witness was Mr. Brown, speaking for an organization called TOSCO, the Oil Shale Corp. Mr. Brown stated as follows:

We think that with properly leveraged project financing of an appropriate-sized plant, shale oil could probably compete in a free market today with OPEC oil of comparable quality landed in the U.S.

Mr. TALMADGE. Mr. President, will the Senator yield?

If that is true, why are we not producing it today?

Mr. HART. I am about to get to that.

It is not the economics. It is the impact on the water and the land and the air that still have not been resolved. It is the impact on the State of Colorado and the surrounding States and communities resulting from this production that still has not been taken care of, and it is many other factors. But it is not, according to Mr. Brown and TOSCO, the financing.

What did Mr. Armand Hammer say? He is with Occidental Petroleum, one of the companies trying to develop a technology. He testified before the Energy Committee on April 1, 1977:

Occidental believes it has found a way to produce this (shale) oil in an environmentally acceptable manner at prices competitive with imported oil . . . in the range of $11 to $14 per barrel," and . . . I do not mean Government-guaranteed loans. I do not mean price supports. We are not asking for anything of that kind. We don't believe it is necessary. The only thing we think is necessary and advisable is that the Government help speed up the process.

The Government is helping speed up the process. It has done so for about the last 20 years, even during the period when oil has been cheap. There has been Government-conducted research and development, and there is presently Governmet-financed research and development.

What needs to be solved are the technological problems, many of which are still unresolved, and the $3 a barrel subsidy will not solve them.

What needs to be solved is where the water is going to come from for this industry. As a Senator from this State, I say that that problem has not been solved, in a very arid State.

What needs to be solved is the impact on the land of the disposal of spent shale from above ground retorting. That problem has not been solved. What needs to be solved is the impact on the air of the State of Colorado from the retorting of this resource above ground. That has not been solved. What needs to be solved

are some investment problems as to the amount of capital required to finance this industry. That has not been solved. This $3 a barrel subsidy will not solve any of these problems.

Mr. President, the development of a full-scale oil shale industry is going to have enormous impact on my State, and I believe there is going to be an oil shale industry in the State of Colorado and in surrounding States. I think it will not be far off, but it has to be done right. It has to be done by the free market and not by an industry whose construction is financed by the Federal Government, whose prices are supported by the Federal Government, whose market is created by the Federal Government, whose costs are subsidized by the Federal Government, and in which the taxpayers have no stake whatsoever, except to underwrite the whole venture, so that somebody can make a lot of money at it.

The Senate of the United States would be well advised, before it adopts a provision such as this, to know exactly what it is doing. What it is doing is not anything related to free enterprise. It is a further step in the door of Government subsidization of a handful of companies, for one industry.

If we need oil shale, and I think we will, and if it is going to cost a great deal of taxpayers' dollars—and it might, although I am not convinced that it necessarily will, and the testimony does not support that it will—then let us look at some alternatives that have not been examined by Congress, including public corporations, since much of this resource is on public land that is presently owned by the taxpayers of the United States, and including a range of other alternatives. But complete elimination of business risk and subsidization of industry, so that the risks can be socialized and the profits can remain in the private sector, is hardly a fair deal.

Mr. President, as one whose State will be enormously impacted by the development of this industry, and as one who has followed oil shale development for the last 10 or 12 years very closely, as I said before, this is the wrong approach for the wrong reasons at the wrong time.

If Dr. Hammer is to be believed in his testimony before Congress, and if other spokesmen for oil shale companies are to be believed in their testimony before Congress and in statements they have made to me—I have looked into this matter for some period, both in public office and before I held public office—then, this is not necessary. This may be somebody's idea in the industry to get a leg up, but it is not the way to develop a major resource of this country. It has not been thought out. Most U.S. Senators do not know what shale is. It is not a new resource. It is something the people in Colorado and the surrounding area paid great attention to for a long period of time. As their spokesman in the United States, I am saying this is not the way to go.

The PRESIDING OFFICER. Who yields time?

Mr. TALMADGE. Mr. President, does the Senator from Maine desire to proceed? I suggest that he proceed at this point, and I would like to conclude, inasmuch as I have to face the argument.

Mr. HATHAWAY. I would be happy to let the Senator go ahead with his final remarks and reserve to myself 2 minutes to answer them.

Mr. TALMADGE. I yield myself 1 minute.

Mr. President, I have been told by knowledgeable people in the energy business that many potential oil shale developers are in a squeeze. I have been told that these companies must show planned commercialization of shale oil or they will lose their mineral leases on certain Government and private lands. If this be the case, it is not surprising that, on paper, everyone in the field is optimistic about commercialization, but in the real world they are doing very little about it.

Mr. President, the Senator from Colorado speaks of the ecological problems here. This amendment has nothing whatever to do with that. That is a red herring. It does not even come into the issue. That is something the Federal Government, the State of Colorado, and local authorities will face, because this does not change the law.

All I am doing by this modest subsidy is trying to save $14.40 a barrel that we pay to Saudi Arabia and OPEC, by having a subsidy of $3 a barrel for oil from shale rock. It seems to me that it is a good deal if you can spend $3 and get back $14.40.

I reserve the remainder of my time.

Mr. HATHAWAY. Mr. President, the Senator from Georgia may be correct; but I think that the questions that have been posed by the Senator from Colorado and the questions I mentioned earlier about the difficulty of determining just what, if any, credit should be allowed, as well as and all the other difficulties that are preventing us from getting oil shale and the geopressurized methane gas, remain to be answered.

I think it is premature at this time to be awarding these energy companies $3 a barrel and 50 cents an Mcf when we do not have any hard data to support that. Maybe they would be entitled to that much of a credit, maybe more; but not at this stage of the proceedings could we afford to grant them anything at all.

Mr. HART. Mr. President, will the Senator yield?

Mr. HATHAWAY. I yield.

Mr. HART. Mr. President, I think the Senator from Georgia made my point exactly. If those problems have not been solved yet, then this is an unnecessary subsidy and it will not solve those problems. We are proceeding in an orderly manner to develop an oil shale industry. We have been doing so for 20 years in this country.

Mr. TALMADGE. Mr. President, will the Senator yield to me, on my time?

Mr. HART. I will finish my remarks, and then I will retire from the field.

This subsidy will not solve those problems.

It is not raising a red herrring to say that those problems exist. They do exist, and this subsidy is not going to solve them. You can subsidize that industry for a long time, and until those problems are solved, it will be no good. That is exactly the point.

Mr. TALMADGE. Mr. President, I hold in my hand a weekly bulletin entitled "Environmental Study Conference, Senate Supplement No. 1, October 24, 1977." I read from page 8 thereof, and I ask the Senator if this is a correct quotation:

> Finally, Hart says oil shale has yet to be proved an economic technology. Although there have been estimates that oil could be produced from shale for as little as $18 per barrel, this estimate does not include the cost of reclamation, price support, other government subsidies annticipated by industry, or construction grants now available from BOE.

Mr. HART. I say to the Senator that I do not know where that quote comes from. It may or may not be accurate.

Mr. TALMADGE. It quoted the Senator as saying it probably was not economically feasible even at $18 a barrel. That is my point. I am trying to prove that that is the reason we need a subsidy. The beauty about the subsidy is that: the $3 a barrel will be paid only if they produce petroleum. There will not be 1 nickel paid if they do not produce petroleum. What is wrong with producing petroleum in the United States of America at $3 a barrel instead of importing it from Saudi Arabia and other OPEC nations at $14.40 per barrel?

The PRESIDING OFFICER (Mr. STONE). The Senator's 1 minute has expired.

Mr. TALMADGE. I yield myself 2 additional minutes.

Mr. President, I ask unanimous consent to print in the RECORD a letter to Senator LONG, dated October 13, 1977, from the distinguished Senator from Colorado (Mr. HART) and an item-by-item response thereto.

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

U.S. SENATE,
Washington, D.C., October 13, 1977.

Hon. RUSSELL B. LONG,
Senate Committee on Finance,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to express my concern over reports that the Senate Committee on Finance plans to include a $3 per barrel tax credit for oil produced from shale.

I oppose such a credit on two counts. First, I do not believe that a tax subsidy is useful to accelerate the current rate of experimental oil production from shale. And second, there is no evidence to support the conclusion that shale oil will not be commercially feasible without this subsidy once full scale commercial production levels are achieved.

The Federal Government should help accelerate the development of promising new technologies, so they are economically practical and environmentally acceptable. However, I believe the tax credit proposed by the Finance Committee is premature and inappropriate at this time. Spokesmen for each of the various oil shale proposals have said that their current new technologies can compete with oil at current OPEC prices. Prototype commercial plants need to be built to prove the technology. But subsidies for commercial operations have not been deemed necessary, even by the oil shale companies.

As you probably know, there are a number of different oil shale operations at various stages of research and development in Colo-

rado. Of these, the Paraho project is currently conducting tests under the direction of the Department of Defense and ERDA on the Naval Oil Shale Reserve at Anvil Points. Of the two proposed production facilities on private land, the Colony Development Operations is presently awaiting full review of an Environmental Impact Statement and is negotiating with the Bureau of Land Management over a proposed land exchange. Upon successful resolution of these and other matters, Colony estimates that it will take at least 4 years to construct its pilot production facility.

Superior Oil is also discussing the possibility of a land exchange with the Bureau of Land Management, and this proposal will require an Environmental Impact Statement before any decision is reached. If a swap is completed, a 5 to 7 year pilot production program is necessary before commercial production is even considered.

Detailed Development Plans have just been approved for the Federal leaseholders of both the C–a and C–b tracts in Colorado. Both of these Plans propose a period of years for small scale demonstration projects to assess the economic viability, technical performance, and environmental ramifications of their as yet untested technologies. In the case of the Rio Blanco project on the C–a lease tract, this experimental phase will run for a full 5 years. In summary, it appears that research and development is now proceeding well, and large scale commercial production is about 5 to 10 years away.

I also question whether there is any justification for a tax credit in the future, once the full-scale commercial phase is begun.

The Finance Committee's initial interest in the $3 subsidy for oil shale appears to be based upon testimony by Mr. R. G. Daniels of Atlantic Richfield and by Mr. Brown of TOSCO Corporation (Colony Development) before the Finance Committee on September 12, 1977. Mr. Daniels suggests a $3 per barrel subsidy (for pioneer plants only), but gives no data to back the assertion that $3 is necessary to support commercial development.

All other testimony, both by the Atlantic Richfield/TOSCO group and by proponents of three other technologies, reaches the opposite conclusions. All promising new technologies are said to be commercially viable at the world oil price. In fact, on March 11, 1977, before the Energy Committee, Mr. Brown of TOSCO testified, "we think that with properly leveraged project financing of an appropriate-sized plant, shale oil could probably compete in a free market *today* with OPEC oil of comparable quality landed in the U.S.

In order to get properly leveraged financing, the shale oil industry needs to build a few prototype plants to prove that the technology works in a full scale plant. There is no evidence of a need to subsidize commercial production. In fact, there are at least two groups who plan to go ahead with prototype commercial plants without any kind government subsidy. Dr. Armand Hammer, of Occidental Petroleum Corp., testified before the Energy Committee on April 1, 1977, "Occidental believes it has found a way to produce this (shale) oil in an environmentally acceptable manner at prices competitive with imported oil . . . in the range of $11 to $14 per barrel," and ". . . I do not mean Government guaranteed loans. I do not mean price supports. We are not asking for anything of that kind. We don't believe it is necessary. The only thing we think is necessary and advisable is that the Government help speed up the process." . . .".

Superior Oil Corporation also reports to have a commercially viable process without subsidy. Mr. Ben Weichman, before the Energy Committee on May 24, 1977, testified that Superior's process could produce oil at $11 per barrel. Superior Oil wants to swap oil shale land, but does not want a production subsidy.

Paraho's experience to date at Anvil Points, Colorado, has resulted in projections that crude oil should be commercially feasible at current world oil prices.

It is a reasonable assumption that additional Federal help may be useful to further develop oil shale production capabilities. However, Federal aid should take the form of technical and research assistance to help solve the problems of water supply, air and water quality constraints, sociological impacts, and spent shale disposal. The government should provide for expedited consideration of the various Environmental Impact Statements and land exchange proposals. It is these technological and environmental matters which are the real barriers to full scale oil development. The subsidy proposed by the Committee will do nothing to overcome these production problems, but will only serve to add yet another revenue-losing provision to the tax code.

Further, tax subsidies are merely one form of Federal financial support—including construction loan guarantees, price supports, and guaranteed markets—which have been proposed for the oil shale industry. We should not enter this "incentive" thicket—which is manifestly antagonistic to true free enterprise—without much greater thought being given to its long range implications for our economic system. For my money, Federal financing inevitably will require greater public participation—particularly for a publicly owned resource.

I urge the Finance Committee to reconsider its proposal to subsidize commercial oil shale production and to focus instead on incentives to accelerate the research and development toward overcoming environmental and production difficulties.

Sincerely,

GARY HART,
U.S.S.

COMMENTS ON LETTER FROM SENATOR HART TO CHAIRMAN LONG OPPOSING SHALE OIL PRODUCTION CREDIT

In a letter to Chairman Long dated October 13, 1977, Senator Gary Hart has expressed opposition to the $3 per barrel shale oil production credit adopted by the Finance Committee. The letter confirms the fact that the United States will have no commercial shale oil production by 1985 if the current rate of development continues. In the absence of a Government incentive to expedite the construction of a few pioneer commercial plants, Senator Hart acknowledges that oil shale development over the next 5 to 10 years will probably be confined to mere technology demonstrations.

On the other hand, the shale oil production credit proposed by the Finance Committee could cause the existing oil shale ventures to activate and accelerate their development plans and could, as estimated by the Committee staff, stimulate between 100,000 and 300,000 barrels per day of domestic shale oil production in 1985. Even more importantly, the construction and operation of a few genuine commercial plants will provide a context for the advancement and refinement of existing recovery technology and will create a technological, environmental, and economic basis for further development of the Nation's oil shale resource. With the experience of a few commercial ventures in hand, the second generation of oil shale plants should proceed without the need for Government assistance or incentives.

The principal fallacy in Senator Hart's argument is the assertion that prototype technology demonstrations can establish an adequate basis for investment in full-scale commercial facilities. In fact, recovery technology represents only one of several necessary steps in a commercial oil shale project. The other steps—which are equally vital to the economics of a plant—include mining, crushing, oil upgrading, and reclamation. While further technology demonstrations may provide useful information, they will not establish that a complete commercial plant can be built and operated in an economic and environmentally acceptable manner.

For example, there is the proposed Colony oil shale project. Started in 1964, it is said to be the most commercially advanced oil shale project in the United States today. More than $70 million has already been spent on the project. Technology needed for it has been demonstrated at the semi-works plant scale, and design work and definitive cost estimates have been completed for commercial scale facilities to produce 48,000 barrels per stream day of high quality, sulfur free distillate petroleum. The Bureau of Land Management has completed a Final Environmental Impact Statement for the project, and Colony has acquired land needed for community development and completed planning of community facilities for construction workers and the permanent plant staff.

Despite all these efforts, the plans for proceeding with the Colony project are on the shelf, where they have been for the past three years. The project has not moved into its next phase, field construction, because of complex economic considerations attendant to all pioneer projects involving first-of-a-kind machinery. First, there is the size of the required investment—in excess of $1 billion. This is a huge sum of money, even to a group of large companies. Consideration of the investment of 1 billion must inevitably pay special attention to the risks involved, which are substantial in the case of a pioneer commercial oil shale plant.

On the regulatory side, there are uncertainties regarding the application of unsettled environmental requirements to a new industry without previous commercial-scale experience or precedents. These uncertainties could cause costly delays and expensive changes to the plant design. There is also the risk of costly delays because of litigation instigated by groups opposed to oil shale development. And there are, of course, the inevitable risks attributable to cost overruns resulting from scale-up of new technology and integration for the first time on a large scale of all of the operations involved in oil shale processing.

In reality, there are two sets of oil shale economics—those for pioneer plants and those for later plants. Later plants will benefit from the experience of the first plants and will, of course, be more efficient. And it is important to understand that significant breakthroughs in efficiency are more likely to be gained through experience with genuine commercial-scale facilities than through smaller proptotype demonstrations which are inherently uneconomic and inefficient.

Senator Hart errs in suggesting that prototype demonstrations could lead to the leveraged project financing of commercial oil shale ventures referred to by Mr. Brown of Tosco Corporation in his testimony to the Energy Committee. In discussing the competitive potential of domestic oil shale, Mr. Brown assumed a hypothetical financing structure in which two-thirds of the total capital cost of a commercial plant could be borrowed at a favorable interest rate on the strength of the project's assets. Mr. Brown emphasized that the leveraged financing scenario was entirely hypothetical and that such financing could not be obtained for a first plant even where the economics were attractive on paper. His testimony also carefully noted that prototype demonstrations would reduce only some of the risks and uncertainties deterring commercialization of oil shale.

Senator Hart's letter is further misleading in characterizing the proposed Colony De-

partment plant as a "pilot production facility." In fact, the Colony group (currently Atlantic Richfield Company and Tosco Corporation) has already conducted all necessary pilot plant and semi-works demonstrations and final design work for a full-scale commercial plant is also completed. Construction could proceed within six months. The group has no plans for further pilot or prototype operations.

The letter also appears to misinterpret announced development plans of other ventures by stating that they plan to go ahead with prototype "commercial" plants without government assistance. While Superior Oil, Paraho, and Occidental Petroleum each considers its respective technology ready for commercialization, none of them has announced a financial commitment to build a commercial plant. Superior has stated publicly that it does not intend to spend its own funds to commercialize its process (Press Conference of Mr. Ben Weichman, Washington, D.C., March 25, 1977). Occidental has stated that it will be "conservative" in the pace of development and that its prime venture on Federal lease tract C-b will spend only about $40 million over the next three years on initial mining operations (Los Angeles Times, March 21, 1977). The commercial plant is estimated to cost $440 million.

In fact, the infant oil shale industry is essentially in a holding pattern, with each venture spending only the relatively modest amounts necessary to maintain its technology, its private site, or its leased reserves. In these circumstances, the shale oil production credit proposed by the Finance Committee offers a fail-safe incentive. If the credit actually stimulates the construction of pioneer commercial facilities, it will have served its purpose. If the credit fails to stimulate commercial production and no significant quantities of shale oil are produced, the credit will not result in a material revenue loss to the Treasury.

Finally, the amount of the proposed credit is based on the detailed cost information for the Colony project submitted by the ARCO/TOSCO witnesses. This data has been previously published and constitutes the most definitive cost information in the public record for a commercial oil shale facility. Based on this data, the $3 credit would allow a project to incur cost over-runs of 25 percent and still remain competitive with imported oil. The credit would provide $1.80 per barrel to cover a 25 percent capital cost over-run for equipment redesign and replacement. It would also include $1.20 per barrel to cover downtime of up to 25 percent for unanticipated repairs.

Mr. TALMADGE. Finally, Mr. President, I hold in my hand a poll made by Louis Harris and Associates, dated September 1974, on attitudes toward oil shale development and preservation of natural resources in the State of Colorado as to whether they favor or oppose oil shale development in Colorado.

Total public, favor 62 percent, oppose 26 percent, not sure 12 percent; central city, favor 60 percent, oppose 28 percent, not sure 12 percent; suburb, favor 66 percent, oppose 22 percent, not sure 12 percent; town/rural, favor 57 percent, oppose 30 percent, not sure 13 percent; western slope—and that is where most of the shale rock is—favor 86 percent, oppose 11 percent, not sure 3 percent; government leaders, favor 75 percent, oppose 11 percent, not sure 14 percent; business leaders, favor 82 percent, oppose 14 percent, not sure 4 percent; environmentalists, favor 32 percent, oppose 64 percent, not sure 4 percent.

Mr. President, I ask unanimous consent that this poll be printed in the RECORD.

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

ATTITUDES TOWARD OIL SHALE DEVELOPMENT AND PRESERVATION OF NATURAL RESOURCES IN THE STATE OF COLORADO

Whether favor or oppose an oil shale development plant in Colorado

[In percent]

	Favor	Oppose	Not sure
Central city	60	28	12
Suburb	66	22	12
Town/rural	57	30	13
Western slope	86	11	3
Active sportsman	57	33	10
Total public	62	26	12
Government leaders	75	11	14
Business leaders	82	14	4
Environmentalists	32	64	4

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

The PRESIDING OFFICER. The Senator has 6½ minutes remaining.

Mr. TALMADGE. Mr. President, I withhold the remainder of my time.

Do either of the Senators desire to use more time?

Mr. HART. Mr. President, will the Senator yield one-half minute?

Mr. HATHAWAY. Yes, I yield one-half minute to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for one-half minute.

Mr. HART. To reiterate, I do not know what the poll figures prove. As I said in my remarks, I am in favor of an oil shale industry. I think most people in my State are. That does not necessarily mean you have to be in favor of this subsidy. That is not the issue—how many people in Colorado are in favor of an oil shale industry? I favor an oil shale industry. It does not mean I have to favor every proposal to develop that industry.

Mr. HATHAWAY. Mr. President, how much time remains for the proponents?

The PRESIDING OFFICER. Eight and one-half minutes remain.

Mr. HATHAWAY. Mr. President, the Senator from Georgia has made the point that we are going to get this oil for $3 a barrel. We are going to get it for $3 a barrel for the credit, plus whatever we have to pay for the barrel, which is $14 or $15 if it is new oil. So we are adding to the price that the consumers in the United States are going to have to pay for the oil; albeit we are replacing foreign oil, but we are going to do it at a very heavy cost.

It seems to me that there are other methods where we could achieve the same result and reduce the number of barrels that we have to import at a much lower cost than what the bill in this particular section proposes.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. HATHAWAY. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged to either side.

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. TALMADGE. 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. TALMADGE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATHAWAY. Mr. President, the Senator from Idaho wishes to speak on this amendment.

I again ask unanimous consent that we have a brief quorum call and the time not be charged to either side so he will have an opportunity to get over here.

I suggest the absence of a quorum.

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. HATHAWAY. 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. HATHAWAY. Mr. President, how much time remains for the proponents?

The PRESIDING OFFICER. The Senator from Maine has 7 minutes remaining.

Mr. HATHAWAY. Mr. President, I yield 3 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CHURCH. I thank the Senator.

Mr. President, I support this amendment because the provisions in the bill are redundant, extremely costly in terms of lost revenue, and totally unnecessary. Since the Government is already up to its ears in developing methods for the utilization of shale oil, what more can we do than we are already doing? How much more can we give away for that purpose than we are already giving away in public money? Why did we set up ERDA in the first place if we are then going to disregard what it is, at massive public expense, that ERDA is engaged in doing?

I do not understand this bill generally. But apart from my general mystification, this provision in the bill makes utterly no sense at all. We have at least four oil companies that are engaged in the utilization of oil shale rock in the great plateau of western Colorado. They know how to do it. The in situ technology has been developed to the point where all that is required now is Government participation for demonstration

projects that will make it clear it is indeed feasible to utilize this resource.

Only last week the Department of Energy signed an agreement with the Occidental Oil Co. to develop their in situ process. And the terms of that agreement are that the Federal Government will put up 71 percent of the money. That is three-quarters of the money to do it.

In view of the fact that ERDA is deeply engaged in putting up public money for this purpose, in view of the fact that the oil companies find this a satisfactory method for developing the oil shale, why on earth do we have to lay on top of it still another tax break?

It is quite unnecessary, quite unjustified, and I do hope that common sense will prevail and that this amendment will be adopted.

Mr. TALMADGE. Mr. President, I yield 2 minutes to the Senator from Oregon.

Mr. PACKWOOD. Mr. President, in each of these tax credits that was given by the Committee on Finance we attempted to estimate as fairly and as honestly as we could, with the figures used by the Joint Committee on Taxation, what the revenue loss would be for each credit, how much energy would be saved, and what it would cost to replace that energy if we did not save it.

On the oil shale and geopressurized methane gas credit it is estimated that it will cost the Treasury in the year 1985 $573 million to save 245,000 barrels of oil a day. That is about 3 percent of our imports.

If we do not spend that $573 million and save the 245,000 barrels, then we are going to have to import the 245,000 barrels. Every drop we do not save is a drop we are going to import.

To purchase 245,000 barrels of oil at today's prices, not what the Arabs may charge us in 1985 but today, would cost $1.274 billion or, to put it another way, it will cost us $700 million more to purchase the oil than it will cost us to save the oil. The difference of $700 million will be the amount of money going out of this country, gone, in order to purchase 245,000 barrels of oil and will result in a greater dependence if we passed this amendment, than we would otherwise have.

I cannot understand this rationale as to why we would not rather give—if you want to call it that, I call it incentive or inducement—$573 million to American businesses, to American individuals, to save 245,000 barrels of oil instead of $1.274 billion to the Arabs for the purchase of oil, and increase our dependence on the Arabs and increase our vulnerability to boycotts, jeopardizing our national security, making our diplomacy subject at any moment to the whims of whatever sheikhs may happen to be in control of different Arab countries.

I would implore the Senate, for a variety of reasons, financial, diplomatic, and military, to support the committee's position, defeat this amendment, and defeat all other amendments that will be coming down the road which would eliminate the savings of oil that we have tried to write into this bill.

Mr. TALMADGE. Mr. President, I yield 2 minutes to the distinguished Senator from Nebraska.

Mr. CURTIS. I thank my distinguished colleague.

An earlier speaker said we did not need this, and then proceeded to advocate appropriated money for a Government operation.

If that Government operation does not succeed, our money is gone and we have no oil.

Under the plan brought in by the Finance Committee, the risk and the expenditures made in the private sector, if it does not succeed, do not cost the Treasury one dime. If oil flows from the project, and it will, we will get a bargain. We will pay a subsidy of $3, rather than going on and on and on increasing our dependency upon foreign oil.

For 4 long years the Senate has sat here and worked on energy bills. We have authorized ERDA. They have built a grand Schlesinger-ocracy that costs $10 billion a year and never produced a pint of oil.

Here we have a chance to say to the private sector, "You can go ahead; if you fail we do not owe you anything, but if you succeed you will get a credit."

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. TALMADGE. One additional minute.

Mr. CURTIS. It will provide the incentive for those pioneer projects. The Senator asked, "What has ERDA built?" I would like to know. Never a pint of oil. We have had energy bills here, bill after bill, and our dependency on foreign oil just goes up, and up, and up. Why is it that they single out this one thing in here that does not call for the appropriation of money and gives a chance for more domestic production of oil?

Mr. HATHAWAY. Mr. President, will the Senator yield to me on my time?

Mr. CURTIS. Yes, I am delighted to yield on the Senator's time.

Mr. HATHAWAY. Can the Senator tell us why he wants the amount to be $3, and not $2, $1, 50 cents, or 10 cents? Is there any justification for the amount of $3 a barrel? Is there any justification whatsoever, other than a guess?

Mr. CURTIS. There was one witness, and there may have been more, who gave a constructive——

Mr. HATHAWAY. From the oil industry?

Mr. CURTIS. Yes.

Mr. HATHAWAY. What about the administration? I understand the administration is not taking a position on it.

Mr. TALMADGE. Will the Senator permit me to respond to that?

Mr. CURTIS. Yes.

Mr. TALMADGE. The Secretary stated that in his judgment it would cost $18 to $20 a barrel to produce petroleum from shale rock. Of course, as the Senator knows, a tax credit is deductible from taxes owed, so that would translate into a subsidy of something on the order of $5 a barrel plus for a corporation that is making a profit. So you add that to approximately $14 that a barrel of new oil sells for in the United States, and it would amount to approximately the cost of producing a barrel of oil from shale rock, according to Dr. Schlesinger.

Mr. HATHAWAY. Will the Senator yield further on my time?

Mr. TALMADGE. I yield.

Mr. HATHAWAY. Does that include all the other subsidies, the depletion allowance, the foreign tax credit, deduction of drilling costs, and all the rest?

Mr. TALMADGE. The subsidy would be for producing a barrel of petroleum, and nothing else. We had at least two companies that stated, "If we had a tax credit of $3, we would develop this petroleum capacity out of shale rock." One was Atlantic Richfield; the Senator will remember they testified before our committee that they had a plant that would probably cost $1,200,000,000, which they would build from their own resources. I put in the RECORD earlier in the day a statement from the chairman of Union Oil, in which they stated if they received the tax credit, that they would build, from their own resources, a shale oil capacity in America, to be run by Americans.

Mr. HATHAWAY. Of course, they are under no obligation to do that. They can make all kinds of promises to that effect.

Mr. TALMADGE. Suppose they do not do it. They do not get the credit.

Mr. HATHAWAY. The point made by the Senator from Colorado was what seems to me the real problem of why we are not getting this oil from shale rock. I think that problem ought to be addressed before we proceed with this giveaway.

Mr. TALMADGE. The answer is that every time we give away $3, we are going to save $14.40 that we would otherwise be using in Saudi Arabia or other OPEC countries. The jobs would be in the United States of America, not in Saudi Arabia, not in Iran, not in Kuwait, not in Venezuela. They would be here in America.

Mr. HATHAWAY. But it would still cost the price——

The PRESIDING OFFICER. The time of the Senator from Maine has expired. The Senator from Georgia has 1 minute.

Mr. TALMADGE. I yield the Senator 30 seconds.

Mr. HATHAWAY. It will still cost $3 to the taxpayers plus whatever the cost per barrel is going to be.

Mr. TALMADGE. It would cost $3 if it produces petroleum, but we would save $14.40 that would otherwise be spent in the OPEC countries.

Mr. HATHAWAY. As a taxpayer and a consumer, it would cost me $3 per barrel, plus $14 for producing it.

Mr. TALMADGE. You would pay the same price you would pay if we were getting it from Saudi Arabia, but it will be American oil, produced by Americans who pay American taxes.

Mr. President, has all time expired?

The PRESIDING OFFICER. The Senator has one-half minute.

Mr. TALMADGE. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. TALMADGE. I ask unanimous consent at this point that a letter from TOSCO Research, Inc., dated October 20, 1977, to the distinguished Senator from Colorado, written by Mr. Charles H. Brown, president, be printed in the RECORD, together with an article published in the Los Angeles Times of March 21, 1977, entitled "Hammer Pushes Hard for U.S. Oil Shale Project," be printed in the RECORD.

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

TOSCO RESEARCH, INC.,
Boulder, Colo., October 20, 1977.

Hon. GARY W. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I am disappointed that you are opposing the shale oil production credit adopted by the Senate Finance Committee. Although it is very unlikely that our company could utilize such a credit to any significant extent, we firmly believe the credit would cause other companies to accelerate their plans for investing in oil shale development and could stimulate the construction of a few pioneer commercial plants by 1985. Without an incentive of this nature, it does not appear that the United States will have a commercial oil shale facility in operation by 1985.

I know you are well aware of the vastness of our Nation's oil shale resource and of its potential for reducing our increasing dependence on foreign oil. In addition, you must realize that a commercial oil shale industry would provide substantial economic benefits and new employment in the State of Colorado and, in particular, would raise the economic horizons of those who live in the depressed Western Slope region where Colorado's oil shale reserves are located. Independent polling has established that residents of the Western Slope overwhelmingly support commercial oil shale development, and it would be ironic if their dreams of entering the mainstream of American prosperity were frustrated by their own Senator.

Personally, I am disturbed that your recent letter to Chairman Long opposing the proposed credit quotes my testimony to the Energy Committee out of context and in a misleading manner. In explaining to the Energy Committee that the obstacles to commercial oil shale development are essentially financial, I presented extensive economic data based on a hypothetical financing structure which assumed that two-thirds of the total capital of a commercial plant could be borrowed at a favorable interest rate on the strength of the project's assets. Although this analysis showed that such leveraged financing could make a commercial shale plant competitive with imported oil, I emphasized to the Committee that the leveraged financing scenario was entirely hypothetical and could not be obtained for a first plant even where the economics were attractive on paper.

Furthermore, my testimony to the Energy Committee carefully noted that further prototype demonstrations could only reduce some of the risks and uncertainties which are presently deterring investment in commercial oil shale projects. This testimony is contrary to your assertion to Chairman Long that further prototype demonstration could lead to the type of leveraged financing on which I based my economic analysis.

Finally, your letter to Chairman Long is also misleading in characterizing the planned Colony Development plant as a "pilot production facility." In fact, the Colony group (currently Atlantic Richfield Company and Tosco Corporation) has already conducted all necessary pilot plant and semi-works demonstrations and final design work for a full-scale commercial facility has been completed. Construction could proceed within six months. Contrary to the implication in your letter, the group has no plans for further pilot or prototype operations.

Very truly yours,
CHARLES H. BROWN, *President.*

[From the Los Angeles Times, March 21, 1977]

HAMMER PUSHES HARD FOR U.S. OIL SHALE PROJECT

(By Dan Fisher)

"If you're talking about a comprehensive energy plan, you have to talk about shale oil."

That's how a top aide to energy czar-designate James Schlesinger responded when asked if President Carter will include that perennial bridesmaid among potential fuel sources in his April 20 energy message.

However, the official added quickly, the Administration is still considering a half-dozen approaches ranging from reliance on private industry to demonstrate feasibility up to a billion-dollar government commitment to assure immediate commercialization of shale oil technology. In between are a variety of proposals for government-financed demonstration programs.

There's probably no one more interested in which of these options is chosen than Dr. Armand Hammer, the controversial chairman of Occidental Petroleum Corp.

"The doctor," as he is known around the oil company's Westwood headquarters, has been using his considerable political influence to push for the most aggressive plan. He has met with Schlesinger and others arguing in favor of a $1 billion government commitment to build a 200,000-barrel-per-day shale oil facility to be managed by Occidental and using the company's technology.

A Carter proposal for a small, government-financed demonstration program would be "better than nothing," Hammer said in an interview. But, he added, it would "absolutely" be a disappointment if that were all the energy message had to say about shale oil.

The energy crisis demands "bold action," Hammer said. At the least, he said, the President should announce the appointment of a commission of noted scientists who would review Occidental's technology and report back to him on whether to proceed with the $1 billion commercialization plan.

It's long been recognized that the United States is to shale oil what Saudi Arabia is to conventional petroleum. The amount of oil locked in shale deposits in Colorado, Utah and Wyoming is equal to twice the proven oil reserves in the rest of the world—including those in the Middle East.

Repeated efforts to unlock that resource dating back more than 100 years have been unsuccessful, however, due to technical, economic, environmental and other problems.

Hammer stands almost alone in claiming that he has a process to extract shale oil at today's prices and without government help. Occidental and Ashland Oil Inc., Ashland, Ky., are seeking government approval to proceed jointly with a $440 million plant in northwest Colorado to produce 50,000 barrels per day of shale oil by 1983.

"We are not dependent on government help," Hammer said in the interview. "The decision has already been made to go forward."

However, the Occidental chairman added, "we will be, perhaps conservative" in the pace of development. The first three years following U.S. Interior Department approval of the development plan will only involve the expenditure of about $40 million for initial mining operations.

Occidental's current projection of commercial output by 1983 contrasts with its forecast just three months ago that it could be commercial by 1981.

While it doesn't need government help, Hammer said, the kind of federal commitment to shale oil he has outlined "can play a vital role in markedly accelerating the rate and breadth of commercialization."

Critics both in the Carter Administration and at competing companies are skeptical over Occidental's claims for its process. They argue that one or more government-financed demonstration programs are necessary to prove whether Hammer's or any other process is technically—much less commercially—feasible.

The Energy Research and Development Administration has already asked for unspecified budget authority to provide financial incentive for a shale oil demonstration project. And Sen. Floyd K. Haskell (D-Colo.) has introduced legislation that would provide about $100 million for a test of Occidental-type technology in a 5,000-barrel-per-day plant.

There's no question Occidental has a strong vested interest in seeing the President come out strongly for shale oil.

The 5,000-acre Colorado tract the company seeks to develop along with Ashland contains an estimated 1.2 billion barrels of recoverable shale oil. "That's like two North Seas—and you know what the North Sea is to Occidental," says Hammer. (Wall Street analysts are forecasting that the company's 1977 income from oil and gas operations will double to $133 million or more on the strength of its initial North Sea production, and 1978 earnings are expected to increase even more.)

Hammer has offered Occidental's oil shale technology to the government free of charge, although he wants his company to manage the proposed government-owned facility "for the normal management fee paid government contractors for similar undertakings."

The company has said it would offer licenses to others for a 3% royalty. If, as Hammer projects, a 2 million-barrel-per-day shale oil industry emerged from that $1 billion government commitment, the company could theoretically stand to collect $175 million a year in royalties alone.

All that is highly speculative, of course. Some experts doubt the value of the company's patents, for example. Art Lewis, project leader for oil shale at the Lawrence Livermore Laboratories, said that the concept Occidental is pursing "goes back a long way." It is his opinion that the company's patents "won't stand up to challenge, and I think Occidental's technical people know they won't."

Hammer said that five major oil firms have expressed interest in the company's process in recent weeks and the company is "actually talking about license arrangements" with one.

He acknowledged however, that positive government action could "add credibility" to the company's process.

Mr. TALMADGE. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. FORD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr.

HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

On this vote, the Senator from North Carolina (Mr. MORGAN) is paired with the Senator from Minnesota (Mr. HUMPHREY). If present and voting, the Senator from North Carolina would vote "yea" and the Senator From Minnesota would vote "nay."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BARTLETT), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from California (Mr. HAYAKAWA), the Senator from Kansas (Mr. PEARSON), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT) is absent on official business.

The result was announced—yeas 35, nays 49, as follows:

[Rollcall Vote No. 588 Leg.]

YEAS—35

Abourezk	Eagleton	Melcher
Anderson	Hart	Metcalf
Bayh	Haskell	Metzenbaum
Biden	Hatfield	Nelson
Bumpers	Hathaway	Pell
Chiles	Heinz	Proxmire
Church	Inouye	Riegle
Clark	Jackson	Sarbanes
Cranston	Kennedy	Sasser
Culver	Leahy	Stafford
DeConcini	Magnuson	Stevenson
Durkin	McIntyre	

NAYS—49

Allen	Gravel	Randolph
Baker	Hansen	Ribicoff
Belmon	Hatch	Roth
Bentsen	Helms	Schmitt
Burdick	Hollings	Schweiker
Byrd, Harry F., Jr.	Javits	Sparkman
Byrd, Robert C.	Johnston	Stennis
Cannon	Lavalt	Stevens
Case	Long	Stone
Chafee	Lugar	Talmadge
Curtis	Mathias	Thurmond
Danforth	Matsunaga	Tower
Dole	McClure	Wallop
Eastland	Moynihan	Weicker
Garn	Nunn	Williams
Glenn	Packwood	Zorinsky
	Percy	

NOT VOTING—16

Bartlett	Hayakawa	Muskie
Brooke	Huddleston	Pearson
Domenici	Humphrey	Scott
Ford	McClellan	Young
Goldwater	McGovern	
Griffin	Morgan	

So Mr. HATHAWAY'S amendment (No. 1519) was rejected.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 993

(Purpose: To exempt gasoline used as fuel in commercial fishing vessels from the two-cent tax increase.)

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for himself and Mr. HATHAWAY, proposes unprinted amendment numbered 993.

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

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

The amendment is as follows:

On page 23, line 14, after the words "section 212" insert the following: "including use as fuel in a commercial fishing vessel".

On page 23, line 20, after the words "section 212" insert the following: "including use as fuel in a commercial fishing vessel".

Mr. WALLOP. Mr. President, will the Senator yield?

Mr. STEVENS. Yes.

Mr. WALLOP. Mr. President, I ask unanimous consent that Mr. Bob Reynolds of my staff be granted the privilege of the floor on any votes and for the remainder of the consideration of this bill.

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

Mr. STEVENS. Mr. President, I thank my friend from Colorado (Mr. HART) for allowing me to go ahead of him with this amendment.

This amendment has very little revenue impact. It would simply exempt the use of gasoline as fuel in commercial fishing vessels from the 2-cent tax increase.

The committee bill calls for removal of the 2-cents-per-gallon refund or credit for gasoline and other fuels for motorboat and other nonbusiness, off-highway use.

This amendment continues the 2-cents-per-gallon refund or credit for gasoline used as fuel in commercial fishing vessels.

The amendment does not affect the 2-cents-per-gallon tax increase for other fuels, such as benzol, benzene, naphtha, LPG, and so forth, because commercial fishing vessels do not use these fuels to any significant extent.

The amendment does not affect the 2-cents-per-gallon tax increase for gasoline and other fuels for any use in a motorboat other than use as fuel in a commercial fishing vessel.

Neither the bill nor this amendment affects diesel fuel, nonhighway uses of which are not subject to the tax.

This amendment is needed, in my opinion, because the tax increase is unfair to those commercial fishermen who would be affected by it. Those affected would be the small operators with smaller, gasoline-powered vessels. These are generally those persons who are least able to absorb the increased tax. Within the fishing industry, the effect would be greater in Alaska, for instance, on salmon fishermen and others who tend to use smaller vessels than those fisheries in which larger vessels predominate that go very far offshore.

Agriculture will continue to receive the 2-cents-per-gallon refund or credit, as other businesses of gasoline are not affected by the bill. Commercial fishermen, in our opinion, are "farmers of the sea" and should receive the same fuel tax treatment as land farmers are entitled to.

The 4-cent tax on highway use was originally imposed to support highway development. The 2-cent increase on nonhighway uses will go only to improve water recreational facilities, but they would have to pay the increased tax. There will be no benefit to the commercial fishing vessels that would have to pay this increased tax.

The overall impact will be small, because most craft use diesel fuel rather than gasoline, but for those who use gasoline, their costs will be increased by this measure, without any benefits to anybody, except recreational boaters.

Diesel fuel in motorboats for business uses is exempted from the 4-cent tax applicable to highway uses, as are other nonhighway uses. Why should gasoline for fishermen be treated any differently?

There is no compelling argument against the amendment since, as the committee report states, the estimated energy savings from the removal of the credit or refund are negligible.

Certainly, the maintenance of this principle of treating fishermen as farmers of the sea, I think, is important.

Mr. CURTIS. Will the Senator yield?

Mr. STEVENS. I am happy to yield.

Mr. CURTIS. Is the Senator's amendment based upon the premise that basically, over the long run, gasoline taxes are levied for highway building purposes?

Mr. STEVENS. Yes, and this tax, as it applies to motorboats, is to be used for recreational purposes, not to assist commercial fishermen.

Mr. CURTIS. I think it is an extension of the principle which has been applied in reference to agricultural uses and the like. I have no objection to the amendment.

Mr. STEVENS. Mr. President, I ask unanimous consent that the distinguished occupant of the Chair, the Senator from Florida (Mr. STONE), be added as a cosponsor to this amendment.

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

Mr. STEVENS. That is my statement. I think it is a matter of principle, I say to the chairman of the committee. These little fishermen feel very strongly about being treated as farmers and food producers and not as recreational users of their boats.

Mr. LONG. Mr. President, there is not a lot of money involved in this amendment. It will be in conference and we can certainly consider the advantages and disadvantages in conference. I think the Senator has made a good case. I personally favor taking the amendment to conference.

Mr. STEVENS. I thank the Senator.

Mr. President, I ask unanimous consent that the Senator from North Carolina (Mr. HELMS) be added as a cosponsor.

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

Mr. STEVENS. I move adoption of the amendment.

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

The amendment was agreed to.

Mr. STEVENS. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Again, I thank the Senator from Colorado.

UP AMENDMENT NO. 994

(Purpose: To delete oil shale production from the credit for nonconventional source production.)

Mr. HART. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an unprinted amendment numbered 994.

Mr. HART. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 90, beginning with line 6, strike out through page 91, line 22 and insert in lieu thereof the following:

"(b) AMOUNT.—The amount of the credit allowed under subsection (a) shall be equal to the sum of—

"(1) $3 multiplied by the number of barrels of tar sands produced during the taxable year from all tar sands property the taxpayer has an interest in to the extent such production is attributable to the taxpayer, and

"(2) 50 cents multiplied by the sum of the number of thousand cubic feet of—

"(A) geopressurized methane gas produced during the taxable year from all geopressurized methane gas property (within the meaning of section 614) the taxpayer has an interest in, and

"(B) gas produced during the taxable year from all tight rock formation property the taxpayer has an interest in,

to the extent that such production is attributable to the taxpayer.

"(c) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—For purposes of subsection (b), the production attributable to the taxpayer for oil or gas produced from any property during a taxable year shall be equal to the amount which bears the same ratio to the total production of oil or gas from the property during the year as the amount of the taxpayer's gross income from the property for the taxable year under section 613(a) on account of such production bears to the aggregate gross income from the property for the year (within the meaning of section 613(a)) of all parties having an interest in such property.

"(d) DEFINITIONS AND SPECIAL RULES.—

"(1) TAR SANDS, ETC.—The terms 'tar sands,' 'geopressurized methane gas', and 'tight rock formations' include such tar sands, gas, and formation as are included within a standard scientific definition of each such term established by the Secretary by regulation after consultation with the Secretary of Energy.

"(2) TAR SANDS AND TIGHT ROCK FORMATION PROPERTY.—The terms 'tar sands property' and 'tight rock formation property' include any property (within the meaning of section 614) with respect to which the taxpayer is claiming the credit allowed under subsection (a).

Mr. HART. Mr. President, in the course of the amendment just preceding the amendment offered by the Senator from Alaska, there was considerable discussion about a subsidy for the shale oil industry. I do not think it is necessarily profitable to repeat the entire debate that transpired principally between the Senator from Georgia as the proponent of that measure and the Senator from Colorado.

The amendment at the desk is similar to the one we voted on at the last rollcall vote with the simple exception that it affects only the oil shale subsidy.

Mr. President, as the debate indicated, the bulk of the oil shale deposits in the United States are located in the State of Colorado, approximately 80 percent of those deposits.

Mr. TALMADGE. Mr. President, will the distinguished Senator agree to a brief time limit, perhaps a 1-hour debate, and perhaps move to table this, because it has already been fully debated and voted on by the Senate.

Now, I am willing to agree to a reasonable time limit, but all we can do is really rehash what we talked about an hour ago.

Mr. HART. Mr. President, I ask unanimous consent that there be allocated to this amendment a half hour, with 15 minutes equally divided.

Mr. TALMADGE. That is agreeable to the Senator from Georgia.

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

Mr. HART. Mr. President, I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. HART. Mr. President, I would hope that the distinguished floor manager would not move to table on the grounds this has not been approached as an isolated matter. I think the previous amendment, affecting three separate subsidies, is substantially different from this. Therefore, I feel the amendment striking the oil shale subsidy should rise or fall on its own merits.

Mr. President, the history of the oil shale development in this country runs back 60 or more years. It is not recent or novel. There has been a considerable amount of Federal Government involvement in the attempts to develop that resource.

The exact amount of money spent, the Senator from Colorado cannot cite at this point. But it runs into the millions, if not the tens or hundreds of millions of dollars, perhaps tens of millions of dollars being spent by taxpayers to develop it.

The question is, Will it be developed on an orderly basis so that the State of Colorado and neighboring States are not destroyed in the process, or will it be done properly?

There is no question in my mind that there will be an oil shale industry. I think it will be in the reasonably foreseeable future. But at the same time, that industry has to be developed so it does not destroy the State of Colorado, the State of Utah, and the State of Wyoming.

It also has to be done in a way that is economically justifiable and economically fair.

The real question is whether a $3 a barrel subsidy at this point meets that last requirement.

There is also, I think, a serious philosophical question about the kind of economic development we will have in this country.

Those who have been promoting oil shale development in recent years have not just asked for a tax subsidy or a tax credit. They have also asked for loan guarantees for construction, because the amounts of money required to develop the facilities are considerable. They have asked for price supports against the possibility that foreign markets might reduce their prices. They have asked for loan guarantees that the Federal Government, the people of the United States, will guarantee that a certain amount of oil will be bought. They have asked for a lot of other things, including leasing public lands, which has in fact gone forward.

I favor some of those measures, but I certainly do not favor all of them because the result of that is not free enterprise, Mr. President, and I do not think we can promote a subsidy of this sort, particularly when linked to those other measures that many of those developers want, and call it free enterprise.

It is a private corporation conducting the operation, but if every element of risk is eliminated, we do not have free enterprise.

I was raised to believe that free enterprise not only resulted in a fair profit and return on one's investment in time and effort, but also undertaking a certain risk.

If the taxpayers of this country are asked to eliminate that risk, then I do not think, through any feasible, conceivable scheme of thought, can one decide that this is being done by free enterprise merely because it is a private company.

For example, when we were deliberating on the issue of the loan guarantee program for synthetic fuels, it was stated by a prominent journal in this country, as follows:

Once it is admitted that the private sector can't justify an investment in a commercial enterprise, it has to be conceded that the economic costs outweigh the economic benefits. Otherwise, the government is asking us to believe that a bureaucrat is better able to spot a profit opportunity than is a businessman.

As doctrinaire as we are on this point, we've always conceded that there is room for government support of pure reseach and development. But in the current bill Congress is being asked to finance existing, uneconomic Synfuel technology. Once the government gets involved in directly allocating capital to energy, a long line of capital-starved industries will be close behind.

Mr. President, that was the Wall Street Journal.

That is, I think, what underlies the issue here before us with this subsidy, whether, first of all, the industry is prepared to go forward.

I have argued rather strenuously that it is not, not really for economic rea-

sons, but for a variety of other reasons, problems with the industry that have not been solved and will not be by this subsidy.

Second, Mr. President, is the philosophical argument of whether the taxpayers should be underwriting operations that have not proved themselves to be economically feasible.

Third, Mr. President, whether this is an orderly way to proceed.

As a strong opponent of this process and one who has followed oil shale for a number of years, I feel very strongly that this is not an orderly way to proceed.

As the Senator from Idaho previously argued, the Government of the United States through ERDA and through the Department of Energy is doing a considerable amount of investing in oil shale development. I think that should continue.

But this subsidy will not enhance development of an industry one iota, and I think it is an unnecessary insertion of the public sector into what essentially is and ought to be a private development operation.

Mr. President, in spite of all that has been said on the previous amendment, the issue is not whether we are for or against oil shale development. I suspect I am as much for that as the Senator from Georgia. I am certainly aware of the polls read into the RECORD about the attitude of the people in my State. I followed them pretty carefully or I doubt I would be here. I know what the mood is of the people in my State and the people of this country.

The issue is not whether we want to free ourselves from dependence on foreign imports. I feel as strongly about that as I suspect anybody in this body.

I do not think this ought to be fought on whether we are for or against independence or for or against production of alternative supplies.

I think I feel as strongly as any person here on this issue, including the distinguished floor manager of the bill.

The issue is whether this measure, this specific subsidy, will enhance those alternative supplies and whether this procedure is the most orderly way to approach the development of a supply located in my State that I think a considerable amount of work already has been done.

I feel very strongly, Mr. President, that the answer to that question is "no."

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

Mr. TALMADGE. Mr. President, the President of the United States has sounded a call to arms to every man, woman, and child, to every banker, businessman, and worker, to every industry, energy company, and every environmentalist. He has declared war on the energy crisis that this country is presently facing.

He has looked beyond existing politics and set his sights on the long-term best interests of our country and its citizens. He has told the American people in no uncertain terms through word, act, and deed that the days of relatively cheap energy from traditional sources are over.

I applaud him for his initiatives in energy conservation and development.

The President has sent to Congress a daring and tough national energy plan. It contains provisions that are difficult to accept by all people and all sectors of the economy.

No one can seriously disagree with his commitment, zeal, and dedication of purpose to solving this crisis which threatens the economic security and stability of our Nation.

So long as we are dependent upon foreign oil barons for almost half of our oil needs, we are at the mercy of foreign powers. That is an unconscionable situation for the United States to be in.

As a Member of the Senate, I pledge myself to be a soldier in America's army against this new enemy. This is an enemy which threatens our national security and even the freedom of the American people.

The President, with the analytical ability of the engineer that he is, has submitted an intricate and detailed battle plan to Congress.

In it, like in any war plan, there is recognition that a price must be paid—and it must be paid by everyone.

The President has placed in his energy bill forceful and effective provisions for the conservation of energy and for the increased efficiency of energy use.

However, as I see it, the President's "war room" advisers have overlooked one very crucial element for final victory. They have failed to provide sufficient resources and supply lines for the troops of this war, American industry and the American people.

Apparently, someone has assured the President that there are enough discovered energy sources to successfully fight and win this conflict with the energy shortage.

As I see it, this philosophy may win the battle. But it will lose the war.

Without overstating my concern or overdramatizing the situation, I fear for the future of the United States if we do not win energy independence as soon as possible.

The United States, despite reports to the contrary, has abundant resources in fossil fuels. In testimony before the Senate Finance Committee, Energy Secretary Schlesinger testified that there exists in known resources a 500-year supply of fossil fuels in coal, methane gas, and oil shale deposits.

During these energy hearings I, and other members of the committee, heard testimony that the United States has in the neighborhod of 1.7 trillion barrels of oil in shale rock that has yet to be developed on a commercial basis. This is more oil in shale rock alone than all the OPEC nations have combined.

We were also told that we are importing foreign crude oil at a daily rate of 8 to 9 million barrels and at a per barrel cost of some $14.40.

Secretary Schlesinger testified that the cost of producing oil from shale rock was generally conceded to be in the neighborhood of $18 to $20 per barrel.

Mr. President, it does not take a prophet to calculate that a $3 per barrel tax credit for the domestic production of shale oil would be beneficial to this country.

It would make this untapped resource commercially viable for the many companies and businesses that have been anxious to get into the production of shale oil for years.

For every barrel of shale oil produced. It would save $14.40 in our foreign trade deficit.

It would create jobs for our sluggish economy when the cry of "a job for every American" is being heard from New York to California.

It can make this country energy self-sufficient. It can break the OPEC cartel and free the United States from the whims of governments in control of oil and petroleum.

It would not cost the Government or the American taxpayer one red cent unless oil was produced.

Many people have expressed deep concern that the $3 credit would cause all sorts of threats to the ecology and the environment. To those people and to my distinguished colleagues, I say that this issue is a "red herring."

My amendment in no way effects the environmental safeguards that exist in the present law and would have absolutely no effect on any changes in future environmental laws.

Many people argue that a tax incentive is not needed by potential shale oil developers. If that be the case, then where is the commercial production?

I can see that many companies are projecting commercialization at some point in the future. However, the crisis is today, tomorrow, and the next day—not 20 years from now.

Also, I have been told by knowledgeable people in the energy business that many potential shale oil developers are in a squeeze to show the economics of immediate commercial development. I have been told that these companies must show planned commercialization of shale oil or they will lose their mineral leases on certain Government and private lands.

If this be the case, it is not surprising that on paper everyone in the field is optimistic about commercialization, but in the real world they are doing very little about it.

Other people argue that the cost of shale oil is uncertain and too potentially expensive to justify a Government commitment. To those people I say, if there is no production of oil from shale then there is no credit and no cost to the taxpayer.

Mr. President, all my distinguished colleagues know I am from an energy consuming State, and not a producing State. I have no nest to feather or axe to grind with energy companies.

The plain fact is that last winter I had to consider more than 40,000 who were put out of work as a result of the natural gas shortage.

I hope in the future to be able to tell my constituents that Congress and the President have dealt responsibly with every aspect of this country's energy problems.

I do not want to be in the position of trying to explain to them that the price

they had to pay in this war on energy was their jobs, heat in their homes, and the security of their Nation.

Many of my colleagues might say that it is very simple for the Senator from Georgia to advocate this kind of production when his State has no responsibility in it.

I would most respectfully point out to my colleagues that in a poll conducted in Colorado, one of the States most rich in oil shale, the people there by a very large majority have supported such development.

In fact, the results of a poll conducted in Colorado in late 1974 revealed that 62 percent of Colorado's overall population favored oil shale development and, in fact, on the Western Slope where most of such development would take place, there is an overwhelming amount of support—86 percent of those polled.

The last point I would like to make to my distinguished colleagues is that my proposed $3 per barrel tax credit would diminish in real value every year as a result of inflation.

This would, needless to say, encourage companies to immediately take advantage of this credit and would, in a sense, phase it out over time.

In my opinion, I would much rather run the risk of an American company making a profit producing untapped energy resources than to let the oil sheiks continue to line their pocket with gold.

My amendment, Mr. President, is no windfall for anyone. It is merely an attempt to get this Nation started in an area of energy development. It is merely a start toward energy independence.

We cannot go on forever talking about energy development. Early in World War II, the U.S. war machine needed synthetic rubber. If we had just talked about it, there would not have been sufficient rubber and the U.S. war effort would have ground to a halt.

Instead, the Government directed a crash program to develop synthetic rubber—and it became a reality.

The same kind of crash program was launched to develop the atomic bomb in the Manhattan project.

We also need a crash program to develop U.S. energy. And, the sooner we get started the better and safer our Nation will be.

Mr. President, I shall be brief, because this is primarily the issue we spent 1 hour debating prior to the previous vote.

The Senator referred to the free enterprise system and we ought not eliminate the risks involved in free enterprise by Government subsidy.

The risk involved is this, one plant will cost $1,200 million. That is the risk.

What is the Government's risk? The Government says, "If you produce domestic petroleum, we'll subsidize it, $3 a barrel."

That, in my judgment, is free enterprise in the capitalistic system at work. If they build this $1.2 billion plant and do not produce any petroleum, they will not get a tax credit of $3 a barrel.

If Union Oil Co., as the chairman says he will do, undertakes to spend over $100 million to build a plant to develop petroleum from oil shale, it is his risk. But if he produces some petroleum, we will subsidize that at the rate of $3 a barrel. Why? Because now we are paying $14.40 a barrel for about 47 percent of the petroleum used in the United States of America.

We import at the present time, if my memory is correct, something on the order of 8,700,000 barrels of petroleum a day. What is it costing? It is costing $14.40 a barrel landed. Where is it coming from, primarily? The OPEC nations, primarily the Middle East. What will be the Middle East favorable balance of payments this year? It will be $100 billion—money from the whole free world, going to Saudi Arabia, going to Kuwait, going to Iran, going to the other nations there, going to Venezuela, going to Nigeria. That is a $100 billion surplus for those countries.

What will be the trade deficit for the United States? A minimum of $25 billion, probably $30 billion.

It is all well and good to try to conserve energy, and that is primarily what the House-passed bill did. I am for conserving energy. But if you conserve energy and do not develop more energy, what do you do? You die less quickly than you would otherwise. That is what you do when you conserve energy.

What is the answer? To develop alternative sources of energy. And what are the alternative sources of energy? The first is coal. We have a third of the reserves in the entire world, and we must convert to coal wherever we can.

What else do we have? In the Rocky Mountains, in the West, we have a shale rock formation. It is said that more than 2 trillion barrels of petroleum are tied up in that shale rock. Two trillion barrels of petroleum is more petroleum than all the OPEC nations have combined.

However, right now it is not economically feasible to produce it. There is only one small plant operating out there. Others are interested, but it is not economically feasible at present prices.

So what am I proposing? What is the Finance Committee proposing? The Finance Committee voted on this issue twice. One time I think the vote was 14 to 2 and another time the vote was 14 to 3. That is the judgment of the Finance Committee. They attended the hearings; they heard the evidence; they know the issue. They know the deficit on our balance of payments. They know that the answer cannot be solely rested on conservation. The answer must be in developing alternative sources of energy. One of the most promising alternative sources of energy is to produce petroleum from shale rock. We have more petroleum in shale rock than all the OPEC nations have combined. So why do we not develop it?

I am prepared to yield back the remainder of my time, if the Senator from Colorado is.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. HART. Mr. President, how much time does the Senator from Colorado have?

The PRESIDING OFFICER (Mr. MATSUNAGA). The Senator has 8 minutes.

Mr. KENNEDY. Will the Senator yield to me?

Mr. HART. I yield.

Mr. KENNEDY. First, I ask the Senator from Colorado: During the course of the hearings were there not developers who indicated that they intended to go ahead with oil shale development without any tax credits? As I understand it, that was the case. Am I correct in that understanding?

Mr. HART. I think the Senator from Massachusetts is correct.

We have reviewed the testimony put forward there. One of the principal proponents of oil shale development has been the Occidental Petroleum Co. and its president, Dr. Armand Hammer. He stated before the Energy Committee, in April of this year, that he did not want Government support, did not feel it was necessary, and felt that he had a process that was economically feasible without any subsidies of any kind.

Mr. KENNEDY. I thank the Senator.

My understanding is the same as that of the Senator. Those who were committed to development felt that they could do this and could develop it economically. As I understand it, that was the testimony received by the Finance Committee.

Mr. President, I listened to the eloquence of the Senator from Georgia as to how this credit is going to resolve our energy problems. But the question is, at what cost? What kind of payment is the American consumer willing to put in the hands of special interest groups in order to get more energy? What price must we ask the people of Colorado to pay?

The $3 credit is equivalent to a depletion allowance of 57 percent, on top of the 15 percent depletion allowance already allowed for shale. So this amendment is going to provide a total of a 72-percent depletion allowance to oil shale developers, who are among the richest corporations of this country. Everyone should understand that. If they can also take advantage of the intangible drilling cost deduction, they get an even larger benefit.

I listened to the Senator from Georgia talk about how we have to meet the energy problem. But what is the justification for this huge giveaway? What is the justification for 57 percent on top of 15 percent? He has not made a case for this provision on the floor of the U.S. Senate.

This is one of the most outrageous giveaways to the highest income people of this country, and we had better understand that.

Only a few years ago, we debated the issue of eliminating the 22-percent depletion allowance for the largest oil corporations. That issue was on the floor of the Senate for a generation. Then, finally, 2 years ago, under the Hollings-Kennedy amendment, we eliminated the depletion allowance for the richest oil companies in this country, and their profits have escalated dramatically because of the international cost. They do not dare come on the floor of the Senate and say, "Give us our depletion allowance back on this bill." They are not bold enough to try that directly. Instead, they come in by the back door of oil shale and get an incredible 72-percent depletion allowance for going into oil shale.

It is a giveaway. It is a gigantic loop-

hole which will shock the average American taxpayer. And it is all done in thinking we are going to resolve our energy problems. But no case has been made on the floor of the U.S. Senate that this is any sort of responsible incentive.

On the contrary, the testimony is in direct conflict to it. There are adequate incentives already to be able to do it.

Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 2 minutes. The Senator from Georgia has 11 minutes.

Mr. HART. Mr. President, I should like to clarify something, because I want the record to be clear.

The statement by Dr. Hammer that I cited was before the Energy Committee. There was testimony before the Finance Committee on this bill that a tax subsidy or tax credit of this sort would be helpful for the purpose of establishing pioneer plants, but not specifically any testimony supporting a permanent tax credit for commercial production of oil shale in this country. If that testimony was before the Finance Committee, I think it will be interesting to have it at this point in the RECORD, because that is what this tax credit does.

Mr. KENNEDY. Mr. President, am I not correct that there are provisions in the proposed legislation to provide for the pilot programs? It is my understanding that that already exists in the bill. Does not DOE have 17 projects at the present time?

Mr. HART. The Senator from Idaho was on the floor with respect to the previous amendment and cited the amount of Federal assistance going into oil shale at the present time: The 1977 budget in ERDA includes $6 million for oil shale production research, $4 million for gas production from shale, $2 million supporting——

Mr. KENNEDY. We have, as I understand it, 17 projects that are going on.

Mr. HART. That is correct.

Mr. KENNEDY. This amendment will benefit the current development, as well as others.

Mr. HART. That is correct.

Mr. KENNEDY. Finally, will the Senator comment on the environmental impact on the State?

It is interesting to me, Mr. President, that the State that is going to be most affected by this $3 tax credit is the State of Colorado. It is interesting that Colorado's two Senators have expressed strong objections to this credit. Why is the rest of the Senate trying to jam this credit down the throats of the residents of Colorado. I think that is the real question.

What is the impact? Has the Senator already made that case?

Mr. HART. The case has been made that there are about a dozen operations going forward, none commercially. The reason they are not going forward in the case of almost all of them is that there are serious problems of air pollution, of lack of water quantity, and of deterioration of water quality, and the question of how to dispose of the spent shale for the above ground retorting where the shale is mined and hauled up to the surface. The impact on our State would be enormous. Of course, this tax credit does not respond to any of those problems.

Those problems are the principal reason why there is not an oil shale industry in this country today.

I yield to the Senator.

The PRESIDING OFFICER. All time of the Senator from Colorado has expired.

The Senator from Georgia has 11 minutes remaining.

Mr. KENNEDY. Mr. President, could I ask unanimous consent for 2 minutes for Mr. HASKELL?

Mr. TALMADGE. Mr. President, I yield 2 minutes to the distinguished Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 2 minutes.

Mr. HASKELL. Mr. President, I wish to thank the distinguished Senator from Georgia.

In the Energy Committee and specifically in my Subcommittee on Energy Production and Supply, I had a bill to provide two completely federally funded tests to be operated by private companies for the purpose of ascertaining the economics of shale, the water consumption of shale, and the environmental impacts of shale. My point was that this is something we should know. My point was that we have huge oil reserves if they were economically and environmentally extractable.

Immediately after announcing the hearings and specifically after the first hearing two companies said, "No matter what the Federal Government does we are going into commercial production anyway."

One company conditioned its statement on the acquisition of some additional land.

Of those two companies, one company already has announced it is in commercial production.

So my point, Mr. President, is that this incentive, as it is called, is absolutely unnecessary. This is not to say that it may not be necessary not only with shale but tar sands and coal gasification that there be some type of Federal loan program because the capital cost is so large, but that is a different issue.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

The Senator from Georgia.

Mr. TALMADGE. Mr. President, the distinguished Senator from Massachusetts referred to intangible drilling costs. There is no intangble drilling cost here. This is a mining operation. A mining operation has a depletion allowance of 15 percent.

Mr. KENNEDY. The Senator understands that this will all be built on top of intangibles in the industry; does he not?

Mr. TALMADGE. No. There will be no intangible drilling cost. This is not a drilling operation. This is a mining operation.

Mr. KENNEDY. It is a taxing operation, also, and the Senator is not denying intangible drilling cost. Shale oil developers are also oil and gas producers. They also have the intangible drilling deduction. And they use it on their tax returns.

Mr. TALMADGE. It is a mining operation. They have a 15-percent depletion mining allowance, and that is it. It is a mining operation. There is no intangible drilling. This is not drilling down in the ground for oil. This is a mining operation, to mine rock.

I say to the Senator that rock looks like this. It comes out of mountains. It produces shale oil like this, and I understand out in the Rockies we have more potential petroleum than there is in all of the OPEC nations combined. The question is whether or not we want to produce petroleum here in the United States of America or whether we want to import it from the Middle East, from Kuwait, from Saudi Arabia, from Venezuela, and the other nations of the world now that operate OPEC and charge us $14.40 a barrel for the oil that we bring in from those nations.

It is the considered opinion of the Senator from Georgia and the opinion of the Finance Committee, by a vote of 14 to 3, that we should try to develop alternative sources of energy here. And the Rocky Mountains, where they have this vast resource tied up in rock, offer the best potential because there is more petroleum there than all of the Middle East combined.

Mr. LONG. Mr. President, will the Senator yield?

Mr. TALMADGE. I yield to my distinguished chairman.

Mr. LONG. Mr. President, when the Senator from Louisiana started his odyssey to try to work his way up from one committee to another to try to be on one of the more senior committees, he had the privilege of serving on the Interior Committee long before many present Senators came to this body, and back in about 1950 we were talking about that if you just had a little better price for oil produced from shale, we would have a huge flood of shale oil and as a matter of fact once in commercial production the unit cost would go down and we would just have all the energy we needed forever.

We have been hearing about that since 1950 to my certain knowledge, that with just a little price edge we are going to get all this flood of oil.

We have not seen any of it. After 20 years the only bit I have seen of it is the thimble full the Senator has in that vial right there. So far, a lot of people have put money into it.

Dear old Gene Milliken if he were here could certify to the Senator from Colorado and I tell people, if they have any doubt about it, "I want you to know I have put my own money in buying this shale; I think it has great possibility."

The poor man has gone to meet his Maker 15 years ago, and we still do not have any more than the ounce we see on the Senator's desk to show for all our oil.

Let us assume for the sake of argument so far no one has done anything but lose money. Gene Milliken lost. Everybody else has lost theirs. So far no one has made a nickle. All they have done is lose their good money.

The Senator is now afraid at long last someone might show a profit. We

should pray to the merciful Lord someone would make a profit out of this because if they do we will have enough energy to last us to kingdom come, and the Arabs can buy it from us for a change. If it should be that someone is making an unconscionable profit that way, and we do not have one ounce of it in Louisiana—I would be glad to pay to buy some of it—but if it should be that someone should make a profit out of it then we can take it away from them just like we took the depletion allowance away from the major oil companies.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. TALMADGE. I yield to the distinguished Senator from Nebraska.

Mr. CURTIS. Mr. President, if this oil is produced in the United States from shale, it will not be subject to any foreign tax credit as is oil produced elsewhere. Is that correct?

Mr. TALMADGE. The Senator is entirely correct.

Mr. CURTIS. Also if a corporation makes a profit, we get 48 percent back in taxes. Is that correct?

Mr. TALMADGE. The Senator is entirely correct.

Mr. CURTIS. All right. If all of this operation is in the United States, will those employees and officers, and all the added employees they get, be paying income tax?

Mr. TALMADGE. And working instead of drawing unemployment benefits.

Mr. CURTIS. And will they be paying the ordinary payroll taxes for social security and the like?

Mr. TALMADGE. They will.

Mr. CURTIS. Will they be paying gasoline taxes as they drive back and forth?

Mr. TALMADGE. They will.

Mr. CURTIS. How are you going to defend the Treasury of the United States if you insist on maintaining an oil industry thousands of miles across the sea and oppose one here? How is that going to benefit the Treasury?

Mr. TALMADGE. It will not. The Senator has put his finger on the entire problem. Instead of benefiting the Treasury, the Treasury is losing $25 to $30 billion on our balance of payments and the value of our dollar is going down day after day.

The first thing you see in the paper every morning when you pick it up is the dollar declines against the yen, the dollar declines against the Swiss franc, the dollar declines against the German mark. The reason it is declining is because of this intolerable deficit in our balance of payments which is caused primarily by the blackmail prices we are having to pay for imported energy from the OPEC nations.

The beauty about this provision in the Senate bill is this: If you will produce a barrel of petroleum in the United States of America from shale rock you will get to deduct $3 for the barrel from taxes that you owe in the United States. If you do not produce anything, we give you nothing. All of the risk is yours. If they produce, what happens? It will cost us then $3 per barrel from the Treasury; whereas, at the present time it is costing us $14.40 that goes to Saudi Arabia, to Kuwait, to Venezuela, to the other OPEC nations. The jobs are there and the money is there. What we are trying to do is bring the jobs back home and the money back home.

I yield back the remainder of my time.

Mr. HATHAWAY. Mr. President, before the Senator yields back his time, will the Senator agree to define the $3 credit?

Mr. TALMADGE. I did not understand the Senator.

The PRESIDING OFFICER. All time having expired, the question is on——

Mr. HATHAWAY. Mr. President, I ask unanimous consent to proceed for 30 seconds.

The PRESIDING OFFICER. Is there objection?

Mr. TALMADGE. What was the unanimous-consent request?

The PRESIDING OFFICER. To proceed for 30 seconds.

Mr. TALMADGE. What was the unanimous-consent request?

Mr. HATHAWAY. Ten more minutes, to be evenly divided.

Mr. TALMADGE. I object.

Mr. HATHAWAY. Five more minutes? How about 2 more minutes?

The PRESIDING OFFICER. Objection is heard.

All time having been yielded back, the question is on agreeing to the amendment of the Senator from Colorado. The clerk will call the roll.

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

Mr. LONG. The suggestion is out of order. The rollcall has already started.

Mr. ABOUREZK. I said I suggest the absence of a quorum.

Mr. LONG. Mr. President, point of order. Mr. ABOUREZK's name was called and Mr. ABOUREZK said "aye."

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

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

The PRESIDING OFFICER. The rollcall had not yet begun and the point of order is not well taken. The clerk will call the roll to determine the presence of a quorum.

The second assistant legislative clerk proceeded to call the roll.

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

Mr. KENNEDY. I object.

The PRESIDING OFFICER. The clerk will continue with the call of the roll.

The second assistant legislative clerk continued to call the roll.

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

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. TALMADGE. Mr. President, I ask unanimous consent that debate be limited to 4 minutes to be equally divided between the distinguished Senator from Maine and the Senator from Georgia.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

Who yields time?

Mr. HATHAWAY. Mr. President, I yield myself 30 seconds. I want to ask the Senator if he would accept an amendment to this so that the credit provided would be confined to the tax that was due on the shale oil operation only and could not be applied against any other of the company, if they run a candy store or any other type of business.

Mr. Talmadge. That is already in the amendment; that is the amendment now. It is limited to shale oil.

Mr. HATHAWAY. From reading it here it seems to me the $3 tax credit could be taken against any income which the company received or any tax on any of the income a company received.

Mr. TALMADGE. I could not agree to that, Senator.

The PRESIDING OFFICER. The Senator's 30 seconds have expired.

Mr. TALMADGE. I yield 1 minute.

The purpose of the tax credit is to develop some incentive for the development of this shale rock. Right now there is no significant development, as the distinguished Senator from Colorado said a moment ago. You have one or two little pilot plants which are financed with a dabble of money, Federal money, and federally-operated, but they are not producing oil from shale rock.

What we are trying to do is to produce oil from shale rock in abundance and trying to do it with a tax credit. The beauty about the tax credit is that it costs nothing unless they produce the petroleum. They will have to produce it in their own plant and, in addition to producing it in their own plant, they will bring the jobs back here. In addition to that it will be produced in this country. It will be American petroleum instead of petroleum we are importing at a cost of $14.40 a barrel.

I am perfectly agreeable to this: if there is a grant for the construction, the additional construction, paid for by Federal money, that would be withheld to the extent of the grant. I have no objection to that. But if there is a grant involved of 100 percent I would have no objection to withholding the credit or vice versa. I do not want to give them both.

But what we are giving them here is an investment tax credit where they risk their own capital.

Mr. HATHAWAY. But giving it to them against any income, income from any enterprise they have regardless of whether it is oil-related or not. That does not seem to be the thrust of what the Senator was arguing earlier that we need this $3 credit to make up for the differential of what the costs would be in the price of oil.

Mr. TALMADGE. We are starting with a project that is nonexistent; to wit, the development of oil from shale in the United States. We are trying to substitute such oil produced in the United States for petroleum produced in Saudi Arabia. In order to give them an incentive to do it we are offering them a tax credit of $3 a barrel. If people had taken that position during World War II, we never would have developed synthetic rubber, we never would have developed the atomic bomb,

and we could never have put a man on the Moon. We have got to have enormous resources involved and put forth an enormous effort to get the job done.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. KENNEDY. Mr. President, I yield myself the last remaining minute.

The PRESIDING OFFICER. The Senator is recognized for 1 minute.

Mr. KENNEDY. The most this Congress has ever provided in the depletion allowance was the old infamous 27½ percent for oil and gas. If the $3 credit is translated into a equivalent depletion allowance, it is worth 57 percent, added onto the 15 percent of the depletion allowance already available for shale. That makes a grand total of 72 percent depletion for shale. That is the effect of the committee bill. The amendment would strike the $3 credit. We should not be imposing it against the wishes of the two Senators from the State in which 80 percent of the oil shale is found.

In the past, we have heard Members speak for Colorado who represented the oil and gas industry. They are not here any longer. We now have spokespersons for the people of Colorado, and we have heard their objections to this amendment. I wonder how many of us would tolerate the rest of the membership jamming something down the throat of any of our States the way the Committee on Finance is doing to the State of Colorado. It is going to be interesting to watch how those who speak about States' rights vote on this particular measure.

The PRESIDING OFFICER. Does the Senator yield back the remaining time?

Mr. TALMADGE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Colorado.

The yeas and nays having been previously ordered, the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. FORD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Illinois (Mr. STEVENSON), and the Senator from Minnesota (Mr. HUMPHREY) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

On this vote, the Senator from North Carolina (Mr. MORGAN) is paired with the Senator from Minnesota (Mr. HUMPHREY). If present and voting, the Senator from North Carolina would vote "yea" and the Senator from Minnesota would vote "nay."

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from California (Mr. HAYAKAWA), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT) is absent on official business.

The result was announced—yeas 36, nays 47, as follows:

[Rollcall Vote No. 589 Leg.]

YEAS—36

Abourezk	Eagleton	Magnuson
Anderson	Glenn	McIntyre
Bayh	Hart	Melcher
Biden	Haskell	Metcalf
Bumpers	Hatfield	Metzenbaum
Chiles	Hathaway	Nelson
Church	Heinz	Pell
Clark	Hollings	Proxmire
Cranston	Inouye	Riegle
Culver	Jackson	Sarbanes
DeConcini	Kennedy	Sasser
Durkin	Leahy	Stafford

NAYS—47

Allen	Garn	Randolph
Baker	Gravel	Ribicoff
Bartlett	Hansen	Roth
Bellmon	Hatch	Schmitt
Bentsen	Helms	Schweiker
Burdick	Javits	Sparkman
Byrd,	Johnston	Stennis
Harry F., Jr.	Laxalt	Stevens
Byrd, Robert C.	Long	Stone
Cannon	Lugar	Talmadge
Case	Mathias	Thurmond
Chafee	Matsunaga	Tower
Curtis	Moynihan	Wallop
Danforth	Nunn	Weicker
Dole	Packwood	Williams
Eastland	Percy	Zorinsky

NOT VOTING—17

Brooke	Huddleston	Muskie
Domenici	Humphrey	Pearson
Ford	McClellan	Scott
Goldwater	McClure	Stevenson
Griffin	McGovern	Young
Hayakawa	Morgan	

So Mr. HART's amendment was rejected.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. TALMADGE. Mr. President, I ask unanimous consent that Mr. Bill Pursley, of Senator STONE's staff, be granted the privileges of the floor during further debate on this measure and votes thereon; also, that Mr. Russell King, of my staff, have the privileges of the floor during debate and votes on this measure.

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

UP AMENDMENT NO. 995

(Purpose: Strike subsection (b) on the limitation of President's Authority to Adjust Imports of Petroleum.)

Mr. McINTYRE. Mr. President——

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. McINTYRE. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. McINTYRE) proposes an unprinted amendment numbered 955.

On page 97, beginning with line 18, strike all through line 5 on page 99.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation of 20 minutes on this amendment, to be equally divided.

Mr. McINTYRE. Mr. President, a parliamentary inquiry. I understand there is a time limitation of 20 minutes, 10 minutes on each side, on this amendment, is that correct?

Mr. HASKELL. Reserving the right to object, Mr. President, I would first like to find out what this particular amendment is.

The PRESIDING OFFICER. The Parliamentarian advises me that there is no time limitation.

Mr. ROBERT C. BYRD. Mr. President, I made the request just now.

The PRESIDING OFFICER. Is there objection?

Mr. HASKELL. Reserving the right to object, Mr. President, I would first like to find out what the amendment is.

Mr. McINTYRE. May I be permitted to respond to the distinguished Senator from Colorado without having the time charged against the amendment?

The PRESIDING OFFICER. There is no time limit until such time as a unanimous consent is agreed to. The Senator may proceed.

Mr. McINTYRE. Mr. President, the thrust of this amendment is to remove subsection (b) from section 1054, which substantially broadens the authority to limit imports of refined petroleum products.

The PRESIDING OFFICER. Is there objection?

Mr. HASKELL. Reserving the right to object, subject to the manager's thoughts, I would agree to a time limit of 30 minutes per side, if that is satisfactory to the Senator from Louisiana.

Mr. LONG. Mr. President, I am willing to do whatever the Senator from Colorado would like to do about this matter. He is very familiar with what is involved.

Mr. HASKELL. I would make a substitute unanimous-consent request, Mr. President, that on this amendment there be 30 minutes allotted to each side.

Mr. ROBERT C. BYRD. Mr. President, I modify my request accordingly.

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

Mr. McINTYRE. Mr. President, I yield myself so much time as I may require.

Mr. President, while subsection (a) of this part of the bill places greater restrictions on the President's authority under the Trade Expansion Act of 1962 to limit or adjust imports of crude oil, subsection (b) substantially broadens the President's authority to limit imports of refined petroleum products.

Subsection (b) states that the Secretary of the Treasury shall report to the President, after receiving a request to do so by any person, whether product imports threaten to impair national security. The President can then impose or adjust tariffs, fees, or quotas on refined petroleum products for as long as he deems appropriate.

This subsection ties national security to our domestic refining industry and

establishes several factors relating to refining.

These factors are:

(1) impact of foreign competition on the economic welfare of the domestic refining industry and (2) the investment necessary to assure the welfare and growth of such industry; and (3) any substantial unemployment, (4) decrease in revenues of government (5) loss of skills or investment, or (6) other serious effects resulting from displacement of domestically produced refined petroleum products by excessive imports shall be considered, (7) without excluding other factors, in determining whether such weakening of our internal economy may impair national security.

From 1959 until 1972 we experienced a domestic quota system on crude oil and refined petroleum products.

Commencing in the late 1960's the existence of the quota resulted in regional shortages of several petroleum products, the most notable distillate fuel oil.

While I am sympathetic to the need for a viable and efficient domestic refining industry, it is dangerous to shoot for a quick fix approach. This is particularly true in a noncompetitive, concentrated industry such as oil.

The Department of the Interior Energy Refining Utilization Report of 1971 first warned us of a growing shortage of domestic refining capacity as it relates to total national demand and that shortage is still present today. The industry has refused to respond. I am fearful that this authority could be used in a manner that would create a shortage of essential petroleum products such as home heating oil and residual oil, particularly if a quota was imposed. I believe there is no justification to a Government policy that would create artificial shortages.

In 1971 through 1973 I conducted a series of hearings before the Banking, Housing, and Urban Affairs Committee examining our growing need for additional domestic refining capacity and petroleum product shortages.

Based on those hearings, I have advocated on numerous occasions the need to construct efficient, modern, and environmentally sound refineries in the United States, including New England.

I do not believe, however, that the way to increase our domestic refining capacity is to return to a discredited quota or tariff system.

The President's report on the mandatory oil import quota system issued in 1970 clearly documented that petroleum quotas represent a substantial drain on consumer purchasing power with no offsetting advantages.

Presently total demand for petroleum products in the United States is averaging around 18½ million barrels a day.

Total domestic refining capacity is approximately 16½ million barrels a day when used at a capacity rate of close to 95 percent.

We, therefore, presently have a refining capacity shortage of approximately 2 million barrels a day.

During last winter's cold spell, this country was importing 700,000 barrels a day of distillate fuel oil. We are also presently importing close to 1½ million barrels a day of residual fuel oil. Furthermore, residual oil demand is increasing at a rate of 12 to 15 percent a year and distillate heating oil demand is increasing at approximately 10 percent a year.

Every additional barrel of residual oil demand is met through imports and much of the distillate demand increase must also be met by imports.

Also, because of widespread conversion by natural gas users to distillate, demand is estimated to continue to increase substantially for the foreseeable future. As just one example, automotive manufacturers are turning increasingly to diesel-powered engines to meet mileage and emission standards.

Large sections of this country rely on heating oils, both distillate and residual, as their residential and commercial heating source.

This is true for a large part of the Middle Atlantic States, the Northeast, the Midwest, and the Pacific Coast States.

Increased tariffs or quotas will only drive prices up on heating fuels and the consumer will have no alternative heating sources.

When dealing with an essential commodity such as heating oil, quotas do not depress demand, they only limit supply; tariffs do not decrease demand, they only increase price.

It is unfair to require some users of petroleum products to bear the brunt of a shortage of domestic refining capacity, a shortage for which the industry itself is responsible. If a quota is imposed on heating oils, then the ultimate result will be increased profits for domestic refiners and an increased cost to millions of American homeowners and small businesses.

The impact on local taxes will also be devastating.

A large percentage of public buildings are heated with residual fuel oil or distillate heating oil.

Decreased supply and increased price will place even greater stress on the tax base of our State and local governments.

What this section of the bill does, if the authority is exercised, is to take care of the refiners in this country—every one of which is presently making millions in profits. Of the products that could be affected two are of critical importance to the Northeast, residual and distillate oils. While the imposition of a quota will assure additional millions in profits to the refiners, consumers of heating oils will suffer because we either will not be able to afford to pay the price, or, worse, will not be able to get the oil at any price to heat our homes, run our hospitals, schools, public buildings, factories, and transportation.

I would rather vote for price decontrol than quotas or tariffs, Mr. President.

The price is too high for New England to pay with tariffs.

The winter is too long and too cold for shortages caused by quotas. We cannot take this type of regional punishment.

The cost is simply too high.

We are already paying the price for what the Arabs did to us in 1973.

I would rather vote for increased prices based on decontrol, with its obvious devastating redistribution of wealth from consuming areas to producing areas, than the inevitable slow strangulation that is assured in my region of the country from quotas or tariffs. We are not producers; hopefully some day we will be. We are not refiners; hopefully some day we will be.

I find it difficult to talk about shortages during a glut of oil in the world. Everyone of us knows by now that oil and gas are available; that is, available for a price.

If there is one thing I have learned after years—in fact a decade—of holding hearings on oil, it is that supplies of oil and natural gas are based on one criteria—price. The basic fact in the oil industry is that supply is based on price. Or, to put it another way, in our domestic oil industry, price and price alone determines supply. This is not normal in other industries. In other economic sectors of our economy, numerous factors impact on supply, and price is determined competitively. I am convinced, however, that at the production, refining and transportation levels of the oil industry, of which the natural gas industry is part, competition just does not exist and, furthermore, that at the levels of production and transmission of the much larger energy industry, that competition is increasingly contracting as the industry concentrates through acquisition, merger, contract and agreement. This is why I have consistently voted against price decontrol.

In the oil industry, the only competition I have observed is at the distribution and marketing levels and it is contracting rapidly at that critical level—critical because, at the marketing level, supply sets price rather than price setting reserves. Marketers will and do compete today if a competitive price is available.

Short of war, we cannot control the price the OPEC charges, and we realize that war is out of the question. In that context, I believe if the consumer is to have any chance of price competition, it must come through the supply side of petroleum products. There is no price competition at the production level. There is no competition at the transportation level. Therefore, any competition which could benefit the consumer must come at the marketing level. Tariffs will kill competition at the marketing level. Quotas will kill competition at the marketing level.

Quotas and tariffs only aid the big oil companies. Quotas and tariffs will ultimately cost more than decontrol because with decontrol, there is some chance of competition at the marketing level. Quotas and tariffs on petroleum finished products will tie the knot—and tie it tight—of total vertical monopolization by a consortium of integrated oil giants.

It must be pointed out that this authority was not requested by the President. This section was added by the Finance Committee. Do we, as a legislative body, truly want to give the President a blank check? If this power is exercised by President Carter or any future Presi-

dent, then total monopolization is assured in our domestic petroleum industry. This power is too great, in this Senator's opinion, to be explicitly granted by law to one person. Article I, section 8 of the Constitution explicitly grants to the Congress the power to levy duties and tariffs. A quota has the same effect but even goes further in the monopolistically controlled oil industry. The old mandatory oil import quota system destroyed competition at the refining level of the oil industry by creating controlled shortages of crude oil.

In this bill, we now give that power to the President for quotas or tariffs on finished products—which means mainly home heating oil and residual, in that these are the only products that are imported in quantity.

Furthermore, I would like the proponents of this section to explain why we might need tariffs or quotas against foreign petroleum products refined from world price oil at OPEC prices of close to $13.50 a barrel when average domestic crude oil is under $10 a barrel? Why in the world is there a need to keep out products refined from world price crude oil if ours is presently cheaper? To me, there is only one reason: a price fix to get U.S. crude and products above world price by establishing a tariff or quota controlled price.

This grant of quota authority, if used, could strangle New England, my region of this great country.

So I say "no." And I say "no" not only because I want to protect my region and my constituents, but because I want to protect the constitutional powers of the Senate of the United States from being surrendered to another branch of Government.

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

Mr. HASKELL. Mr. President, first, I think it is important to recognize that this provision in effect states existing law. Since that is the case, why is this provision here? This provision is here because the distinguished Senator from Kansas, in committee, eliminated the President's authority to adjust oil imports right across the board, both as to crude and refined product, to impose tariffs, fees, or quotas.

Then, having done that, the distinguished Senator from Kansas talked with me and recognized that there was a need to protect a domestic refining industry. Therefore, all this does is put back into law what actually is now in there and, by inference, eliminates any reference to crude product.

Mr. President, why would it be a good idea to have a viable domestic refining industry? Is any type of standby Presidential import authority necessary? In my opinion. Mr. President, and I believe in the opinion of many others, it is absolutely essential that we preserve a domestic refining industry. The domestic refining industry could be badly threatened. For example, offshore refineries are not subject to OSHA requirements. Offshore refineries are not subject to EPA requirements. Offshore refineries do not have these additional costs that onshore refineries have.

Right now, Mr. President, only 54 percent of the domestically consumed petroleum refined product is manufactured in the United States. I think we should examine the situation. If refineries flee overseas, if additional refineries go to Holland, if refineries go to the Mideast and thereby undercut our refineries, would that not diminish the security of the United States? Because surely, the security of the United States depends upon being able to refine oil domestically. We are already dependent upon imported crude petroleum, but we need at least a viable domestic refining industry.

Now, Mr. President, this section of the bill, as reported by the Finance Committee, does not require the President of the United States to do one thing. This merely says that upon receiving an application, the Secretary of the Treasury, first, shall report his findings to the President. If the Secretary finds that imports threaten to impair national security, he shall so advise the President. Then the President, if he desires, shall take action.

Mr. President, the purpose of this provision, I think, is very well stated. The things that should be taken into consideration are the impact of excessive imports, such as substantial unemployment, decrease in Government revenues, loss of skills or investment, or other adverse effects. All these must be weighed without, at the same time, disregarding any other relevant factor such as the possible effect of the proposed action on the economy, on regional needs and on consumers.

Mr. President, I think allowing the President of the United States this authority is vital.

I reserve the remainder of my time and yield to the distinguished Senator from Wyoming.

Mr. HANSEN. Mr. President, I thank my distinguished colleague from Colorado for yielding.

Many of the things I had intended to say have already been articulated very forcefully by my good friend from Colorado.

Let me say on the face of it, simplistically, it is not difficult to understand the conclusions reached by our mutual good friend from New Hampshire. But we have got to look a little more deeply into this issue than simply to say, "If we impose a tariff on imported products, is that not going to make the cost of energy higher in this country?" Hopefully, a quick, ready answer may be, "Yes; it will."

But let us look beyond that.

I can remember when New England was dead opposed to the mandatory oil import program, a program that had bipartisan support, both Republican and Democrat, over a period of time, which was intended to see that we did not become too dependent upon any foreign source of supply.

In other words, the rationale was, "Let us keep the domestic industry healthy."

Now, I am not going to try to defend that program. It has been rejected by the Congress. But I would just make the point that when it was cheaper to buy oil abroad, New England did not like that program one bit because they said that if it were not for this mandatory oil import program they could buy a lot of that surplus cheap oil from other parts of the world—and not only New England, there were other parts of the country that said the same thing.

They said, "Why on earth are we handcuffing ourselves, making it necessary that we have to pay tribute to the domestic oil industry?"

That was all well and good and, of course, it is all history what happened.

In due time, we kicked out the mandatory oil import program, started buying oil abroad and then found out that not only the United States, but most of the civilized world, greatly increased its need for energy and competition got into the picture, then foreign relations got into the picture.

The Middle Eastern countries, many of which are Arabic, or at least inclined that way, were not pleased with America's position in the Middle East, and we had an embargo put on in 1974.

At that time, I did not hear anybody jabbing the domestic industry.

We rolled prices back and we are subsidizing foreign oil today by virtue of the fact that the composite price of domestically produced oil is about $8 a barrel, and what do we pay for the oil that comes from abroad? We pay about $13.50.

So all this amendment that the Senator from Colorado is defending, which is old legislation, is to say that it makes good sense to have the diversity that comes from a diversified refining industry, and these small refining plants, absent the protection that they now have and that the Senator from Colorado and I and others want to continue to give them, means they would go out of business.

So the long-range picture simply is this, given the advantages of avoiding the kind of tough environmental laws we have in the United States, given the ability of foreign refiners to burn high sulfur oil and to pay lower wages and transport their products on foreign bottoms, and to do many other things, they can come in with their refined products into the United States and undersell the products refined by the small domestic refiners.

When that happens, I say to my good friend from New Hampshire, that he will not find these foreign operators as charitable as they seemingly are today.

When they have put our small refiners out of business, they will have a virtual monopoly and they will be able to dictate the price.

It is because of an awareness of that fact that the policy of the United States has been to extend benefits and special considerations to the small refiner so he will stay in business.

I hope very much that the amendment by the distinguished Senator from New Hampshire, well intentioned though it is, will not pass, because if it does, New England and every other part of the

United States is going to suffer, and we will concentrate, in those few big refiners we have in the United States, a vulnerability to attack that could knock this country completely out of business.

It is only through the diversification of our refining capability that our national security is enhanced. We want to keep it that way. I regret that we have all these entitlement programs and we rolled prices back and did many other things.

Maybe Senator HASKELL and I do not agree on all of them, but we surely do agree on this one, and I stand solidly with him in urging that the Senate reject this amendment because, if we fail to support the position of the Senator from Colorado, we are going to pay through the nose when we see these small refinery operations go down the drain and we have to buy from abroad.

I thank my friend from Colorado.

Mr. HASKELL. I thank the distinguished Senator from Wyoming.

I assume the Senator from New Hampshire has something he would like to say and I think that right after his statement, we can possibly yield back our time.

Mr. McINTYRE. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 3 minutes.

Mr. McINTYRE. Mr. President, I would take issue with the distinguished Senator from Colorado that this is a rewrite of old law. Apparently, he is referring to the Trade Expansion Act of 1972.

The existing law, in the opinion of this Senator, is changed because by adding in new factors in this section it ties in domestic capacity of refining to national security for the very first time, and those factors are in this subsection.

First, impact of foreign competition on the economic welfare of the domestic refining industry;

Second, the investment necessary to assure the welfare and growth of such industry;

Third, any substantial unemployment;

Fourth, decrease in revenues of Government;

Fifth, loss of skills or investment;

Sixth, other serious effects resulting from displacement of domestically produced refined petroleum products by excessive imports shall be considered; and

Seventh, without excluding other factors, in determining whether such weakening of our internal economy may impair national security.

Mr. President, the distinguished Senator from Wyoming knows that right as of this moment the refining capacity on residual oil in domestic refineries is some 1.5 million barrels short of the needs of this country, and particularly of the region of New England.

When the distinguished Senator from Wyoming talks about the mandatory oil import quota system that was inflicted on this Nation and on the sections of the country that are not rich in oil or in energy sources back in 1958, we had to live with that program until finally it fell of its own inequities and its own stumbling.

Many times I heard the former Senator from Rhode Island, Mr. Pastore, exclaim in this Chamber about the price of foreign oil, back in 1958, 1959, 1960, 1961, 1962, and so on, the price of foreign oil being $1 or $1.25 a barrel cheaper than the subsidized price of oil at the domestic level. Senator Pastore said, "Why don't we buy all the oil we can out there that is cheaper and save our oil?" That made good sense.

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

Mr. McINTYRE. I yield myself 2 additional minutes.

So the very thought of a Presidential activity that would bring quotas onto refined petroleum products sends the cold shivers down the spine of this Senator. Never, in my opinion, was a program more inequitable than the mandatory oil import quota system that was originally to aid and cause the refineries of America to be built.

Instead, our oil industry went to the Arab lands, where they could bring it out at a penny a barrel. The shadow of that oil import program must never occur again, because it is very unfair to New England.

Mr. President, I urge the Members of the Senate to join me in striking subsection (b), which is totally unnecessary and totally pointed, so far as this Senator is concerned, toward New England, the Middle West, the Far West, and other areas which are shy of oil and need this help with respect to refined distillates.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, if I recall correctly, in the discussion of this matter in the committee, the distinguished Senator from New York (Mr. MOYNIHAN) made the point that if, in order to save the domestic refineries or a substantial number of them, it might result in an increase in the cost of imported products, he could not go along with that if the burden was going to fall almost entirely or, in the main on, the Northeast part of this country or on the eastern seaboard.

It was agreed in the committee that we would work out something, either for floor consideration or in the committee, to assure that those who were the principal recipients of this imported product would not bear a disproportionate burden, but that, rather, the burden of the import program would be spread among all Americans, each more or less bearing his share of the burden of that program.

I note that there is an amendment numbered 1525, by Messrs. MOYNIHAN, RIBICOFF, HATHAWAY, and JAVITS, which would allow a refundable credit to qualified users of refinery products if the President imposes a quota, which was agreed to earlier today helps to take care of that problem.

So the point here is that there is no intent on behalf of the committee or on behalf of the managers of the bill to impose a heavy burden or a lopsided burden on New England or the eastern seaboard or any other part of this Nation to continue the American oil refineries and to maintain that industry at the proper level. If there is to be a burden, I say to the Senator from New Hampshire, that it should be shared evenly by all Americans, including those from the State I have the honor to represent, where we produce much of the energy, and we would be just as happy if there were no imports.

At the same time, we know what the problem is, and we will seek to assume our part of the burden of the cost of imports, to try to maintain a domestic refinery industry. We do this because we think it only fair. If we are going to ask those in the area represented ably by the Senator from New Hampshire to cooperate with us in maintaining a domestic refinery industry adequate for the Nation's needs, then we should cooperate with them, to see that no undue burden is imposed upon that part of the Nation.

So, in due course, we would expect the conference to agree to the Moynihan-Ribicoff amendment or we would work out something else in conference that would achieve the same purpose.

Mr. McINTYRE. I thank the distinguished chairman of the Finance Committee for those kind words. I certainly appreciate his intentions. But intentions do not keep us warm when there is a shortage, and that is what could occur by allowing some President to impose quotas.

I point out, Mr. President, that I consistently have urged the construction of refineries in the New England area. We had one or two before the imposition of that mandatory oil import quota system program, but they disappeared within a year or two after that facet in 1958.

I took it upon myself, because of the strong complaints of pollution and environmental factors, to visit the Arco refinery in Bellingham, Wash., which is a model refinery, and brought back the word to New England that it is possible today, with modern techniques and technology, to construct refineries that do not look like the Atlantic coastline along the New Jersey shore.

With that, Mr. President, I am prepared to yield back the remainder of my time, if the Senators from Colorado, Wyoming, and Louisiana are prepared to do so.

Mr. DOLE. Mr. President, will the Senator from New Hampshire yield for a question?

Mr. McINTYRE. I am happy to yield.

Mr. DOLE. I wish to make certain that I understand the complaint of the distinguished Senator from New Hampshire. I offered the motion in the Finance Committee to take away Presidential authority to impose fees or quotas, after Mr. Schlesinger stated on "Meet the Press" that if the Senate did not do what he thought we should do or the administration thought we should do, they

would solve the energy problem by imposing import fees up to $5 a barrel.

In an effort to make certain this would not happen, the amendment was offered to take away the authority from the President, in an effort to assure that the Senate had a chance to enact responsible energy legislation.

It never was the intent to damage New England. In fact, I think the distinguished chairman has indicated that we had the other view presented in the committee.

It was my understanding that the amendment of the distinguished Senator from Colorado (Mr. HASKELL) does not do violence to any section of the country. I was not in the Chamber to hear the initial part of the statement. I am wondering what the problem is as it concerns New England.

Mr. McINTYRE. The Senator from New Hampshire has no difficulty with subsection (a); it is with subsection (b), which deals with the refined petroleum products. That, of course, gets into two distillates that are very important to us—residual oil and heating oil No. 2. So we have no objection to subsection (a).

It is simply the fact that quotas might have to be imposed after we have lived through that mandatory oil import quota program. We cannot tolerate that, because that was very unfair and had many rank situations to disturb the people, such as in Portland, Maine. The oil tankers from the Middle East would arrive and pump oil through the State of Maine, into Canada, where, in Montreal, heating oil was 1½ cents or 2 cents cheaper than in Portland, due to the subsidizing of the domestic refineries.

I have no trouble with subsection (a); it is subsection (b), with the fear that a President in the future could enforce quotas. It is very objectionable.

As to Mr. Schlesinger's remarks about a $5 barrel, that was on crude oil; was it not?

Mr. DOLE. Yes.

Mr. McINTYRE. We would be strongly opposed to that, even though the Secretary has told us privately that the administration would take into consideration the vulnerability of sections such as New England and the Middle West.

Mr. DOLE. It is not that provision he objects to. I guess it is the part of the Haskel provision the Senator referred to as section (b).

I thank the Senator.

Mr. McINTYRE. I thank the Senator.

Mr. MATHIAS. Mr. President, the energy tax proposals reported by the Finance Committee contain a section which is the same as the provisions of S. 2012 as introduced by Senator FLOYD K. HASKELL on August 4, 1977, and cosponsored by Senators BENTSEN, GRAVEL and myself. This section amends the Trade Expansion Act of 1962 and is intended to protect our national security by insuring that the domestic refining industry does not fall casualty to foreign refineries as a consequence of continuing Government actions which raise the costs of doing business to domestic refineries. It is founded on legislation which I introduced in January. That bill was S. 56.

Foreign refiners presently enjoy substantial cost advantages over domestic refiners, including unloading facilities for supertankers; use of foreign rather than U.S.-flag ships; lower wage and other employment costs; ability to burn higher sulfur, lower cost fuel; and exemption from income taxes and from local property taxes. These cost advantages do not result from true economic efficiencies, but rather reflect desirable U.S. governmental policy to achieve important social goals within the United States.

Currently short-range programs, such as the domestic crude oil price controls, the DOE's crude oil cost equalization program, and import fees have offset the additional costs incurred by domestic refiners in meeting these national goals and thus have allowed domestic refiners to remain competitive with foreign refiners. However, future cost increases imposed on domestic refiners by Government actions (such as the imposition of a crude oil equalization tax or a user tax) could greatly aggravate this disadvantage. In order to prevent this, the President, under this section, could make the necessary adjustments to import license fees and tariffs with respect to foreign refined petroleum products as necessary to foster a strong domestic refining industry which is competitive with foreign refiners and to encourage construction of new or modernized refining capacity within the United States rather than in foreign countries.

Section 1055(b) merely builds on existing Presidential authority to protect national security. The U.S. Supreme Court, in *FEA* v. *Algonquin SNG, Inc.*, 426 U.S. 548 (1976), indicated that the President has some authority to regulate imports of oil and derivative products in this regard, but the case is not definitive on the limits of that authority. The section would, thus modify section 232 of the Trade Expansion Act of 1962 to explicitly delegate to the President authority to impose monetary exactions of the type required to protect the domestic refining industry.

It should be noted that this section of the Finance Committee's bill stands alone and is neither dependent on, nor irreconcilable with, any other section contained therein. It should be noted also that the section is necessary whether or not the final energy legislation contains crude oil equalization tax or a user tax because of the continuing uncertainty of what future conditions may arise which could call for fees to offset costs disadvantages of domestic refiners vis-a-vis foreign refiners.

SECTION 105(b) NEEDED TO PROTECT THE NORTHEASTERN UNITED STATES

Section 105(b) of H.R. 5263 would protect our national security by providing a mechanism for insuring that the United States is not dangerously dependent on unsecure sources of foreign refined petroleum products.

Section (b) does not mandate any tariff or import fee on any product. It does not mandate that the amount of any tariff or fee be the same on all products. Rather it provides a flexible means of protecting our national security by explicitly delegating to the President discretionary authority to insure that domestic refiners have a reasonable chance to compete with foreign refiners despite Government actions which raise the cost of business for domestic refiners higher than that of foreign refiners.

This section is particularly important for the Northeastern United States. The Northeast, which is refinery deficient and, therefore, inordinately dependent upon petroleum product imports, has shown increasing interest in the construction of refineries in that region. A. Johnson & Co. has recently (1974) completed a 14,000 barrels per day refinery in Newington, N.H. A referendum passed by voters in Massachusetts in November 1976, endorsed the acceptability of a refinery in that State, and Massachusetts has also recently completed through a reputable consulting firm (PIRINC) a feasibility study on refinery siting. Several refineries have been proposed for Maine including a 250,000 barrels per day plant at Eastport, Maine, proposed by the Pittston Co. and presently in the final stages of obtaining the necessary Government permits. In short, the Northeast—especially New England—now clearly wants to accommodate petroleum refineries and related energy facilities. Section (b) is vital to safeguarding these new refineries and related facilities.

This interest by Northeastern States in new domestic refineries is understandable given that region's current dependence on unsecure foreign refineries. The U.S. Bureau of Mines reports that in 1976 the east coast relied on imported product to meet 9.6 percent of its distillate demand, 80.8 per cent of its residual fuel demand, and 26.1 percent of its total petroleum product demand. For the first quarter of 1977, this dependence increased to 22.4 percent of distillate demand, 82.2 percent of residual fuel demand, and 32.6 percent of total product demand. This demand for imported product may increase even further this winter in the face of the regional natural gas shortage predicted by the October 10 report of the Senate Intergovernmental Affairs Subcommittee. Such a natural gas shortfall could be offset in the future by the construction along the east coast of proposed refinery capacity to convert naphtha to SNG, but again section (b) is vital to such refineries.

The economic relation of domestic and foreign refineries and the national importance of section (b) is explained in the attached factsheet. For the Northeastern States, it is clear that section (b) would be a substantial aid in securing their fuel supply and correcting their regional refinery deficiency. I, therefore, urge my colleagues to vote against the amendment of the distinguished Senator for New Hampshire.

The following groups support the bill as is:

American Petrofina, Inc.
Ashland Oil, Inc.
Building & Construction Trade Dept., AFL-CIO.

Champlin Petroleum Company.
Cities Service Company.
Clark Oil and Refining Corp.
Crown Central Petroleum Corp.
Getty Oil Company.
Hampton Roads Energy Company.
Hawaiian Independent Refinery, Inc.
Husky Oil Company.
Independent Refiners Assoc. of America.
Kerr McGee Corp.
Marathon Oil Company.
National Council of Farmer Cooperatives.
National Petroleum Refiners Association.
North Pole Refining Company.
Oil, Chemical and Atomic Workers International Union.
Pester Refining Company.
Phillips Petroleum Company.
Pennzoil Company.
Standard Oil Company (Indiana).
Sun Company, Inc.
Tenneco, Inc.
Union Oil Company of California.
Vickers Petroleum Co., Inc.

Mr. President, I ask unanimous consent that the following letters in support of the bill as reported be inserted in the RECORD at this point.

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

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION,
Denver, Colo., October 12, 1977.

MEMBERS,
Senate Finance Committee, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR: As President of the Oil, Chemical and Atomic Workers International Union ("OCAW"), I am writing to urge very strongly that the Finance Committee adopt the provisions of Senator Haskell's bill (S. 2012) as part of any energy tax legislation reported by the Committee.

Senator Haskell's bill would provide a mechanism, by amending section 232 of the Trade Expansion Act, to protect the U.S. from undue reliance on foreign refiners by authorizing the President to adjust import license fees or tariffs to foster a strong domestic refining industry. S. 2012 therefore would provide standby protection for domestic refining and, for the reasons set forth below, should be enacted independently of the fate of the proposed crude oil equalization tax.

There are currently 100,000 workers in the domestic refining industry and additional tens of thousands in petrochemical and other industries directly tied to the domestic refining industry. OCAW represents a large proportion of these workers.

The operations of these industries are largely computerized and labor-efficient. Their workers are highly skilled with years of on-the-job training and experience behind most of them. Layoffs of this category of skilled and experienced workers can be catastrophic to workers and their families as work of this caliber elsewhere is generally not available to them. Conversely, to again build up a skilled work force in these industries is exceedingly difficult, costly and time-consuming. Yet the jobs of these workers are jeopardized today by the competitive advantages enjoyed by foreign refineries through tax and other legislative favors. Moreover, if the crude oil equalization tax passed by the House were accepted by the Senate in any form, these jobs could be lost almost overnight.

Foreign refining operations today have the unfair advantage of special and favorable tax treatment, not available to domestic refiners. In addition, domestic refining is unavoidably more costly than foreign refining because of higher American wages and other socially desirable measures to protect the environment and the health of the workers. Furthermore, the proposed crude oil equalization tax and industrial users tax, if enacted into law, would give domestic refining another financial handicap.

Moreover, OCAW believes that the design and maintenance of domestic refineries should be upgraded to reduce emissions of noxious effluents into the surrounding community. We believe that workers exposure to toxic substances, such as benzene, should and can be reduced to levels such that workers suffer no threats to their health by working in a refinery. We acknowledge that the attainment of these objectives will additionally raise the cost of domestic refining above those of foreign refining operations that are beyond the reach of EPA and OSHA regulations.

In considering the competitive position of domestic refining, it is necessary to examine also the real costs of foreign crude to the multinational oil companies that produce it. Because of profits and special tax advantages, the net cost of foreign crude to the multinational producers is less than the nominal world price. If the COET were enacted, imported products made with foreign crude by the multinationals would cost less than domestic products made with domestic crude even were refining costs the same.

For these reasons, OCAW strongly supports the Haskell bill, S. 2012, and urges its enactment as part of any national energy legislation.

Sincerely yours,
A. F. GROSPIRON, *President.*

AFL–CIO,
BUILDING AND COSTRUCTION TRADES DEPARTMENT,
Washington, D.C., October 11, 1977.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that on Tuesday, Senator Haskell will re-offer his amendment in support of the domestic refining industry. This amendment should be adopted.

To serve the U.S. market, refineries will have to be maintained, constructed, modernized and expanded. This work should be done here, providing jobs for American workers, not abroad. However, U.S. refineries have cost disadvantages because foreign refineries enjoy tax breaks, harbors for supertankers, different environmental rules and other advantages. Energy Act proposals, such as the crude oil tax, would make the domestic industry noncompetitive.

The American people are willing to pay fair prices for American made products which provide jobs for Americans. Congress should not permit the domestic refining industry to become a casualty to a new Energy Act, however that Act ultimately may turn out.

Senator Haskell's amendment, with bipartisan sponsorship, deserves the support of every member of the Finance Committee. I urge that you give it your full support and leadership.

With kind regards, I am
Sincerely,
ROBERT A. GEORGINE,
President.

Mr. McINTYRE. I am prepared to yield back the remainder of my time.

Mr. HASKELL. I yield back the remainder of my time.

Mr. McINTYRE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from New Hampshire.

On this question, the yeas and nays have been previously ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Delaware (Mr. BIDEN), the Senator from Kentucky (Mr. FORD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Illinois (Mr. STEVENSON), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from California (Mr. HAYAKAWA), the Senator from Kansas (Mr. PEARSON), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT) is absent on official business.

The result was announced—yeas 23, nays 58, as follows:

[Rollcall Vote No. 590 Leg.]

YEAS—23

Anderson	Javits	Proxmire
Case	Kennedy	Ribicoff
Chafee	Leahy	Riegle
Durkin	Lugar	Schweiker
Hatfield	McIntyre	Stafford
Hathaway	Metzenbaum	Stone
Heinz	Moynihan	Weicker
Humphrey	Pell	

NAYS—58

Allen	Dole	Melcher
Baker	Eagleton	Metcalf
Bartlett	Eastland	Nelson
Bayh	Garn	Nunn
Bellmon	Glenn	Packwood
Bentsen	Gravel	Percy
Bumpers	Hansen	Randolph
Burdick	Hart	Roth
Byrd, Harry F., Jr.	Haskell	Sarbanes
	Hatch	Sasser
Byrd, Robert C.	Helms	Schmitt
Cannon	Hollings	Sparkman
Chiles	Jackson	Stennis
Church	Johnston	Stevens
Clark	Laxalt	Talmadge
Cranston	Long	Thurmond
Culver	Magnuson	Tower
Curtis	Mathias	Wallop
Danforth	Matsunaga	Zorinsky
DeConcini	McClure	

NOT VOTING—19

Abourezk	Hayakawa	Pearson
Biden	Huddleston	Scott
Brooke	Inouye	Stevenson
Domenici	McClellan	Williams
Ford	McGovern	Young
Goldwater	Morgan	
Griffin	Muskie	

So Mr. MCINTYRE's amendment was rejected.

FEDERAL AVIATION ACT AMENDMENTS—CONFERENCE REPORT

Mr. CANNON. Mr. President, I submit a report of the committee of conference on H.R. 6010 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. MATSUNAGA). The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 6010) to amend title XIII of the Federal Aviation Act of 1958 to expand the types of risks which the Secretary of Transportation may insure or reinsure, 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 all 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 October 27, 1977.)

Mr. CANNON. Mr. President, the conference report, with the exception of one amendment affecting only Alaska and Hawaii, which was offered by the Senators from those two States and is a limiting amendment offered in the conference, is identical with the way H.R. 6010 was passed by the Senate. I ask that the conference report be approved.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

ENERGY PRODUCTION AND CONSERVATION TAX INCENTIVE ACT

The Senate continued with the consideration of H.R. 5263.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

UP AMENDMENT NO. 996

Mr. HATHAWAY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

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

Mr. LONG. I object, Mr. President. Just read the amendment.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. HATHAWAY) proposes an unprinted amendment numbered 996:

On page 90, line 23, insert the following:

"(3) Any credit allowed by this section shall be reduced in equal proportion to the proportion of the value of any Federal funds provided by grant to the total cost of the investment in the equipment installed and facilities constructed to carry out these processes. The rule provided by this paragraph shall apply on a project by project basis."

Mr. HASKELL. Mr. President, will the Senator from Maine yield for a unanimous-consent request?

Mr. HATHAWAY. I yield.

Mr. HASKELL. Mr. President, I ask unanimous consent that Robert Libertore of my staff may have access to the floor during the consideration and votes on this measure.

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

Mr. HATHAWAY. Mr. President, I have discussed this amendment with the manager of the bill, and I think it is agreeable to him. It is comparable to another amendment found at page 69 of the bill. It simply states, in effect, that if there are any Federal funds provided by grants on a project-by-project basis to those companies that can avail themselves of the $3 oil shale credit and the 50-cent gas credit, the credits would be prorated accordingly, so that it would only be credited toward the money that they had actually invested, and not toward those Federal funds that were made available for the production of that barrel of oil or that thousand cubic feet of gas.

Mr. LONG. Mr. President, I am willing to accept the amendment and take it to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

UP AMENDMENT NO. 997

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask that it be reported. I then intend to yield to the Senator from Washington.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS), for himself and others, proposes an unprinted amendment numbered 997.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be waived, and I will explain it.

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

The amendment is as follows:

On page 99, line 6, insert the following new paragraph:

"(f)(4) The President shall transmit any proposed adjustment regarding imports of refined petroleum products to the Congress before such proposed adjustments shall take effect together with a report explaining the reasons for the proposed adjustment. The proposed adjustment shall not become effective and may not be implemented unless neither House of Congress has disapproved such proposal in accordance with the following procedures:

(A) The President shall transmit any import adjustment (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any import adjustment is received by the appropriate officers of each House, for purposes of this section such import adjustment shall be deemed to have been transmitted on the first succeeding day on which both Houses are in session.

(B) (1) Except as provided in paragraph (2) of this subsection, if import adjustment is transmitted to the Houses of Congress, such adjustment shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such adjustment is transmitted to such Houses, unless between the date of transmittal and the end of such 15-day period, either House passes a resolution stating in substance that such House does not favor such adjustment.

(2) An import adjustment described in paragraph (1) may take effect prior to the expiration of the 15-calendar-day period after the date on which such action is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to such adjustment.

(C) For the purpose of subsection (B) of this section—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-calendar-day period.

(D) Under provisions contained in an import adjustment, a provision of such an action may take effect on a date later than the date on which such action otherwise takes effect pursuant to the provisions of this section.

(E)(i) This subsection is enacted by Congress—

(*a*) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (*a*) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(*b*) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(ii) For purposes of this subsection, the term "resolution" means only a resolution of either House of Congress described in subparagraph (*a*) or (*b*) of this paragraph.

(*a*) A resolution the matter after the resolving clause of which is as follows: "That the ——— does not object to the import adjustment numbered ——— submitted to the Congress on ———, 19—", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one import adjustment.

(*b*) A resolution the matter after the resolving clause of which is as follows: "That the ——— does not favor the energy action numbered ——— transmitted to Congress on ———, 19—", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one import adjustment.

(ii) A resolution once introduced with respect to an import adjustment shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(iii)(A) If the committee to which a res-

olution with respect to an import adjustment has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such import adjustment which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same import adjustment), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same import adjustment.

(F) (*a*) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(*b*) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(1) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2) (A) of this subsection with respect to an import adjustment, for a resolution described in paragraph (2) (B) of this subsection with respect to the same such action, or

(2) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2) (B) of this subsection with respect to an import adjustment, for a resolution described in paragraph (2) (A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(VI) (A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(VII) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an import adjustment, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

Mr. JAVITS. I ask unanimous consent to yield to the Senator from Washington without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Washington is recognized.

UP AMENDMENT NO. 998

Mr. JACKSON. Mr. President, I ask unanimous consent to call up at this time my unprinted amendment which is at the desk.

The PRESIDING OFFICER. Without objection, the clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Washington (Mr. JACKSON) proposes an unprinted amendment numbered 998:

In section 1061, strike the comma after the word "gas" in subparagraph (c) of paragraph (1) of subsection (b), and insert "or synthetic liquid fuel,"

Mr. JACKSON. Mr. President, this amendment would allow the tax credit against the excise tax on business use of oil and natural gas for facilities for production of synthetic liquid fuels. The affected language applies only to facilities for the production of synthetic gas from coal. I see no reason why liquid fuels as well as gas should not be treated equally.

Mr. President, I have taken this matter up with Senator METZENBAUM. It is that part of his amendment which was adopted that this amendment is addressed to. I have also taken the matter up with the manager of the bill.

Mr. LONG. We are willing to accept the amendment and take it to conference.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. JACKSON. Yes.

Mr. CURTIS. We are unable to locate a section numbered 1061.

Mr. JACKSON. That was adopted yesterday. You have to have an up-to-date print. That is the Metzenbaum amendment, which dealt with gas from coal but not liquid fuel from coal. Obviously, they are all a part of the same synthetic process, an alternative process. The amendment is to correct that.

Mr. CURTIS. I thank the Senator for the clarification. We have no objection to the amendment.

Mr. JACKSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Washington.

The amendment was agreed to.

Mr. JACKSON. I thank the Senator from New York.

UP AMENDMENT NO. 997

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, the amendment I have offered—I am willing to yield to the Senator from Kansas for a unanimous-consent request, if that is what he wishes.

Mr. DOLE. Mr. President, I just thought I would like to see if we could get to the bill.

Mr. JAVITS. That is a rather large matter, but that will not be long.

Mr. DANFORTH. Is the Senator yielding for minor amendments?

Mr. JAVITS. No, mine will not be long.

Mr. President, this amendment is the necessary sequel to the amendment which we have defeated, though I voted for it, by the Senator from New Hampshire (Mr. MCINTYRE). What it does is say that if the President utilizes such authority as he has under the bill to impose new fees, tariffs, or quotas on any petroleum product import, then that action shall be subject to a one House veto. That, in essence, is the amendment.

I would like to read to the Senate, because it is of very broad interest, if the clerk would give it to me, the original amendment. May I have the original amendment, which is at the desk?

The PRESIDING OFFICER. The clerk will provide the Senator with the original amendment.

Mr. JAVITS. I wanted to read to the Senate the names of the cosponsors involved, because it represents, Mr. President, a very broad interest.

The Senate has decided, and that is the end of that, that it is going to leave the President with this authority which the Finance Committee has given him. That is the end of that. But the question is now suppose he does exercise this authority, which he has threatened to do, if he is not satisfied with our bill? What then? What I say is that if he is not satisfied, then by all means we should have the right at least to have a one-House veto.

Mr. President, there is always argument about the one-House veto, but I would like to point out that every other major energy pricing action by the administration which relates to petroleum or petroleum products is subject to a congressional veto provision.

This is contained in the Energy Policy and Conservation Act.

The sponsors of this amendment, just to indicate the breadth of the support for it, are Senators JACKSON, KENNEDY, BROOKE, STONE, MOYNIHAN, RIBICOFF, MCINTYRE, DOLE, DURKIN, and RIEGLE.

It is not an amendment which has any one of the two interests where we have had the major struggle in this bill. It is an amendment on which I believe all could agree, on the ground of an element of congressional protection in the vast power we are giving the President to undo, really, because that is the only time he would use it, the scheme which the Congress might establish in this energy bill as it finally comes out.

Mr. President, I believe this is an essential point. It has been much debated and argued by Senator MCINTYRE in connection with his amendment. We simply accept the verdict of the Senate, but seek this one precaution, that at least either the Senate or the House may reject the President's efforts in this regard.

Mr. President, to my section of the country and all of New England, this is a very critical point, because we are the primary users of home heating oil and residual fuels. That is the area to which the words used in the law "product imports" would specifically apply.

I hope very much that the Senate will see fit to allow at least this minimal measure of residual safeguard, having already made the decision that it is

going to keep this power with the President.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, as I explained previously, and I believe the Senator from New York was not in the Chamber at the time, we propose in conference, by both the Moynihan amendment, which has already been agreed to, and by whatever else may be necessary, to see that whatever may be necessary to assure that New York and the Eastern Seaboard are not subject to any undue burden as a result of trying to save domestic refineries, is done. We think any burden should be spread across the entire width and breadth of the land, with the people in my part of the country sharing our part of the burden along with all the rest. We would do that by whatever means may be necessary. It may have to be a tax credit or it may have to be something else. If the Moynihan amendment is not broad enough to do it, the provision of section 1054 is. We want to assure the Senator that we have every intention of protecting New York and the Eastern Seaboard from any special burden as a result of saving these refineries.

Having done that, Mr. President, we would believe that the Senate's view that these refineries should be kept in business would prevail. It scarces the independent refineries to death when they hear talk about a one-House veto. That means that if they have to count on the House, they will survive. But if they have to count on both Houses being for them, without the pressure of the other House exercising its proper weight, they might not survive.

I would hope very much that the Senator would not insist on that concept for the reason I have indicated.

Mr. JAVITS. I paid very strict attention to the Senator from Louisiana in this particular matter, about which he knows a great deal. There is no question about that. The Senator knows more than I do about it. In this particular case, the reason I read the list of sponsors, which includes four members of the Finance Committee, was to indicate opinions other than mine. I do not remotely pretend to be an expert on this whole subject. Naturally, it is my duty to have whatever safeguard I can for my particular interests, which I have tried to do here.

Apparently, this amendment enjoys broad agreement.

The Senator may or may not be right as to what bill will emerge out of the conference. I do not know. The Senator will have a great deal more to do with that than I will.

It seems to me that, faced with the threat of the Presidential use of this power—and the President has threatened that in very real terms—this is a very elementary precaution. On the two-House veto versus the one-House veto, the time element is so short, 15 days, the Senator knows it is physically impossible.

Finally, I would like to say this to the Senator: I would suggest, and I am not putting it in any sense of a demand, why not have the full armory of weapons in the conference, having this, too? There will be a lot of trading of this for that and that for this. The Senator could, in the conference, if he decided that way, make it a two-House veto, if he should decide that way. The Senator knows the Senate is not going to turn down the conference report on that account.

I would hope, and I do not know whether the Senator will or will not, that the Senator might consider simply taking this and having yet another string in his bow. Then, having Senators RIBICOFF, MOYNIHAN, and DOLE with the Senator on this conference, in some fashion the conferees can decide together what to do. I have no fixation on it. But after having the picture of rejecting the McIntyre business, and the President's making the threat he did—and we cannot assume it to be an idle threat—it seems to me it would not be an idle precaution.

Mr. LONG. Mr. President, what is wrong is that if we go to conference and the Senate asks the House Members if they want to take it, that is all there is to it. We cannot preclude the House from accepting a Senate amendment. That is probably what would happen, that they would just take it. That would be the end of it. We could not negotiate at all. If we wanted something other than that, and the House wanted to accept that amendment, we would not have any flexibility or discretion.

Mr. JAVITS. I am a conferee probably as often as the Senator is. I have great fidelity to that oath. I would not counter that argument. I would not say for a minute, or counsel for a minute, that any Senator should treat an amendment as half an amendment. I have made the point I wanted to make. If I cannot count on that particular argument all I can suggest is that the Senator have the same sweet attitude he has about this vote as he had on the vote on the Heinz amendment when he said even though there was some argument about whether it was 42 or 43, let us have it over with and go to the next. I suppose that is the best way to settle this.

Mr. LONG. Might I suggest that the Senator amend his amendment to make it a two-House veto?

Mr. JAVITS. I have given consideration to that. I would like very much to go with the Senator, but the difficulty is it is 15 days. I am just too experienced to accept that physical impossibility. Besides that, if it is a two-House veto, the Senator would definitely be stuck in the conference. This way, if the Senator wanted to, he could still make it two Houses when he gets there.

Mr. LONG. I would make it 30 days, 30 days with a two-House veto.

Mr. JAVITS. I do not see that it really advances the cause. I would like very much to do it, but I think we had better have it up or down.

Mr. LONG. Mr. President, I regret that I cannot support the amendment. I am willing to do anything within reason to assure anyone that, by virtue of trying to preserve the domestic refining business, it is important to our energy survival as well that we have the refineries necessary to provide our needs. They are going to deteriorate, they are not going to be here if we do not provide adequate refining capacity.

That being the case, I shall have to resist the amendment and hope that it is not agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I ask unanimous consent that I may yield to Senator TOWER without losing the floor.

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

Mr. TOWER. Mr. President, I have some information here to report that I think will be of interest to the Senate.

The President of the United States has just endorsed deregulation of gas. In a telephone address to the National Newspaper Association Convention in Houston, the President said he favors eventual deregulation of natural gas prices. He said the move must be made gradually to control the economic shock.

The issue of deregulation is one of the items splitting the House and Senate over a national energy bill. The Senate approved deregulation, while the House supported Carter's plan to continue and expand controls for the time being.

"My goal is still to deregulate natural gas," he said. "I don't think we ought to do it all at once. It would be too much of an impact on our national economy."

Mr. President, in the Bentsen-Pearson bill is gradual deregulation. I think that, by implication, the President has endorsed it. This should facilitate the work of the conference and should result in the President's position being sustained.

I ask unanimous consent that this UPI report may be printed in the RECORD at this point.

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

In the telephone hookup address, he also said that he favors eventual deregulation of natural gas prices, but said that move must be made gradually to control the economic shock.

The issue of deregulation is one of the items splitting the House and Senate over a national energy bill. The Senate approved deregulation, while the House supported Carter's plan to continue and expand controls for the time being.

"My goal is still to deregulate natural gas. I don't think we ought to do it all at once. It would be too much of an impact on our national economy."

Mr. HATHAWAY. Will the Senator yield?

Mr. TOWER. I yield.

Mr. HATHAWAY. The President said eventually. He did not say whether it would be 100 years from now.

Mr. TOWER. The Bentsen-Pearson bill is eventual and gradual. It fulfills all the requirements of the President's position.

I am sure the Senator sitting in the chair now will be happy to hear this.

Mr. RIEGLE. Will the Senator yield for a unanimous-consent request?

Mr. JAVITS. I yield for that purpose.

Mr. RIEGLE. Mr. President, I ask unanimous consent that Jim Humphreys be granted the privilege of the floor during vote and debate on this measure.

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

UP AMENDMENT NO. 999

Mr. JAVITS. Mr. President, I send a modified amendment to the desk and ask that it be stated. Will the clerk read the words as they appear in the modified amendment as well as the basic amendment?

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes a modification of his amendment numbered 997, which is now numbered 999.

On page 99, line 6, insert the following new paragraph:

"(f)(4) The President shall transmit any proposed adjustment regarding imports of refined petroleum products to the Congress before such proposed adjustments shall take effect together with a report explaining the reasons for the proposed adjustment. The proposed adjustment shall not become effective and may not be implemented unless both Houses of Congress have disapproved such proposal in accordance with the following procedures:

(A) The President shall transmit any import adjustment (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any import adjustment is received by the appropriate officers of each House, for purposes of this section such import adjustment shall be deemed to have been transmitted on the first succeeding day on which both Houses are in session.

(B)(1) Except as provided in paragraph (2) of this subsection, if import adjustment is transmitted to the Houses of Congress, such adjustment shall take effect at the end of the first period of 30 calendar days of continuous session of Congress after the date on which such adjustment is transmitted to such Houses, unless between the date of transmittal and the end of such 30 day period, both Houses pass a resolution stating in substance that such House does not favor such adjustment.

(2) An import adjustment described in paragraph (1) may take effect prior to the expiration of the 30-calendar-day period after the date on which such action is transmitted, if both Houses of Congress approve a resolution affirmatively stating in substance that such House does not object to such adjustment.

(C) For the purpose of subsection (B) of this section—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-day-calendar period.

(D) Under provisions contained in an import adjustment, a provision of such an action may take effect on a date later than the date on which such action otherwise takes effect pursuant to the provisions of this section.

(E)(i) This subsection is enacted by Congress—

(a) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(b) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(ii) For purposes of this subsection, the term "resolution" means only a resolution of either House of Congress described in subparagraph (a) or (b) of this paragraph.

(a) A resolution the matter after the resolving clause of which is as follows: "That the ——— does not object to the import to the Congress on ———, 19—", the adjustment numbered ——— submitted first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one import adjustment.

(b) A resolution the matter after the resolving clause of which is as follows: "That the ——— does not favor the energy action numbered ——— transmitted to Congress on ——— ———, 19—", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one import adjustment.

(ii) A resolution once introduced with respect to an import adjustment shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(iii)(A) If the committee to which a resolution with respect to an import adjustment has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such import adjustment which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same import adjustment), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(c) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same energy action.

(F)(a) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(b) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(1) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(A) of this subsection with respect to an import adjustment, for a resolution described in paragraph (2)(B) of this subsection with respect to the same such action, or

(2) to offer an amendment in the nature of a substtute, consisting of the text of a resolution described in paragraph (2)(B) of this subsection with respect to an import adjustment, for a resolution described in paragraph (2)(A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(V)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(VII) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to import adjustment, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

Mr. JAVITS. Mr. President, the modification provides for a two-House veto within 30 days, this is, with 30 days instead of 15 days for the effectiveness of any order. I understand that is acceptable to both Senator LONG and Senator CURTIS.

I have conferred with a number of my cosponsors, and it is acceptable to them.

Mr. DURKIN. Will the Senator yield?

Mr. JAVITS. Yes, I yield.

Mr. DURKIN. That is with the privileged motion provision included?

Mr. JAVITS. Exactly; it carries privileged motions in both Houses.

Is that all right, I ask the Senator from Louisiana?

I am ready to vote.

Mr. DOLE and Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I move to recommit H.R. 5263 to the Senate Finance Committee.

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

Mr. LONG. Mr. President, I have talked to the gentleman who speaks as liaison man for the President today and I have also talked to the President himself by telephone. The President is most hopeful that we do not recommit this bill. It is the President's view that we should amend the bill, improve on it if we can to the extent that we think we can, but he is very hopeful that the Senate will pass a bill and the bill will go to conference with the House.

I hope, Mr. President, that the motion to recommit is not agreed to.

The PRESIDING OFFICER. Will the

Senator send his motion to recommit to the desk?

Mr. RIEGLE. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. Will the Senator yield for a parliamentary inquiry?

Mr. DOLE. The Senator will yield for a parliamentary inquiry without losing his right to the floor.

The PRESIDING OFFICER. The Senator will state the parliamentary inquiry.

Mr. RIEGLE. May I inquire as to the disposition of the amendment put forward by Senator JAVITS?

The PRESIDING OFFICER. The motion takes precedence over an amendment.

Mr. JAVITS. Mr. President, I ask unanimous consent that action may be had upon my amendment.

Mr. LONG. Mr. President, I must object to that. I ask the Senator from New York to let us have the record vote on the motion.

Mr. JAVITS. If we have a vote on this amendment, we can dispose of it. There will be no further debate.

Mr. LONG. If the Senator will yield, I prefer to go ahead and vote on the motion to recommit, Mr. President.

I will accept the amendment, but I want to go ahead and vote on the motion to recommit.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I understand there may be other motions to recommit. I only say to those who may have a different view that we have been discussing when to bring up a motion to recommit. We have discussed, at great length, how to phrase this motion to recommit.

I am not under any illusion that we probably have the votes to recommit this bill to the Committee on Finance. However, let me discuss it for a few moments. My distinguished colleague from Colorado (Mr. HASKELL) and my distinguished colleague from Massachusetts (Mr. BROOKE) and others may wish to be heard on the motion to recommit.

First, I think we should understand that by recommitting this bill to the Committee on Finance, it is not an attack upon the President's energy program. Four-fifths of the President's energy program has already passed the Senate. This Senator voted for every one of those bills. However, as presently structured, I cannot support the energy tax bill.

There have been some suggestions today that we would pick up more votes if we added certain instructions that would say that, for every dollar expended, there should be a dollar of revenue raised. It has been suggested that the committee could come back next Wednesday with that type provision.

Others have suggested that we have the instruction include the amendment by the distinguished Senator from Ohio (Mr. METZENBAUM). I think that is a good amendment. Once we start adding instructions it creates problems. As everyone in this Chamber knows, we all have different views. Therefore, the Senator from Kansas and the Senator from Colorado decided to go with a straight motion to give those Senators opposed to a tax increase a chance to vote against the tax increase.

Make no mistake about it: I do not care how we dress this bill up or what we call it, when we voted to report this bill and when the energy tax bill is passed, and it goes to conference, the Senate has voted for a crude oil equalization tax and many other taxes that are in the House bill. There is no way we can escape those taxes in conference.

There are many of us in the Senate who are opposed to a tax increase. We are going to have a big social security tax increase before the Senate next week. Those opposed to a tax increase ought to have a right to vote against that tax increase.

This motion is a way to bring to the attention of the American people, who still think we are talking about an energy bill in the Senate that in fact this is a tax bill. We have not discussed an energy bill since the first few days the bill was in the Finance Committee. The committee was under great pressure to report any bill. So the distinguished chairman put together a $40 billion package of tax credits. In the last few days, we added another $4 billion, or $5 billion. There has been some revenue gained through the efforts of the distinguished Senator from Ohio (Mr. METZENBAUM).

The administration will attempt to rewrite the bill in conference. We ought to recommit the bill or pass it. We should not waste the Senate's time and delay those with obligations by discussing amendments.

Mr. President, if it is possible to use the tax mechanism to find a solution to our energy problem, this bill is not the way to do it.

First, it is unthinkable that we can have before us a bill that makes no mention of the crude oil equalization tax, yet we all know that a vote for this bill is a vote for the equalization tax, a vote against it is a vote against the tax.

It is not enough to say this is the biggest tax cut in history, and the House passed the biggest tax increase in history, but go to conference and come out in the middle because the middle is voting for an equalization tax.

Passage of this bill could result in a precedent that will take a long time to live down. The Finance Committee has soundly rejected the crude oil equalization tax. We are not now voting on a crude oil equalization tax. Yet, we are under pressure by the administration to get on with our business so they can get this bill to conference. They plan on rewriting it in conference.

We have been told that by the Speaker of the House and by the House conferees. They have made up their mind, they want a crude oil equalization tax.

What the conference will decide—and the Senator from Kansas may be a conferee—is how to divide the money in rebates, back into production, or some other area, of conserving or producing energy.

If we end up with only the opportunity to vote on an entire bill, a bill whose major parts we have never had the opportunity to vote on, we will be shirking our responsibility as legislators.

The option is to return this bill to committee where we can take the time to see how taxes can indeed be best used to as one approach to solving our energy problems.

The Senator from Kansas realizes after the rather lopsided vote last night on residential tax credits that it is very difficult to bring a bill to the Senate floor filled with tax credits for everyone and have any success in whittling down those credits. It is much easier to give someone a tax advantage than have a tax increase.

Aside from the issues that are conspicuously absent from this bill, there is in the bill a Christmas tree of ill-advised tax credits that will cost the Government an unknown amount of money, and will save a completely undetermined amount of energy.

There is, in fact, no known relationship between the amount of purchases that will be made for new equipment, and the amount of energy that will be saved under this program. These tax credits are a boon to the particular industries that have been singled out in the bill, and they only very indirectly address the problem of energy savings. We have allowed tax credits for: furnaces, burners, flue dampers, electric pilot lights, storm windows, and doors, clock thermostats, caulking and weather-stripping, heat pumps, special meters, fluorescent lighting systems, and anything else the Secretary of the Department of Energy thinks can result in running a house more efficiently. There is, even, an unbelievable 40 percent extra tax credit for business to purchase energy saving equipment.

There is no way to estimate the amount of purchases that will occur, or the amount of energy savings that will accrue. Neither is there any way to tell whether all of the tax credit will be eaten up in artifically higher prices for the items that we have listed in this bill.

Mr. President, it just seems to this Senator, who opposed the increased taxes in the committee, that we ought to have an opportunity, for those in the Senate opposed to tax increases on an already overburdened economy, on an already overburdened American taxpayer, to have an opportunity now to say "No" to tax increases.

I would suggest if everyone in this body could sit down and say, "I want the tax increases to go to this area, or that area, or back in rebates," we might be able to agree on some legislation. But, we are voting for a tax increase. This is not energy legislation. If anyone can find any energy legislation in this bill, I will be happy to have it pointed out.

There have been estimates how we might save certain amounts of oil if we do this or that through tax credits. But I suggest that it is the better part of wisdom to take it back to the Finance Committee. There we can add the amendment of the distinguished Senator from Ohio (Mr. METZENBAUM), and others who have a direct interest in seeing some balance in the program.

But I would also say to those who have not followed this bill closely, as some of us have in the Finance Committee, it is a tax increase. It is not an energy bill. It is a tax bill.

We have seen just yesterday the President of the United States saying that he is going to delay sending the tax reform bill to Congress until next year. I commend the President for that action because we already have a tax bill before us right now, not a tax reform bill, but a tax increase bill.

It is going to raise the price of gasoline 9 cents a gallon by next year if we have the equalization tax, and who knows what the total increase will be by 1985.

And where does the money go?

There should not be any mistake about this bill. I think everyone recognizes this as a tax increase, as a tax bill and not as an energy bill. It is certainly not an energy production bill.

There is some focus on conservation, but very little is reliably estimated. No one really knows what the bill will save. No one really knows what the true cost will be to save energy.

I would hope my colleagues would recommit the bill. Send it back to the Finance Committee, give us another chance and perhaps we can come out with real energy bill.

Mr. President, I yield the floor.

Mr. HASKELL. Mr. President, I would like to support the motion of the distinguished Senator from Kansas to recommit the bill.

The bill is, as the Senator said, a tax bill. I would like to underline the fact that we have already processed four-fifths of the suggestions of the administration as to their energy program and I would also suggest that it is up to the Senate to decide whether the last one-fifth is or is not meritorious.

Obviously, the Senator from Kansas and I conclude it is not meritorious. But I think it is the job of each individual Senator to see if the tax one-fifth of the President's program has, in fact, as it is, the solution of the Nation's energy problem.

Briefly, the present bill before us has lots of incentives. In fact, somebody said that we have an incentive for everything except to buy thermal underwear.

We do not know what these incentives are going to do. We do not know whether they are going to save petroleum products, or in what amount. We do not know how much additional production the production incentives will raise.

So any estimates on the oil barrel saving, as the very competent staff of the joint committee said, are strictly speculation—educated speculation, but speculation nevertheless.

Let us now look at the bill in the House. First, there are three taxes. There is a crude oil equalization tax, and this will take billions of dollars out of the economy. Then, at least for 2 years, these billions go back on a per capita citizen basis.

What economic side effects is this tinkering with the economy going to have? What impact is it going to have on the suddenly escalating costs of places of employment throughout the country? I submit, Mr. President, that no economist is wise enough to say, and I submit that this is a dangerous exercise.

The second tax that the House bill contains is a so-called user tax on natural gas. We in the Senate have passed a coal conversion bill which will prohibit any new industrial or utility source, with minor exceptions, from using oil and gas. The user tax on natural gas is designed to leverage existing plants to scrap their plants. I use that term advisedly, because you do not convert to coal; you abandon one plant and you put in another plant. This user tax is designed to leverage an industry to scrap a very valuable, possibly new, possibly old, plant.

I submit that this is not an equitable procedure. These plants were constructed at a time when it was perfectly proper—and when, in fact, there was a national inducement—to use natural gas. To use the power of taxation to destroy that investment, in my view, is improper. If we want them to stop using natural gas and put in a coal plant, it seems to me that this is a national obligation, and suitable recompense should be undertaken.

So part of the user tax, so far as new plants are concerned, is unnecessary, because we have the coal conversion bill. The part as to existing plants is inequitable.

The third tax, of course, is the gas guzzler tax, but I believe that in the Senate, due to the efforts of the distinguished Senator from Ohio in the Energy Committee, we have a far better approach. We say that, starting at a certain year, no new car will get less than 16 miles per gallon, going up to 21 miles per gallon.

What we are asked to do here is to take a bill, which the senior Senator from Connecticut characterizes as a bill he could not vote for if he thought it was going to be enacted, and put that with the House bill, which has lots of taxes in it which do not seem to have merit; and then, somehow, we delegate our authority to a few Members of the Senate, and the House delegates its authority to a few Members of the House, to come up with a third program that may or may not have any relationship to either of those two. I submit that this is not a responsible legislative action.

To be sure, Congress should address itself to the gaps which remain in the energy problem of the United States. As I said at the beginning, four of five bills have been passed. I think there is one particular significant omission. We have not addressed ourselves to the question of whether Government loans or Government guarantees or other Federal mechanisms are necessary to bring on production in the areas of coal gasification, oil from tar sands, oil from shale, and the like—or, for example, the generation of electricity by solar energy.

ERDA is permitted to build one prototype plant; but it may well be—I pose this as a question, and it is subject to hearings—that there should be further Federal involvement.

Mr. President, it seems to me that we are dealing with a problem that basically cannot be settled by taxes. We have one approach in the Senate, which is all these incentives, another approach in the House, which consists of taxes—the incentives not being quantifiable as savings. As to the taxes, I think a majority of the body, given each tax, would vote against it.

I believe the wise thing to do is to recommit the bill to the committee. If the committee can come up with a proper bill, I think that is fine; but at the same time, we can examine this production end.

I yield the floor.

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The point is well made. The Senate is not in order. Staff members will cease conversations. Staff members wishing to converse will retire to the cloakroom.

Mr. BROOKE. Mr. President, one of the most profoundly disturbing questions to arise from the energy debate is whether the executive branch or Congress can cope at all with complex technical and economic questions about basic resources; for competence of this nature is essential for decisionmakers in our era. Indeed, the future of democracy depends on our finding ways to manage a technologically advanced society effectively. Yet, in the energy debate, the House of Representatives virtually rubberstamped its committees' bill. Few fundamental questions were raised on the House floor. Even our Senate committees bogged down hopelessly over some issues including many tax matters. I do believe that the Senate has done much better than the House, in that we have at least tried to review each aspect of the legislation critically and thoroughly. But I fear that the end product, of which this bill is a part, shows the effects of our lack of time and resources to rework the administration's hastily devised program. It also shows the nature of the deep disagreements about energy policy in the Nation and in this body.

But, Mr. President this preposterous energy tax legislation which we are debating is the ultimate evidence of the recent breakdown of the policymaking process. This proposal for over $40 billion of tax expenditures, to be financed from just $28 million of new revenues, can also be viewed as the plan to spend more than $50 per barrel for theoretical oil savings in 1985. In fact, we know its sponsors only seem intent to move their deliberations on taxes out of the normal legislative arena and escape the discipline of future detailed congressional review.

I think all of us in this body are sympathetic to the committee's plight of having to fashion a consensus on this crucial section of the President's energy program where no true consensus exists. But I feel that it would have been better to admit failure directly rather than to present us with legislation which is a vehicle for a future compromise. It puts Senators who are publicly associated with very definite positions on energy and tax matters in the impossible posture of anticipating a conference report on

which they will have no opportunity to record these positions on the issues of greatest priority to them.

In other words, as has been said by the distinguished Senator from Kansas and the distinguished Senator from Colorado, we are abdicating our responsibility, delegating that authority. We will have no opportunity whatever to take our own positions and divorce our own opinions on the important aspects of this legislation.

For these reasons, I supported striking section 1054 and I am deeply disappointed that that motion of the distinguished chairman of the Energy Committee failed. The carte blanche the committee is requesting from the Senate would give the conferees on the tax bill enormous power.

I have nothing against giving power to our distinguished chairman of the committee and some of those conferees, but this is a very important issue. It is a vital issue. It is an issue on which we all should be heard. It is an issue on which we all should vote, and it is an issue on which we should know what we are voting on.

It even seems likely that they would propose an undefined public corporation to invest untold billions in energy programs as yet unidentified under budgetary procedures not subject to control by Congress, not even subject to control by the President. There is no control whatsoever.

I hope that this end-run on the legislative process will fail and that the radical policy of establishing an institution beyond the reach of normal governmental processes will die with it.

Mr. President, my own position on energy taxes has long been that some crude oil and end-use taxes would be acceptable if the proceeds went back to taxpayers. Our faltering economy and our beleaguered consumers cannot afford to have tens of billions in new taxes transferred out of ordinary households' pockets and into the energy producer's accounts. But I have become sadly convinced as we have debated this bill that we just cannot get there from here.

This tax expenditure scheme is written as a blank check on which neither the payee nor the amount to be paid is filled in, and I do not think any one of us are ready to do that. We would not do it in our personal lives. We certainly would not do it in our businesses. No one wants to write out a blank check without the amount, without the payee, and sign it. It is a negotiable instrument that can be used by others for whatever amount they want.

The signature can be seen as plain as can be, and that signature is "American taxpayer." That is what the signature is. This brainchild of the administration has now become the Senate's "Rosemary's Baby." It has become a monstrosity. We cannot get any assurance this can be translated into sound policy and if there is anything we need it is a sound policy in this action. And it would be wrong for the Senate to relinquish its responsibility to review each provision in such a potentially massive tax bill.

That is where our Finance Committee has stood time after time, year after year, when we were dealing with a massive tax bill. We should review and review carefully each provision. But here they are asking us not to do it, to give them a carte blanche.

Therefore, I am joining the distinguished Senator from Kansas, Senator DOLE, in making this motion to recommit, recommit this tax bill. It is a bad bill. It is a disastrous bill, and it is beyond redemption, beyond redemption in its present form.

The time has come for the Senate to ask its Finance Committee to start over, preferably with a commitment from the Carter administration to design a specific and responsive policy.

I think there is no one in this Chamber who doubts that we desperately need a sound national energy policy and without it we certainly should not be writing this kind of a tax bill. This is not such a program. Indeed, it is no program at all. Some feel political expediency dictates that we need a bill, just get it out, any bill. Rush it out.

There has been too much legislation of that sort where we do not think about it, where we do not put it on the drawing boards; we just get it out. And there is a potpourri of legislation floating around now like that, anxious to get it out. Let us do not get it out until it is right, and this is not right. This is clearly not responsible policymaking.

Rather, Mr. President, we should step back, rework this bill, bring it to the Senate floor in a few short weeks from now at the start of a new session. There are those of us who may believe we should bring it sooner. If the committee can do it, all right. But we certainly are not ready to vote on it at this time.

So, there is always plenty of time to legislate a good measure rather than a bad one.

Mr. President, in conclusion, I strongly urge my colleagues to support our effort to bring this proceeding to a temporary halt by recommitting this legislation. We are not trying to kill it. Recommit it. Recommit it for further refinement, for the further refinement this needs.

We will rue the day if we pass this legislation as it is. Mark my word on this 28th day of October, we will rue the day if we pass this legislation as it is presently written.

I yield the floor.

Mr. LONG. Mr. President, I take issue with two points that the Senator from Massachusetts made.

He said that we could bring back under the language in this bill a corporation with powers to borrow or guarantee loans.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LONG. Mr. President, in view of the fact that there is nothing in the bill that refers to a corporation and nothing in the House bill referring to a corporation or to establishing a Federal corporation, would it be within the purview of the conference even under section 1054 to bring back to the Senate from conference a corporation?

Mr. BROOKE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Chair shall take that under advisement while the Senator is continuing.

Mr. HOLLINGS addressed the Chair.

Mr. LONG. Mr. President, let me make it clear that I have discussed this matter. This matter has been discussed with the Parliamentarian, who is not here at this moment, and we have been advised that it is not within the power of the conference to bring something back having to do with establishment of a corporation. There is nothing in the bill that establishes a corporation or refers to a corporation being established or created.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. HOLLINGS. Mr. President, has the Senator concluded?

Mr. LONG. Mr. President, I wish to have that parliamentary inquiry answered.

Mr. HOLLINGS. Mr. President, I do not wish to interrupt.

The PRESIDING OFFICER. A conference report that introduces new subject matter that is not germane to either the House bill or the Senate bill would be subject to a point of order on return to the body.

Mr. LONG. It is my understanding that there is nothing in the Senate bill at this point, and there is nothing in the House bill, that creates any corporation. That being the case, I ask if the conference could report back anything creating a corporation.

The PRESIDING OFFICER. Not without being subject to a point of order as previously stated by the Chair.

Mr. BROOKE. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. BROOKE. It is my understanding, even though it is not in the bill, that the option is still open for the conferees to bring it back in the bill; is that not correct?

Mr. LONG. That is just the point, it is not. That is our judgment and that is the information we received, having inquired of the Parliamentarian and others, that there is nothing in the bill along that line to establish a corporation, and it would be subject to a point of order if we tried to bring back a corporation in the conference report.

The PRESIDING OFFICER. The Senator has stated the point correctly.

Mr. BROOKE. A further parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Louisiana has the floor. Is the Senator yielding for a parliamentary inquiry?

Mr. LONG. I yield for a parliamentary inquiry.

Mr. BROOKE. Could the conferees bring back the trust fund? That is no longer in the bill, as I understand it, that would take it out of the bill, the trust fund, but could the conferees bring back a trust fund?

The PRESIDING OFFICER. The same point of order would lie against the conference report in that situation if it was not germane to the legislation of either house as they went to conference.

Mr. BROOKE. I thank the Chair and I thank my colleague.

Mr. ABOUREZK addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. LONG. Let me just complete my statement and then I will be glad to yield.

Therefore, Mr. President, I would take it that all we are really talking about here is that if we should agree to some of the House taxes in conference that we would have the privilege of recommending some tax reductions, tax credits or, perhaps, deductions, but we would not have the privilege even to recommend a tax increase other than that which is within the purview of the House bill. So that all we are really talking about is the right to recommend some tax reductions in the event we take taxes, and that would be in the area of trying to provide incentives to produce more energy. That is all we are really talking about.

Mr. President, I know we are going to have very lengthy debate on this. Those who speak for the motion have had a great deal more time to discuss it than those of us in opposition. But I believe, by way of getting on to it, we ought to move and move on to the next thing, and I, therefore, move to table the motion.

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold that?

Mr. LONG. I would be willing to withhold it——

The PRESIDING OFFICER. Does the Senator from Louisiana withhold?

Mr. LONG. I would be willing to withhold, Mr. President, if someone wishes to ask a question. I am willing to yield for a question.

The PRESIDING OFFICER. Will the Senator yield for a question?

Mr. ROBERT C. BYRD. I would like to make a statement on this motion.

Mr. LONG. I would ask unanimous consent that I might yield to the Senator from West Virginia for 3 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. I object.

Mr. ABOUREZK. Mr. President, reserving the right to object——

Mr. HOLLINGS. I have objected.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Will the Senator withhold his motion to table?

Mr. LONG. Mr. President, I cannot withhold without losing the floor and, therefore, I am sorry.

Mr. HOLLINGS. I object.

Mr. CURTIS. I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. LONG. I ask for the yeas and nays on my motion to table.

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

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold his motion and yield to the Senator from South Carolina and yield to me?

Mr. LONG. I would be willing to yield for a question, not for a statement.

Mr. HOLLINGS. I objected. Let us vote.

Mr. ROBERT C. BYRD. The Senator objected, but I am asking if the Senator would yield to the Senator from South Carolina briefly and then to me for a statement.

Mr. HOLLINGS. No. This brings us to a good enough point. I have been trying to be recognized——

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to recommit. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LEAHY (when his name was called). Mr. President, on this vote I have a pair with the Senator from Delaware (Mr. BIDEN). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Illinois (Mr. STEVENSON), the Senator from Delaware (Mr. BIDEN), the Senator from Montana (Mr. METCALF), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

I further announce that if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. BAKER. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from KANSAS (Mr. PEARSON), the Senator from Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT) is absent on official business.

On this vote, the Senator from Alaska (Mr. STEVENS) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from Alaska would vote "yea" and the Senator from Oregon would vote "nay."

The result was announced—yeas 51, nays 30, as follows:

[Rollcall Vote No. 591 Leg.]

YEAS—51

Allen	Curtis	Johnston
Baker	Danforth	Long
Bellmon	DeConcini	Magnuson
Bentsen	Eagleton	Mathias
Burdick	Eastland	Matsunaga
Byrd, Harry F., Jr.	Ford	Melcher
Byrd, Robert C.	Glenn	Moynihan
Cannon	Gravel	Nelson
Case	Hansen	Nunn
Chafee	Hathaway	Packwood
Chiles	Heinz	Percy
Clark	Hollings	Randolph
Cranston	Huddleston	Ribicoff
Culver	Humphrey	Sasser
	Javits	Schweiker
Sparkman	Stone	Zorinsky
Stafford	Thurmond	
Stennis	Williams	

NAYS—30

Abourezk	Hart	Metzenbaum
Anderson	Haskell	Pell
Bartlett	Hatch	Proxmire
Bayh	Helms	Riegle
Brooke	Jackson	Roth
Bumpers	Kennedy	Sarbanes
Church	Laxalt	Schmitt
Dole	Lugar	Tower
Durkin	McClure	Wallop
Garn	McIntyre	Weicker

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Leahy, against.

NOT VOTING—18

Biden	Inouye	Pearson
Domenici	McClellan	Scott
Goldwater	McGovern	Stevens
Griffin	Metcalf	Stevenson
Hatfield	Morgan	Talmadge
Hayakawa	Muskie	Young

So the motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from New York.

Mr. JAVITS. I am ready to vote.

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

The amendment, as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HOLLINGS. Mr. President, on behalf of the Appropriations Committee, I move that the bill, H.R. 5263, as amended, be committed to the Committee on Appropriations as required by section 401(b)(2) of the Budget Act with instructions that the committee report the bill back forthwith as amended to date, with an amendment deleting the refundable portions of those refundable tax credits contained in H.R. 5263 which have not been the subject of prior record votes by the Senate.

Mr. President, in a capsule so that we do not raise undue alarm, we are going to go back or——

Mr. STENNIS. Mr. President, I suggest this is a highly important matter. I ask for order in the Senate.

The PRESIDING OFFICER. The Senate will be in order. The Senator from South Carolina is entitled to be heard. Senators who wish to converse will please retire to the cloakroom.

Mr. NELSON. Mr. President——

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. HOLLINGS. I ask unanimous consent to yield momentarily so the Senator may pose a unanimous-consent request.

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

Mr. NELSON. Mr. President, I ask unanimous consent that Jeffery Nedelman, of my staff, be granted the privileges of the floor during the consideration of the pending measure.

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

Mr. HOLLINGS. I also make a similar request for Mike Joy, Roger Schlickeisen,

Sid Brown, Ira Tannenbaum, John McEvoy, and Karen Williams.

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

Mr. HOLLINGS. Mr. President, as I was about to state, the Senate has already taken, by record vote, action with respect to these refundable tax credits—approving both the Domenici amendment for assistance to the elderly and, the housing insulation credit, and also by a very close vote reflecting the intercity bus credit. I emphasize that this particular motion with instructions does not affect those refundable tax credits now in the bill which have already been acted upon by the Senate up to this particular point.

I only move that the bill goes back to the Appropriations Committee——

The PRESIDING OFFICER (Mr. BUMPERS). The Chair will ask the Senator to suspend until we have order in the Senate. There is entirely too much noise. We cannot hear the Senator. Will all Senators either take their seats or retire to the cloakroom?

The Senator from South Carolina.

Mr. HOLLINGS. The bill really does not go to the Appropriations Committee, but parliamentarily it does by procedure. Then immediately we will consider an amendment. The amendment, in essence, would knock out the two remaining refundable tax credits, the 40 percent and the 10 percent conservation and conversion credits left in there for businesses.

I emphasize the fact that the amendment does not affect individuals or the poor because the Domenici amendment and the residential conservation credits for individuals have already been acted upon by the Senate. We are not trying to change the already-voted upon will of the Senate with motions to reconsider and table, but, on the contrary, adhere to the law and the rules of the Senate with respect to jurisdiction, and more particularly to bring this bill back in line under the second concurrent budget resolution that was agreed to overwhelmingly by the Senate just last month.

Over the past year—and I wish my distinguished chairman from the Budget Committee were here because he is so eloquent and convincing on this particular score—the Budget Committee, with the various authorizing committees, the appropriations subcommittees and their various staffs has been working up a credibility for the congressional budget process.

Heretofore we have been extremely successful. We have had a first concurrent resolution and a second concurrent resolution for 1978. Everyone can always look and make certain that last minute trickery or back door financing cannot occur. There is no better way—I do not mean to be crass—to characterize this insidious so-called refundable tax credit to institutions and businesses that do not pay taxes in the first instance. It is pure sham.

What it ends up doing is, between now and 1985, to put on the books a $15 billion appropriations program, a spending program, that is not even subject to review. It has never been before the authorization committees in the first instance. Your Budget Committee has been working until 11 or 12 at night, just as the Energy Committee, in its considerations of the First and Second Budget Resolutions. We have never heard of these things.

We asked the questions. The Finance Committee told us 2 months ago about $1 billion in tax credits. We do not object to tax credits. But then they come out with this gimmickry. Turn to page 78 of the bill where it says "Payment in Lieu of Credit to Tax Exempt Organizations." That is the one of either 40 or 10 percent. Or turn to page 57 and it says "Certain Energy-Related Depreciable Property." There is allowed a credit against the tax imposed by this chapter of either 40 or 10 percent going right in.

These are moneys that are never to be paid. They are payments, and they have not been considered by any committee whatsoever. Here we are right at the end of the session, when all of us are trying to get this bill to a conference committee.

Incidentally, I voted with the chairman of the Finance Committee to table the motion to recommit just a minute ago.

It is not our intention in the Appropriations Committee to actually take this bill and go down and meet. We did that this morning in a very deliberate and well-attended session. We had a vote of 16 to 1. I understand somebody else might have voted against us, or our distinguished majority leader. I am not sure. That would have been 16 to 2. But we had two other proxies, the chairman of the committee (Mr. MCCLELLAN) and the Senator from Massachusetts, who was in another hearing. So we really ended up with an 18 to 2 vote after discussing, deliberating, and considering these measures.

Mr. CURTIS. Will the Senator yield briefly for a question?

Mr. HOLLINGS. Yes.

Mr. CURTIS. In reference to the meeting of the Committee on Appropriations, was the chairman of the Committee on Finance invited to the meeting and given an opportunity to state the case for the Finance Committee?

Mr. HOLLINGS. There was that ridiculous suggestion made earlier this morning in the Appropriations Committee by the Senator from Alaska. I never heard of anything more amusing than to have the Appropriations Committee invite over the trespassing chairman of the Finance Committee to come and explain our jurisdiction to us. We never more invited your chairman than you invited our chairman to your Finance Committee sessions when you breached the budget, the rules, and the law of the land. If you want me to read the law, Senator from Nebraska, I shall be glad to read the law that you voted for, supposedly.

Mr. CURTIS. We took no action against the Appropriations Committee. I am sure if we had, it would have been our duty—we might have overlooked it, I do not know—but it would have been our duty to notify them of it.

Mr. HOLLINGS. Well, you certainly did take action against the Appropriations and the authorizing committee. If you turn to our new rules, now, with the budget process there on page 215, "such bill or resolution shall then be referred to the Committee on Appropriations," and so on.

The fact of the matter is that this Senator consulted the Parliamentarian first—the staff did. Only yesterday, we were told by the Parliamentarian that it was not a discretionary thing. I thought perhaps we would, maybe, just raise a point of order.

He said, "It is not discretionary. You instead make a parliamentary inquiry, and I will automatically refer it to the Appropriations Committee."

When I double-checked that particular parliamentary opinion at the time, I was told the leadership is disturbed about this, and I would have to submit it to the U.S. Senate and let them vote upon it.

Well, we have been twisting and turning. We have had a difficult time to even get the floor. The distinguished chairman of the Finance Committee just came up to the Presiding Officer and said, "Well, if we are going to have a motion to recommit, we might as well recommit it to Finance as to Appropriations."

I think, as mature men, we ought to forget about that kind of nonsense. We are not trying to delay. We are considering this very objectively and very seriously. Here is $400 million. Every one of the appropriations subcommittee chairmen, working as the Senator from Mississippi on Defense appropriations, I happen to handle State-Justice-Commerce—we have all had to pare down, pare back to come within limitations allocated us by the U.S. Senate in the second concurrent resolution.

Now to have pared down, and without hearing, without discussion, without witnesses, please, my gracious, you come in from the Finance Committee, Senator from Nebraska, and stick it in the bill as a $15 billion spending program with no review whatever. It just absolutely wrecks the budget process and then you say, did we invite the distinguished chairman of the Finance Committee to come and explain it? We can hear his explanation. I am going to yield the floor and listen with interest.

We know what is going on. You have this Mickey Mouse language throughout the bill, for example giving discretion to the Secretary of the Treasury to set effective dates. Or the sense of the Senate provision to the conferees recommending a revenue impact. These little items do not dignify any kind of tax bill out of this particular body. They are playing games.

No, we did not play the game, Senator from Nebraska. Rather, we said we should be more forthright and bring up those things that exceeded our Appropriations Committee responsibility by $400 million. That is exactly what the amendment under the instructions would do. We have cut out that 40 percent refundable tax credit and the 10 percent refundable tax credits to various institutions who implement, purchase, and install the energy conversion and conservation equipment.

Many of us would agree with the merit of those particular things if properly considered. But that is the position taken

by the Appropriations Committee. This can be voted on just like any other amendment. It need not go down to the Appropriations Committee to get a quorum. It is not a delaying measure.

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

Mr. HOLLINGS. I will be delighted to yield.

Mr. PACKWOOD. Would this also cut out the credits put in by the Senator from New Mexico (Mr. DOMENICI) for the aged that the Senate just yesterday voted for?

Mr. HOLLINGS. Oh, no, I was prepared for that, sir.

The motion, Senator from Oregon, says, "As amended to date, with an amendment deleting the refundable portion of those refundable tax credits contained in H.R. 5263 which have not been the subject of prior record votes by the Senate."

As the Senator indicated, the Domenici amendment has had a prior record vote and this Senator voted with the Domenici amendment and there have been other amendments with respect to residential insulation and with respect to intercity buses.

We are not being disruptive. We are not trying, by some maneuver, to go back on what we have done and undo it after parliamentary clinchers have been applied.

I do believe, if we are going to adhere to the budgetary process, if we are going to have any order whatever with all of the Senators on their committees, we ought to know that, just before we close down next Friday, we cannot come out here with a $15 billion program in your subject, namely, energy, and you have not heard a witness.

If we are working hard on the Appropriations Committee and trying to keep spending within limits, the Senate itself, with its Budget Committee and its overwhelming vote, cuts it back, too. They are men you ought to be able to rely on in their particular action. You should not have the idea or feel that, by some twisted or contorted wording here of refundable tax, we will be paying credits to things that do not even pay taxes or anything else, and have them considered as a tax or financial measure, when it is simply and solely appropriations that have never been submitted to the Appropriations Committee.

We cannot get that orderly process, if we are going to spend 6 weeks at the beginning of the year to get reorganization and the committees' jurisdiction cleared so everyone can know the new Member and senior Member and everybody can understand the rules of the game. If we are going to amend our rules and stick these in, let us not do havoc to it in the last week and make amendments with respect to this and go $400 million bucks over any kind of appropriations or authorizations, no witness or anything else.

More than anything else, you will never see it again. My sunset Senator, where art thou? You will never see the Sun rise on this one, never mind sunset. You have not seen the beginning of this one and, not having seen the beginning, you are going to have to suffer the end through 15 billion bucks through 1978, and see it through without having a chance to call ourselves a responsible body and reorganize.

We have reorganized the Senate and we have passed rules. It is pure sham, and I think it should be done right. I think this is the orderly way in which to do it.

Mr. LONG. Mr. President, I do not suppose I have ever been impressed by the sincerity of anybody more than by some young people I met when I first came to this body. These young people dedicated everything they had in life to trying to save this tired old world from destroying itself. They called themselves a "moral rearmament movement." I was invited to join and did not, just because I did not think I had what it took to live up to the high ideals those young people advocated, preached, and lived by. One thing they said I shall never forget. They said: It is not a matter of who is right; what is important is what is right.

Now that is the issue when you really get down to it.

Let us take something like the refundable tax credit that Dr. DOMENICI offered just the other night. I had some doubts about the fiscal aspects of that proposal. I knew very few Senators who would oppose it. On a previous occasion, I had been the only Senator to vote against that type of amendment. I invited anyone who wanted to oppose it to do so.

Let us suppose, for the sake of argument, that the sponsors of that amendment had limited themselves to a tax credit against income tax owed. If they had done that and if the Senate had voted for that by the same margin—80 to 2—what would have been the result?

Not many people over 65 pay an income tax. Only those who are fortunate enough to make enough money, in spite of all the different exemptions and deductions they get, to owe us an income tax—only those people over 65 would have had the benefit of that $75 tax credit. All the people who needed it most would have been denied the benefit of the tax credit. That would have been a travesty, indeed, and we would have had difficulty explaining to people why we did that.

The point the Senator from South Carolina is making at this moment was not made at that time, that a refundable credit is going to destroy the solvency of the Nation and that it is a dangerous way to do business.

We on the Senate Committee on Finance, after considerable prompting, enacted something that moves in the direction of a negative income tax. It is known as the earned income credit. It is based on the assumption that if a poor soul does not earn much money and if he has children he supports, perhaps we should help him. We gave those poor people the opportunity of making out their income tax, showing how little they had to support their families, and then entitling them to a tax credit which is refundable. A lot of poor people would rather toil than go on welfare, even though what little they have to show for it may not be much more than they would get in welfare. To be able to deal with this type of situation, we have to be able to make a tax refund to someone who does not owe us an income tax, or to someone who does not owe as much tax as we would be paying back to him as a refund.

Mr. President, this Nation needs the ability to use the device of a refundable tax credit.

I suppose we can illustrate it with the bill we have here as well as with any other bill. Take one problem with regard to which we have already had amendments offered: trying to save the oil refineries of the United States in the event the entitlements program comes to an end. Some of us think we need to have the capacity to refine oil in this country. Those members of the Finance Committee from the Northeastern States took the attitude that they were willing to preserve a domestic refining industry. But they did not think it would be fair that the burden of that policy should be levied entirely on their part of the country where oil imports come ashore. If we could work the matter out in such a fashion that they would feel the burden was shared generally across this land, they would be happy to maintain America's capability to refine oil.

It was the thought of this Senator, along with others, that perhaps we should use the device of a refundable tax credit for colleges that pay no taxes, for State governments that pay no taxes, poor people who pay no taxes—directly, at least, since taxes are passed on to them in the price of a product—to help them meet the burden that might be placed on them in the event the President put a tariff or a fee on energy coming into this country.

If we are to have a tax credit, it should not be based on whether a person owes at least that much income tax. It should be based on whether the burden is such that a person should be entitled to some assistance.

If we are going to have a provision of that sort, the place to handle it is in the tax writing committee. For one thing, a tax credit is not a matter we would be annually trying to assess in terms of appropriating a given amount of money.

We can estimate the cost of the credit when we set the budget, but we would not want to refuse to pay it just because one year we estimated the cost of the credit on the short side, any more than we would want to decline to pay the full interest on the national debt just because we underestimated the amount. That is why the interest on the debt is paid under a permanent continuing appropriation.

Mr. President, more than 2 years ago we enacted the earned income credit. That is a refundable tax credit, and although it benefits the poor, technically it has everything to say against it that the Senator from South Carolina said against a refundable credit that might benefit business.

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

Mr. LONG. Let me complete my statement and I will yield.

Mr. MAGNUSON. I do not know what the poor have to do with this. I am trying to find out.

Mr. LONG. Let me explain a little bit further.

After we enacted the earned income credit for the benefit of the people to whom I referred, this question was asked of the Comptroller General: Was the earned income credit, a refundable tax credit, unconstitutional because the Constitution says that money can only be spent pursuant to an appropriation?

The Comptroller General answered that inquiry by pointing out that in 1948 an appropriation act contained a permanent, indefinite appropriation for tax refunds, and that the refundable earned income credit was such a tax refund. Let me read the last paragraph of the letter by the Comptroller General:

> In view of the fact that a permanent appropriation in an indefinite amount is available for making refunds of income tax overpayments, and the fact that the Congress has provided that, when allowable earned income credits exceed tax liability, the excess shall be considered an overpayment, we believe that payment of this excess from the permanent appropriation is authorized and there is no violation of the constitutional requirement that moneys not be drawn from the Treasury without an appropriation.

In other words, there is a continuing appropriation that covers the earned income credit.

Mr. President, let us look at the Budget Control Act of 1974, and in the document before me, the Standing Rules of the Senate, dated April 30, 1977, I am looking at page 216:

> (1) For purposes of this section, the term "new spending authority" means spending authority not provided by law on the effective date of this section.

Let me repeat that:

> "New spending authority" means spending authority not provided by law on the effective date of this section.

Mr. President, the law upon which the Comptroller General relies in upholding the refundable earned income tax credit was enacted in 1948. The Budget Control Act was enacted in 1974. So for almost 30 years we have had the continuing appropriation which makes possible the refundable tax credit.

Mr. President, quite apart from the technicalities and the legalities, it is simply a matter of saying that if something is right we ought to do it, regardless of what committee has jurisdiction, and if it is not right we should not do it, regardless of what committee has jurisdiction.

So far as this Senator is concerned, I would be the first to concede that the Appropriations Committee has a proper concern about the matter. If the Appropriations Committee wants to look at the matter, it is all right with me to refer it to the Appropriations Committee and to have the Appropriations Committee make a recommendation. I would be happy to consider any recommendation along this line that the Appropriations Committee wishes to make. After that committee has made a recommendation, let us permit the Senate to decide what it wants to do about it. That is fine with me.

As to the possibility of a point of order which one might consider making, it could only be made to a recommendation by the committee. It could not be made if we offered the same matter as a floor amendment.

I will make the members of the Appropriations Committee a good faith offer right now. If you want to recommit the bill, fine; we will recommit it to you. But do not try to tell us that we do not have the authority to recommend a refundable tax credit. The Comptroller General, having studied the matter very carefully, says that the authority exists to enact a refundable credit. The Finance Committee has the right to recommend a refundable tax credit, and the Senate can decide what it wants to do with the recommendation. The Appropriations Committee may have a recommendation to make, but do not try to commit the Senate in advance to vote against something.

We on the Finance Committee believe we have thought about these refundable tax credits longer than you have, but you may be wiser than we—Who knows? In any event, if you want to have the matter referred to your committee, fine. How long do you want it? We will be glad to recommit the bill.

Mr. MAGNUSON. Mr. President, I want to ask a question. The Senator from Louisiana does not get down to the point of the problem of jurisdiction.

He made a very nice speech about how gracious and how sympathetic the Finance Committee is to the poor. I do not know what that has to do with this. We are not talking about the merits of what the Finance Committee did. We think that the Finance Committee does not have a monopoly on taking care of the poor. The Appropriations Committee spends half its time taking care of the poor and the people who need it. But the Senator did get down to the real problem here, in the end.

The Senator made a speech about the merits of what the Finance Committee had done. That may be fine. I agree with some of it. But we can do certain things, too, and we do. We dispense equity all over the country—billions of dollars a year—and we think we do it very wisely.

We have some responsibility for the expenditure of money; and the Finance Committee has an even greater responsibility than we—more difficult—to raise the money for us to spend. But until the rules of the Senate are changed, we feel that we do not want to be criticized for the expenditure of money about which we have nothing to say. Otherwise, we might as well abandon the committee.

It is unfortunate that these things happen. I had thought that when we spent hours and days around here, at the beginning of the session, changing the rules, we were going to take care of everything. Jurisdictional problems are worse now than they ever have been, with respect to jurisdiction of committees of the U.S. Senate.

If we really want to recommit something, we should recommit the rules of the Senate, send them right back again to the drawing board. We have so many rules now and we are so mixed up in such a web that the country wonders whether we can get anything done.

That brings me to the point: We do not want to stall this bill in any way, but we do not see that we should establish a precedent here that the Finance Committee or any other committee should take over the constitutional and legislative duty of the Appropriations Committee.

We have long hearings. We have just as many hearings as does the Finance Committee. With respect to one section of the appropriation on HEW 1 year, I listened to 716 witnesses. That was exceeded only by my friend from Mississippi, on the Public Works Committee. I think he had 800 that year. We hear everybody and work hard.

We do not want to do anything to undo the graciousness and the benevolence of the Finance Committee for the poor. We are all for that. We are for doing equity around the country. Sometimes I wonder where you do it, but you claim you do it.

That is our only problem here. I felt that we could work this out, because it gets down to the establishment of a precedent. I would just as soon have less work; but we do have the responsibility for the appropriation of money. This is what we are concerned about, and this is what the Senator from South Carolina is concerned about, as well as the committee members who discussed this matter at some length.

It was unanimous that we try to work out this matter so that a precedent will not be established, that the Finance Committee can appropriate money at the same time they raise taxes. That used to be the rule in the House in the early days. The Ways and Means Committee appropriated money, and then they tried to raise the taxes for what they appropriated. That may be a good system to go back to. I am not so sure.

Then we went through a period in the history of the Senate during which the authorizing committees would also appropriate the money for whatever they authorized. That might be a good system to go back to.

Now we have the Budget Committee, and so forth, but we still are responsible. We are still the ones to whom the people say, "You fellows did this terrible thing; you appropriate all this money." Some people applaud it, but most people object to it, that we probably do too much. But until we do that, we are still the Appropriations Committee, and we are going to stick up for our rights, I hope. Otherwise, we would not be worthy of being members of the Appropriations Committee.

Mr. LONG. Mr. President, I admire the acting chairman and every member of the Appropriations Committee, including the distinguished Senator from South Carolina.

I recall when we first became involved with the investment tax credit, I believe I was the acting chairman of the Finance Committee at that time, or at least the chairman of the conferees. I asked to meet with the Appropriations Committee because it seemed to me that it might be a proper concern to them that the conference wanted to enact the investment tax credit. I had some doubts

about jurisdiction, and I thought it should be cleared with the Appropriations Committees. I came before them at that time and they said, "Go ahead."

Mr. MAGNUSON. The investment tax credit was not necessarily refundable.

Mr. LONG. I know.

Mr. MAGNUSON. It was a tax that was not going to be collected. That is what I understood it to be.

Mr. LONG. It was a subsidy.

I went to the Appropriations Committee and asked that committee for its judgment about the matter, and it was the view of the committee that I should go ahead, and I did.

On another occasion, when we first had the revenue sharing bill before us, I asked that the two committees meet on the issue of the provision appropriating revenue sharing funds. We discussed the matter, and on that occasion we just could not agree. So finally we debated the matter in the Senate, and we asked the Senate to decide the issue, and the Senate did.

On this occasion, Mr. President, I believe the Finance Committee has the jurisdiction to recommend what we did. I believe that we are within our rights in doing so. But that is not the important thing. What is important to me is that we do what is right, and I will be the first to agree that the Appropriations Committee has a proper concern about the matter.

What would the acting chairman of the committee like to do? So far as I am concerned, I do not care to concede that we do not have jurisdiction to make the recommendation, because I believe we do. Let me read from the Budget Control Act of 1974, where they have the definition of what entitlement authority means—what kind of bill must be referred to the Appropriations Committee. I am reading from page 216 of the Standing Rules of the Senate, dated April 30, 1977, the pamphlet that the Senator is looking at. I am looking at subsection (c) of section 401, "Definitions," paragraph (2), subparagraph (c). Here is the definition: It means authority "to make payments * * * the budget authority for which is not provided for in advance by Appropriations Acts."

My point is exactly the point that Mr. Staats made in his letter: The budget authority is provided for in a prior Appropriation Act, the supplemental Treasury and Post Office Departments Appropriations Act of 1949, approved June 19, 1948, chapter 558, title I, 62 Statute 561. Since the authority is provided for in a prior Appropriation Act, a refundable tax credit does not meet the definition of an entitlement authority under the Budget Act which would require referral to the Appropriation Committee.

But on the other hand, I would concede that the Appropriations Committee has a large interest in this subject matter.

Would the Senator like to have the bill recommitted to his committee and, if so, for how long?

Mr. MAGNUSON. I must say to the Senator I was not here when the Senator from South Carolina presented his motion, if there is a motion pending. As a matter of fact, I was down in the Appropriations Committee doing what we are trying to do here, doing exactly what the Senator is trying to do, doing some equity around the country with the money that the Senator recommends be raised.

Mr. HOLLINGS. If the Senator will yield, I am glad to try to answer that question.

Mr. LONG. I would like to know first what the Senator from Washington would suggest. I know what the Senator from South Carolina suggests.

The PRESIDING OFFICER. Would the Senator from Washington use the microphone?

Mr. MAGNUSON. I yield to the Senator from South Carolina.

Mr. HOLLINGS. I shall try to answer it to bring in focus the point I am trying to make. If the distinguished Senator will refer it back to us we do not have a discretion. We do not have the $400 million. We have done all we can do; namely, come out with an amendment to bring this portion of the Appropriations Committee jurisdiction back into line with the budget resolution and the spending limits this Senate has placed. It is a senatorial constitution that binds us, not the letter that the distinguished Senator read from Elmer Staats that has to do with the U.S. Constitution on earned income tax credits to individuals. We are not disputing the U.S. Constitution.

If we get through and succeed and it is concurred in and signed by the President, we do not think we can make a constitutional assault. We can make a senatorial assault within the budget process. So if the Senate refers it back to us we can only go up to the limit what we could spend particularly in this category. We have not quite $500 million—$400-some-odd-million over—and that is why we already exercised what discretional advice we could give; namely, that we strike the refundable portions of these two refundable tax credits which are more or less appropriations.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. LONG. Mr. President, I did not only refer to the Constitution. I also referred to the definition which is right in the Budget Control Act of 1974.

I do not want to confuse a difference of opinion with the Appropriations Committee with a difference of opinion with my friend who also serves on the Budget Committee on a Budget Committee matter involving the revenue impact of the bill. That is somewhat of a different matter. I think that should be considered on the merits and we will try to satisfy and comply with the Budget Act. We had our staff consult with the Budget Committee staff and the best advice that our staff could get from their staff was that we were in compliance, and we think we are. If we are not, we are going to amend the bill again so that we are in compliance, but we do not think we will have to.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. CURTIS. I share the opinion of the distinguished chairman of the Finance Committee that this very properly is a matter of concern and should have the attention of the Appropriations Committee. I believe if we look at the entire picture, however, we will find that the subject of tax credits is part of the taxing process and not appropriating process.

We have a good many tax credits in the code. There is the foreign tax credit. A political contribution calls for a tax credit. We have the investment tax credit that this Congress has enacted over and over again to spur the economy to give a credit for the purchase of new machines. We have what used to be called the retirement income credit. It is now referred to as the elderly credit. It was a provision put in the law because certain retirement programs were tax free. Railroad retirement was tax free by statute. Social security was tax free by ruling of the Treasury. And in order to equalize it for people whose income came from all other sources we have the retirement income credit. It worked out that they could take a credit on it.

What I am saying is a tax credit is part of the taxing process, part of the mechanism to determine the tax liability of the person and how he should report it. We have the work incentive credit.

In levying taxes it has always been the practice to distinguish the source of the income. Capital gains is taxed in one way, ordinary income in some other way, and all through the years there have been gaps where it was not observed. There have been special laws relating to earned income, and we have called it a work incentive. It is taken care of with a credit. We have earned income credit. There is a credit allowed in the law for someone who purchases a new home. It was only in there 2 years, but it was enacted. If someone makes an expenditure to care for his dependents while she goes out and works there is a credit given. There is a credit given for an employer who employes certain new employees in order to relieve unemployment.

Mr. BELLMON. Mr. President, will the Senator yield for a question?

Mr. CURTIS. I will when I finish my line of thought.

There is written right in the tax return a credit of $35 for each taxpayer and dependents.

Mr. MAGNUSON. Mr. President, will the Senator yield to me to save time?

Mr. CURTIS. No. It will not take me long.

Mr. MAGNUSON. I think it will save a lot of time.

Mr. CURTIS. No.

Mr. MAGNUSON. We are not talking about tax credits at all here.

Mr. CURTIS. Yes, we are.

Mr. MAGNUSON. The Senator is talking about the merits of tax credits.

Mr. CURTIS. Now there are times when the tax law allows a deduction against income and there are times that it is more equitable to allow a credit against the tax. Then if someone does not owe a tax, in most instances—I think in every instance—he can carry the unused credit forward. We have businesses that were not making any money. They brought new equipment they wanted to buy very badly, but they were not mak-

ing an money, and their only salvation was to carry the credit forward. They came before our committee and said:

Won't you make a refundable credit. We need the investment credit to carry out its purposes. Our well-to-do competitors get it but we cannot.

So the committee had to decide whether to make a refundable credit. It is part of the taxing program to determine the liability of a taxpayer and how it should be accounted, what system of accounting, and how it shall be reported.

It is not money that arrives in the Federal Treasury and then goes out.

The reason to make these refundable is that sometimes the carryover would not do the job, or it was a long wait. So, we made the tax credit refundable right now.

I realize that maybe we have too many refundable tax credits. Maybe we have appropriated too much money. Maybe the Appropriations Committee appropriates too much money. We should not attack their jurisdiction because of that. And as I say, I understand their concern. I am not critical of it. I do think that it has been the long-time practice here that when more than one committee feels that they have jurisdiction of a matter the usual practice is that they negotiate a little bit, that the two chairmen get together and see if they can agree on a joint referral, or something else, or ask each other about it, and in this case it was not.

Here this bill has gone along for several days and now, without notice to the chairman, without an opportunity for him to come to a committee and state the case for the Finance Committee, we are met with this as part of the procedure, I think on the part of some, to oppose or delay this bill.

I think that the citations made by the distinguished chairman of this committee are the controlling law. I believe if it were otherwise this would have been settled by a point of order. It is far different from some of these other cases, because a refundable credit is a refund of a tax. That is all it is.

I believe the position of the chairman of this committee ought to be sustained.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, we ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, I have been listening to the debate. It seems to me that the refundable tax credit is an interesting kind of device that could be used in an awful lot of ways. Right now it is on an energy bill. I think the distinguished chairman of the Committee on Finance said that the Nation needs this device.

Well, I think the Nation would get to see this device used quite a bit. If it is capable of being used. I think you could use it not just on an energy bill, as is the case now, but I think you could kind of use the device in a lot of ways.

I just started looking at a few appropriations bills. I find school assistance in the federally impacted areas, and it would seem to me if you wanted to you could say that we are going to give a refundable tax credit to those areas that have an Army base there.

After all, that is something that is important in the fact that they do not pay any taxes, so we will give them a refundable tax credit. Therefore, regardless of whether the Appropriations Committee decided to cut the impacted funds, if we decided to just give them a refundable tax credit we could do so.

I look at another appropriation bill, and I see security supporting assistance. Under that appropriation act Israel is down for $750 million, Egypt for $93 million, Jordan for $9 million. Let us give Israel a refundable tax credit. They do not pay any taxes to the Federal Government now, but we can give them a refundable tax credit. If we can do it for the bus companies, why can we not do it for Israel. So we give them a refundable tax credit, and we do it that way.

I look at another one, and I see the Panama Canal Zone, which is a subject of great interest now. For the Panama Canal Commission we are putting up some funds. Well, they do not pay any taxes now, but there is no reason why you cannot give them a refundable tax credit. It is said the Nation needs this device. It is something we need, so if we decide to, or the Committee on Finance decides to, we just make a refundable tax credit.

You would take every item, I think, that is in any of the appropriations bills or any other item we want to think about and call it a refundable tax credit, and I think that is the concern that the Appropriations Committee has after that comes out and after that is in that bill.

If it is wrong for the Appropriations Committee to say anything about that "Shame on you. What in the world are you doing having anything to say about that? You are just not right, and if you are going to do it you certainly ought to invite us there and talk to us about it."

I do not know, it seems to me I heard today that we ought to take up each one of these item-by-item. Well, certainly an individual has always been able to come on this floor—it has been one of the characteristics of the Senate, and I am glad it is there—and make his amendment to a bill. You could not raise any point of order that his amendment did not go through a committee regardless of what the committee was. We have always allowed that, and that has allowed some of us as individuals a voice where we could not get a committee to hear from us. But that is as individuals.

If a member of the Committee on Finance wanted to come up and put this on as an item, that is one thing. But when you come out with a bill, a package, and then you say "This is the package and now the Appropriations Committee cannot touch that package, or no one else can touch that package," you have gone beyond what an individual Member's right is on this floor because he stands as the individual and he tries to convince or persuade the body.

But when you come out with a Committee on Finance package and you wrap it all up in that package, then you take away from the body and from the authorizing committees and the appropriating committee the right to carry out their function.

The whole reason for the Budget Act was because we felt we had to have some control over spending. We were having all kinds of good items coming out, and I have never voted for a bad appropriation since I have been in government. They are all good, and they all benefit someone. But no one was tending the store and saying we have only got so many dollars to spend, and so we have got to set priorities.

So we said in the Budget Act we are going to try to set some priorities, and we are going to say that is the Budget Committee's prerogative to try to set those. But that comes up for debate, and everybody on this floor has an opportunity to put his 2 cents worth in to determine what those priorities should be. But within those broad priority numbers we allow the authorizing committee and the appropriating committee to say where the money should be spent, for what kind of items it should be spent and, at the same time, in that act we try to cut out the backdoor spending, the trust fund device that had been used, and all of the other kinds of backdoor devices.

Now, I can tell you if we can have this kind of device as a refundable tax credit it would be the biggest backdoor spending of any that there is. There would just be no way of controlling that because nothing would go through. It would not go through the Budget Committee, it would not go through the Appropriations Committee, and it would not go through the authorizing committees.

If you can circumvent every other device of the Senate which is to try to make order and to try to set a basis of coming through priorities, then you would really have destroyed the whole system. So I think we have to do something to just establish the order that we should.

Mr. MAGNUSON. Mr. President, I just wanted to say——

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, may I ask the clerk to read this motion once more?

The PRESIDING OFFICER. Does the Senator want the motion read?

Mr. PACKWOOD. The motion, yes.

The PRESIDING OFFICER. The clerk will read the motion.

The second assistant legislative clerk proceeded to read the motion.

Mr. PACKWOOD. That is enough. That is what I want to make clear. This is not a point of order, as I understand it. It is strictly a motion, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. PACKWOOD. That reference in there "as required by law" is redundant to the purpose of this motion, is it not?

The PRESIDING OFFICER. Well, the motion speaks for itself.

Mr. PACKWOOD. Well, I guess my question is if it is required by law, is the motion needed? I am curious, if we relied upon the law could this be referred to the Appropriations Committee, so I guess my question is, is the motion necessary?

The PRESIDING OFFICER. It would take a point of order to enforce the law. The law is not self-enforcing.

Mr. PACKWOOD. I understand that. So we are dealing not with a point of order and not with a point required by law but simply a motion.

The PRESIDING OFFICER. The Senator is correct.

Mr. PACKWOOD. We are not dealing with the Constitution either because all the Constitution requires for spending is that the appropriation be approved by Congress. The Constitution is not concerned with Appropriations Committees, Finance Committees, Interior Committees, or anything else, but the question it is concerned with is has it properly passed Congress whether it comes from the Finance Committee or any other committee, so that would not be a constitutional test.

So we are talking about then just one thing: the motion of the Senator from South Carolina to send this bill to the Appropriations Committee with instructions to take out the so-called 40- and 10-percent credits for the nonprofit corporations, and the 40 and 10 business credit, the refundable portion of them, and to send it back without those refundable portions.

The Senator from South Carolina several times made reference to the fact that it was fiscally irresponsible what the Finance Committee had done, and the horrendous amount of money it was going to cost. I want to look at the implications of that for a moment.

The cost of the refundability is $3.2 billion, that it will cost the Treasury in 1985. In exchange for that, we have 940,000 barrels of oil a day in 1985. That is what would be saved, at an expenditure of $3.2 billion. That is what it costs the taxpayers.

Mr. CHILES. Mr. President, will the Senator yield?

Mr. PACKWOOD. Yes.

Mr. CHILES. $15 billion over the life.

Mr. PACKWOOD. Well, yes, $15 billion over the life, but then in that case we will talk about the energy saving over the life. I do not mind if people want to compare apples and apples, but I do object to them saying $15 billion and then only taking the energy savings in 1985.

Mr. CHILES. I am not talking about energy savings at all.

Mr. PACKWOOD. No; unfortunately most people are not talking about energy savings, and this is an energy bill. I will accept either the cost to the taxpayers over the life of the bill compared with the energy savings over the life of the bill, or the energy savings year by year versus the cost year by year.

The cost in 1985 is $3.2 billion. That is when the credits run out, and in that year we save 945,000 barrels of oil per day, and we will save that day after day, even when the credits are done, because these are credits for hardwood installations and for machinery that will save energy.

What we will be losing if we knock out these credits in 1985 is 945,000 barrels of oil a day, and that will cost us $4.9 billion at $14 a barrel, assuming the OPEC countries have not used up their oil and we can still purchase it at today's prices. So by sending this measure to the Appropriations Committee for modification, we would be saving $3.2 billion in refundable credits, but we would increase the cost to the taxpayer by $4.9 billion to purchase the oil. And not only do we lose the savings in 1985, we lose them every year, at an annual cost of $4.9 billion.

Mr. MAGNUSON. Mr. President, will the Senator yield at that point?

Mr. PACKWOOD. Yes.

Mr. MAGNUSON. The Appropriations Committee does not want to knock these things out.

Mr. PACKWOOD. I thought the motion was to send the bill to that committee with instructions to strike them.

Mr. MAGNUSON. We will come right back with them. We will strike them temporarily, and come right back with them. We are not going to strike that out.

Several Senators addressed the Chair.

Mr. PACKWOOD. I yield to the Senator from Louisiana.

Mr. LONG. Mr. President, I have now had an opportunity to discuss this matter with the distinguished Senator from South Carolina and the distinguished Senator from Washington, and I believe we have an understanding which I think would be appropriate.

I believe that the Senator is willing to modify his amendment to eliminate the words "as required by section 401(b)(2) of the Budget Act." If he will eliminate that, it is perfectly all right with me to go along with the motion, because, as I undersand it, it would still be subject to the Senate deciding whatever amendment it wants, the Finance Committee amendment or the Appropriations Committee amendment. It is up to the Senate to decide, and as long as that is the case, I am willing to vote for the motion if those words I cited are deleted.

Mr. MAGNUSON. Mr. President, if the Senator will yield, I want to say to the Senator from South Carolina, too, that I think this is a reasonable way to do this. I hate to see us get into—I know how sincere my good friend from Oregon is, but we are not attempting to change this bill particularly. We are just trying to establish jurisdiction. The Domenici amendment has nothing to do with this, or the poor have nothing to do with it. We are going to be just as good to them. If we had had the bill originally we probably would have done better than you people did. I am sure we would have done much better, no question about that in my mind, but I think we can work this out.

Mr. HOLLINGS. Mr. President, since the yeas and nays have already been ordered, this would be a unanimous-consent request. I do not mind; I just want my record made absolutely clear, and that of the Appropriations Committee, in that we have discussed this with the Parliamentarian right here—I think I could make a parliamentary inquiry on that—and he said that that section still applies.

There is no question whatever about the language:

> If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new spending authority—

This is on the $15 billion from now through the year 1985—

> Which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b) in connection with the most recently-agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House.

That is my position and the position of the Appropriations Committee. As a lawyer—and I know the distinguished chairman of the Finance Committee, the Senator from Washington, and the Senator from Oregon are good lawyers—I think we are trying to do everything we can to expedite the passage of the bill. If we were merely trying to be technical as lawyers in sending it back to the committee, we will have lost time and everything else.

So in this spirit only of moving the bill forward, the point having been made, I ask unanimous consent that my motion be amended by striking therefrom the language "as required by section 401(b)(2) of the Budget Act."

The PRESIDING OFFICER (Mr. MATSUNAGA). Is there objection?

Mr. KENNEDY. Mr. President, reserving the right to object, the alteration of the motion that has been requested by the Senator from South Carolina, will that in effect strike the refundable parts of the Senate bill?

Mr. HOLLINGS. No, that is a legal reference, actually, in the motion, because we still have to vote on it up or down by the yeas and nays. This language still says:

> With instructions that the Committee report the bill back forthwith as amended to date, with an amendment deleting the refundable portions of those refundable tax credits contained in H.R. 5263 which have not been the subject of prior record votes by the Senate.

So the rest of the motion stands.

The PRESIDING OFFICER. Is there objection?

Mr. STENNIS. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. STENNIS. Reserving the right to object, and I shall not object, I just want to make it clear, now, as I understand the Senator from Washington, the Senator from South Carolina, and the Senator from Louisiana, in the present situation, by striking out this reference to the section, it will still be voted on?

Mr. HOLLINGS. Oh, Yes.

Mr. STENNIS. And then also, before the bill as written now can be changed, it will take a vote of the Senate?

Mr. HOLLINGS. Right.

Mr. STENNIS. The Appropriations

Committee can just suggest a change, but on the floor here we will have to vote on it, is that correct?

Mr. HOLLINGS. The motion is that, technically, when you move to commit with instructions, parliamentarily it is under the auspices of going in, so to speak, into the committee, and coming out. So the answer is yes, we still have to vote on that amendment about these earned income tax credit sections still remaining in the bill.

The PRESIDING OFFICER. Does the Senator from Mississippi withdraw his reservation of the right to object?

Mr. STENNIS. Yes; I do not object.

Mr. ABOUREZK. Mr. President, reserving the right to object, I want to make an inquiry on this point. If the language is deleted as suggested by the Senator from South Carolina, does that mean no further point of order would lie against the legislation by virtue of its defects that have already been outlined?

The PRESIDING OFFICER. That would not be true.

Mr. ABOUREZK. A further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ABOUREZK. The Senator from South Carolina alluded to the fact that if a parliamentary inquiry were made concerning whether or not this legislation should have been referred, the Chair would automatically refer it, is that a correct understanding, to the Appropriations Committee?

The PRESIDING OFFICER. If the point of order were made and sustained, then the bill would, in fact, be referred to the Appropriations Committee.

Mr. ABOUREZK. I understand that, but I understood Senator HOLLINGS to say that a point of order would not be necessary, on a parliamentary inquiry. Which is it that would be required?

The PRESIDING OFFICER. It would take a point of order to enforce the provisions.

Mr. ABOUREZK. Mr. President, I make the point of order, then, that the legislation has not been referred according to law and it is not in order to consider this legislation unless it is referred to the Appropriations Committee under the provisions of the Budget Act. Mr. President, is a point of order debatable?

Mr. LONG. Mr. President——

The PRESIDING OFFICER. The Senator from South Dakota has the floor. He has reserved the right to object. Does the Senator from South Dakota raise the point of order?

Mr. ABOUREZK. Yes.

Mr. LONG. Mr. President, I move that the point of order——

Mr. ABOUREZK. A point of order is not debatable.

Mr. LONG. Mr. President, I move to lay the point of order on the table.

The PRESIDING OFFICER. The question is on the motion to table the point of order.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to speak for 1 minute.

The PRESIDING OFFICER. Is there objection? Without objection, the distinguished majority leader is recognized.

Mr. ROBERT C. BYRD. Mr. President, we thought we had the matter resolved. The distinguished Senator from Louisiana was willing to proceed with a vote to send it to the committee; to have the committee report forthwith, in accordance with the motion of the Senator from South Carolina, with an amendment. The Senate would vote on that amendment. The distinguished Senator from South Carolina is willing to proceed in that fashion. The acting chairman of the Appropriations Committee is willing to proceed in that fashion. I would hope we would proceed in that fashion.

Both sides have argued this business about points of order, the language in the Budget Reform Act, and both sides have stated eloquent cases for their position.

But here is an opportunity to get on with this matter and avoid voting on a point of order when about everybody here has reached the consensus that it ought to go to the committee, that the committee report it back forthwith and without the language which refers to that. Everybody has made legislative history on that. One can choose whichever side he wishes on that.

I hope the Senator from South Dakota will not press his point of order but let us go on in the fashion that we were about to proceed, which I thought had been met with agreement by practically everybody here. We could get over this matter and get on with the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ABOUREZK. 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. LONG. Mr. President, I make the point of order that a motion to table has been made and the motion is not debatable. I ask unanimous consent that the Senator might make a statement, if he wishes.

Mr. ABOUREZK. Mr. President, all I am going to do is withdraw my motion.

Mr. LONG. I have no objection, Mr. President.

Mr. HOLLINGS. Now I ask again, Mr. President, unanimous consent, as I had before. I will reinstitute the unanimous-consent request to strike from my motion the language "as required from section 41(b)(2) of the Budget Act."

The PRESIDING OFFICER. The Chair will state at this point that a point of order not submitted to the Senate is not subject to a motion to table. Inasmuch as the point of order has been withdrawn, the question is now moot. Does the Senator from Louisiana seek recognition?

Mr. LONG. Mr. President, I just want to make the point——

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. LONG. I yield.

Mr. ROBERT C. BYRD. Will the Chair put the question by the distinguished Senator from South Carolina, please?

The PRESIDING OFFICER. Without objection, it is so ordered. The motion will be so modified, by unanimous consent. It is so ordered.

Mr. LONG. Mr. President, I hope everyone understands that I have stated my position and the Senator has stated his position. I have no objection at all to the Appropriations Committee proposing this amendment and I will vote for the Senator's motion.

SEVERAL SENATORS. Vote! Vote!

Mr. HOLLINGS. Do Senators want to withdraw the yeas and nays?

Mr. LONG. Mr. President, I ask that the yeas and nays be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, the yeas and nays are withdrawn.

The question now recurs on agreeing to the motion, as modified.

The motion, as modified, was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the motion, as modified, was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Does the Senator from Massachusetts seek recognition?

Mr. HOLLINGS. Now, Mr. President, will the Chair recognize the distinguished Senator from Washington, the acting chairman of the Committee on Appropriations?

The PRESIDING OFFICER. The Senator from Washington.

UP AMENDMENT NO. 1000

(Purpose: To make the energy investment credits nonrefundable.)

Mr. MAGNUSON. Mr. President, from the Committee on Appropriations I report back H.R. 5263, as directed, and send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Washington (Mr. MAGNUSON) proposes an unprinted amendment numbered 1000.

The amendment is as follows:

On page 69, line 16, strike out the end quotation marks and the end period.

On page 69, between lines 16 and 17, insert the following:

"(e) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43.".

On page 70, strike out lines 7 through 15.

On page 70, line 16, strike out "(d)", and insert in lieu thereof "(e)".

On page 78, beginning with line 4, strike out all through page 79, line 22.

On page 92, lines 19 and 20, strike out "43, 44C, 44E, and 44F" and insert in lieu thereof "and 43, 44C, and 44H".

Mr. LONG. Mr. President——

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, it is my understanding in this parliamentary situation that when the committee reports the

bill back with the amendment, the Senate has the privilege of either agreeing to the amendment proposed by the Appropriations Committee or not agreeing to the amendment proposed by the Appropriations Committee.

The PRESIDING OFFICER. The Senator is correct.

Mr. LONG. Now we have the matter before us where we can dispense with the pride of committee jurisdiction. Now we can talk about the merits, which is what I have been wanting to talk about all the time, the merits of it.

Mr. President, the Senate Committee on Finance did not go along with the proposal of the House on requiring all of the companies to change over from gas and oil to coal. The committee proposed to save just as much energy by recommending a tax credit of 40 percent rather than by recommending that everyone be taxed in order to convert.

The Metzenbaum amendment would take care of all those who can convert. We still have to contend with those who cannot convert.

Mr. President, the big item in the bill is to provide that those who cannot convert should be provided a tax credit for converting rather than be required, as the House bill would require, to convert. So we still have the problem: Do we want to provide a tax credit to help bring about conversion, or do we want to do nothing about conversion with regard to those people who do not have plants that can burn coal?

Mr. President, if we are going to do it, the cost is very great. A 40-percent tax credit is very likely to exceed the income of the companies. But they need the money in order to find the wherewithal to do the converting. Otherwise, a company might be faced with as much as $100 million burden in order to convert. Mr. President, it seems to this Senator and seemed to the committee that they should have the credit to help pay the cost of converting.

Beyond that, Mr. President, the Senate amendment would also deal with the specially defined energy property. For example, there is an additional 10 percent as defined on page 61, investment tax credit for a recuperator, a heat wheel, a regenerator, a heat exchanger, a waste heat boiler, a heat pipe, an automatic energy control system, a turbulator, a preheater, a combustible gas recovery system, an economizer, an industrial heat pump, or any other property of a kind specified by the Secretary by regulations, and so on.

These are things that people would buy to provide for more efficient use of energy. The committee felt, with regard to these items, and the administration agreed with regard to most of these items, that there should be a special credit. The question is whether it should be refundable. It was the view of those of us on the committee that, if one does what we want him to do to be more efficient and use less energy, he should get it whether he paid that much in taxes that year or whether he did not pay that much in taxes. I pay out, people pay more taxes than just income taxes, which we are looking at. They also pay social security taxes, gasoline taxes, and various other taxes.

If those who favor the amendment care to discuss it further, Mr. President, I shall yield at this point.

The PRESIDING OFFICER. Does the Senator from South Carolina seek recognition?

Mr. HOLLINGS. Mr. President, the issue is still the same. It is a matter of payments. We understand about energy and everything else of that kind, but it is still a fact that that is the bottom line; namely, some $400.8 million in 1978 or $15.4 billion between 1978 and 1985, over and beyond budgetary limitations that have been fixed by the U.S. Senate. We did not have that liberty or discretion as an Appropriations Committee. That is why we had to come back and that is why the amendment faces us as an Appropriations Committee amendment. That is all we could do. We could not consider energy and all these other things, because it was not within our prerogative, under the directions of the Senate.

Having made the point, I think I am ready to vote on the amendment.

Mr. ABOUREZK. I want to ask a couple of questions. In voting for your amendment, in a sense, we are cutting out, over the life of the program, some $15 billion in tax refunds out of Treasury——

Mr. HOLLINGS. To businesses.

Mr. ABOUREZK. To different segments of industry. Who would be getting a refund out of the Treasury if they did not pay tax? Would that be public utility companies?

Mr. HOLLINGS. Well, the utility companies in the main, charitable institutions, certain schools, certain other nontaxpaying institutions.

Mr. ABOUREZK. Oil companies, refineries?

Mr. HOLLINGS. Oh, yes, the tax credit is still there. We never did get to the basis of that because it was obfuscated—I have learned that word since I have been up here—confused. We have done away with the refundable tax portion for those who do not pay taxes. For those who do, the credit is still there. This would have gotten rid of all of it. If someone would try to persuade the Senate that this would take away the substantial negotiating powers of our distinguished chairman of the Finance Committee in the conference with the House, there is still some $25 billion that this amendment does not touch. This only goes to the $15.4 billion.

Mr. ABOUREZK. I am trying to determine which industries benefit the most out of this particular giveaway provision that is in the bill and that the amendment would take out.

Mr. HOLLINGS. Utility companies and all that buy new boilers, new heavy equipment.

Since the Senator has asked that, let me refer to and make a part of the RECORD this letter. I did not want to get into this and delay the Senate.

In response to an inquiry by our Budget Committee dated October 26, 1977, Miss Alice Rivlin, the Director of our Congressional Budget Office, replied:

This is in response to your request that the Congressional Budget Office examine the effectiveness of the coal conversion tax tax credit provision (Section 1031) in the Energy Production and Conservation Tax Incentive Act (H.R. 5263), as reported by the Senate Finance Committee. Specifically, you requested that we estimate the proportion of the tax expenditures that would go to firms that would have converted to coal without such an incentive. This value is often referred to as an economic windfall since it represents a payment of firms for decisions which they would have made irrespective of the tax credit. This windfall is in contrast to that portion of the tax expenditure which induces firms to increase their coal use.

We have examined these issues and concluded that of the estimated 1.7 mbd oil equivalent of coal conversion qualifying for the proposed tax credit, about .8 mbd oil equivalent, or almost 50 percent, is likely to take place anyway. Thus, the windfall is about 50 percent of the proposed tax expenditures, or approximately $10–12 billion over the period 1978–1985.

The .8 mbd oil equivalent of coal conversion qualifying for the proposed tax credit projected to take place whether or not the tax credits are enacted consists of approximately .45 mbd oil equivalent in the industrial sector, and 0.35 mbd oil equivalent in the utility sector. These estimates are consistent with the data presented in the "Base Case" of the National Energy Plan, April 1977.

That plan was presented by the administration.

That goes directly to the point.

Mr. KENNEDY. Mr. President.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want to make a very brief comment on the issue of refundability, because it is a concept which I think, under some circumstances, is very clearly justified. On reviewing the matters which have been raised by the Senator from South Carolina, I hope that the Senate will not be going on record either for or against refundability. Last year, I offered a refundable child care credit for working mothers and that was accepted by the chairman of the Finance Committee. It gave poor working mothers a refundable tax credit, which otherwise they would have been denied, while middle-income mothers would have been able to receive the credit. So the issue of refundability has some very broad policy implications. As a matter of simple equity, when we provide a tax credit, we ought to make it refundable.

I think the better part of wisdom is for the Finance Committee and the Appropriations Committee to try to work out what is necessary in terms of committee jurisdiction and what is necessary in considering tax expenditures, which have many elements in common with appropriations.

So in deciding this motion, I hope we will not be voting on the issue of refundability, because it is an important concept. It has been used, I think, effectively in ways I would strongly support, in the past in terms of the working poor.

I think it is one that deserves strong support in most instances. But I think the position which has been taken by the Appropriations Committee on the matter of jurisdiction is entirely justified.

Mr. President, in the past I have said that the existing 10-percent investment credit should be refundable. There are a number of newer industries that have not yet made profits. They are denied the investment credit because it is not refundable.

The current 10-percent investment credit, whether we are for it or against it, is basically a subsidy for industry.

By denying it to newer industries, or older industries that fail to have profits, we are basically saying that there is an important segment of our economy which is denied the investment credit if we do not make it refundable. The fairest and most equitable way, I believe, is to make it refundable.

The clearest example of the problem is an illustration in the automobile industry, where General Motors, because it is profitable, gets an investment credit, while Chrysler Corp. does not, because it has not had enough profits in the past few years. The investment credit lets General Motors pay $90,000 for a $100,000 machine. Why should Chrysler have to pay the full $100,000?

There are industries in my part of the country, older industries, which have been adversely affected because of the recent recession. They have not had the profits, and are denied the opportunity for the investment credit. Newer industries in my part of the country are denied it.

So the concept of refundability raises important equity issues which should not be lost sight of here.

On the particular issue here, I oppose the refundability of the 40-percent credit in this bill, because the credit is too large.

I would support refundability for about 10 percent, and I hope to offer an amendment to that effect.

I think that the 40-percent refundability is far too large, for other reasons that we will bring out during the course of the opportunity to debate that amendment. I would hope, if the Senator from South Carolina's amendment is accepted, to offer one to permit refundability up to 10 percent, which I think is warranted and justified by the committee's action and by the course of the hearings.

If the Senator from Louisiana is successful, I am going to make a motion to reduce the credit from 40 to 10 percent, because I think that is all that is justified.

But I wanted to express what I think are some of the considerations and some of the dilemmas in voting on this particular issue.

Mr. HASKELL. If the Senator from Massachusetts will yield for a question, I would concur with the Senator from Masachusetts that refundability is desirable because it evenhandedly treats the individual or the organization that makes a profit or does not make a profit.

But it occurs to this Senator, and I would like the Senator from Massachusetts' reaction, that this is not the place for an investment credit at all.

If we want companies to throw away their gas boilers and go into coal, some companies may be damaged to the extent of 70 percent. If they have a new plant, they may be damaged to the extent of 70 percent. If they have a very old plant they may be damaged to the extent of 5 or 10 percent.

I would pose the question to the Senator, whether he thinks this particular situation is a desirable place to treat everybody the same mathematically, whether they have an old or a new plant?

Mr. KENNEDY. Well, the hour is late in debate and the opportunities to alter or change this bill are few.

Mr. HASKELL. I understand.

Mr. KENNEDY. I favor an incremental refundable credit which has, according to the Library of Congress, the best opportunity for generating new capital formation, at the lowest cost to the Federal Treasury in terms of tax expenditure. But I do not think this is the place to debate it. We will have that chance to debate it on the tax reform bill next year.

But I would hope the Senator would feel that the reduction from 40 to 10 per cent would be a reasonable step here.

Mr. HASKELL. I say to the distinguished Senator from Massachusetts, I do not really know how I am going to vote on this particular motion. But I think the record should show that this is a perfect example where the investment credit is not tailored to the needs.

We want existing plants to convert. We are asking some of them to junk 80 percent of their investment and others 10 percent.

For the record, I hope in the future the Senate will look at things on a case-by-case basis.

I yield the floor.

Mr. LONG. Mr. President, let me just point out what this amendment does do and what it does not do.

It is to be presumed that with regard to most profitmaking companies they would get the tax credit, even without the refundability, because under the law, under a tax credit, they would get a 3-year carryback and a 7-year carry forward.

So most of them would be able to use the tax credit, no matter what level it might be.

It is true, even if this prevails, we might have to compromise it down from 40 to whatever, 20 or some other figure.

But no doubt about it, if the Senate position prevails there will be a big tax credit to help those who are required by law to convert to coal to do so, and that will help ease the burden.

But look at the inequities we would have, if you follow the Appropriations Committee amendment.

Here, let us say, is a city being served by a privately owned taxpaying power company. They get the benefit of the tax credit. Here is another city being served and having to convert, but this is a city-owned plant. We have two of those in Louisiana. It is a city-owned plant, owned by the community, or it is a rural electric plant. We are privileged to have a big REA plant in our State. They do not get it, so they have to put it in their rates and charge the farmers and all those people in their area a higher rate. You give a big tax credit to the privately owned companies. They call them privately investor-owned companies. While they get it, REA does not get it, the city-owned plant does not get it, the universities do not get it, the schools do not get it, the charitable organizations and nonprofit organizations do not get it.

Furthermore, any new organization, any new company which does not have the profits does not get it. It is hoped that in the future they might be able to make some money, but if they are new in the business, they do not get it, either.

So you would create the kind of inequity we frequently complain about: "Them as has gets, and them as don't have can do without."

So you have brought about the kind of anomaly we would seek to achieve with the tax credit, where the farmer at the end of the REA line, on REA electricity, does not get it, and the person in the city-owned plant does not get it, and local governments, county governments, and State governments—whatever they have along this line—do not get it.

The same would be true with regard to all these people who would get the 10 percent but who install an automatic energy-control system, a preheater, a combustible gas recovery system, an economizer, an industrial heat pump, a recuperator, a heat wheel, a regenerator.

If you have the good fortune to have profits and pay taxes, you get it. If you do not have that good fortune, you just do without. It works on the principle that "Them as has gets it," which we Democrats like to use from time to time in advancing our philosophy. But it runs contrary to it, Mr. President, because we Democrats like to think we are going to give the little fellow and the new man in business the same break as the others.

So we do not think this is a good provision. In other words, it would give those who are doing very well the benefit of the tax credit, and those who are not doing so well or those nonprofit organizations or universities or city governments or rural electrification units would do without.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. LONG. I yield to the distinguished Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I say to the able Senator from South Carolina that I believe the letter is not a correct communication so far as giving a figure is concerned, whatever the figure may be, because it appears to be picked out of the air, absolutely.

I can say to the Senator that the electric generating plants of this country that we are attempting to have use coal instead of natural gas and oil are reluctant—extremely reluctant—to do this. They are continuing to resist conversion.

I remind the Senator that the Senate and the House have mandated a changeover from natural gas and oil to coal. If the Senator will check this issue carefully he will find that there has been strong resistance by the electric companies, the utilities of this country, and other units of power generation, to make

the change to coal. There has been a limited program of coal conversion in law since 1975—and the changeover to coal has not come about as we had hoped. That is one of the major reasons now why the Congress is in the process of approving more comprehensive coal conversion legislation that is presently in conference.

I say, very kindly but very pointedly, that the figure used in the communication is not correct.

Mr. LONG. Mr. President, I ask unanimous consent that I may yield to the Senator from South Carolina, if he wishes to respond.

Mr. HOLLINGS. I will be glad to do so.

I obviously do not have the methodology that my distinguished colleague from West Virginia has. But in my experience of working, there could be a misunderstanding on my part or on his part.

I doubt that the figures or facts here are incorrect, in and of themselves. They read pretty clearly to me.

What she does, as I understand, is to take the national energy plan for April of 1977 and find out from the actual trends of usages and conversions that have occurred—let us say, this particular year and the preceding calendar year, down the line—watching the general trends with respect to conversion. From the shortage of natural gas, a lot of things bring about that conversion. One thing was the awfully cold winter we had last year. So they were not waiting on the Finance Committee, or the Senate, or the Senator from South Carolina to come along with a tax credit plan. On the contrary, they just could not wait any longer, and they began to convert. So, in working with Dr. Rivlin and the Congressional Budget Office, we think that generally they have been on target.

The Senator from Oklahoma has been trying to speak for some time, so I will yield to him.

Mr. BELLMON. Mr. President, to begin with, I call the attention of my colleagues to the fact that this is not basically a Hollings amendment. This is an Appropriations Committee amendment, which was agreed to by the membership of the Appropriations Committee, and Senator HOLLINGS is simply doing the bidding of the full committee.

Also I should like to make the point that we are not necessarily against the purposes that the Finance Committee has in mind when it establishes a refundable tax credit. Our point is that we are spending about $15 billion which has not had to be reviewed as other expenditures are reviewed and that this is not just a technical matter nor a jurisdictional matter in which the Appropriations Committee is trying to protect its territory. We feel it is an important issue and one that the full Senate should consider.

A refundable tax credit is a mechanism whereby the Government spends money just as though an authorizing bill and an appropriation bill had worked their way through the legislative process. So, what we have here is a mechanism for avoiding the whole authorizing and appropriating process. A refundable tax credit, therefore, does not have to be measured against all the other demands for spending, and a refundable tax credit survives regardless of its priority or cost-benefit analysis.

It becomes an entitlement which is not subject to regular and periodic review and evaluation.

I call the attention of the Senate to how far we have gone down this route. If we take a look at what we think of as backdoor spending, we find that refundable tax credits are just a part of the problem. In fiscal year 1977 we could calculate the total backdoor spending to be almost $300 billion. That is how much money passes through the Treasury without the appropriations or authorizing committee even taking a look at it—$300 billion. That breaks down into $134 billion which was not appropriated. We have off-budget spending and loan guarantees of about $8 billion in fiscal year 1977 and then tax expenditures of $125 billion.

So, of our total amount of spending in this country, about $300 billion goes on automatically, without the review of either the authorizing or the appropriating committees.

It is easy to see that a refundable tax credit could be designed for anyone and for any purpose. It does not matter whether the recipient is a taxpayer or a nontaxpayer. It could be a private citizen or a large corporation. Further, it does not matter whether a spending program designed by the committee of spending jurisdiction already exists.

These kinds of spending schemes come in on top of everything already in place, and they are not reviewed by the authorizing committees nor by the appropriating committees in a regular manner.

It seems to me that this issue concerns every Senator regardless of the committees assignment and regardless of personal or economic philosophy, and regardless of the merits of this particular tax expenditure.

This is not an Appropriations Committee problem, nor a Budget Committee problem, but it is a problem for every committee in the Senate. The bill as reported included refundable credits for energy equipment, for intercity buses, and for residential conservation; so the credits obviously affected the Energy Committee, the Commerce Committee, and the Banking, Housing, and Urban Affairs Committee.

The next time we could see a refundable tax credit that affects agriculture, military personnel, or environmental programs, overseas programs, veterans, or any other committee, and in those cases we would be invading the jurisdiction of the committees that have those responsibilities.

So I hope when we vote on this issue, and I hope we will vote very soon, that we will see this problem in its proper light.

It is not only a matter between the Appropriations Committee and the Finance Committee, but it is also whether or not the Senate is willing to give up the traditional areas of responsibility and turn them over to the Finance Committee and, in effect, allow them to vote these refundable tax credits without proper review.

SEVERAL SENATORS. Vote.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that David Johnson, of Senator MUSKIE's staff, be accorded the privilege of the floor.

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

Does the Senator from South Carolina seek recognition?

Mr. HOLLINGS. Yes.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I will go along with the wishes of the manager of the bill at this particular point. If the manager wishes a voice vote or wants a rollcall vote—let me ask for the yeas and nays on the amendment, if that is what he wants.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, it seems to me that we have debated this amendment as long as Senators want to debate it. I do not want to cut off debate. I want to vote on a motion to table.

Therefore, I move to lay the amendment on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment on the table. (Putting the question.)

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to lay the amendment on the table. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. Senators will please clear the well. Senators will clear the well.

The clerk will suspend.

Senators will clear the well. Senators will please clear the well.

The clerk will proceed.

The second assistant legislative clerk resumed and concluded the call of the roll.

Mr. DECONCINI (after having voted in the affirmative). Mr. President, on this vote I have a pair with the distinguished Senator from Maine (Mr. MUSKIE). If he were present and voting he would vote "nay." If I were at liberty to vote I would vote "yea." Therefore, I withhold my vote.

Mr. MCCLURE. Regular order.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Illinois (Mr. STEVENSON), the Senator from Georgia (Mr. TALMADGE), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Montana (Mr. METCALF),

and the Senator from Minnesota (Mr. HUMPHREY) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. BAKER. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from New York (Mr. JAVITS), the Senator from Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT) is absent on official business.

On this vote, the Senator from New York (Mr. JAVITS) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from New York would vote "yea" and the Senator from Oregon would vote "nay."

I further announce that, if present and voting, the Senator from Alaska (Mr. STEVENS) would vote "yea."

The result was announced—yeas 38, nays 41, as follows:

[Rollcall Vote No. 592 Leg.]

YEAS—38

Allen	Haskell	Pearson
Baker	Heinz	Pell
Bartlett	Helms	Randolph
Bentsen	Huddleston	Ribicoff
Byrd, Robert C.	Johnston	Roth
Cannon	Laxalt	Schmitt
Cranston	Long	Sparkman
Curtis	Matsunaga	Stone
Danforth	McClure	Thurmond
Eastland	Melcher	Tower
Garn	Moynihan	Wallop
Gravel	Nelson	Williams
Hansen	Packwood	

NAYS—41

Abourezk	Durkin	Morgan
Bayh	Eagleton	Nunn
Bellmon	Ford	Percy
Brooke	Glenn	Proxmire
Bumpers	Hart	Riegle
Burdick	Hathaway	Sarbanes
Byrd, Harry F., Jr.	Hollings	Sasser
	Jackson	Schweiker
Case	Kennedy	Stafford
Chafee	Leahy	Stennis
Chiles	Lugar	Weicker
Church	Magnuson	Zorinsky
Clark	Mathias	
Culver	McIntyre	
Dole	Metzenbaum	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

DeConcini, for.

NOT VOTING—20

Anderson	Hayakawa	Muskie
Biden	Humphrey	Scott
Domenici	Inouye	Stevens
Goldwater	Javits	Stevenson
Griffin	McClellan	Talmadge
Hatch	McGovern	Young
Hatfield	Metcalf	

So the motion to lay on the table the committee amendment was rejected.

Mr. BROOKE. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. LONG. I would like to vote up or down on the amendment, but I want Senators to hear just for a few minutes what this thing is all about before we vote.

Mr. WEICKER. I move to reconsider the vote.

Mr. LONG. I am not going to move to reconsider. I want to vote up or down on the amendment.

Most Senators did not hear the debate, and I want the Members to hear for a moment or two what this is all about. Most of the Senators who discussed this with me and the Senator from Nebraska changed their votes, because they did not know what this was all about. Let me tell them what this is all about.

This committee amendment by the Committee on Finance does not strike this 40 percent tax credit for converting to coal—it does not do that, oh, no, it just takes it out for certain people. Who does it take it out for? It takes it out for the utilities financed by the Rural Electrification Administration. In other words, if you are an investor-owned company, and you are paying taxes, you get the investment tax credit against those taxes, a 3-year carryforward——

Mr. STENNIS. Mr. President, may we have order, here? Could the Chair clear the well and ask for order?

The PRESIDING OFFICER. The Senators will please cease their conversation on the floor. The Senate will be in order. Authorized staff will retire to the seats in the rear of the Chamber. The Senate will please come to order.

The Senator from Louisiana.

Mr. LONG. Mr. President, in my State we are building a big REA generating plant. It will have to change over and use coal. All right. Now, they will not get the tax credit, but the private investor-owned will get a 40-percent tax credit under this bill on that Appropriations Committee amendment. They will get it, the privately owned taxpaying companies will get it, and they will get a 3-year carryback and 7-year carryforward to take advantage of that 40 percent tax credit. The little REA cooperatives are going to have to raise their rates to all those farmers and all those small communities because they do not get it, so they will have to raise their rates while the privately owned investor-owned companies will get a big tax break, and that will reduce the rates, of course, because they will not have to put it in their rate base.

We have little communities, we have cities that have generating plants. They do not get it. If they were investor-owned, they do get it.

There are hospitals involved; there are nonprofit organizations; there are schools involved, and they do not get the benefit of the tax credit, because they are not taxpaying organizations. The taxpaying organizations do get it.

Mr. President, nobody has tried to contend that this investment tax credit, even the 10 percent investment tax credit, is to take care of an expense. It is a subsidy to encourage somebody to do something, and in this case the investment tax credit we are talking about here, the 40 percent, and also the 10 percent for using efficient equipment, all of that is a tax credit to encourage people to either convert to coal or a tax credit to encourage people to use more efficient equipment, and they ought to get it, Mr. President, whether the organization is owned by private investor-owned or whether it is owned by the Sisters of Charity if it is doing the same thing. If they earn it they ought to get it whether it is a small city or whether it is an REA, or whether it is a big privately owned organization.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. CURTIS. How about all the State universities?

Mr. LONG. They will not get it.

Mr. CURTIS. The colleges?

Mr. LONG. They will not get it.

Mr. CURTIS. All the Ivy League schools, the nonprofit institutions?

Mr. LONG. The point is you are saying here that—

> We are asking you to do something in the national interest. We ask you to save energy, and if you will save energy we propose to give you a subsidy; we propose to give you an incentive, and we are going to do it by using the tax system.

There is precedent for it, Mr. President. But the Appropriations Committee amendment would recommend that the REA not get it, that the public bodies not get it, that the State and local governments not get the benefit of it; that the charitable organizations not get the benefit of it; that the universities, the colleges, not get the benefit or that some new organization, some new business——

Mr. BENTSEN. How about the Salvation Army?

Mr. LONG. They would not get it.

Now, Mr. President, this is a case where you could either give it to all those who comply or you can give it to some and not give it to others.

Even among private business organizations, a new organization starting out that does what you call upon them to do, but because it is a new business has no earning pattern, has not had a chance to generate enough income to have a carryback and a carryforward or to make much profit at all, they would not get the benefit of it.

Mr. President, that is patently inequitable, it is patently unfair; and Mr. President, the Committee on Finance has dealt with it for a longer period of time than the Appropriations Committee.

I am sure the Appropriations Committee has thought about it, but we in the Committee on Finance have been talking about it year after year. We talked about it year after year to convince one of the best conservatives serving on that Committee on Finance that if you do something like this it ought to be a refundable credit, because this is a subsidy. It is a subsidy to get somebody to do something. It is not related to his actual out-of-pocket expenses; it is something you pay to help get him to do something you want him to do. If he does what you want him to do, he ought to have the benefit

of it, and if he does not do it, he should not have the benefit of it, but it should not depend on the amount of his tax liability.

Now, Mr. President, that is the case for a refundable tax credit and, in my judgment, Mr. President, the Senate will regret it if they do not agree with it, if the Senate concludes that you are going to provide the tax credit for those fortunate people who are making a lot of money and paying a lot of taxes, business organizations, or whatever, and you are not going to provide it for the charitable organizations, the colleges, the universities, the nonprofit institutions, the municipal governments, the public power groups that do the same thing and have the same right to it, to the same subsidy by way of the tax system, that those that are the investor-owned companies and the taxpaying companies paying a lot of taxes, of course, would receive if they earned the subsidy, they ought to have it.

Mr. BUMPERS. Mr. President, will the Senator yield for a question?

Mr. LONG. Yes.

Mr. BUMPERS. Under the present law, the 10-percent investment tax credit is not a refundable tax credit, is it?

Mr. LONG. No, it is not.

Mr. BUMPERS. Well, these same people the Senator is talking about now, the municipally owned companies, REA and so on, you said a while ago that the investment tax credit is to try to get people to do something. The 10-percent investment tax credit has always been, at least I have always thought it was, designed to get business to invest, and in determining their tax liability and taking into consideration the investment tax credit they could get, they would make a decision on whether to invest or not. But these people the Senator is talking about have never gotten the advantage of the investment tax credit, whether it was 7 percent or the current 10 percent.

If that is the rationale, what is the rationale for now making them eligible for the additional 40 percent?

Mr. LONG. All right, let me give the Senator the rationale. Here it is: We want you to convert at very great expense gas-burning boilers over to a coal-burning boiler, and if you will do that we will give you a tax credit to help you to do it, so we are going to pay you an incentive to get you to save energy in the Nation's interest.

If we want you to do it, and we are encouraging you to do something, and we are going to help you pay the cost of it by a subsidy that we are paying out of the Treasury, why should we just give it to those who are private investor-owned groups and are making that much profit and not give it to the others?

The whole trend has been, may I say to the Senator, toward more and more taking and recognizing this factor that the people who have earned it and people who deserve it ought to get it whether they pay that much tax or not.

Mr. RIBICOFF. Mr. President, if the Senator will yield, I think the Senator from Arkansas raised a basic question that ought to be explained.

The original purpose of the investment tax credit was to induce the business and manufacturing community during the depression or low economic periods to buy new equipment to refurbish their plants so that they would get going and lift our economy and, therefore, we gave the investment tax credit to the business part of America to help the employment and the economy.

If you are talking about the Salvation Army or a hospital or a university, they did not have a plant or manufacturing organization for which they used investment tax credit, so the investment credit has a basic economic or social or political objective.

Now you come across and you want to convert from oil and gas to coal, so this becomes an objective all of its own. So you have the inducement of a 40-percent investment credit for the changeover to coal.

So that here we have another objective and we want to make certain that the institutions which are not profit-making will turn over and change to coal from oil and gas. That is the reason of a different rationale that we did not use before because we have different objectives, different purposes, and different uses.

Mr. BENTSEN. Will the Senator yield?

Mr. LONG. I yield.

Mr. BENTSEN. The Senator from Arkansas has raised a very significant point. I think we are seeing a transition taking place. We have seen it take place in the Finance Committee and here in the Senate, where the Senator from Massachusetts used to argue for a refundable tax credit. We talk about some of the inequities we see in a company not making a profit and not being eligible for an investment tax credit. He has proposed a refundable tax credit.

This kind of mood or change of mood has taken place in the Finance Committee. I am talking about the Senator from Nebraska moving to that position. It is to try to bring equity as to whether a company is making a profit or not, and in this case doing it by a refundable tax credit.

Mr. BUMPERS. If the Senator would permit me to make an observation, it would be this: For example, REA cooperatives obviously are going to be put at something of a competitive disadvantage when they are forced to convert with no refundable tax credit. They are not going to get any of the 40 percent back that they invest. That is unfair.

By the same token, of course, these people are not taxed entities. They get that competitive advantage over the private investor-owned utilities.

I wish the refundable tax credit were not what I consider so exorbitant. I could go along with perhaps some increase in the investment credit, but 40 percent seems to me like an exorbitant amount, with 10 percent, for a total of 50 percent. It makes one pause to wonder why we should not just pay the other 50 percent and take them over, if we are going to have to foot 50 percent of the bill. That seems like an exorbitant amount.

We have this refundable tax credit which is an advantage to the investor-owned utilities against the fact that the publicly owned do not pay any taxes. I wish the two were sort of in balance, but they cannot be in balance when the refundable tax credit is as high as 50 percent.

Mr. LONG. May I make one point there? The final point may be 40 percent, or, frankly, we may have to reduce it in conference. For all I know, they may force us to cut it a lot in conference, to try to work out a conference agreement. There is no way to tell. They might make us settle for half or less. In any event, whatever the figure, whoever is getting it, it is still going to depreciate that plant. He is going to be able to depreciate the full cost of it even though he gets the investment tax credit.

Is it fair, if we are going to let him depreciate the plant as well, to give that additional advantage to the privately owned company over the publicly owned company, let us say to the private generating facility over the REA?

Is it fair to give that much additional advantage over these local public power districts, the community-owned facilities?

Is it fair to give that much advantage to the other organizations such as universities and hospitals?

Is it fair to give that much advantage to a new business compared to an old business?

I am not talking about whether the credit is too generous. It may be. If so, perhaps an amendment should be offered to reduce it.

The other thing is more important to me, just as a matter of justice and fairness, it seems to me, if people do what you want them to do. In some cases the final answer may be that we are going to make them do it. In fact, as the committee recommended, we would be making these people convert by the time the House got through, but we would be helping to pay for it, if they took part of the Senate amendment.

If that were the case, would it be fair that the help in converting would apply to all and not just to the so-called investor-owned facilities?

Mr. BUMPERS. Let me ask a question. The Senator said something of interest to me a moment ago. I am not a public accountant and I do not know enough about tax law to ask these questions. Is the investor-owned utility going to get this 50-percent tax credit? The Senator said they also get the right to depreciate the total amount. If the investor-owned utility was going to build a plant at a cost of $1 billion, first of all they are entitled to a tax credit.

Mr. LONG. If the Senator will make it $100 million, I can calculate better.

Mr. BUMPERS. First of all, they are entitled to a 50-percent tax credit, which is refundable. So they have recovered half of their cost. Is the other $50 million depreciable?

Mr. LONG. Yes.

Mr. BUMPERS. So they recover all the expenditures they have put out, is that correct?

Mr. LONG. Let us put it more like it is. I believe the Senator will find that

companies in that category are probably paying about 20 percent of their income in taxes.

Mr. BUMPERS. I am using a hypothetical case.

Mr. LONG. Well, if they depreciate, let us say, a $100 million plant against a 20-percent rate, that is worth $20 million. If there is a 50-percent credit, that is worth $50 million. So they are out $30 million. It is 50 plus 20 being 70. So they are out $20 million.

Mr. BUMPERS. To use a hypothetical case, let us assume this is a good, honest utility company who will pay a full 48 percent on all earnings above $50,000. His first refundable tax credit is $50 million, so he has recovered 50 percent of his investment. Then he depreciates $100 million, and if he were in that hypothetical category, which a lot of people are in, he recovers another $48 million, so he has recovered $98 million of his $100 million investment. Is that a fair statement?

Mr. LONG. If the Senator can find one of those people actually paying 48 percent, that is right. What has been proven when that has been done? It has proven that perhaps it is being too generous to this investor-owned organization, and pointing up the inequity that that REA organization is not getting any help at all.

To take the Senator's example, the Senator is saying that the investor-owned company is getting 98 percent of his bill paid, which is difficult to justify. If that is the case, yes, perhaps so, but does that point up the fact that the REA over here, if they have to do the same thing, ought to be permitted to have at least 40 percent of theirs taken care of?

Mr. BUMPERS. For those of us who come from States where REA covers a substantial part of the rural areas of the State, it is a very difficult decision to have to make. The point is the REA as well as municipally owned utility companies and all other publicly held utility companies do not pay any taxes. They never have to take their tax liability into consideration in determining whether to make an investment. As I say, I would not have objected to some increase in investment tax credit, I think even a refundable tax credit, which the Senator from Massachusetts has championed on more than one occasion in this body. But, as I say, we do not balance out the increase in investment tax credit against the failure, for example, of publicly owned utilities to pay taxes. I think that is unfair. I wish we had it on a more equal basis.

Mr. BUMPERS. I do not want to belabor the point. I have made the point that I want to make.

Mr. LONG. My point is that this investment tax credit, as applied to energy, is a subsidy and it is a reward to those who do what we want them to do, which is install—either to convert to coal or to use and install the kind of energy equipment that we would like to see them install. If we are going to pay the subsidy, why deny it to grandma just because she did not make enough to pay taxes? Why should not everybody get the benefit of a subsidy if we are going to pay it? That is the whole point of making it refundable. That is my argument.

If you say it is too generous to the guy who gets it, if it is, then this other fellow is not getting any benefit out of it at all. So it is unfair that he is not benefiting from it, it seems to me.

Mr. RIBICOFF. May I have this colloquy with the Senator from Arkansas, because I understand what is bothering him.

The Senator from Arkansas is the Governor of Arkansas and I am the Governor of Connecticut. Most of our heating is done by oil in the State of Connecticut and the State of Arkansas, and we have budget problems. Now we have a policy that we want to convert from oil to coal. We get our public works department and they say, "Governor, it is going to cost us a million dollars to convert from oil to coal."

No one is going to make you, but you feel you ought to do that for the good of the country, the good of the energy problem, you should convert your campuses and your other public buildings, from oil to coal.

You suddenly ask yourself, where are we going to get that million dollars for the conversion. Money is tight. But suddenly, we come up and we say, well, they passed a law down there that, if we do convert from oil and coal, we will get a refundable tax credit of $400,000.

The budget picture comes to the Senator on his desk as Governor and my desk as Governor, and we look at it. We might not be willing to spend the $1 million, but we will spend $600,000 and, even though it is costing us some money, we will be able to balance out the equities.

What we are saying is a public policy—if energy is so important and oil and gas are so important that we save and convert to oil, we are going to be helpful to those institutions that do not have the funds to do it as a private corporation would have the funds and would get the credits. We are going to make it possible for hospitals and schools in States and city halls to go back and convert. We are saying that the Federal Government and the taxpayers are going to give us a break to help us.

Do I explain the policy?

Mr. LONG. Yes.

Mr. RIBICOFF. I think this is the problem we were faced with.

Mr. BUMPERS. As I say to the Senator, I do not want to belabor the point. I wish the investment tax credit were smaller. You know, this refundable tax credit in this bill is really supplemental to the mandate in the coal conversion bill which the energy conference committee is going to be taking up next week, which came out of our committee. It is supplemental to the coal conversion bill, which mandates that all of these plants convert, anyway, by 1990. What we are doing here is saying, we would like to expedite it, we would like you to do it as quickly as possible, and we are going to give you this really tremendous investment incentive to do it.

My point is that I simply think it is too high. There is not anybody here who would like to see this speeded up more than I would. But I think if we take 1½ million barrels a day, which is projected to be the savings under this conversion, and put it to the cost to the Federal Government of $27 billion, which is supposed to be the cost of this conversion tax credit by 1985—I have not done an analysis on it, but I just wonder how much the Government is going to be paying a day in subsidy for that 1½ million barrel savings.

Mr. PACKWOOD. I can give a partial response to that.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. McCLURE. Will the Senator yield to me for a unanimous-consent request?

Mr. LONG. Yes, I yield.

Mr. McCLURE. Mr. President, I ask unanimous consent that Ron Shiflett of my staff may be accorded the privilege of the floor at all stages of the proceedings during this legislation.

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

Mr. PACKWOOD. Will the Senator from Louisiana yield for a response?

Mr. LONG. Yes.

Mr. PACKWOOD. Although the total figure mentioned includes the refundability and the nonrefundability part, the refundability part of this credit is about two-thirds of the savings. It will save about 945,000 barrels of oil a day. The cost is not the full $27 billion, but closer to $20 billion over the entire period. In 1985, the cost for that year is $3.2 billion. The cost to purchase 945,000 barrels of oil at today's prices is $4.9 billion.

So where is the Government better off, where is the taxpayer better off? The taxpayer would be better off, literally, if we raised the taxpayer's taxes enough to pay the $3.2 billion than to pay $9.4 billion to buy the same amount of oil overseas.

Mr. WEICKER. Mr. President.

Mr. BUMPERS. May I make this point? If the Senator from Connecticut would let me make one point, then I shall shut up.

The 1½ million barrels of oil a day savings that the Committee on Finance represents will be saved by this provision——

Mr. PACKWOOD. Not the Finance Committee, the Joint Committee on Taxation.

Mr. BUMPERS. The Joint Committee on Taxation, whoever—neglects one fact. That is that this conversion is going to take place under a mandatory requirement under the Coal Conversion Act, anyway.

I think we can safely assume that we will get all of this conversion by 1990 whether we give a tax credit or not. So if we want to allocate the tax credit to some formula by deciding that conversion will occur maybe 2, 3, or 4 years sooner than it otherwise would, then I think we can take credit for the barrels saved on that basis. But I do not think we can take credit for 1½ million barrels a day.

Mr. PACKWOOD. First, this is a lot more than just conversion to coal. This

is conversion to hydroelectric, geothermal, solar, whatever we are trying to encourage people to shift to and away from oil and gas.

Over the days we have been debating this, people have been challenging the figures. I would not necessarily say that every figure that has been cited is accurate. All we can do is go on the best figures we have, and these are the best figures we have. The question is, Are we willing to give up the refundability, in exchange for that, if our estimates are accurate—and that is all we can go on—increase the amount of oil we shall be importing by about a million barrels of oil a day. We are only importing today 0.8 million. This is roughly 12 to 13 percent of all the oil we import.

If we have nothing but two choices—go with the refundability to have it cost the Treasury $3.2 billion a year, or eliminate the refundability and pay $4.9 billion a year to buy the oil we would otherwise save—from a strictly budget or financial standpoint, I cannot see why we do not choose the refundability.

Second, from a standpoint of equity, the chairman has made the point over and over: all the amendment is cutting out is the refundability for the companies in this country that are prosperous. They will be able to write off a total tax credit against their tax liability, reduce their taxes, and take the full advantage of the encouragement that we are trying to give to convert. To those companies that are new and fledgling, barely making a profit, to every eleemosynary institution in this country, every nonprofit organization in this country, we are simply yanking out from under them the rug of incentives, leaving them to the General Motors and General Electrics, taking it away from the Salvation Armies and Good Wills. And the bottom line is we are importing 1 million barrels of oil a day or more.

I ask you, where is the financial good sense, where is the national security good sense, where is the equity in that kind of conclusion?

Mr. WEICKER and Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, I suppose I have to ask a question as to whether or not we are going to be allowed to vote on the amendment of the distinguished Senator from South Carolina. I think that is really the issue here. It is not a matter of discussion. It is quite frankly a parliamentary device we are being placed through so we can go around the formal procedure of the Senate. I am not one of those who ever believed, and hopefully never will, that the end justifies the means. I think we are talking about the appropriations process, the budget process. I think these things should be observed.

I wish the distinguished Senator from Louisiana were on the floor now because I would like to know whether or not we are going to vote on the Hollings amendment now.

If he wants it delayed, I think that should be known also. If that is the case, I will be glad to go ahead and hold the floor because I know that I can hold the floor as long as anybody else can.

I sympathize with the problems that confront the Finance Committee, but the reason we are here debating this particular issue is because of the inability of the Finance Committee to do its job.

Had it done its job, there would have been plenty of time to go through the requirements of the process and those requirements certainly include the Appropriations Committee and the Budget Committee.

I am not willing to trust an energy policy to any one or several individuals, in essence this body, without instructions.

I grant, we had a test on that matter several times before. But now we are going even further. We are going to the point of obviating the normal processes of this body.

I advise my colleagues that this is something, sooner or later, that will catch up with each one of them.

I notice the distinguished Senator from Louisiana is in the rear of the Chamber. I wonder if he might respond to my question as to whether or not we could have a vote on the amendment of the Senator from South Carolina immediately.

My question to the distinguished Senator from Louisiana is whether or not we could possibly have a vote on the substance before us, his motion to table having failed, as to whether or not this matter now not be voted up or down. Really what we are voting up or down is not the substance or the merits, which have been described very eloquently here by both sides, but merely the matter of procedure.

I am not willing to go ahead and follow a procedure by anyone in this body. I point this out as to whether or not it is violating the appropriations process or the budget process.

I realize that having been on the short end of the vote, there may be unwillingness to have a vote immediately on the amendment before us, the amendment of the distinguished Senator from South Carolina. Is this something we can have right now, or not?

Mr. LONG. Well, Mr. President, I do not hold the floor. The Senator has the floor.

Mr. WEICKER. I ask the Senator from Louisiana as to whether he would be willing to have a vote on this matter right away?

Mr. LONG. I am not the one speaking.

Mr. WEICKER. No. I asked the question, and the Senator has not answered.

Mr. LONG. Whoever is the one doing the speaking is the one preventing us from having it.

Mr. WEICKER. I am not dealing in semantics but merely saying I would like to know if the Senator from Louisiana is willing to vote on the Hollings amendment right now. I am sure if he said "yes," we could all get to that vote right away.

Mr. LONG. I will make the Senator a proposition, if he will pair with the distinguished Senator from Georgia (Mr. TALMADGE), it will be right now.

Mr. WEICKER. What is of concern to me, and I think to many on this floor is the urgency of the problem that confronts the U.S. Senate in the sense of an energy crisis. Certainly, the distinguished Senator from Louisiana has made very substantial contributions to going ahead and resolving that crisis.

On the other hand, I have to stop somewhat short of entrusting the fate of the resolution of this crisis to his hands and his hands alone.

He and I have had this pointed out, I believe in the Tax Reform Act of 1976, where I was told that everything would work out if the Senator from Louisiana could go to conference.

I disputed then and now many of his philosophies, and the principles I would agree with on this issue.

But I will not agree to either he or the President of the United States having the power to resolve something which each one of us wants to address ourselves to and to go ahead and advocate to this same body that we should circumvent the appropriations process or the budget process.

I do not care what the merits are. First of all, we have to get to first base.

On its merits, I voted for much of what the Senator from Louisiana believes in. Deregulation, decontrol.

I do not believe I am very much opposed to the Senator from South Carolina philosophically. But I am not willing, no matter what the merits are, to go ahead and tread over the bounds of these processes which guarantee a thorough examination of any problem. That examination has to be made both from the sense of substance and merit, and that is the purpose of the authorization in the terms of appropriation and the terms of budget, all these elements.

I am not willing to go ahead and lump them into one committee. That is what is involved here.

I think the arguments presented by the distinguished Senator from Oregon and the distinguished Senator from Arkansas are, indeed, very enlightened, but they do not get to the point which now confronts us.

Are we, under the weight of the emergency and the crisis, willing to throw procedure overboard? That I am not willing to go ahead and do.

I think in essence the reason why the distinguished Senator from Louisiana lost on the last count was not because of his philosophy, not because of the merits, but because this encroachment of law and of custom, when it takes place, takes place under the guise of emergency and of the seriousness of any particular problem.

This is what is at issue now. That is why I say, why not get on to the business of voting on the motion of the distinguished Senator from South Carolina because, indeed, it really has not that much to do with substance or merit. It has to do with the procedures of the U.S. Senate.

I think we can get it over with very fast. Let us keep going on amendments and on substance, as I have indicated.

Mr. LONG addressed the Chair.

Mr. WEICKER. I do not yield the floor. I will yield for a question.

Mr. LONG. May I say to the Senator, I am not going to delay a vote. We are going to vote. But I say to the Senator, I thought we satisfied all the procedural complaints of the Appropriations Committee when I supported the motion to recommit the bill and report it back with their amendments, so that the amendment has the dignity of the Appropriations Committee behind it, and having done that we have our amendment and we have theirs.

I did the best I could. I thought I satisfied that.

I am willing to vote. It is all right with me.

Mr. WEICKER. May I ask the distinguished Senator from South Carolina if he is now willing to vote on his amendment?

Mr. HOLLINGS. I am prepared to vote. I would like to say one word, if the Senator will yield 1 minute.

Mr. WEICKER. I yield——

Mr. HOLLINGS. I lost my audience, but I still have the chairman of the Finance Committee.

In essence, if we look on page 23——

Mr. WEICKER. Is this a question?

Mr. HOLLINGS. Well, I was going to make—I will make it into a question.

Mr. WEICKER. I yield the floor; I have heard the Senator from Louisiana. He has indicated willingness to have a vote. That is good enough for me.

I yield the floor now. I hope we can have a vote on this matter.

Mr. HOLLINGS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Does the Senator from South Carolina seek recognition?

Mr. HOLLINGS. I am ready to vote. Let us see what happens.

The PRESIDING OFFICER. The question is on agreeing to the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DeCONCINI (after having voted in the negative). On this vote I have a live pair with the Senator from Maine (Mr. MUSKIE). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withdraw my vote.

Mr. SPARKMAN (after having voted in the negative). On this vote I have a live pair with the Senator from Ohio (Mr. METZENBAUM). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Illinois (Mr. STEVENSON), the Senator from Georgia (Mr. TALMADGE), the Senator from Montana (Mr. METCALF), the Senator from Delaware (Mr. BIDEN), and the Senator from Ohio (Mr. METZENBAUM) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

I further announce that if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. BAKER. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from New York (Mr. JAVITS), the Senator from Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT) is absent on official business.

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Alaska (Mr. STEVENS). If present and voting, the Senator from Oregon would vote "yea" and the Senator from Alaska would vote "nay."

I further announce that, if present and voting, the Senator from New York (Mr. JAVITS) would vote "nay."

The result was announced—yeas 30, nays 47, as follows:

[Rollcall Vote No. 593 Leg.]

YEAS—30

Abourezk	Culver	Morgan
Bellmon	Dole	Percy
Brooke	Glenn	Proxmire
Bumpers	Hart	Riegle
Burdick	Hathaway	Sarbanes
Byrd, Harry F., Jr.	Hollings	Schweiker
Case	Jackson	Stafford
Chiles	Kennedy	Stennis
Church	Lugar	Weicker
Clark	Magnuson	
	Mathias	

NAYS—47

Allen	Gravel	Nunn
Baker	Hansen	Packwood
Bartlett	Haskell	Pearson
Bayh	Heinz	Pell
Bentsen	Helms	Randolph
Byrd, Robert C.	Huddleston	Ribicoff
Cannon	Johnston	Roth
Chafee	Laxalt	Sasser
Cranston	Leahy	Schmitt
Curtis	Long	Stone
Danforth	Matsunaga	Thurmond
Durkin	McClure	Tower
Eagleton	McIntyre	Wallop
Eastland	Melcher	Williams
Ford	Moynihan	Zorinsky
Garn	Nelson	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

DeConcini, against.
Sparkman, against.

NOT VOTING—21

Anderson	Hayakawa	Metzenbaum
Biden	Humphrey	Muskie
Domenici	Inouye	Scott
Goldwater	Javits	Stevens
Griffin	McClellan	Stevenson
Hatch	McGovern	Talmadge
Hatfield	Metcalf	Young

So Mr. MAGNUSON's amendment (No. 1000) was rejected.

Mr. LONG. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. MELCHER). The Senator from Massachusetts is recognized.

AMENDMENT NO. 1467

(Purpose: Reduce the 40-percent additional investment credit for conversion equipment to 10 percent in section 1031.)

Mr. KENNEDY. Mr. President, I call up amendment No. 1467 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes amendment numbered 1467.

On page 57, line 22, delete "40" and insert "10".

The PRESIDING OFFICER. May we have order in the Senate?

The Senator from Massachusetts.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. ROBERT C. BYRD. Mr. President, may I ask the distinguished Senator from Massachusetts how many amendments he plans to call up?

Mr. KENNEDY. Mr. President, I have three amendments. This one, which relates to the reduction of the investment credit from 40 percent to 10 percent; then I may offer an amendment to reduce the basis for depreciation under this additional investment credit. And then I shall try to delete G and G deduction, which is a marvelous program that we can talk about. I hope we may get that one accepted. I have a number of others. I think that would probably do it.

Mr. ROBERT C. BYRD. I thank the Senator.

On the two amendments, excluding the one which he hopes will be accepted, will he agree to a time limitation of 40 minutes on each, equally divided?

Mr. KENNEDY. I think we can do it with 20 minutes to each side. I do not think we will use the time.

Mr. ROBERT C. BYRD. Is the Senator saying 20 minutes to the side?

Mr. KENNEDY. Twenty minutes each, or 15 minutes to a side.

Mr. ROBERT C. BYRD. Thirty minutes on each amendment equally divided?

Mr. KENNEDY. That is fine.

Mr. ROBERT C. BYRD. Mr. President, I make that unanimous-consent request.

The PRESIDING OFFICER. Is there objection?

Mr. WEICKER. Mr. President, reserving the right to object, I ask the distinguished Senator from West Virginia whether or not it is his intention to try to complete this bill tonight. We had 77 Senators voting on that last vote. That is almost one-quarter of the Senate out on probably the most crucial issue facing this Nation. I suggest this is not the best

of procedural practices, and I am willing to stay here all night if need be. But I wish to have some indication from the leadership, because very frankly, I think the objective of achieving a schedule to me is not as important as the fact that the substance of what we do be meritorious, and I really wish to have some sort of response on this question.

Mr. ROBERT C. BYRD. I am glad to respond.

Mr. PELL. Mr. President, if the Senator will yield, it is an excellent question. There may be only 77 Senators here now, but some of us who are here canceled out on the assumption we would keep going until we got through. So I think it is the stop and start, the staccato method of operation that gets us down. I hope for the sake of those who canceled out to stay here to finish that we keep going.

Mr. ROBERT C. BYRD. Mr. President, I will respond to the distinguished Senator. All week, Mr. President, I have stated that it was the intention of the leadership to try to complete action on this bill today, and that if action were not completed on this bill today we would be in tomorrow.

Now, this morning the distinguished minority leader and I stated very early that we would be in tonight until 11 or 12 o'clock in an effort to finish this bill tonight. I have been here many times when there were not 70 Senators, and I have seen the Senate stay in until 1 or 2 o'clock in the morning to finish action on a bill.

So it was announced early today that we would be in late, 11, 12 o'clock tonight, in an effort to finish the bill tonight, and if we cannot finish it tonight we would be in tomorrow.

Now, as to making a schedule, may I assure the distinguished Senator that making a schedule is no more important to me than it is to him. But as I stated today, and as I have stated all week, it is important that we complete action on this bill, get it to conference, and complete our floor work next Saturday, not to meet a schedule, but to allow the conferees to meet in the conferences on the five energy bills and on the other bills that are in conferences, without being harassed by quorum calls and rollcalls by either body.

So just forget about finishing a schedule. The important thing is to finish the bill, get it to conference, and get action there.

The conferees need to meet full time there and not have to be running back and forth to the floors of both Houses. They cannot complete their work there, and we need to get this bill in conference so all five bills would be in conference and the conferees can apply their full time and efforts and energies to this work there.

So I would hope that is a fitting response to the distinguished Senator's question.

Mr. WEICKER. Well, reserving the right to object—I will be glad to yield.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Reserving the right to object, this body, in order to meet the events scheduled deliberated around-the-clock on the issue of deregulation—I am not sure very intelligently—and to me, I suppose I would use the words of Thoreau when he said the question is not whether or not we are busy but what are we busy about.

Very frankly, having been on an around-the-clock schedule to try to meet a then October 7 deadline, which I thought was ridiculous to begin with, we then proceeded to go ahead and take days off and hours off.

I have to say that I am a little bit weary of what it is that is being done here merely to get through or get passage of a bill. I would suggest that as soon as the Senator from Massachusetts is through with his endeavors—I think it is important that we deliberate these things in the cold light of day, not at the end of 12 hours—and, as I say, I will be glad to stay here all night, and I will stay here all night, but it is my intention, I will tell my colleagues just that, that when we get through with the amendment of the Senator from Massachusetts, if I can receive recognition I will be glad to go ahead and discuss the energy bill, not one that is entrusted to any one or two individuals on the floor of this body or entrusted to one making a schedule, but a bill that makes sense.

If it means we spend Saturday here, that is fine. If we spend next week here, that is fine. When I got here to serve in this session, I did not expect to be out until Christmas, and I have nothing else to do, so I have nothing much further to say really on this issue except that I think it is time—and I serve on that conference, and we have been serving and meeting all week on that conference on energy, and we are doing our job here, and we will try to do it on the floor. But what is important, I think, is that we bring some degree of intelligence and, I might add, courage to addressing the issue of energy, not a tired mind and body and not one that is trying to meet some sort of a schedule, that is intended to get everybody out of town so that a few people can do the job each one of us ought to be doing.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABOUREZK. Mr. President, was there a unanimous-consent request before this body?

The PRESIDING OFFICER. I beg the Senator's pardon?

Mr. ABOUREZK. Has there been a unanimous-consent request? I heard somebody reserve the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. ABOUREZK. To what, may I ask?

[Laughter.]

Reserving the right to object——

Mr. WEICKER. To a time limitation.

The PRESIDING OFFICER. Is the Senator reserving the right to object?

Mr. ABOUREZK. I am reserving the right to object. I would like to know what the request was.

The PRESIDING OFFICER. The Senator from Massachusetts has asked unanimous consent for a 30-minute time limitation on two amendments. Will the Senator from Massachusetts identify the second amendment?

Mr. KENNEDY. 1511.

The PRESIDING OFFICER. Will the Senator describe the amendment?

Mr. KENNEDY. Its purpose is to require a basis adjustment for the 40 percent business energy investment tax credit.

The PRESIDING OFFICER. Is there objection?

Mr. ABOUREZK. Reserving the right to object, Mr. President, with all respect to the leader, I have to agree with Senator WEICKER.

I think what we have been concerned with, and especially the leadership in this particular piece of legislation, is they have been concerned more with form than with substance. Now, there is no secret about it that there are a lot of us who do not like what is in this piece of legislation. There are some serious amendments to this legislation that ought to be considered not when we are in late at night, on a Friday night especially, when everybody thought they were going to go home and eat dinner or wherever they were going to eat dinner, but I do not think there is any reason why we cannot either do this tomorrow or do it on Monday instead of staying in until midnight tonight. If the Senator from Connecticut wants to stay here and discuss the issue later tonight I will stay with him to help him discuss it.

The PRESIDING OFFICER. Does the Senate object?

Mr. ABOUREZK. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Massachusetts.

Mr. ABOUREZK. Mr. President, will the Senator yield?

Mr. KENNEDY. Yes.

Mr. ABOUREZK. Mr. President, I want to finish what I was going to say, if I may be permitted to do so now.

I would like to just direct a question to the leader. It is this: Is there any real compelling reason why we have to stay in so late tonight? Why is it not proper that we cannot come back either tomorrow or Monday, preferably Monday, and finish up this legislation?

Mr. ROBERT C. BYRD. Mr. President, we attempted to earlier this week, Monday and Tuesday, the leadership made every effort, to get Senators to come to the floor to debate this bill, offer their amendments.

I would like to get home as much as anyone does. I would like to have dinner with my wife also, but we have a responsibility, I think, to stay here and do the work. We have plenty to do Monday. We can finish this bill tonight or tomorrow, and we will have plenty to do Monday. We will have the supplemental appropriations bill on Monday; we will have social security financing next week; we have the Alcan pipeline next week; we have Regulation Q next week. So we have plenty of work to do next week, and I would hope that Senators would allow the Senator from Massachusetts to get on with the discussion of his amendments, and other Senators to offer their amendments.

Our responsibility is to do the work. The leadership is doing its very best to

proceed in an orderly fashion and to expedite the work. I would just urge Senators to let the Senate get on with its work on the bill.

The distinguished Senator from Connecticut a little while ago I heard him urging that we vote on the amendment. He was asking the distinguished Senator from Louisiana if he intended to hold the floor and not let the Senate vote, and I applaud the Senator from Connecticut for that because I think that helped us to reach a vote really.

Now he talks about holding the floor and not letting the Senate complete its business. I hope he will reconsider that, and I hope we will get on with the amendments by the Senator from Massachusetts.

Mr. BENTSEN. Mr. President, could we have an understanding as to——

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. KENNEDY. Mr. President, I would like to get to talking about my amendment, if we may.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. BENTSEN. I have been trying to seek recognition for some time. I would like just about 30 seconds, if the Senator will yield.

Mr. KENNEDY. Yes, I am glad to yield briefly.

Mr. BENTSEN. I would like to ask the majority leader if he has any feel for the number of amendments yet to be offered.

Mr. ROBERT C. BYRD. The Senator from Massachusetts has indicated he has three; will other Senators indicate if they have amendments?

Mr. HATHAWAY. Four.

Mr. ROBERT C. BYRD. That is seven. Senator DURKIN has one.

Mr. HANSEN. Senator BARTLETT and I have at least three, do we not? Probably more.

Mr. ROBERT C. BYRD. That is 11.

Mr. BROOKE. I have four.

Mr. WEICKER. I have two.

Mr ROTH. I have an amendment.

Mr. ROBERT C. BYRD. That is 20.

Mr. HATHAWAY. I understand the Senator from Connecticut (Mr. RIBICOFF) has one amendment.

Mr. ROBERT C. BYRD. Twenty-two.

Several Senators addressed the Chair.

Mr. KENNEDY. Mr. President, I think I have the floor.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. ABOUREZK. Mr. President, will the Senator yield?

Mr. KENNEDY. Briefly, without losing the floor.

Mr. ABOUREZK. Did I correctly understand there were 22 proposed amendments yet? Is that what the leader counted?

Mr. ROBERT C. BYRD. That was my count.

Mr. ABOUREZK. Does the leader intend to vote on all those amendments tonight?

Mr. ROBERT C. BYRD. Well, I have seen Senators call up their amendments and have them accepted in a matter of a minute or two. We probably have discussed things other than Senators' amendments enough now to dispose of them.

Mr. ABOUREZK. Then the answer is yes, we intend to take up all 22 amendments tonight?

Mr. ROBERT C. BYRD. I did not say that.

Mr. ABOUREZK. I hope the Senate will quit at some time tonight. May I ask the leader what time he plans on recessing or adjourning tonight?

Mr. ROBERT C. BYRD. I have no plans at the moment. That is the only answer I can give. That is the only responsible answer I can have. I cannot say 9 o'clock or 10 o'clock.

Mr. ABOUREZK. There is a precedent for that.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this is a relatively simple amendment, but it does have a large budget effect. It involves issues which were talked about at some length earlier by the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Louisiana (Mr. LONG).

In this particular legislation—could we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. May be have order in the Senate?

The Senator from Massachusetts.

Mr. KENNEDY. In this bill, Mr. President, there is an additional refundable 40-percent investment tax credit, which is allowed for "alternative energy property" purchased by industries and utilities in converting from oil and gas to coal and other fuels.

The proposed amendment would reduce the 40 percent alternative tax credit to 10 percent.

The revenue saving would be $600 million in fiscal year 1978, and $10 billion for fiscal years 1978–85.

Mr. President, the user tax adopted by the Metzenbaum amendment overlaps the 40 percent credit and eliminates the need for the credit. The energy saving under the user tax, 1.2 million barrels per day in 1985, is identical to the saving under the 40 percent credit, which would simply become a tax break for firms that have already converted to alternative fuels.

The energy saving estimate for the 40 percent credit in the SFC report, 1.2 million barrels per day, is grossly inflated. The Congressional Budget Office estimates that about 50 percent of the conversion attributed to the credit would take place anyway, even without the credit. Therefore, as CBO states, the credit provides a windfall of $10 to $12 billion over the period 1978–85. Half the credit is a pure waste of money.

At the 40 percent level, the credit provides a tax cut of $26 billion for business over the next 8 years. A large part of the subsidy will go to the Nation's 1,100 industrial giants, most of whom will be receiving a tax break for what they are doing anyway. If a tax cut for business of this magnitude is justified, it should be included in the general tax reduction package now under study by the President.

The proposed amendment cuts $10 billion from the cost of the tax credit in the bill. The amendment alone would bring the bill over half way back to the budget resolution. As reported, the SFC bill has a fiscal year 1978 revenue loss of $1.9 billion, which is $1 billion over the budget resolution. The amendment reduces the gap by $600 million, leaving a gap of $400 million.

The 40 percent credit is likely to be highly inflationary. The Treasury cautions that this large a credit may raise the price of boilers, which in turn will increase the revenue loss, because the 40 percent credit is based on the purchase price of the boilers. Each time the revenue estimate appears in the SFC report, a Treasury footnote is appended explaining the inflation problem.

The Finance Committee estimates assume an annual price inflation of 5.5 percent, roughly the current annual overall CPI figure. If the price of boilers escalates under the pressure of the 40 percent tax credit, the Treasury estimates that the revenue losses will be far greater—5.5 percent inflation, $26.4 billion; 10 percent inflation, $33.7 billion; 15 percent inflation, $43.9 billion.

The committee bill gives a cost of $26.4 billion for 5.5 percent inflation. At 10 percent inflation, the cost will go up to $33.7 billion. At 15 percent inflation, the cost will go up to $43.9 billion. The committee cost is bad enough. But it will be much worse, even twice as bad, if the price of boilers starts to climb.

Mr. President, in addition, the 40 percent credit is available on top of the existing 10 percent investment credit, making a total credit of 50 percent. Accelerated depreciation is also available on the full purchase price—that means a purchaser of a $100,000 boiler will actually pay only $50,000 for the boiler as a result of the tax credits. The purchaser can also take annual accelerated depreciation deductions based on the full $100,000. There is no justification for this "phantom" depreciation, based on a cost the purchaser did not pay.

There is no precedent for a 50-percent tax credit in the income tax laws. The committee estimates that, with the credit plus depreciation, a purchaser will actually pay only one-third of the cost of the equipment purchased. The Government will subsidize two-thirds of the cost of the equipment in the first year.

According to the American Boiler Makers Association, 1977 orders for boilers are running 60 percent ahead of 1976. In 1976 and the first half of 1977, not a single oil-fired or gas-fired boiler has been ordered in the larger industrial categories. The trend is even more pronounced among utilities. A tax incentive of the magnitude of 40 percent is not needed to encourage this trend.

Mr. President, finally, the boiler industry is concentrated. It is dominated by four major firms—Babcock & Wilcox, Combustion Engineering, Foster Wheeler, and Riley, which control 80 percent of the market. All four of these firms are large suppliers of the oil and gas industry. There are serious barriers to entry into the business—it recently

took 4 years and $30 million to construct a new boilermaking facility. In this situation, the 40-percent tax credit is very likely to be siphoned off by the dominant firms in the form of higher prices for their boilers, higher profits for the firms, and higher losses for the Treasury.

Mr. President, the House of Representatives adopted a 10-percent tax credit for such equipment and that is as high as we should go in the Senate.

Mr. President, I ask unanimous consent that a letter from Alice R. Rivlin, Director, Congressional Budget Office, and a letter from Laurence N. Woodworth, Assistant Secretary for Tax Policy, Department of Treasury, may be printed in the RECORD.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., October 26, 1977.

Hon. EDMUND S. MUSKIE,
Chairman, Committee on the Budget, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request that the Congressional Budget Office examine the effectiveness of the coal conversion tax credit provision (Section 1031) in the Energy Production and Conservation Tax Incentive Act (H.R. 5263), as reported by the Senate Finance Committee. Specifically, you requested that we estimate the proportion of the tax expenditures that would go to firms that would have converted to coal without such an incentive. This value is often referred to as an economic windfall since it represents a payment to firms for decisions which they would have made irrespective of the tax credit. This windfall is in contrast to that portion of the tax expenditure which induces firms to increase their coal use.

We have examined these issues and concluded that of the estimated 1.7 mbd oil equivalent of coal conversion qualifying for the proposed tax credit, about .8 mbd oil equivalent, or almost 50 percent, is likely to take place anyway. Thus, the windfall is about 50 percent of the proposed tax expenditures, or approximately $10–12 billion over the period 1978–1985.

The .8 mbd oil equivalent of coal conversion qualifying for the proposed tax credit projected to take place whether or not the tax credits are enacted consists of approximately .45 mbd oil equivalent in the industrial sector, and .35 mbd oil equivalent in the utility sector. These estimates are consistent with the data presented in the "Base Case" of the National Energy Plan, April 1977.

If we can be of further help to you, please let us know.

Sincerely,

ALICE M. RIVLIN,
Director.

DEPARTMENT OF THE TREASURY,
Washington, D.C., October 27, 1977.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This is in response to a request from your staff concerning the revenue effect of the additional 40 percent investment tax credit provision in the Energy Production and Conservation Tax Incentive Act.

The question refers to the Treasury Department opinion that the revenue cost estimate of the 40 percent tax credit is correct only under the assumption that prices of qualified property does not increase at a rate in excess of the general rate of inflation assumed to be 5.5 percent per year.

In this context, your staff has asked the Treasury Department to provide revenue cost estimates for the provision under the assumption of a 10 percent and 15 percent annual rate of increase in the price of qualifying property. Under these assumptions the cumulative revenue loss is $33.7 billion and $43.9 billion, respectively. The revenue cost estimated by the Senate Finance Committee is $26.4 billion. While the Department of the Treasury has no evidence which indicates that the price of qualifying equipment will increase at a rate in excess of 5.5 percent, it is possible that increased demand for certain equipment might cause substantive price increases for the equipment.

Sincerely,

LAURENCE N. WOODWORTH.

Mr. KENNEDY. So, Mr. President, I am hopeful that we can recognize the importance of modifying this 40 percent refundable investment credit in the way which I have described here, for the reasons which I have outlined.

I reserve the remainder of my time.

Mr. HASKELL. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. Yes. There was an objection to the time limitation request, as I remember.

The PRESIDING OFFICER. There is no time limitation.

Mr. KENNEDY. I yield.

Mr. HASKELL. The Senator has pointed out that the coal conversion bill will prevent many hundreds of plants from going on oil and gas, and furthermore it will make existing plants with standby coal facilities convert; so we are talking about existing plants without standby facilities.

I wonder if the Senator from Massachusetts or anyone else knows how many plants might convert anyway, because their plants are wearing out, or because gas has gotten too high, and they can get coal. Does the Senator know of anyone who has those figures? It seems to me that might be relevant to our general discussion.

Mr. KENNEDY. I would not be able to give the Senator a precise answer on that, I can only indicate what the orders for boilers are now, versus 1976, according to the American Boilermakers Association. The figure is 60-percent higher now than in 1976 for coal-fired burners.

No single oil fired or gas fired burner has been ordered by the large industrial categories. So there has already been a dramatic increase of 60 percent, and no orders on oil and gas burners. I cannot say what the quality of some of the boilers would be.

Mr. HASKELL. Merely as an observation, it occurred to me that the Senator's statistics show that people are doing it anyway. This would certainly buttress the Senator's argument that 10 percent is liberal.

Mr. KENNEDY. I appreciate the statement of the Senator. I believe the Senator makes the point that the 60-percent increase at the present time shows that industries are already moving that way and supports the need for a reduction in the 40-percent credit.

I reserve the remainder of my time.

Mr. LONG. Mr. President, is there a time limitation? I was not aware that one was granted.

The PRESIDING OFFICER. There is no time limitation.

Mr. LONG. That is what I thought.

Mr. President, the Senator made the statement that there have been very few, if any, new gas or oil boilers ordered. The fact is, or my information is, that very few boilers of any kind have been placed on order. We want people to place them on order. The whole idea here is to get them to make a very big investment, to change over from gas and oil burning boilers to coal boilers. It would cost about three times as much to put in one of the coal burners as it will to put in a gas burner, and about twice as much for a coal burner as an oil burner, I am told.

These are very big investments. People are holding back. They are using every method available to them to stall, to delay. That is the reason conversion is not going along.

In an effort to get them to make the investments which, by law, they are required to make by 1990, quite a few years from now from the point of view of most of us, we feel that they need a very major incentive. That is why the committee proposed not a 10-percent credit, as we do not think that will get the job done, but a big tax credit, a 40-percent additional tax credit; we believe they need a big incentive. Our estimates are that without a big incentive, they are not going to go ahead and do it. With that incentive, the best estimate we can get is that this one item will bring about the conversion to save about half of the energy savings required by the tax writing committee for the whole program, just this one item.

Mr. CURTIS. Will the Senator yield?

Mr. LONG. For a question, yes.

Mr. CURTIS. Is it about 1 million barrels of oil per day?

Mr. LONG. Yes.

The PRESIDING OFFICER. Did the Senator yield?

Mr. LONG. I yielded for a question, Mr. President.

Mr. CURTIS. It is my understanding that this will bring about a conversion which will save 1 million barrels of oil per day.

Mr. LONG. That is correct.

Mr. CURTIS. If we wait for the existing statute to run and they comply by 1990, there will be a lot of days intervene where we will not have that saving of 1 million barrels per day. Is that the situation?

Mr. LONG. Mr. President, it will be a great number. If we let nature take its course, if we do not provide the tax incentive, the law says by 1990 they will have to convert. But what happens? They will just continue to postpone and delay as they are doing. They will come to 1990 and they will not have done it.

What happens if we do what we did with the clean air law? We were told that if we could put a man on the Moon we could certainly build a pollution-free automobile. So it was to be against the law not to build a pollution-free automobile by now.

They did not know how they could do it. We passed the law. What happened? All we did was prove industry right. It is true that we put the man on the Moon, and it is true we exploded the atom, but we still do not have the pollution-free

automobile. It is just like that Moon shot contributing to cancer research.

If you can put a man on the moon, you can get a cure for cancer in the same number of years. Just make the same dollar effort.

Back then that was the thought. We still do not have a cure for cancer. My thought is if we had spent $1 trillion, we would still not have a cure for cancer. It is not that we were not spending enough money in that case, but it just did not work.

But these people keep postponing and postponing. They get up to a deadline and what happens? They come to Congress and say, "Well, we cannot do it." It is that simple. It is like saying you cannot squeeze blood out of a turnip, it is just not there. When the time comes, they say, "I am sorry, we cannot do it. There is no way we can do it."

So Congress passes a law saying, "You have not been able to convert so we will extend the date."

Mr. CURTIS. Will the Senator yield further?

Mr. LONG. I will yield for a question.

Mr. CURTIS. As I understand this proposal, if a utility company just has to expand, if they have to build a plant and they build a coal one, they do not get this. It is when they convert and quit using gas or petroleum that they get it.

Mr. LONG. That is the whole idea. That is exactly right.

Mr. CURTIS. The whole purpose of this to save 1 million barrels of oil per day?

Mr. LONG. That is the purpose.

Mr. CURTIS. I do not recall what the contention was about the cost difference between the committee's version and the amendment, but I daresay it is far less than the cost of running the Department of Energy a year. So far, all their transactions have been on paper and they have not produced a barrel of oil.

I thank my chairman for yielding.

Mr. LONG. Mr. President, the Senator from Ohio (Mr. METZENBAUM) offered an amendment, to which we agreed, that said that the new facilities would be subject to a tax in case they do not convert, which is all fine, and that those very few who are fixed so they can burn coal as well as burn the other fuels would have to convert.

Ninety percent of what would be achieved by that amendment is in the new facilities to be built. There were exemptions all through it, whole States, for example, the metropolitan areas of New York, most of California, practically all the industrial areas. By the time we get through with all the exemptions of the Metzenbaum amendment, we would find that all those burning oil and burning gas would be permitted to continue, with very few exceptions. If we want these people to convert, we have two ways to do it: Either by putting a tremendous tax on them or by fining them under the law, or we can put in an incentive and help pay the cost of it. I do not think, Mr. President, that this Senate is willing to vote to say to those industries that are burning gas and burning oil and can convert without very great expense, that they will pay a back-

breaking tax. Nobody has proposed that here. They can propose it if they want to, to make them convert.

So what is your alternative? Your alternative is to give them a big tax advantage if they do.

Obviously, Mr. President, an additional 10-percent investment tax credit is not going to get the job done. It will help some, but it will fall far short of what we have. The Senator will be able to report what he has reported about all boilers. They are just not being placed on order. The people are not buying them. The people are not converting.

Mr. President, estimating oil at $15 a barrel coming in from the Near East, by 1985, the provision that we have in mind will save about $7,500 million a year. When you look at the cost of this provision and then look at it in terms of saving oil, you come up with an enormous saving. And the savings justify the cost. This is a way to provide for a change in the affirmative and to spread the burden.

There are some areas that do not have any coal-burning facilities. If they are required to convert from oil, it is going to be a tremendous burden on those people. Sometimes, it is going to be the people who use the service, the person who consumes the electricity generated by a plant. How are we going to carry the burden of this conversion? Some people are already using coal burners. How are we going to share it? It is by providing the method by which taxpayers tend to spread the burden across the Nation and help share the burden brought on by conversion. That is the suggestion of the committee. A 10-percent tax credit, Mr. President, has on simple defect: It just will not get the job done.

Mr. MELCHER. Will the Senator yield?

Mr. LONG. I yield to the distinguished Senator.

Mr. MELCHER. I thank the distinguished chairman for yielding. I have a question.

I did not vote for the Metzenbaum amendment, because I was not sure of its effect on the copper industry in Montana. Had I known the answer to the effect of the Metzenbaum amendment on the copper industry that, in many instances, uses gas, I would have been inclined to vote for the Metzenbaum amendment. But I did not vote for it.

My concern now is, with the Metzenbaum amendment in the bill before us, what is the effect of the bill's present status on tax credit with an industry that converts from oil or natural gas to coal? How much tax credit do they get?

Mr. LONG. Under our bill——

Mr. MELCHER. Yes, with the Metzenbaum amendment in it.

Mr. LONG. I mean under the committee bill.

Mr. MELCHER. With the Metzenbaum amendment in it?

Mr. LONG. With the Metzenbaum amendment in it, if they convert, they would get the 40-percent tax credit.

Mr. MELCHER. A total of 40 percent tax credit?

Mr. LONG. Yes, plus the present 10 percent investment tax credit that they would receive under the existing law.

Mr. MELCHER. They would get 50 percent tax credit?

Mr. LONG. Fifty percent.

Mr. MELCHER. May I ask the chairman, is there no discerning feature in the bill as it stands now, with the Metzenbaum amendment in it, to what effect that has on the total earnings? What if the earnings of that particular company are great. Is there no limitation other than the 50 percent?

Mr. LONG. The way we have provided is that the 40 percent, as the Senator knows, would go to all companies. If those companies have a tax liability against which to claim the other 10 percent, they would get the 10 percent that they have available to them now. This is a refundable tax credit, so every company gets the 50 percent, which means that, under this proposal, 40 percent of the cost would be paid as a refundable tax credit. So the Government would pick up 40 percent of the cost of building the new plant. Now, of the other 10 percent, it would remain as under existing law.

Mr. MELCHER. A total of 50 percent, regardless of who owns the business or corporation?

Mr. LONG. That is right. Well, it would be 40 percent if it is, let us say, a public body; they would only get the 40 percent. But a tax paying company could get the 50 percent.

Mr. MELCHER. May I understand from the chairman that the effect of the pending amendment would be a 20-percent tax credit? If the pending amendment were accepted, would it be a 20-percent tax credit?

Mr. KENNEDY. The Senator is correct.

Mr. LONG. The total, plus the 10, would be 20, yes.

Mr. MELCHER. I thank the distinguished chairman.

I think the Senator from Massachusetts has correctly posed before this body the effect of the Metzenbaum amendment on the committee bill. If the Senator from Massachusetts' amendment is not right, then it is up to the Finance Committee to describe what is right, because the committee presented us 40 percent; the Senate adopted the Metzenbaum amendmnt; which has some effect on conversion and the total tax credit if we accept the bill before us results in 50 percent. The Senator from Massachusetts has correctly posed the problem before the Senate: What is correct in this part of this bill? I think, without adopting the Senator's amendment, we have, indeed, gone beyond what the committee recommended for this body when it proposed the bill before us.

Mr. DOLE and Mr. KENNEDY addressed the Chair.

Mr. LONG. Mr. President, I just point out that of the items that are going to bring conversion——

Mr. MELCHER. Who has the floor, Mr. President?

Mr. LONG. I had the floor.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. LONG. Mr. President, it is our view, and the analysis of our staff confirmed this, that of the incentives that

we have in the bill before us, the 40-percent investment tax credit will do far and away more—it is not even close—to bring about conversion than the Metzenbaum amendment. It is our judgment that the Metzenbaum amendment will help some, but it is not going to help a great deal compared to what the 40-percent investment tax credit will do.

I point out that the Metzenbaum amendment only applies to those situations where new plants are to be built or those situations where those plants that are built—which are very, very few—can use the coal as well as using some other fuel. So, if we look at what the Metzenbaum amendment does not cover, which is all those plants that burn something other than coal that we want to convert, there is where the big energy saving would be and that is where this 40 percent tax credit would do this job. We do not think an additional 10 percent tax credit is going to do much of anything.

Mr. CURTIS. Will the Senator yield?

Mr. LONG. Yes.

Mr. CURTIS. It should be pointed out that the 10-percent investment tax credit that is in the law now has no relation to the conservation of oil. That would be available under existing law for someone, even if they put in a boiler that uses oil or natural gas. So the amount of incentive here for converting to coal is not 50 percent, because that is something that is available to everybody.

It may happen that someone who makes the conversion will be combining the two for the specific purpose, but as far as the law is concerned it is unrelated.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I have been listening to the debate. I wonder if I can clarify this.

As I understand it, I guess it is now in conference, the coal conversion regulatory program that requires conversion as far as new powerplants are concerned, and new industrial plants, requires conversion of existing powerplants, and we cannot build anything but coal plants, if it is new, if it is a powerplant or industrial.

I remember testimony in the Finance Committee from the utilities. They do not plan building anything now except coal plants. I am wondering, since we have heard testimony and had the Coal Conversion Act, why do we need the tax credit?

I am just asking for information. Do we save additional energy by the tax credits and the Coal Conversion Act, or is it something that we are going to build a new plant anyway, just saying we gave a tax credit, even though we plan to build one, in any event?

I do not know that I fully understand the reason for the 40-percent refundable credit. But it would seem to me the Coal Conversion Act would take care of at least part of it.

Mr. HASKELL. Will the Senator from Kansas yield for a question?

Mr. DOLE. Yes.

Mr. HASKELL. It occurs to me the U.S. Government might be better off if it just bought the equipment and gave it to the companies.

My mathematics go somewhat like this: Take a $100 piece of equipment. So we get $50 under the proposed bill on investment tax credit, and take depreciation on the $100, since the corporate rate is 48 percent, there is $48. Now, $50 and $48 make $98. Surely, on a quantity discount basis we could get better than a 2-percent less than list price.

Would the Senator consider that possible?

Mr. DOLE. I should think, if we had cash.

Mr. HASKELL. It might be better for the Government to buy the equipment and give it to the company. Does the Senator think it possible?

Mr. DOLE. It is a possibility.

Certainly, it is creating tax shelters for someone if we pass this particular piece of legislation without some modification.

But I still do not know that I fully understand the need for the credit, particularly the 40-percent refundable credit, if it is required. I read from the bill, and it says that the bill would bar the use of oil or natural gas by new powerplants. All powerplants built before April 20 are considered new plants.

That seems rather specific. It seems to me if somebody starts a plant after April 20, it has to be coal, and I do not know why there is a tax credit unless we want to pay for the plant.

I remember the food stamp debate on this floor. Many of those who now support these giant giveaways were fighting about giving food stamps to the poor, that it was a waste of taxpayers' money.

Now we are suggesting we give away billions of dollars to industry, and perhaps they have earned it, or perhaps they will earn it. Perhaps it will save some energy.

But I cannot understand the need for it if we require the new plants to be coal-powered and we say existing powerplants must convert by 1990 without any tax credit.

We say if we do all that, we will save, depending on how far the Metzenbaum amendment might apply, nearly a million barrels a day.

The Senator from Kansas wonders if we will save an additional million barrels a day with tax credits and refundable credits of up to 40 percent.

It seems to me we passed the one piece of legislation in the Senate and I would hope the Kennedy amendment would be adopted.

Mr. MELCHER. Mr. President, if the distinguished chairman will again yield, I want to be sure on legislative intent that his interpretation of the bill is that with the Metzenbaum amendment in, it is an effective 50-percent tax credit.

Mr. LONG. Yes. That is correct. But it is not, because of the Metzenbaum amendment.

The Metzenbaum amendment does not do anything to provide incentive to those who have existing facilities, and we seek to convert to encourage them to do so.

Almost all of them would be exempt under the Metzenbaum amendment, and what we seek to do is convert those facilities. The Metzenbaum amendment just does not apply to them, because practically all of them would be exempt.

Mr. MELCHER. Mr. President, it is clear to me then that the accommodation of the Metzenbaum amendment, which is to force those plants that can convert to convert, that the combination is 50 percent. I think it is up to the committee.

Mr. LONG. Yes, and that would be the case even if we did not have the Metzenbaum amendment.

Mr. MELCHER. Would the distinguished Senator yield?

Mr. LONG. Yes.

Mr. MELCHER. That without the Metzenbaum amendment, is there any forcing to convert on the basis of a higher tax if we do not convert?

Mr. LONG. No. But the law says they would have to convert by 1990.

Mr. MELCHER. I understand what the law says at times and what really forces people to do things, and the Senator from Louisiana, the distinguished chairman, understands that as well as anybody in the Senate.

But sometimes the law is avoided or delayed, but what taxes decree, you obey.

What the effect of the Metzenbaum amendment is, that those who do convert, because of the Metzenbaum amendment, it is a 50-percent tax credit.

If the Finance Committee of the Senate and the Senate itself feels that 50 percent tax credit is excessive, they should respond.

The only proposition we have before us at the moment is the choice between the Senator from Massachusetts' amendment and the 50 percent that has been agreed to by the Senate with a combination, if we accept the committee amendments and the Metzenbaum amendment, for those who must convert.

I would think, under the circumstances, we would be better off with the amendment of the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I am not going to delay the Senate more than 2 or 3 minutes.

First of all, Mr. President, it is important to clarify the record. Under this particular proposal of the Senate Finance Committee, they estimate they are going to save 1.2 million barrels. That is written in the Senate Finance Committee report.

That is exactly the same saving that Senator METZENBAUM says his amendment will achieve. So there is a large energy saving under the Metzenbaum amendment.

In addition, Mr. President, look at page 59 of this bill, this wonderful provision that will save all of this oil. On lines 6 through 13, it says that one can shift to fuel which is still 75 percent gas or oil, and still get the tax credit—$25 billion tax credits. He does not have to convert to coal. He can shift 25 percent to coal, and still use 75 percent oil or gas, and still get the credit. That is on page 59 of the bill.

Mr. President, the Congressional

Budget Office Director, Alice Rivlin, also points out that half the cost of the committee provision is a windfall to firms for doing what they are already doing. I referred to her letter earlier.

Mr. President, her letter says the windfall is about 50 percent of the proposed tax expenditures, or approximately $10 to $12 billion over the period of 1978 to 1985.

They would be converting in any event, Mr. President.

So I would hope that we could move, Mr. President, down to what is a reasonable investment credit, 10 percent.

Mr. President, I am prepared to vote. I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. LONG. Mr. President, the Senator spoke of the proposed savings in the Metzenbaum amendment. We have been looking at those figures. We think the Metzenbaum amendment saves very little energy, because the savings assumed by the Metzenbaum amendment were built on top of this 40-percent tax credit. The Metzenbaum amendment presumes that you are going to have the Metzenbaum amendment to put the tax on to make those who can convert—which is not many—do so with all kinds of exemptions. But it would apply to new plants.

Then the Metzenbaum amendment would assume that you also would have a 40-percent tax credit, which would cause people to convert who have the existing facilities and who would be encouraged by the committee bill to convert.

So the savings claimed by the Metzenbaum amendment were what we claim in the committee bill plus what Mr. METZENBAUM thinks would be on top of it, adding his amendment to ours.

So you would have both put together. Without the 40-percent tax credit, you are not going to have much savings under the Metzenbaum amendment.

It is our estimate that we would save 2,124,000 barrels a day under this bill. It is further our estimate that this one provision would save about 1.3 million barrels a day. So out of what would be saved by the bill, almost two-thirds would be saved by this one amendment which the Senator would emasculate. He would take a 40-percent tax credit, which we think is a strong incentive—it has been said to be too good a thing, and perhaps so—but it is such a strong incentive that we would think people would be moving to convert; whereas, everybody is now resisting.

The Senator says no new gas-burning boilers have been put on order. The fact is that hardly any boilers of any kind have been put on order. Nothing is happening. So to make something happen, and to get it going, we do not think a 10-percent credit would do it. We have tried to estimate what we think a 10-percent additional investment tax credit would do. Not much. Maybe a little something, but not much.

We believe that if you go for a 40-percent additional investment tax credit, you make a tremendous saving. In 1985, you will be saving $7.5 billion a year in what it would cost the Arabs for that oil. That would be for jobs in the United States and to make us more energy independent.

So, Mr. President, in my judgment, if this amendment is adopted, it would reduce by about 50 percent what we would hope to save by the whole bill. In my judgment, that would be a very bad mistake. I would hate to see this amendment agreed to at this time of night, when very few Senators are present to hear the debate. I understand why. People are tired and weary. They wander out and do not hear the debate. They come in and ask someone about it. To put it in the Louisiana parlance, they fly by the seat of their pants, you might say, at that point, and just sort of get the best case they can by a brief explanation.

I think it is unfortunate that we are under the kind of pressure we have been under to vote on this matter, and I dislike to vote this late at night. So, under the circumstances, I move to——

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. LONG. I yield for a question.

(Mr. MATSUNAGA assumed the chair.)

Mr. MELCHER. If the smelters or the copper plants which are using gas cannot convert to coal, does not the Metzenbaum amendment mean they are going to be taxed?

Mr. LONG. Under the Metzenbaum amendment, if they cannot convert, they are exempt.

Mr. MELCHER. They are exempt, if they satisfy the Government that they cannot convert——

Mr. LONG. Under the Metzenbaum amendment, they are exempt from the tax if they say they cannot convert. If they have boilers that are made to use gas or coal or they cannot be converted easily to coal burners, and they use gas or oil and cannot be converted to oil——

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. MELCHER. Mr. President, may I continue these question?

If the decision of Government is that the business can convert, and that company says, "We don't have the money," are they not taxed?

Mr. LONG. In some cases, they can go to court; and if they win, they are exempt from the tax.

Mr. MELCHER. If they win in court?

Mr. LONG. Yes.

Mr. MELCHER. And defy the Government and Congress and what have you. If they have not made any money in 3 years before and 5 years forward, will a tax credit do them any good?

Mr. LONG. Yes, under this bill it would do a lot of good, because it is a refundable tax credit.

Mr. MELCHER. I thank the chairman for that, because that is reassuring. It is a refundable tax credit—if it can be held in conference.

May I ask the chairman if ever the chairman has held in conference a substantial amount of refundable tax credit?

Mr. LONG. We have succeeded in holding the earned income credit, which is a refundable credit, and the housing credit.

Mr. MELCHER. Was it a substantial amount?

Mr. LONG. Yes. One of them is almost $800 million a year.

Mr. MELCHER. And was it for some business or industry like the copper industry?

Mr. LONG. No, it was not.

Mr. MELCHER. I was afraid the chairman was going to say that.

I have a great problem with depending upon this for the copper industry. The chairman has been very generous in yielding to me and responding to my questions.

I say to the chairman that in the case of going to the conference, of all the trade-offs that are involved, this is one of the things that may not be retained. When the distinguished chairman meets in conference, with all the trade-offs and all the melding of the two versions of the bills that are brought about, the question of substantial help in the way of refundable tax credits for an industry that may not be paying any income taxes for a number of years—because the industry is in a problem—may be lost sight of easily in facing the various conferees who are not adjusted to the same type of thinking as that of the Senator from Louisiana.

Mr. THURMOND. Mr. President, I support a refundable tax credit to encourage energy conservation and conversion. I cannot in good conscience, however, support a credit as high as 40 percent.

It is my feeling that 10 percent, as proposed by the distinguished Senator from Massachusetts, may be too low.

A figure between the two would be more acceptable.

Mr. LONG. Mr. President, I hope we could work out something that would be acceptable to both sides, and I would think the more substantial the tax credit is that goes to conference the better chance we have to work it out.

Mr. President, I move to lay this amendment on the table, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to lay on the table the amendment of the Senator from Massachusetts.

On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MOYNIHAN (after having voted in the affirmative). Mr. President, on this vote I have a pair with the distinguished Senator from Maine (Mr. MUSKIE). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "aye." I withdraw my vote.

Mr. CANNON (after having voted in the affirmative). Mr. President, on this

vote I have a pair with the distinguished Senator from Delaware (Mr. BIDEN). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Ohio (Mr. METZENBAUM), the Senator from Maryland (Mr. SARBANES), the Senator from Alabama (Mr. SPARKMAN), the Senator from Illinois (Mr. STEVENSON), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

Mr. BAKER. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from New York (Mr. JAVITS), the Senator from Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT) is absent on official business.

On this vote, the Senator from Alaska (Mr. STEVENS) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from Alaska would vote "yea" and the Senator from Oregon would vote "nay."

The result was announced—yeas 24, nays 50, as follows:

[Rollcall Vote No. 594 Leg.]

YEAS—24

Allen	Hansen	Randolph
Bentsen	Heinz	Ribicoff
Byrd, Robert C.	Huddleston	Sasser
Curtis	Johnston	Schmitt
Danforth	Long	Schweiker
Eastland	Matsunaga	Stennis
Ford	McClure	Stone
Gravel	Packwood	Tower

NAYS—50

Abourezk	DeConcini	McIntyre
Baker	Dole	Metcher
Bartlett	Durkin	Morgan
Bayh	Eagleton	Nelson
Bellmon	Glenn	Nunn
Brooke	Hart	Pearson
Bumpers	Haskell	Pell
Burdick	Hathaway	Percy
Byrd, Harry F., Jr.	Helms	Proxmire
	Hollings	Riegle
Case	Jackson	Roth
Chafee	Kennedy	Stafford
Chiles	Laxalt	Thurmond
Church	Leahy	Wallop
Clark	Lugar	Weicker
Cranston	Magnuson	Williams
Culver	Mathias	Zorinsky

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Moynihan, for.

Cannon, for.

NOT VOTING—24

Anderson	Hayakawa	Muskie
Biden	Humphrey	Sarbanes
Domenici	Inouye	Scott
Garn	Javits	Sparkman
Goldwater	McClellan	Stevens
Griffin	McGovern	Stevenson
Hatch	Metcalf	Talmadge
Hatfield	Metzenbaum	Young

So the motion to lay on the table Mr. KENNEDY'S amendment (No. 1467) was rejected.

UP AMENDMENT NO. 1001

Mr. ALLEN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes an unprinted amendment numbered 1001 to Kennedy amendment No. 1467:

In lieu of figure "10" proposed to be inserted by amendment 1467, insert "20".

Mr. ALLEN. Mr. President, while I voted for the motion to table, I did so because I thought the 10-percent figure was too low; to cut the credit from 40 percent down to 10 percent, I thought, was too drastic. Also, amendment No. 1467 loses sight of the fact that the committee has two levels of credits, depending on the value of the work being done to justify the credit. They had the 40-percent level and the 10-percent level. This would bring all such credits down to the 10 percent.

Yet I believe there is ample reason to justify a difference. If you look on page 61 of the bill, under item (2) there, it lists the various items that would have the 10-percent credit. I ask unanimous consent that subsection (2) on pages 61 and 62 of the bill be printed in the RECORD.

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

EXCERPT

"(2) SPECIALLY DEFINED ENERGY PROPERTY.—The term 'specially defined energy property' means—

"(A) a recuperator,

"(B) a heat wheel,

"(C) a regenerator,

"(D) a heat exchanger,

"(E) a waste heat boiler,

"(F) a heat pipe,

"(G) an automatic energy control system,

"(H) a turbulator,

"(I) a preheater,

"(J) a combustible gas recovery system,

"(K) an economizer,

"(L) an industrial heat pump, or

"(M) any other property of a kind specified by the Secretary by regulations,

the principal purpose of which is reducing the amount of energy consumed, or the amount of heat wasted, in any existing operation and which is installed in connection with an existing industrial, agricultural, utility, or commercial facility.

Mr. ALLEN. The Kennedy amendment would bring all of the credits down to 10 percent. I believe there is justification for disparity. I thought the disparity was too great between the 40 percent as against the 10 percent; yet I believe 20 percent would be a more reasonable figure. It would constitute a 50-percent reduction in the credit proposed by the Finance Committee. I believe that would be fair and equitable, and I call for the yeas and nays, Mr. President.

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

Mr. KENNEDY. Mr. President, I will not delay the Senate much longer. But I point out that we have a 10-percent investment credit in the law now. With the amendment of the Senator from Alabama, we would be adding 20 percent more. So the total credit would be 30 percent, which is an unprecedented level for a tax credit, obviously.

Just very briefly I would refer my colleagues to the language on page 59 of the committee bill, which says that firms do not have to convert fully to coal. They can shift to a fuel stream which is 75 percent gas or oil, and still get their tax credit. Seventy-five percent gas and oil and still get their gas credit on this. That is what we are talking about here.

As the Senator from Kansas has pointed out, these companies, under the Coal Conversion Act, are going to be required to convert by 1990, in any event. There has not been a new oil or gas boiler ordered in 18 months. The number of coal boilers has increased by 60 percent this year alone. There may be a justification for marginal increase, but certainly not to the extent set forth by the Senator from Alabama.

Finally, I would point out that the amendment of the Senator from Ohio (Mr. METZENBAUM), as he stated, would save 1.250 million barrels, which is exactly what the Senate Finance Committee claims for its 40-percent credit. The Senator from Louisiana disputes those figures now, but they were not disputed during the course of the debate.

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

Mr. KENNEDY. I will not delay the Senate long. I would like to yield briefly. I yield to the Senator from New Hampshire for a question.

Mr. DURKIN. I thank the Senator. Is it not true that the investment tax credit that we are now talking about would require an additional 20 percent, which is important to people in New England who are trying to bring local hydro on the line?

Mr. KENNEDY. What this amendment of the Senator does, Mr. President, is to create a 30 percent credit. It is unjustified. Mr. President, I move to table the amendment of the Senator from Alabama and I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, I ask unanimous consent that the distinguished Senator from South Carolina (Mr. THURMOND) and the distinguished Senator from West Virginia (Mr. RANDOLPH) be added as cosponsors.

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

The question is on the motion to table.

Mr. ALLEN. I call for the yeas and nays.

Mr. KENNEDY. Mr. President, I would be delighted to have a division, a standing vote.

The PRESIDING OFFICER. The yeas and nays have already been ordered. The clerk will call the roll. The question is on agreeing to the motion to table the amendment of the Senator from Alabama.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Colorado (Mr. HASKELL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Ohio (Mr. METZENBAUM), the Senator from Maryland (Mr. SARBANES), the Senator from Alabama (Mr. SPARKMAN), the Senator from Illinois (Mr. STEVENSON), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

Mr. BAKER. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from New York (Mr. JAVITS), the Senator from Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT) is absent on official business.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD), and the Senator from Alaska (Mr. STEVENS) would each vote "nay."

The result was announced—yeas 41, nays 34, as follows:

[Rollcall Vote No. 595 Leg.]

YEAS—41

Abourezk	Cranston	Lugar
Baker	Culver	Magnuson
Bartlett	DeConcini	Mathias
Bayh	Dole	McIntyre
Bellmon	Eagleton	Morgan
Brooke	Glenn	Pearson
Bumpers	Hart	Pell
Burdick	Hathaway	Proxmire
Byrd, Harry F., Jr.	Hollings	Ribicoff
Case	Huddleston	Riegle
Chafee	Jackson	Roth
Church	Kennedy	Stafford
Clark	Laxalt	Weicker
	Leahy	Zorinsky

NAYS—34

Allen	Heinz	Randolph
Bentsen	Helms	Sasser
Byrd, Robert C.	Johnston	Schmitt
Cannon	Long	Schweiker
Chiles	Matsunaga	Stennis
Curtis	McClure	Stone
Danforth	Melcher	Thurmond
Durkin	Moynihan	Tower
Eastland	Nelson	Wallop
Ford	Nunn	Williams
Gravel	Packwood	
Hansen	Percy	

NOT VOTING—25

Anderson	Domenici	Goldwater
Biden	Garn	Griffin
Haskell	McClellan	Sparkman
Hatch	McGovern	Stevens
Hatfield	Metcalf	Stevenson
Hayakawa	Metzenbaum	Talmadge
Humphrey	Muskie	Young
Inouye	Sarbanes	
Javits	Scott	

So the motion to lay on the table amendment numbered 1001 was agreed to.

Mr. LONG. Mr. President, I ask unanimous consent that when we meet on tomorrow, there be a 10-minute limitation, to be equally divided between the Senator from Massachusetts and the manager of the bill, on the Kennedy amendment.

Mr. ALLEN. Mr. President, reserving the right to object.

Mr. KENNEDY. Mr. President, reserving the right to object, I should like to hear from the leader about the voting. I was in my seat from 3 o'clock until 8:30, prepared to offer an amendment. I was prepared to agree to a half-hour time limitation. I listened with interest to what the leader has said, along with others, on it. I certainly hope that we could follow what the leader said and we will be able to vote this evening.

I waited 5½ hours to gain the floor and agreed to a 30-minute limitation. I am realistic enough to know that anybody can take it. People have threatened it on the floor. I hope the leader will speak on this issue now, as he spoke about it before.

Mr. LONG. I would like to speak one moment before the leader speaks.

Mr. President, when the Senator brought up his amendment, I was not the one who objected to a unanimous-consent agreement. It was Mr. ABOUREZK who objected to a unanimous-consent agreement. As far as I was concerned, I was willing to agree to a unanimous-consent agreement.

There were 75 votes. Seventy-five Senators were present and voting on the last rollcall. That means we have 25 absentees.

Mr. President, the point is, we estimate that this amendment knocks out about 50 percent of the energy saving in this bill. If we had agreed to a unanimous-consent request, fine. I would be willing to abide by it. But we did not agree to it. Mr. ABOUREZK objected.

That being the case, it seems to me, Mr. President, we ought to vote tomorrow when we have a more full attendance than we have now; some Senators are not here, and, obviously, I do not have any doubt how the vote would go right now. That is why I think we ought to vote tomorrow.

Mr. LEAHY. Will the Senator yield?

Mr. LONG. Yes.

Mr. LEAHY. Would it make a difference to the Senator if we did a head count to see which one of the bad guys would agree tomorrow, however divided?

Mr. LONG. Mr. President, the last time I did a tally, it looked like my side was behind because of the absentees. We have more absentees than the other side.

When we enter a unanimous-consent request, we take that chance. But when somebody objects to it——

Mr. KENNEDY. I would just like to hear from the leader about whether we are going——

Mr. ROBERT C. BYRD. The Senator likes to needle the leader.

I tried to get a unanimous-consent agreement earlier for 30 minutes on the Senator's amendment. He was very agreeable to that. There was an objection raised. I cannot help it because the objection was raised. I am willing, it is fine with me to stay in.

But, however, if it is the Senator from Louisiana or the Senator from Massachusetts managing the bill, I have to lean on that manager of the bill. If he does not want to go, I cannot make him go.

Talk about the leader, I am willing to stay here until 12 or 1 in the morning, but I cannot make Senator RANDOLPH, when he manages a bill, stay here if he does not want to stay.

Now, if Senator LONG wants to stay here, I am willing to stay, and I hope he will. But he has been here since 9:30 this morning. If he and Mr. CURTIS want to go home, fine. I cannot force them to go on. That is all I can do.

He has said he does not want to go forward. I know where I stand, so I cannot say. The leader cannot say any more than he is saying. He has done the best he can do.

Mr. ABOUREZK. May I say something?

The PRESIDING OFFICER. Is there objection?

Several Senators addressed the Chair.

Mr. ABOUREZK. Reserving the right to object.

The PRESIDING OFFICER. The Senator from South Dakota reserves the right to object.

Mr. ABOUREZK. My name has been bandied about here quite freely, so I have a right to respond, I think.

Now, it was not the Senator, he is not losing because I objected to that request earlier.

Mr. LONG. The Senator is losing——

Mr. ABOUREZK. All I am losing is a lot of sleep, not losing any votes. The Senator is the one losing the votes and wants to give up until tomorrow.

All I asked was that the leader let us go home early tonight and eat with our families and go to bed at a decent hour.

The leader convinced me we ought to stay in and I think we ought to stay. But we ought to separate the issues. The objection to the request had nothing to do with whether we come back tomorrow or not.

The PRESIDING OFFICER. Is there objection?

Mr. ABOUREZK. I object.

Mr. WEICKER. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Louisiana.

Mr. LONG. Mr. President, as I was saying, it is the estimate of the committee that in the year 1985 under the bill we will save 2,124,000 barrels of oil imports a day and of that we would save 325,000 of it because of the residential energy credit, which this Senate voted for yesterday.

We hoped to save 26,000 with the transportation credit. We would save 265,000 from tax incentives relating to alternative sources of fuel to produce energy.

Put that together and what does it add up to?

It adds up to a saving of, roughly, 600,000 barrels per day.

Let us take 600,000 barrels. Let us take one other item. This is the additional refundable investment tax credit which accounts for almost all of it, 1,300,000 barrels per day.

This one item, 1,300,000 barrels a day gives us twice as much saving as all the rest put together. Twice as much from that one item.

We voted for the Metzenbaum amendment offered to us yesterday. The Metzenbaum amendment estimated big energy savings. Why? Because it was built on top of the 1.3 million. It was assuming we would still have the 40-percent refundable investment tax credit, and that in addition to the 40-percent investment tax credit saving 1.3 million barrels per day, some additional savings would be achieved from the Metzenbaum amendment.

But the overwhelming bulk of the so-called savings in the Metzenbaum amendment was because of the 1.3 million that is built in by the additional investment credit, not the small amounts, because of the Metzenbaum tax that go along with it.

The Metzenbaum amendment would do little in its own right, over and above the tax credit, because it exempted all existing facilities that burned gas. To all intents and purposes, it exempted practically everything that does not burn coal.

Look at what they had to save. Only 10 percent of what they hoped to save in oil and gas use with the Metzenbaum amendment would come from—10 percent of it, only 10 percent—what was to be saved by converting any of the existing facilities.

Where was the other 90 percent to be saved?

Either by building new facilities or, by what is in this bill, to provide a tax incentive to save. As a practical matter, Mr. President, nobody is converting over now when they get a 10-percent tax credit. The law says everyone must convert by 1990, but nothing has happened yet. Nothing much is being placed on order in the way of anything new.

Where are the savings supposed to come from?

Two-thirds of the savings in this bill is to come from a big 40-percent investment tax credit and by letting the investors depreciate the full price of the equipment, as well. An enormous tax incentive that was never voted before.

There is where we will get two-thirds of the savings in the bill.

Now, the Senator would strike that and he would substitute in lieu thereof a 10-percent investment tax credit.

Mr. President, in our view, that is throwing feed at the chickens. It is not going to accomplish much of anything.

The oil savings estimate is so low that it is not worth talking about.

Now, after we worked long hours, came in early and stayed late, are we now going to have a situation where Senators wander off the floor, wander to the cloakrooms, take a little nap in the marble rooms, visit this office, visit that office, putter around, talk about matters of the day, visit down in the restaurant, and after a while come in, having heard very little debate, and proceed to gut the bill? Is that what we are going to do?

Mr. President, that would be a very frustrating thing for those of us who have worked very long and hard on this bill to see happen.

So, Mr. President, if we cannot get the Congress to vote for the large tax credit incentive to get some oil savings, and the Metzenbaum amendment does not provide the oil savings, where are they to come from?

The Metzenbaum amendment says that only the people who can convert will go ahead and burn coal with their equipment; and they do not have to put in scrubbers, the way he explained it last night.

So, we are facing a situation in which Congress is not willing to say that those who have the gas-burning and oil-burning facilities that they will have to convert to coal. The Metzenbaum amendment says that those who can easily convert should do so, but it left unsaid what needs to be done with regard to the big problem—that is, the problem of convincing those who own hard to convert facilities that should convert their facilities into coal-burning facilities.

Mr. President, a lot needs to be done if we are going to pass an effective bill. We need to do a great deal more to encourage people to insulate houses. Yes, that will help. It will help if we can persuade people to take the shale rock in the great mountain areas and convert that rock into shale oil. That will help. But it is not going to do a great deal in the short run. It will take time.

Plants have to be built that are very expensive plants. So far, what has been done in this new industry has been very little, negligible.

But in time, those plants will be built and really will it be possible to convert economically to shale oil. It is going to cost not just $100 million or $200 million or $300 million. Those plants will cost $1 billion or even more.

However, the tax incentive we put in the bill for shale oil does remain. So, at least if one can build a billion dollar plant today, if he can get commercial production started, he will get a subsidy of about $3 for a barrel of oil. It costs nothing unless we get some energy.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. ALLEN. One of the objections to the 40-percent figure earlier in the evening was the fact that it would be refundable. I am wondering if there might be a possibility of a compromise amendment leaving the 40-percent figure as is but providing that it would be nonrefundable. That would be a compromise as between those who did want the nonrefundable feature which was defeated by the Senate after a motion to table had failed, after the eloquent argument by the distinguished floor manager of the bill.

I am wondering if those two features could be merged—the 40 percent, but providing that that should be nonrefundable—so it would not cause any payment of a refundable credit to a private enterprise company. It would all have to come out of taxes.

I wonder whether the distinguished manager of the bill would look with some favor on an approach of that sort.

Mr. LONG. Mr. President, I regret to say that I was distracted while the Senator was asking the question, and I ask the Senator to kindly repeat the question.

Mr. ALLEN. Earlier in the evening, there seemed to be a considerable body of opinion in the Senate that the 40-percent credit and the 10-percent credit should be nonrefundable. The Senate voted to make the credits refundable.

I am wondering whether we might merge those two opinions, those who feel that the 40-percent credit should be allowed and those who feel that the credit should be nonrefundable; whereas, under the present provision of the bill it is refundable, but leave the 40-percent figure and provide that that would be on a nonrefundable basis. In other words, there would be no refunds to companies that did not have a tax liability.

Mr. LONG. Mr. President, I honestly believe that we have a better provision with the refundability in it, in terms of justice and equity and merit, where we treat all alike. Basically, that is what we are talking about. The consumer of the product gets the same treatment, whether it is a publicly owned facility or a privately owned facility. It seems to me that the social and economic justice involved in that is a very important issue.

Mr. DOLE. Mr. President, will the Senator from Louisiana yield?

Mr. LONG. I yield.

Mr. DOLE. What about a 15-percent compromise, rather than 20 percent?

Mr. LONG. Mr. President, that sounds as though it might be a reasonable proposition.

I ask the Senator from Massachusetts if, in the spirit of compromise, he might be willing to agree to 15 percent.

Mr. KENNEDY. That sounds reasonable.

Mr. LONG. Would the Senator be so kind as to modify his amendment to make it 15 percent?

Mr. KENNEDY. Mr. President, I request that the amendment be so modified.

The PRESIDING OFFICER. Unanimous consent is required because the yeas and nays have been ordered. Is the Senator from Massachusetts asking unanimous consent?

Mr. KENNEDY. I so ask, Mr. President.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment is so modified.

SEVERAL SENATORS: Vote! Vote!

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

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the amendment of the Senator from Massachusetts, as modified.

Mr. ROBERT C. BYRD. Mr. President, I ask the manager of the bill what his wishes are with respect to proceeding further into the evening.

Mr. LONG. Mr. President, I cannot speak for others, but I believe the others are as tired as I am. We started debating about 9:30 a.m., and it is now 10:10 p.m. Some of us begin to get a little hazy after 12 hours of debating.

I think we all would be in better shape to legislate—we are not going to pass the bill tonight, anyway—if we go home after this vote and come back and start tomorrow, whatever time our slave-driving majority leader thinks would be fair. [Laughter.]

I say that without meaning any criticism of the majority leader. He works harder than anyone else, and he cannot understand why other people cannot do the same. I understand that.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today—and this will be the last rollcall vote of today—that it stand in recess until the hour of 10 a.m. tomorrow morning.

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

ENERGY PRODUCTION AND CONSERVATION TAX INCENTIVE ACT

The Senate continued with the consideration of H.R. 5263.

Mr. CURTIS. Mr. President, I ask unanimous consent that Mr. Gary Crawford, of Senator THURMOND's staff, be accorded the privilege of the floor during consideration of this measure and votes thereon.

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

The question is on agreeing to the amendment, as modified, of the Senator from Massachusetts.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Texas (Mr. BENTSEN), the Senator from Delaware (Mr. BIDEN), the Senator from Colorado (Mr. HASKELL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Ohio (Mr. METZENBAUM), the Senator from Maryland (Mr. SARBANES), the Senator from Alabama (Mr. SPARKMAN), the Senator from Illinois (Mr. STEVENSON), the Senator from Georgia (Mr. TALMADGE), are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE), is absent on official business.

I also announce that the Senator from Maine (Mr. MUSKIE), is absent because of illness.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. BAKER. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from New York (Mr. JAVITS), the Senator fom Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG), are necessarily absent.

I also announce that the Senator from Virginia (Mr. SCOTT), is absent on official business.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD), and the Senator from Alaska (Mr. STEVENS) would each vote "yea."

The result was announced—yeas 72, nays 1, as follows:

[Rollcall Vote No. 596 Leg.]

YEAS—72

Abourezk	Eastland	Nelson
Allen	Ford	Nunn
Baker	Glenn	Packwood
Bartlett	Gravel	Pearson
Bayh	Hansen	Pell
Belmon	Hart	Percy
Bumpers	Hathaway	Proxmire
Burdick	Heinz	Randolph
Byrd,	Helms	Ribicoff
Harry F., Jr.	Hollings	Riegle
Byrd, Robert C.	Huddleston	Roth
Cannon	Jackson	Sasser
Case	Johnston	Schmitt
Chafee	Kennedy	Schweiker
Chiles	Laxalt	Stafford
Church	Leahy	Stennis
Clark	Long	Stone
Cranston	Lugar	Thurmond
Culver	Magnuson	Tower
Curtis	Mathias	Wallop
Danforth	Matsunaga	Weicker
DeConcini	McClure	Williams
Dole	McIntyre	Zorinsky
Durkin	Melcher	
Eagleton	Moynihan	

NAYS—1

Morgan

NOT VOTING—27

Anderson	Hatch	Metzenbaum
Bentsen	Hatfield	Muskie
Biden	Hayakawa	Sarbanes
Brooke	Humphrey	Scott
Domenici	Inouye	Sparkman
Garn	Javits	Stevens
Goldwater	McClellan	Stevenson
Griffin	McGovern	Talmadge
Haskell	Metcalf	Young

So Mr. KENNEDY's amendment (No. 1467), as modified, was agreed to.

Mr. LEAHY. Mr. President, the Senate has already gone on record in the Public Utilities Regulatory Policy Act in favor of studying the efficacy of load management devices to improve utility efficiency and reliability.

As the distinguished chairman of the Finance Committee Senator LONG may know, utilities in Vermont have pioneered in the use of various load management techniques to improve efficiency of operation. As overall electrical demand increases year by year, load management can shave the peaks in electrical demand, thereby delaying the need for more powerplants. Spreading the load more evenly among existing generators today is a way to both conserve capital in a very capital-intensive industry, and precious energy, for tomorrow. Effective load management thereby helps to reduce the ultimate costs to consumers for a vital commodity that is taking an ever larger portion of their already overstrapped budgets. At the same time it conserves increasingly scarce and expensive fossil fuels.

Mr. President, two Vermont utilities—Central Vermont Public Service Corporation and Green Mountain Power Corporation—have established a voluntary time of day rate for their residential customers. Although a relatively small portion of residential customers have elected to participate in this program, customer satisfaction appears to be high in both utility service areas and there is a waiting list of applicants for this rate.

However, the time of day rates require a new and more sophisticated meter which can cost upward of several hundred dollars. I might point out that under section 1031 of the bill an "automatic energy control system" is eligible for the credit as specially defined energy property, and it would certainly seem reasonable that such equipment be similarly covered under the residential tax credit for "other energy-conservating components."

At this time I should like to ask the distinguished chairman of the Finance Committee whether residential load management devices would be eligible for the tax credit under section 1011 of the bill? Does he see such devices being included as one of the items the Secretary may, at his discretion, declare eligible for the tax credit?

Mr. LONG. Yes, this certainly is one of the items the Secretary may, at his discretion, declare eligible for the tax credit.

NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS

Mr. HART. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1131.

The PRESIDING OFFICER (Mr. MATSUNAGA) laid before the Senate the amendments of the House of Representatives to the bill (S. 1131) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

(The amendments of the House are printed in the House proceedings of the RECORD of September 12, 1977.)

Mr. HART. Mr. President, I move that the Senate disagree to the amendments of the House of Representatives and request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. HART, Mr. RANDOLPH, Mr. GRAVEL, Mr. ANDERSON, Mr. MOYNIHAN, Mr. MCCLURE, Mr. STAFFORD, Mr. DOMENICI, and Mr. BAKER conferees on the part of the Senate.

CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the following resolution, which are all printing resolutions, that have been cleared on the minority side: Senate Resolution 294, House Concurrent Resolution 182. House Concurrent Resolution 190, House Concurrent Resolution 204, House Concurrent Resolution 205, House Concurrent Resolution 217, and House Concurrent Resolution 222.

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

ADDITIONAL EXPENDITURES FOR COMMITTEE ON ENERGY AND NATURAL RESOURCES

The resolution (S. Res. 294) authorizing additional expenditures by the Committee on Energy and Natural Resources for routine purposes was considered and agreed to, as follows:

Resolved, That the Committee on Energy and Natural Resources is authorized to expend from the contingent fund of the Senate, during the Ninety-fifth Congress, $50,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act approved August 2, 1946.

BLACK AMERICANS IN CONGRESS

The Senate proceeded to consider the concurrent resolution (H. Con. Res. 182) providing for the printing as a House document of the pamphlet entitled "Black Americans In Congress," which had been reported from the Committee on Rules and Administration with amendments as follows:

On page 3, line 4, strike "two hundred and thirty-eight thousand six hundred" and insert "one hundred eight-nine thousand two hundred";

On page 3, line 7, strike "sixty-one thousand eight hundred" and insert "twelve thousand four hundred";

The amendments were agreed to.

The concurrent resolution, as amended, was agreed to.

The preamble was agreed to.

HOW OUR LAWS ARE MADE

The Senate proceeded to consider the concurrent resolution (H. Con. Res. 190) to provide for the printing of the brochure entitled "How Our Laws Are Made," which had been reported from the Committee on Rules and Administration with an amendment on page 2, beginning with line 4, to insert the following:

SEC. 2. There shall be printed for the use of the Senate thirty-six thousand four hundred additional copies of the document specified in section 1 of this concurrent resolution.

The amendment was agreed to.

The concurrent resolution, as amended, was agreed to.

OUR FLAG

The Senate proceeded to consider the concurrent resolution (H. Con. Res. 204) to authorize the printing of a revised edition of "Our Flag" as a House document, which had been reported from the Committee on Rules and Administration with amendments as follows:

On page 1, line 6, strike "two hundred and seventy-six thousand" and insert "two hundred fifty thousand two hundred and fifty";

On page 1, line 9, strike "fifty-one thousand five hundred" and insert "twenty five thousand seven hundred and fifty";

The amendments were agreed to.

The concurrent resolution, as amended, was agreed to.

OUR AMERICAN GOVERNMENT

The Senate proceeded to consider the concurrent resolution (H. Con. Res. 205) to authorize the printing of a revised edition of "Our American Government" as a House document, which had been reported from the Committee on Rules and Administration with amendments as follows:

On page 1, line 7, strike "five hundred and fifty-six thousand" and insert "five hundred and five thousand";

On page 1, line 10, strike "one hundred and three thousand" and insert "fifty-two thousand";

The amendments were agreed to.

The concurrent resolution, as amended, was agreed to.

THE CONSTITUTION

The Senate proceeded to consider the concurrent resolution (H. Con. Res. 217) to provide for the printing of a revised edition of "The Constitution of the United States of America," which had been reported from the Committee on Rules and Administration with amendments as follows:

On page 1, line 7, strike "two hundred and ninety-eight thousand" and insert "two hundred seventy-six thousand eight hundred";

On page 2, line 1, strike "fifty-one thousand five hundred" and insert "thirty thousand three hundred":

The amendments were agreed to.

The concurrent resolution, as amended, was agreed to.

THE CAPITOL

The Senate proceeded to consider the concurrent resolution (H. Con. Res. 222) to authorize the printing of a revised edition of "The Capitol," as a House document, which had been reported from the Committee on Rules and Administration with amendments as follows:

On page 1, line 6, strike "five hundred and seventy-five thousand" and insert "five hundred forty-four thousand eight hundred";

On page 1, line 9, strike "one hundred and three thousand" and insert "seventy-two thousand eight hundred";

The amendments were agreed to.

The concurrent resolution, as amended, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move to reconsider en bloc the votes by which the various resolutions were agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the votes by which the resolutions were agreed to.

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

The motion to lay on the table was agreed to.

ORDER FOR RECESS FROM SATURDAY UNTIL 10 A.M. MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in recess until the hour of 10 a.m. on Monday next.

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of morning business at this time.

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. Chirdon, one of his secretaries.

APPROVAL OF BILL

A message from the President of the United States announced that on October 28, 1977, he approved and signed the bill (S. 1682) to provide for the implementation of treaties for the transfer of offenders to or from foreign countries.

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.)

REPORT ON CYPRUS—PM 126

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

Pursuant to Public Law 94–104, this report describes the efforts that the United States has made over the past sixty days to promote a settlement on Cyprus.

There have been no further intercommunal talks under U.N. auspices since the submission of my last report to the Congress in August, and none are presently scheduled. This negotiating pause

could easily last for several months more, through the forthcoming Greek elections in November and the Cyprus Presidential elections in February. However, we have not allowed ourselves to proceed on this assumption. Instead, we have continued actively to encourage a resumption of the intercommunal talks and, more importantly, have sought to ensure that, once these do reconvene, there will be meaningful discussion of the major unresolved issues.

We directed our attention to this goal during the special U.N. Security Council consideration of the Cyprus issue requested by the Government of Cyprus in late August and early September. A consensus resolution eventually emerged that was both equitable and nonpolemical, which called upon the parties to avoid provocative acts and resume intercommunal negotiations.

At the same time, we consulted with the Greek and Turkish governments to set the stage for a series of meetings in New York in which Secretary Vance and my Special Representative, Clark Clifford, met with President Kyprianou and Foreign Minister Christofides of Cyprus and with Foreign Ministers Bitsios and Caglayangil of Greece and Turkey. These New York meetings have encouraged us to believe that progress on Cyprus may be possible in the months ahead. We noted a growing recognition in the region that a just solution to the Cyprus issue will serve the long-term interests of all the nations in the Eastern Mediterranean.

Secretary Vance also met in New York with U.N. Secretary General Waldheim and with the Foreign Ministers of Great Britain, the Federal Republic of Germany, and other interested Western allies. All view the situation in the Eastern Mediterranean much as we do, and urgently wish to see progress toward a Cyprus settlement.

So, too, do the Cypriots. While in New York for the U.N. General Assembly, I had a useful discussion with Cyprus President Spyros Kyprianou. I assured him that the United States sincerely wishes to help the people of Cyprus find a just and lasting settlement, and that we stand ready, as in the past, to support the current U.N. negotiating effort in any way we can. President Kyprianou in turn assured me of his people's earnest desire for a settlement and of their hope that the United States can help bring this about.

In sum, therefore, I believe that I can record here—as I have not been able to do in the last two such reports—a cautious anticipation that movement toward meaningful Cyprus negotiations may soon be possible.

JIMMY CARTER.

THE WHITE HOUSE, *October 28, 1977.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 11:14 a.m., a message from the House of Representatives delivered by Mr. Hackney, one of its clerks, announced that the Speaker has signed the following enrolled bills:

S. 717. An act to promote safety and health in the mining industry, to prevent recurring disasters in the mining industry, and for other purposes.

H.R. 3093. An act to provide duty-free treatment for certain copying lathes used for making rough or finished shoe lasts and for parts of such lathes, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore.

At 3:56 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its clerks, announced that the House has passed the bill (H.R. 9346) to amend the Social Security Act and the Internal Revenue Code of 1954 to strengthen the financing of the social security system, to reduce the effect of wage and price fluctuation on the system's benefit structure, to provide for the conduct of studies with respect to coverage under the system for Federal employees and for employees of State and local governments, to increase the earnings limitation, to eliminate certain gender-based distinctions and provide for a study of proposals to eliminate dependency and sex discrimination from the social security program, and for other purposes, in which it requests the concurrence of the Senate.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CANNON, from the Commitee on Rules and Administration:

Without amendment:

S. Res. 294. A resolution authorizing additional expenditures by the Committee on Energy and Natural Resources for routine purposes (Rept. No. 95-555).

With amendments:

H. Con. Res. 182. A concurrent resolution providing for the printing as a House document of the pamphlet entitled "Black Americans in Congress" (Rept. No. 95-556).

With an amendment:

H. Con. Res. 190. A concurrent resolution to provide for the printing of the brochure entitled "How Our Laws Are Made" (Rept. 95-557).

With amendments:

H. Con. Res. 204. A concurrent resolution to authorize the printing of a revised edition of "Our Flag" as a House document (Rept. No. 95-558).

H. Con. Res. 205. A concurrent resolution to authorize the printing of a revised edition of "Our American Government" as a House document (Rept. No. 95-559).

H. Con. Res. 217. A concurrent resolution to provide for the printing of a revised edition of "The Constitution of the United States of America" (Rept. No. 95-560).

H. Con. Res. 222. A concurrent resolution to authorize the printing of a revised edition of "The Capitol", as a House document (Rept. No. 95-561).

By Mr. MAGNUSON, from the Committee on Appropriations:

Without amendment:

S. Res. 282. A resolution disapproving the proposed deferral of budget authority for acquisition, construction and improvements by the United States Coast Guard, Department of Transportation (Rept. No. 95-562).

H.R. 9019. An act to rescind certain budget authority contained in the message of the President of July 19, 1977 (H. Doc. 95-188), transmitted pursuant to the Impoundment Control Act of 1974 (Rept. No. 95-563).

With amendments:

H.R. 9375. An act making supplemental appropriations for the fiscal year ending September 30, 1978, and for other purposes (Rept. No. 95-564).

By Mr. CANNON, from the Committee on Rules and Administration:

Without amendment:

S. Res. 312. An original resolution amending the subpoena authority of the Select Committee on Ethics contained on Section 3(d) of Senate Resolution 338, agreed to July 24, 1964 (Rept. No. 565).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Human Resources:

Gerald L. Klerman, of Massachusetts, to be Administrator of the Alcohol, Drug Abuse, and Mental Health Administration.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that today, October 28, 1977, he presented to the President of the United States the enrolled bill (S. 717) to promote safety and health in the mining industry, to prevent recurring disasters in the mining industry, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. EASTLAND (for himself, Mr. KENNEDY, Mr. BENTSEN, and Mr. DECONCINI):

S. 2252. A bill to amend the Immigration and Nationality Act and for other purposes; to the Committee on the Judiciary.

By Mr. EASTLAND:

S. 2253. A bill to amend title 28 of the United States Code to encourage prompt, informal and inexpensive resolution of civil cases by use of arbitration in United States district courts, and for other purposes; to the Committee on the Judiciary.

By Mr. STEVENS (for himself and Mr. GRAVEL):

S. 2254. A bill directing the Secretary of the Interior to convey certain property to David Sanhite Peele; to the Committee on Energy and Natural Resources.

By Mr. METCALF:

S. 2255. A bill for the relief of Suneetha DeSilva, her husband Ajith DeSilva, and her daughter Varsha Aneetha DeSilva; to the Committee on the Judiciary.

By Mr. RIEGLE:

S. 2256. A bill for the relief of Adat Shalom Synagogue; to the Committee on the Judiciary.

By Mr. MATHIAS (for himself and Mr. SARBANES):

S. 2257. A bill to amend the Railroad Retirment Act of 1974 to provide that a current connection with the railroad industry is not lost by reason of certain employment with the Department of Energy; to the Committee on Human Resources.

By Mr. TOWER:

S. 2258. A bill for the relief of Hildegard Mercedes Schlubach Ercklenz, Enno W. Ercklentz, Junior, Hildegarde Ercklentz Merrill, and Alexander T. Ercklentz, all citizens of the United States; to the Committee on the Judiciary.

By Mr. NELSON (for himself and Mr. HATHAWAY):

S. 2259. A bill to amend the Small Business Act to expand and revise the procedures for insuring small business participation in Government procurement activities, and for other purposes; to the Select Committee on Small Business.

By Mr. MATSUNAGA:

S. 2260. A bill for the relief of Judge Louis LeBaron; to the Committee on the Judiciary.

By Mr. HATHAWAY:

S. 2261. A bill to implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property; to the Committee on Finance.

By Mr. THURMOND:

S. 2262. A bill for the relief of Frans Mustert; to the Committee on the Judiciary.

By Mr. THURMOND (by request):

S. 2263. A bill to amend title 38, United States Code, to establish a Court of Veterans' Appeals and to prescribe its jurisdiction and functions; to the Committee on Veterans' Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. EASTLAND (for himself, Mr. KENNEDY, Mr. BENTSEN, and Mr. DECONCINI):

S. 2252. A bill to amend the Immigration and Nationality Act and for other purposes; to the Committee on the Judiciary.

Mr. EASTLAND. Mr. President, I introduce the Alien Adjustment and Employment Act of 1977, and I ask unanimous consent that a copy of the bill together with a section-by-section analysis of the bill be printed at this point in the RECORD.

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

S. 2252

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 "Alien Adjustment and Employment Act of 1977."

SEC. 2. (a) Section 249 of the Immigration and Nationality Act (8 U.S.C. 1259) is amended to read as follows:

"(a) A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(1) entered the United States prior to January 1, 1970; and

(2) has had his residence in the United States continuously since such entry.

"(b) This section shall not apply to any alien who has assisted in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.".

(b) The title preceding section 249 of such Act is amended to read as follows: "Record of admission for permanent residence in the case of certain aliens who entered the United States prior to July 1, 1924, or January 1, 1970".

(c) The resignation of section 249 in the table of contents (Title II—Immigration, chapter 5) of such Act is amended to read as follows:

"Sec. 249. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to July 1, 1924, or January 1, 1970.".

SEC. 3. Section 201(a) of the Immigration and Nationality Act (8 U.S.C. 115(a)) is amended to read as follows:

"(a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives of United States citizens as specified in subsection (b) of this section, and of aliens in whose case a record of lawful admission for permanent residence is made pursuant to section 249, (1) the number of aliens born in any foreign state or dependent area located in the Eastern Hemisphere who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and shall not in any fiscal year exceed a total of 170,000; and (2) the number of aliens born in any foreign state of the Western Hemisphere or in the Canal Zone, or in a dependent area located in the Western Hemisphere, who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of 32,000 and shall not in any fiscal year exceed a total of 120,000.".

SEC. 4. (a) Notwithstanding any other provisions of law, any alien in the United States may, in the discretion of the Attorney General and under such regulations as he may prescribe, be permitted to reside in the United States temporarily until five years from the effective date of this Act, if such alien applies for such status within one year of the effective date of this Act and establishes to the satisfaction of the Attorney General that

(1) entered the United States on or before January 1, 1977;

(2) has had his residence in the United States continuously since such entry; and

(3) is not inadmissable under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens.

(b) This section shall not apply to any alien who:

(1) on January 1, 1977 was a nonimmigrant whose authorized stay, including any extension of the period of original admission, had not expired; or

(2) immediately prior to losing lawful nonimmigrant status had the status of a nonimmigrant student; or

(3) was formerly a nonimmigrant exchange alien as defined in section 101(a)(15)(J) of the Immigration and Nationality Act subject to the two-year foreign residence requirement of section 212(e) of the Act and has not fulfilled that requirement or received a waiver thereof; or

(4) has assisted in the persecution of any person or group of persons because of race, religion, nationality, membership in a particular social group, or political opinion.

(c) An alien granted temporary resident alien status under this section shall be issued such documentation as the Attorney General may by regulation prescribe.

(d) The Attorney General shall authorize the employment of any alien who is granted temporary resident alien status under this section.

(e) Notwithstanding sections 211(a) and 212(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1181(a) and 1182(a)(20)), the Attorney General may, in his discretion and under such regulations as he may prescribe, authorize the readmission into the United States of any alien who has temporary resident alien status pursuant to this section and who is returning to a residence in the United States from a temporary visit abroad, without requiring such alien to obtain a passport, immigrant visa, reentry permit, or other documentation. An alien who qualifies for readmission under this subparagraph shall not be subject to the requirements of section 212(a)(14) of the Immigration and Nationality Act, (8 U.S.C. 1182(a)(14)).

(f) If at any time after a person has obtained temporary resident alien status under this section, it shall appear to the satisfaction of the Attorney General that such person was not in fact eligible for such status, the Attorney General shall rescind the grant of temporary resident alien status to such person, and the person shall thereupon be subject to the provisions of the Immigration and Nationality Act to the same extent as if the grant of temporary resident alien status had never been made.

(g) Except as otherwise specifically provided in this section, nothing in this section shall be construed to give or confer upon an alien who is granted temporary resident alien status any privileges, rights, benefits, exemptions, or immunities under the Immigration and Nationality Act for which they would not otherwise be qualified.

(h) An alien who is granted temporary resident alien status under this section shall not be eligible to receive any benefits under any of the following provisions of law:

(1) Grants to States for Medical Assistance Programs under Title XIX of the Social Security Act (42 U.S.C. 1396 et. seq.);

(2) Aid to Families with Dependent Children under Title IV, Part A, of the Social Security Act (42 U.S.C. 601 et. seq.);

(3) Supplemental Security Income for the Aged, Blind, and Disabled under Title XVI of the Social Security Act (42 U.S.C. 1381 et. seq.); and

(4) Food Stamp Act of 1964, as amended (7 U.S.C. 2011 et. seq.)

SEC. 5. (a) Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended:

(1) by inserting after subsection (b) the following new subsection:

"(c)(1) It shall be unlawful for any employer to employ aliens in the United States who have not been lawfully admitted to the United States for permanent residence, unless the employment of such aliens is authorized by the Attorney General.

"(2) Any employer who violates this subsection shall be subject to a civil penalty or not more than $1,000 for each such alien in the employ of the employer on the effective date of this subsection or who has thereafter been employed by the employer, except for such alien whose status was adjusted or application for adjustment was pending pursuant to the terms of section 2 or section 4 of the Alien Adjustment and Employment Act of 1977.

"(3) The United States district courts shall have jurisdiction to enjoin violations of this subsection.

"(4) Upon determination that cause exists to believe that an employer has engaged in a pattern or practice of employing aliens in violation of this subsection, the Attorney General shall bring actions for both civil

penalty and injunctive relief in the United States district court in any district in which the employer is alleged to have violated this subsection, or in any district in which the employer is found or transacts business.

"(5) Proof by an employer with respect to any person employed by him that, prior to the person's employment, or, in the case of a person hired prior to the effective date of this subsection, as soon as practicable but in any event within 90 days of such effective date, he saw such documentary evidence of eligibility to work in the United States as the Attorney General has by regulation designated for that purpose shall give rise to a rebuttable presumption that the employer has not violated this subsection with respect to that particular person.";

(2) by inserting after new subsection (c) the following new subsection:

"(d) Any person who knowingly and for gain assists an alien who is not authorized to work in the United States to obtain or retain employment in the United States, or who knowingly enters into a contractual or other arrangement to facilitate, for gain, the employment in the United States of an alien not authorized to work in the United States, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment not exceeding 5 years, or both, for each alien in respect to whom a violation of this subsection occurs.";

(3) by inserting after new subsection (d) the following new subsection:

"(e) The provisions of this section are intended to preempt any state or local laws imposing civil or criminal sanctions upon those who employ, or facilitate the employment, of aliens not authorized to work in the United States.".

(b) The title preceding section 274 of such Act is amended to read as follows: "BRINGING IN AND HARBORING CERTAIN ALIENS; RESTRICTION OF EMPLOYMENT OF ALIENS".

(c) The designation of section 274 in the table of contents (Title II—Immigration, chapter 8) of such Act is amended to read as follows:

"SEC. 274. Bringing in and harboring certain aliens; restriction of employment of aliens.".

SEC. 6. The provisions of this Act shall become effective 60 days after the date of its enactment.

SECTION-BY-SECTION ANALYSIS OF THE "ALIEN ADJUSTMENT AND EMPLOYMENT ACT OF 1977"

Section 2(a) of the bill amends section 249 of the Immigration and Nationality Act (8 U.S.C. 1259) by updating from June 30, 1948 to January 1, 1970 the cutoff date for the creation of a record if lawful admission for permanent residence. This permits the Attorney General, in his discretion, to create a record of lawful admission for permanent residence for aliens for whom such record does not currently exist, and who meet the following criteria, which were adopted from the present version of section 249:

(1) entry into the United States prior to January 1, 1970;

(2) continuous residence in the United States since such entry; and

(3) not inadmissible to the United States under section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a), insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens.

As in the present version of section 249, a successful applicant will obtain lawful permanent resident status as of the date of approval of his application, unless entry was prior to July 1, 1924, in which case adjustment will operate retroactively to the date of entry.

The term "continuous residence" has been construed so that temporary absences, without abandonment of residence in the United States, will not preclude establishment of the required continuous residence. *See e.g., Matter of Young*, 11 I&N Dec. 38 (BIA 1965); *Matter of Outin*, 14 I&N Dec. 6 (BIA 1972).

Present Service regulations, 8 C.F.R. 249.2, require an applicant for permanent resident status under section 249 to present documentary evidence of continuous residence. Such evidence may include records of official or personal transactions or records of events occurring during the period of claimed residence, as well as affidavits of credible witnesses. The Service anticipates that the same requirements will apply under this bill.

In addition, an alien who is inadmissible on certain criminal or immoral grounds, but who is the spouse, parent, or unmarried minor child of a United States citizen or a lawful permanent resident, may apply for a waiver of inadmissibility under section 212 (h) of the Immigration and Nationality Act, 8 U.S.C. 1182(h), in connection with a section 249 application. See 8 C.F.R. 249.1. An alien inadmissible because of membership in certain proscribed organizations may apply for a waiver under section 212(a)(28)(I)(ii) of the Immigration and Nationality Act. Id.

Two statutory requirements contained in the present version of section 249, that the applicant establish that he is a person of "good moral character" and that he is "not ineligible to citizenship", have been deleted.

The term "good moral character" is defined in a negative manner in section 101(f) of the Immigration and Nationality Act, 8 U.S.C. 1101(f). Most of the aggravated grounds of misconduct which would mandate a finding of lack of good moral character are already covered by the section 212 (a) requirements applicable to section 249. With respect to the other factors mentioned in section 101(f), that are not covered by section 249, the Attorney General has sufficient discretion to weigh all favorable and adverse factors in an alien's record and arrive at a proper decision as to whether or not permanent resident status should be granted. Therefore, the statutory requirement of "good moral character" is superfluous.

The term "ineligible to citizenship" basically relates to a rather small group of aliens who claimed legal exemption from military service on the basis of alienage.

The bill also adds a new disqualification to section 249 for aliens who have assisted in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion. The Administration has favored the inclusion of such a bar in other bills relating to the admission or adjustment of status of aliens.

Aliens who have resided in the United States since prior to January 1, 1970 in a parole status under section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5), would be ineligible under section 249 because parole does not constitute an "entry". In addition, the provisions of section 212(e) of the Immigration and Nationality Act, 8 U.S.C. 1182(e), preclude an exchange alien subject to the two-year foreign residency requirement from obtaining adjustment under section 249.

An alien who improperly obtains lawful permanent resident status under section 249 is subject to rescission of that status as set forth in section 246 of the Immigration and Nationality Act, 8 U.S.C. 1256.

Regulations presently provide that an application under section 249 will be made to the district director having jurisdiction over the alien's place of residence, unless the alien is the subject of deportation proceedings, in which case the application will be made to an immigration judge. 8 C.F.R. 249.2. An application denied by a district director can be renewed before an immigration judge in deportation proceedings.

The Service estimates that 765,000 aliens will be eligible for creation of a record of admission for lawful permanent residence under the amended version of section 249. Present processing of section 249 cases involves an average of 30 minutes officer time and one hour clerical time. The Service estimates that the processing of section 249 cases will require 275 officer positions (costing $3,244,000 in FY 1978 and $6,061,000 in FY 1979) and 577 clerk positions (costing $3,201,000 in FY 1978 and $5,955,000 in FY 1979) at a total cost of $18,461,000 for FY 1978 and FY 1979.

Sections 2(b) and (c) of the bill make minor conforming amendments to the table of contents and the heading for section 249 contained in the Immigration and Nationality Act.

Section 3 of the bill amends section 201 (a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)) to exempt aliens obtaining lawful permanent resident status under section 249 from the numerical limitations on immigration. Such an exemption presently exists by reason of long standing administrative interpretation. Nevertheless, it is desirable to codify this exemption in order to avoid any possible doubt or ambiguity as to chargeability.

Section 4 of the bill creates a new temporary resident alien status which would not be a part of the Immigration and Nationality Act.

Section 4(a) of the bill authorizes the Attorney General, in his discretion to permit aliens to reside temporarily in the United States for five years from the effective date of the bill if they meet the following criteria:

(1) entry on or before January 1, 1977;

(2) continuous residence in the United States since such entry; and

(3) not inadmissible to the United States under section 212(a) of the Immigration and Nationality Act insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens.

Applications for this status must be made within one year of the effective date of the bill.

Section 4(b) of the bill precludes the granting of temporary resident alien status to nonimmigrants who were in status on January 1, 1977, to out of status students, to exchange aliens who have not completed the two-year period of foreign residence required under section 212(e), and to aliens who have engaged in persecution. All other groups of undocumented aliens may apply for temporary residence.

Section 4(c) provides for the issuance of appropriate documentation to aliens granted temporary resident alien status.

Section 4(d) requires the Attorney General to authorize the employment of any alien granted temporary resident alien status.

Section 4(e) allows the Attorney General to establish regulations for the waiver of passport and visa requirements for a temporary resident alien who is returning to a residence in the United States from a temporary visit abroad. This would be similar to the waiver now given to a lawful permanent resident alien who is returning from a temporary visit abroad. An alien who is granted a waiver under this subparagraph is also exempt from labor certification requirements.

Section 4(f) provides for rescission of temporary resident alien status which was improperly granted. The language is similar to that of section 246 of the Immigration and Nationality Act, 8 U.S.C. 1256, pertaining to rescission of adjustment to lawful permanent resident status.

Section 4(g) prohibits temporary resident aliens from receiving any privileges, rights, benefits, exemptions, or immunities under the Immigration and Nationality Act except as specifically provided in the bill. Thus, unlike permanent residents, temporary resident aliens would not be eligible to petition for family members or to petition for naturalization on the basis of time spent in the United States in this status.

Section 4(h) excludes temporary resident aliens from receiving Medicaid, Aid to Families with Dependent Children, Supplemental Security Income, and Food Stamp benefits.

Enforcement considerations dictate that aliens granted temporary resident alien status be documented as soon as possible. In addition, sections 262, 264, and 265 of the Immigration and Nationality Act, 8 U.S.C. 1302, 1304, and 1305, require that all aliens in the United States register, that all aliens 14 years of age and older be fingerprinted, and that all aliens 18 years of age and older carry proof of alien registration.

The processing of aliens eligible for temporary resident alien status will require approximately 15 minutes of officer time and 30 minutes of clerical time for each alien. The Service estimates that as many as five million aliens may be eligible to apply, in which case it will require approximately 682 officer positions (costing $8,046,000 in FY 1978 and $15,029,000 in FY 1979) and 473 clerk positions (costing $2,949,000 in FY 1978 and $4,882,000 in FY 1979) at a total cost of $30,906,000 for FY 1978 and FY 1979.

The total cost of the alien adjustment portion of the proposed Act would be approximately $49,367,000.

Section 5(a)(1) of the bill amends section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) by adding a new subsection (c) which provides the following.

Section 274(c)(1) provides that it shall be unlawful for any employer to employ aliens who are not authorized to work in the United States.

Section 274(c)(2) provides that in the event of a violation of the foregoing prohibition, a civil penalty not to exceed $1,000 shall be imposed upon the employer for each alien involved who was in his employ on the effective date of the bill or who was hired thereafter, except for aliens who are adjusted or who have applications for adjustment pending under this bill.

Section 274(c)(3) confers jurisdiction upon United States district courts to enjoin violations of section 274(c).

Section 274(c)(4) provides that upon belief that an employer has engaged in a pattern or practice of violating section 274(c), the Attorney General shall bring an action for civil penalty along with an action for injunction in an appropriate United States district court. An employer who continues to hire undocumented aliens in violation of an injunction could be cited for contempt.

The term "pattern or practice" has been used in other federal statutes such as the Civil Rights Act of 1964 (24 U.S.C. 2000e-6) and the Fair Housing Act of 1968 (42 U.S.C. 3613). The retention of employees hired prior to the effective date of the bill who are not authorized to work in the United States will be considered in establishing whether a pattern or practice exists.

The Government will be required to show more than just accidental, isolated, or sporadic hirings of undocumented workers in order to establish a "pattern or practice." See, e.g., International Brotherhood of Teamsters v. United States. — U.S. — (May 31, 1977). Therefore, those employers who may inadvertently hire an undocumented worker will not have to fear the imposition of sanctions under this bill, and the cause for discrimination against Mexican-American citizens and lawful permanent resident aliens will be minimized. Nevertheless, to further ensure against discriminatory hiring, the President will instruct the federal civil rights agencies to make much greater efforts to ensure that existing anti-discrimination laws are fully enforced.

Section 274(c)(5) specifies that an employer will be entitled to defend a charge of hiring undocumented aliens by proving that each prospective employee's documentation, as designated by the Attorney General in regulations, was seen prior to employment. An employer would have a maximum of 90 days from the effective date of the bill in which to examine the documentation of employees hired prior to the effective date.

The Social Security card will be designated as one of the authorized identification documents. Steps will be taken to make certain that such cards are issued only to citizens and those aliens who are authorized to work, as the law now requires. 42 U.S.C. 405(c)(2)(B). Those steps include requiring personal interviews of card applicants and making the card more difficult to forge. No steps will be taken, however, to make the Social Security card, or any other card, a national identification document.

Section 5(a)(2) of the bill makes it a felony to knowingly and for gain assist an undocumented alien in obtaining employment, or to enter into a contractual arrangement to facilitate the employment of an undocumented alien. The penalty, a maximum fine of $2,000 or up to five years imprisonment, or both, for each alien involved, is the same as that for harboring undocumented aliens under existing section 274(a)(4) of the Act.

These sanctions are directed at the substantial number of individuals who broker jobs for undocumented aliens or who act as agents for alien smugglers. The requirement that the activity be engaged in with knowledge and for gain protects those, such as employment agencies or union hiring halls, who may inadvertently refer an undocumented alien for a job. No change will be made in the proviso to existing section 274(a)(4) which states that employment shall not be deemed to constitute "harboring" for the purpose of the criminal sanctions imposed by that subsection.

Section 6 provides that the bill will become effective 60 days after the date of its enactment.

The employment sanctions portion of the bill would require an estimated 119 additional INS enforcement positions (costing $1,385,000 in FY 1978 and $2,898,000 in FY 1979) at a total cost of $4,283,000 for FY 1978 and FY 1979. In addition, there would be an estimated one-time cost of $4,000,000 for publicity of the new law and regulations.

Total cost of the bill for FY 1978 and FY 1979 is broken down as follows:

	Fiscal year 1978	Fiscal year 1979	Total
Adjustment to permanent residence	$6,445,000	$12,016,000	$18,461,000
Adjustment to temporary residence	10,995,000	19,911,000	30,906,000
Employment sanctions	1,385,000	2,898,000	8,283,000
Publicity	4,000,000	----------	----------
Total	$22,825,000	$34,825,000	$57,650,000

Mr. BENTSEN. Mr. President, I am pleased to join Senators EASTLAND and DECONCINI, in sponsoring the Alien Adjustment and Employment Act of 1977.

By most accounts there are somewhere between 6 and 12 million illegal aliens in this country; some 3 to 6 percent of our population has no claim to American citizenship; is accountable to no one; and is here in violation of our laws. I cannot think of a single nation in the world that would tolerate a similar situation within its borders.

The fact that we really do not have the vaguest notion of how many illegal aliens, or undocumented workers, are currently in the United States is indicative of the complexity of the problem, the lack of hard information about it, and the difficulty of devising a strategy to cope with it.

Certain facts, however, are indisputable:

Illegal aliens are attracted to our country by the prospect of employment at wages far in excess of what they might expect to earn at home.

There is a market for the employment of illegal alien labor, a market that extends to all regions of the country. In many areas illegal aliens are an important factor in the work force.

There is every reason to believe that, given the economic and demographic situation of many countries in this hemisphere, illegal immigration to the United States will increase dramatically in the future.

The financial, ethical, and physical problems inherent in closing our 1,800 mile border with Mexico to illegal immigration are clearly unacceptable. The problem cannot be solved at the border.

We cannot view our policy on illegal aliens as a purely domestic matter; our actions will have a direct impact on other nations, particularly Mexico.

We must be sensitive to the human dimensions of this problem. We are dealing with the lives and futures of millions of people who have come to this country, however illegally, to seek a better life and a more secure existence for their families. This is the same impulse that brought scores of millions of immigrants to America throughout our history.

Finally, Mr. President, I think we can all agree that there is little political profit in any attempt to come to grips with the dilemma of the illegal alien. We confront a problem that defies simple, painless, or popular solution. There is no single element of the President's program that is free from controversy or universally accepted.

Nevertheless, it is apparent that the illegal alien issue is important today and will become even more significant tomorrow. It cannot be addressed by following the line of least resistance. To the extent that we delay consideration of the President's proposals, we compound the difficulty of developing a coherent, comprehensive, effective strategy to deal with the problem.

I commend the administration for bringing the illegal alien question to the attention of the American public and for having the courage to come forth with a series of specific proposals on this matter.

I do not agree with every element of the administration program. I am particularly concerned about millions of illegal aliens being granted "nondeportable status," a sort of second-class residency that is inconsistent with our notion of democracy and may constitute a tacit admission of our inability to come to grips with a problem of this magnitude and complexity.

It is important to realize, however, that the administration proposals are not being submitted on a categorical, "take it or leave it" basis. Rather, they constitute an honest effort to contend with a very difficult and important problem. They provide a valuable frame of reference, a point of departure, for congressional consideration of one of the most significant, long-range problems facing our Nation today.

I am confident that the Senate, as it begins consideration of the Alien Adjustment and Employment Act of 1977, has the will and the capacity to help shape an effective national policy on the illegal alien question. I am confident that the administration will be receptive to our efforts. And I know that we will examine this matter with the care, the compassion, and the urgency it so clearly requires.

Mr. DECONCINI. Mr. President, it is an honor to cosponsor the Alien Adjustment and Employment Act of 1977 with the distinguished Senator and chairman of the Judiciary Committee from Mississippi (Mr. EASTLAND), and the distinguished senior Senator from Massachusetts (Mr. KENNEDY).

This legislation was drafted by the Justice Department in consultation with a wide spectrum of the groups concerned with the illegal alien issue. This is no small problem, Mr. President, especially in States like Arizona; it is not surprising, therefore, that opinions on the matter vary widely. On one point, however, there is unanimity of opinion: Something must be done. The present situation is intolerable. Feelings are mounting to the point where an unfortunate incident is likely.

The Federal Government must shoulder responsibility for the present system—or, more accurately, lack of system. It has been the lack of a firm commitment to any policy which has led to the present state of affairs. In a sense, I believe that many persons would argue that any policy is preferable to floundering on the issue.

The bill which I am cosponsoring today is certainly not without fault. It will not be acclaimed by one and all as the ultimate answer. I certainly have misgivings about some of its provisions. However, it is a policy; a starting point for the development of a coherent, reasonable, and effective national consensus on how best to treat the question of illegal aliens.

Senators EASTLAND and KENNEDY, both of whom serve on the Judiciary Subcommittee on Immigration, are committed to extensive hearings on the legislation, and both will approach the various policy decisions with an open mind. I am anxious to participate in that process and look forward to legislation that will strike the necessary balance between the competing interests of the different affected groups.

I strongly believe, Mr. President, that the illegal alien problem as it involves Mexico must be approached from a variety of directions. The legislation I am cosponsoring today is designed, essentially, to deal with those aliens whose residence in the United States is illegal. It does not confront the cause of the problem which lies in the difficult economic conditions that plague our Southern neighbor. As long as unemployment in that country exceeds 40 percent and economic opportunity is limited, the United States will continue to be a magnet, drawing to it men and women who have lost hope and seek the refuge of America's fabled bounty.

Unfortunately, the America of the 1970's is not the America of the 1870's—a land of virtually limitless opportunity. Our land has been populated and our economy has matured. We can no longer easily absorb thousands of newcomers. Whereas they would once have created more wealth, they now deprive our own citizens of jobs and opportunity. Therefore, while each of us is sympathetic to the desires and dreams of the illegal alien, we are also responsible for the welfare of American citizens.

It is absolutely imperative that we couple the type of legislation being offered today with other initiatives that will affect the root cause of the illegal alien problem—the ailing Mexican economy. I have proposed that the United States create a billion dollar development fund for Mexico. The fund would be jointly sponsored and administered by the American and Mexican Governments. The moneys would be used to assist in infrastructure projects where these were essential to particular economic activities, but the bulk of these funds would be used to promote private Mexican enterprise, especially in labor-intensive areas. As I conceive the program, some of the funds would be distributed on a matching formula basis, some as grants, while some would be used to guarantee private investment.

It is heartening to know that the Carter administration which fashioned the present legislation is also committed to a similar assistance concept. I look forward to working with the administration on this aspect of the problem as well.

In conclusion, Mr. President, I would like to reiterate that I do not believe this legislation is necessarily the final answer. I do believe, however, that it is a tremendously important first step for which the President and the Attorney General deserve not only gratitude, but praise. With the commitment of Senators EASTLAND and KENNEDY, I am confident that the Senate will have before it final legislation prior to the end of the 95th Congress.

By Mr. EASTLAND:

S. 2253. A bill to amend title 28 of the United States Code to encourage prompt, informal and inexpensive resolution of civil cases by use of arbitration in United States district courts, and for other purposes; to the Committee on the Judiciary.

Mr. EASTLAND. Mr. President, I introduce a bill and I ask unanimous consent that the text of the bill together with a letter from the Attorney General in connection with the bill be printed at this point in the RECORD.

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

S. 2253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds and declares that:

(a) in many federal judicial districts, parties to civil litigation experience lengthy delays and avoidable expense in the adjudication of their litigation; and

(b) arbitration has proven to be an effective and fair means of adjudicating many kinds of civil disputes.

SEC. 2. It is the purpose of this legislation to promote the prompt, informal and inexpensive resolution of civil disputes by encouraging greater use of arbitration on a voluntary basis and by authorizing, under the conditions specified in this Act, the courts to refer certain cases to arbitration in certain districts.

SEC. 3 (a) Title 28 of the United States Code is amended by adding after chapter 43 the following new chapter:

"CHAPTER 44—ARBITRATION

"Sec.
"641. Authorization of arbitration.
"642. Certification of arbitrators.
"643. Compensation and expenses of arbitrators.
"644. Jurisdiction and powers of arbitrators.
"645. Referral to arbitration.
"646. Arbitration hearing.
"647. Arbitration award and judgment.
"648. Trial de novo.
"649. Definitions.

"§ 641. Authorization of arbitration.

"A United States district court may authorize by local rule the use of arbitration in accordance with the provisions of this chapter.

"§ 642. Certification of arbitrators.

"(a) The chief judge of a United States district court in which the use of arbitration pursuant to this chapter is authorized shall certify as many arbitrators to serve within the judicial district as he determines to be necessary under this chapter.

"(b) An individual may be certified to serve as an arbitrator under this chaper if:

"(1) he has been for at least five years a member of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or the Canal Zone, and is admitted to practice before the certifying court; and

"(2) he is determined by the certifying court to be competent to perform the duties of an arbitrator.

"(c) An arbitrator may hold no full-time civil or military office or employment under the United States. An arbitrator is a special Government employee within the meaning of section 202 of title 18 and shall not be barred from the practice of law by operation of a code of ethics except as he is restricted from doing so as such a special Government employee and except that no arbitrator or partner or associate of an arbitrator may act as agent or attorney for any party in a matter in which the arbitrator participated as arbitrator.

"(d) Each individual certified as an arbitrator under this section shall take the oath or affirmation prescribed by section 453 before serving as an arbitrator.

"(e) Each certification shall be entered on record in the court and notice of the certification shall be given at once by the clerk of that court to the Director.

"(f) Certification of an arbitrator shall be for a period of four years unless sooner withdrawn by order of a majority of the active judges of the court.

"§ 643. Compensation and expenses of arbitrators.

"(a) Arbitrators shall receive as full compensation for their services a fee determined by the district court not to exceed $50 for each case in which they serve. The fee shall be paid by or pursuant to the order of the Director.

"(b) Under regulations prescribed by the Director and approved by the Judicial Conference, the Director shall reimburse arbitrators for actual expenses necessarily incurred by them in the performance of their duties under this chapter. Reimbursement may be made, at rates not exceeding those prescribed by the regulations, for expenses incurred by arbitrators for clerical and secretarial assistance, stationary, telephone and other communications services, travel, and such other expenses as may be determined to be necessary for the proper performance of the duties of such arbitrators, except that no reimbursement shall be made for all or any portion of the expense incurred by arbitrators for the procurement of office space.

"§ 644. Jurisdiction and powers of arbitrators.

"(a) Notwithstanding any provision of law to the contrary, if the court authorizes arbitration under section 641, the court shall refer to arbitration any civil action pending before it if:

"(1) the United States is a party, and:

"(A) the action is of a type that the Attorney General has provided by regulation shall be submitted to arbitration; or

"(B) the action is brought pursuant to section 2 of the Act of August 24, 1935, as amended (40 U.S.C. 270b), the United States has no monetary interest in the claim, and the relief sought:

"(i) consists only of money damages not in excess of $50,000, exclusive of interest and costs; or

"(ii) consists in part of money damages not in excess of $50,000, exclusive of interest and costs, and the court determines in its discretion that any nonmonetary claims are insubstantial; or

"(2) the United States is not a party, and:

"(A) the parties consent to arbitration and the relief sought consists only of money damages; or

"(B) (i) the relief sought:

"(a) consists only of money damages not in excess of $50,000, exclusive of interest and costs; or

"(b) consists in part of money damages not in excess of $50,000, exclusive of interest and costs, and the court determines in its discretion that any nonmonetary claims are insubstantial; and

"(ii) jurisdiction is based in whole or in part on:

"(a) section 131 of this title and the action is brought pursuant to section 20 of the Act of March 4, 1915, as amended (46 U.S.C. 688);

"(b) section 1331 or 1332 of this title and the action is based on a negotiable instrument or a contract; or

"(c) section 1332 or 1333 of this title and the action is for personal injury or property damage.

"(b) Arbitrators to whom actions are referred pursuant to this chapter shall have within the territorial jurisdiction of the court the power to conduct arbitration hearings and make awards as provided in this chapter and in such rules consistent with the provisions of this chapter as may be promulgated by the court for the conduct of arbitration proceedings.

"§645. Referral to arbitration.

"(a)(1) Actions subject to arbitration pursuant to this chapter, other than those described in section 644(a)(1)(B)(ii) or 644(a)(2)(B)(i)(b), shall be held by the clerk of the court for 20 days after the filing of the answer. If, by the expiration of that time, a party has filed a motion for judgment on the pleadings, summary judgment, or similar relief, the clerk shall refer the action to arbitration only after the court has ruled on the motion. If, by the expiration of that time, a party has initiated discovery proceedings, the clerk shall refer the action to arbitration upon notification to the clerk that discovery has been completed or upon the expiration of 120 days from the filing of the answer, whichever occurs earlier. If, by the expiration of that time, no party has filed a motion for judgment on the pleadings, summary judgment, or similar relief, the clerk promptly shall refer the action to arbitration, and in no event more than 120 days after the filing of the answer.

"(2) The court may return an action described in section 644(a)(1)(B)(ii) or 644(a)(2)(B)(1)(b) for arbitration if at any time before the commencement of trial the court determines that the non-monetary claims in the case are insubstantial and returns the case to the clerk with a statement of such determination. The clerk promptly shall refer any such case to arbitration and in no event more than 120 days after such determination.

"(b) The arbitration shall be conducted before a panel of three arbitrators, unless the parties agree to have it conducted before a single arbitrator. The parties may by agreement select any person or persons to conduct the arbitration. If, within seven days after the action has been referred to arbitration, the parties have not notified the clerk of the court that they have made such a selection, the arbitrator or arbitrators shall be chosen by the clerk by a process of random selection from among the persons certified by the court.

"(c) A person selected to be an arbitrator shall be disqualified for bias or prejudice as provided in section 144 and shall disqualify himself in any action in which he would be required under section 455 to disqualify himself if he were a justice, judge, magistrate or referee in bankruptcy.

"§ 646. Arbitration hearing.

"(a) The arbitration hearing shall commence not later than 30 days after the action is referred to arbitration and shall be concluded promptly.

"(b) Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter. The arbitrators shall have the power to administer oaths and affirmations.

"(c) The Federal Rules of Evidence may be used as guides to the admissibility of evidence in an arbitration hearing. Notwithstanding the provisions of the Federal Rules of Evidence, relevant evidence that is not privileged may be admitted in an arbitration hearing.

"(d) A party may have a recording and transcript made of the arbitration hearing at his expense. If a party has a transcript or a tape recording made, he shall furnish a copy of the transcript or tape recording without charge to any other party.

"§ 647. Arbitration award and judgment.

"The arbitration award shall be filed with the court promptly after the hearing is concluded and shall be entered as the judgment of the court after the time for requesting a trial de novo pursuant to section 648 has expired, unless a party demands a trial de novo before the court pursuant to that section. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect, as a judgment of the court in a civil action, except that it shall not be subject to appeal.

"§ 648. Trial de novo.

"(a) Within 20 days after the filing of the arbitration award with the court, any party may demand a trial de novo in the district court.

"(b) Upon a demand for a trial de novo, the action shall be placed in the calendar of the court and treated for all purposes as if it had not been referred to arbitration, and any right of trial by jury that a party would otherwise have shall be preserved inviolate.

"(c) At the trial de novo the court shall not admit evidence that there had been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for impeachment at a trial de novo.

"(d) If the party who demanded a trial de novo fails to obtain a judgment in the district court, exclusive of interest and costs, more favorable to him than the arbitration award, he shall be assessed the costs of the arbitration proceeding, including the amount of the arbitration fees, and

"(1) if he is a plaintiff and the arbitration award were in his favor, he shall pay to the court an amount equivalent to interest on the arbitration award from the time it was filed; or

"(2) if he is a defendant, he shall pay to the plaintiff interest on the arbitration award from the time it was filed.

"§ 649. Definitions.

"As used in this chapter—

"(a) 'Judicial Conference' means the Judicial Conference of the United States;

"(b) 'district court' means a district court created under chapter 5 of this title and the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands;

"(c) 'Director' means the Director of the Administrative Office of the United States Courts;

"(d) 'arbitrator' means an arbitrator certified pursuant to section 642 to conduct arbitration pursuant to this chapter; and

"(e) the United States is a party to a civil action if it is a party directly, or through its agency or department, or through its officer or employee in his official capacity."

(b) The analysis at the beginning of part III of title 28, United States Code, is amended by adding after the item relating to chapter 43 the following new item:

"44. Arbitration.".

(c) The analysis at the beginning of title 28, United States Code, is amended by adding after the item relating to chapter 43 the following new item:

"44. Arbitration.....651".

SEC. 4. Section 202(a) of title 18, United States Code, is amended by deleting the words "a part-time United States Commissioner" and inserting in lieu thereof the words "an arbitrator certified pursuant to section 642 of title 28".

SEC. 5. Arbitration in accordance with the provisions of chapter 44 of title 28, United States Code, shall be implemented on a test basis pursuant to this section for three years in no fewer than five nor more than eight representative districts to be designated by the Chief Justice of the United States, after consultation with the Attorney General. The selection of test districts shall be made on the basis of considerations such as the number of civil and criminal cases filed and tried

annually in the district, the case backlog in the district, the number of civil cases that would be referred to arbitration that are filed and tried annually in the district, the number of district court judges and magistrates sitting in the district, and the geographical location of the district.

SEC. 6. The Judicial Conference of the United States is authorized to develop model procedures consistent with the provisions of this Act for the conduct of arbitration proceedings under this Act.

SEC. 7. (a) The Federal Judicial Center shall advise and consult with the Judicial Conference of the United States and the district courts in connection with their duties under this Act.

(b) The Federal Judicial Center, in consultation with the Attorney General and the Administrative Office of the United States Courts, shall transmit to the Congress, on or before the expiration of the third year following the effective date of this Act, a report on the use, effectiveness and benefits of arbitration in the test district courts and such other districts in which cases are referred to arbitration under this Act.

SEC. 8. (a) The Attorney General shall promulgate regulations to describe the cases subject to arbitration pursuant to section 644(a)(1)(A) of title 28, United States Code, within one hundred and twenty days of the date of enactment of this Act.

(b) This Act shall take effect one hundred and twenty days after the date of enactment, except that subsection (a) shall take effect on the date of enactment.

SEC. 9. There is authorized to be appropriated for the fiscal year ending September 30, 1979, to the judicial branch of the Government such sums as may be necessary to be allocated by the Administrative Office of the United States Courts to Federal judicial districts and the Federal Judicial Center to carry out the purposes of this Act. The funds so appropriated shall remain available until expended.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., October 20, 1977.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal "To encourage prompt, informal, and inexpensive resolution of civil cases by use of arbitration in United States district courts."

The bill creates a chapter in Title 28 of the United States Code that would establish a process for district courts of mandatory arbitration of specified categories of civil actions, with the right to a full district court trial de novo preserved. In five to eight districts, to be selected by the Chief Justice, the use of arbitration under the statute would be mandated for a three year test period.

Arbitration of the type proposed in this bill has been in use in several states. Careful attention has been given to the experience that Ohio, Pennsylvania, New York, and California have had with arbitration. The experience of these States with mandatory arbitration for relatively small claims has been quite positive. It is, however, recognized that parallels must be made cautiously between the experience of these States and the system proposed for the federal courts because the federal jurisdiction floor (i.e., $10,000) is above the ceiling of most State arbitration plans. We also note that, in addition, there is a long history of the use of federal court arbitration on a voluntary basis.*

The bill contains findings that in civil litigations there are avoidable expenses and delays in many districts. The purpose of the bill is set forth as being the promotion of the prompt, informal and inexpensive resolution of disputes. The vehicle for achieving that result is arbitration.

The bill would add a new chapter to the United States Code, setting forth procedures for arbitration. The bill would allow any district to adopt this arbitration scheme and would require the scheme to be implemented on a test basis in five to eight districts to be chosen by the Chief Justice, after consultation with the Attorney General. This approach was taken because it is felt that the experience with arbitration is sufficiently extensive that it should be available for voluntary use in any district that chooses to adopt it and that a comprehensive and controlled test is warranted to determine how advantageous its mandatory use would be in the federal courts. At the same time, however, it seems premature to impose an arbitration scheme on all 94 districts without a period of experiment and study.

The bill requires that all cases of specified types filed in a district court adopting the scheme be referred to arbitration soon after the pleadings are closed. In addition, any matter in which the parties consent is to be referred to arbitration. The cases that are to be mandatorily referred are actions for money damages only or, in the discretion of the court, actions in part for monetary relief, and where not more than $50,000 in relief is sought, and which are: (1) Miller Act (where the United States does not have a monetary interest) or Jones Act federal question cases; (2) contract or negotiable instrument cases brought under federal question or diversity jurisdiction; or (3) personal injury or property damages cases brought under diversity or maritime jurisdiction. Actions to which the United States is a party are excluded, except where the Attorney General provides by regulation for their inclusion and except for the Miller Act cases where U.S. participation is in form only. The exception to the money damages limitation is made for cases in which the judge determines that any nonmonetary claims are insubstantial. These classes of cases were selected after examining the entire federal civil docket. They are matters that generally present questions of fact and may not require a full trial before an Article III court. The $50,000 ceiling was imposed because it is felt that in cases involving greater amounts, except where the parties consent to arbitration, the losing parties are so likely to seek a trial de novo that arbitration may not be worthwhile.

Table 1, on the following page, sets forth the number of cases for all federal district courts filed in FY 1976 under the statutes under which cases will be referred to arbitration. No information is available, however, on the portion of these cases that seek only money damages and that claim no more than $50,000 damages. Consequently it is not possible to estimate with precision how many cases would be actually encompassed within the arbitration jurisdiction.

Filings and terminations of selected Federal District Court civil cases in fiscal year 1976

	Total filed	Terminated	Pending
Diversity:			
Insurance	3,184	2,483	999
Negotiable instruments	2,240	989	540
Other contract	13,559	9,755	4,584
Marine, personal injury	5,170	1,288	559
Motor vehicle personal injury	6,068	5,725	2,266
Other personal injury	[1] 8,635	5,996	2,006
Federal question:			
Miller act	955	901	555
Jones act	5,170	3,620	1,653
Other personal injury	([1])	107	29
Total selected civil cases	44,981	30,864	13,191
Total 1976 civil cases	130,597	110,175	140,189
Total 1976 criminal cases	[2] 41,020	43,675	19,756

[1] This represents personal injury cases (other than marine and motor vehicle) brought under both diversity and Federal question jurisdiction.
[2] Includes transfers.

Source: 1976 Annual Report of the Director of the Administrative Office of United States Courts, tables 16 and C4.

The proposed statute sets forth the general procedures to be followed for cases submitted to arbitration. They are to be referred to arbitration as soon as possible after the twentieth day following the close of pleadings, taking into account any motions for summary relief made or discovery initiated during the 20 day period. The referral may not be delayed beyond 120 days after the closing of the pleadings, unless a motion on the pleadings is still pending, in which event referral is to be made immediately upon the resolution of the motion. This time period was established in order to allow the resolution of questions related to the pleadings, and to allow the parties to conduct such discovery as can be completed within 120 days. Limited discovery may frequently be necessary in order that the parties may be well enough prepared to be able to have a meaningful and fair arbitration proceeding. Where a judge determines that non-monetary claims in a matter are insubstantial and refers the case to arbitration, the referral is to be made not more than 120 days after that finding.

Upon referral to arbitration, the parties have seven days to select any person or persons as the arbitrator. If they do not notify the clerk that they have done so, a panel of three arbitrators (unless the parties specify one) is to be selected from among a list to be maintained by the district court. Arbitrators on the list would be members of the bar of the court who have been members of any state bar for at least five years. They would be certified by the court for four year terms, with the certification revokable by order of a majority of the active judges of the court. They would be paid by the court a fee not to exceed $50 for each case in which they serve. Arbitrators are designated as special government employees under 18 U.S.C. § 202(a) in order to allow them to continue to handle, in their law practices, cases in which the United States is a party, except where there is a direct conflict of interest with their duties as arbitrators.

The arbitration hearing in a particular case would commence no later than 30 days after the action was referred to arbitration. Witnesses and documents could be subpoenaed

* See, e.g., *Thornton* v. *Carson*, 7 Cranch 596.

pursuant to F.R.C.P. 45, and the Federal Rules of Evidence would be non-binding guides, except that privileged material could not be introduced. It is intended that the relaxed rules would permit the admission of some hearsay evidence, particularly in documentary form.

The arbitration award would be entered as the judgment of the court, unless a party were to demand a trial de novo within 20 days. Where that occurred, the case would be placed on the civil docket of the court and treated in all respects as if it had never been referred to arbitration. Neither the fact of the arbitration proceeding nor the award could be admitted into evidence at a district court trial. The use of testimony given in the arbitration proceeding would not be precluded, however, for impeachment purposes in a subsequent trial.

Disincentives to demanding a trial de novo are included. Unless the party demanding a trial de novo obtained a judgment more favorable to him than the arbitration award, he would be assessed the costs of the arbitration proceedings, including the arbitrator's fees, and interest on the amount of the arbitration award from the time it was filed. These financial disincentives should suffice to cause a party to pause before demanding a trial de novo, but should not be so onerous as to constitute unconstitutional impediments to access to Article III courts.

The Judicial Conference of the United States is authorized to prepare model rules for use by district courts that adopt arbitration. The Federal Judicial Center is authorized to provide consultation and advice concerning arbitration to the Judicial Conference and to district courts adopting arbitration.

During the first three years that the statute is in force the Federal Judicial Center, in consultation with the Attorney General, is required to study the operation of the arbitration procedure. At the end of the third year the Center is required to file a report with the Congress evaluating the operation of arbitration in the test districts for use by the Congress.

The bill authorizes the appropriation of such sums as may be necessary to carry out the purposes of the Act.

I urge the prompt introduction and early enactment of this measure.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this legislation from the standpoint of the Administration's program.

Sincerely,

GRIFFIN B. BELL,
Attorney General.

By Mr. STEVENS (for himself and Mr. GRAVEL):

S. 2254. A bill directing the Secretary of the Interior to convey certain property to David Sanhite Peele; to the Committee on Energy and Natural Resources.

Mr. STEVENS. Mr. President, I am today introducing a bill to direct the Secretary of the Interior to convey property to David Sanhite Peele. My colleague from Alaska, Mr. GRAVEL, joins me in sponsoring this legislation.

This measure would convey to him by quitclaim deed the surface rights to 160 acres of land located on Karta Bay, Prince of Wales Island, Alaska. This property initially belonged to his grandfather, Sanhite. A September 23, 1887, letter written by Territorial Governor A. P. Swineford to Sanhite Peele recognized his possessory rights to this land.

Since Sanhite Peele, an Alaskan Native, relying on this letter; did not apply for a Nativel allotment; a formal deed to this land was never issued. Before his death in 1912, Sanhite Peele willed this property to his grandson, David, with David's father, James, as the trustee. Subsequently based on his grandfather's use and occupancy, the Bureau of Indian Affairs on behalf of his grandson, David twice filed for a Native allotment to this property. The applications were rejected both times.

Since there is no authority in the 1906 Allotment Act for a son to inherit property based on a father's use and occupancy, the initial application was rejected. Additionally, since the land was not primarily used for agriculture or grazing and because David did not qualify for this allotment based on use and occupancy before the forest withdrawal date; the second application was also rejected. The Interior Board of Land Appeals affirmed this decision.

Mr. President, Sanhite Peele's claim to this land was based on the Territorial Governor's letter stating his possessory rights based on use and occupancy. At that time documents of this kind known as Skookum Paper were widely recognized. According to the Alaska State Director of the Bureau of Land Management, "a Skookum Paper which apparently was not based on any law or other authority but had considerable value in establishing occupancy prior to the creation of the Tongass National Forest in 1902".

David applied for his land based solely on his grandfather's use and occupancy, established in 1887 by the letter from the Territorial Governor. The U.S. Forest Service and the Interior Board of Land Appeals have rejected his claim because he did not meet the qualifications of the 1906 Allotment Act. Since this property "was" the Peele's in 1887, and was never a Native allotment, and was never meant to be a Native allotment except when the Bureau of Indian Affairs applied for David Peele in 1956; I urge my colleagues to act favorably on this measure. According to the Bureau of Land Management, David Peele's only alternative to obtain a deed to this property is enactment of private legislation such as this.

By Mr. NELSON (for himself and Mr. HATHAWAY):

S. 2259. A bill to amend the Small Business Act to expand and revise the procedures for insuring small business participation in Government procurement activities, and for other purposes; to the Select Committee on Small Business.

SMALL BUSINESS PROCUREMENT EXPANSION AND SIMPLIFICATION ACT

Mr. NELSON. Mr. President, the bill I am introducing today, the Small Business Procurement Expansion and Simplification Act, would reemphasize a longstanding national policy that encourages small firms to do business with their Federal Government.

This bill is an expression of my deep conviction that the small business community which produces 43 percent of our Nation's GNP more than one-half of our private employment and much of the product innovation of the last 50 years, is, indeed, the backbone of the American economy and should receive fair and equitable treatment as suppliers to the Federal Government. Small businesses are regularly discriminated against despite the fact that their competitive abilities are equal to or better than many larger firms if they are given the proper climate in which to compete.

Adm. Hyman Rickover, who has awarded numerous contracts to businesses for Defense Department programs, has often praised the abilities of small firms to do work for the Government. According to Rickover:

> Many firms, particularly small ones, act in the finest tradition of the free enterprise system A typical example of how the small company operates is one that has an important contract for my program. Its outlook is refreshing. Its owners do not spend nearly all of their time, as do the officials of large companies, on public relations, lobbying, and exerting political influence. Instead they understand it is up to them to please the customer and make a success of work. This they do by paying close attention to the work itself. When confronted with problems, they do not seek bail-outs or subsidies or use influence in high places to get special privileges . . . I have found that small and medium size companies take a more responsible view toward their contractual obligations than the large ones.

Small firms also are fully capable of acting as subcontractors to the Nation's largest Government—mainly defense and space—contractors. A highly placed administrator of the giant Lockheed Aircraft Corp. to the committee had this to say in a letter to the Small Business Committee:

> A formal Small Business Program preceding enactment of small business legislation, was established by Lockheed in 1951. Its philosophy recognized the basic economic fact that prime contractors such as Lockheed, need and rely on small business suppliers because they are responsive, competitive and capable—attributes that make them valuable business allies.

SMALL BUSINESS PROCUREMENT EXPANSION

Title I of the Small Business Procurement and Expansion and Simplification Act would weigh the scales more equitably for small businesses in the Federal procurement system. Small business procurement policy is set forth in broad terms in the Small Business Act and other procurement statutes, but implementation of the general intent of Congress is left to the Small Business Administration and the procuring agencies. Our hearings have revealed time and again that the procuring agencies and the SBA disagree over the degree to which small firms are capable of participating in the Government market. Unfortunately, such disagreements are not resolved in a fair arena, since the SBA has little authority to pursue the merits of its arguments in behalf of the small business contracting community.

PRIME CONTRACTS

Section 101 of this title would give the Small Business Administration authority to assist procuring agencies in the setting of goals for the participation of small concerns in Government procurement. In the past, SBA has had to stand by helplessly while the goals were set solely by the procuring agencies without the advice and assistance of the

agency that knows best what the potential small business participation is. Heretofore, contracting agencies have set their small business goals by what is easily attainable for the procuring offices rather than by what the potential small business market might be.

Here is an example of what can happen as a result of SBA's consultations with Federal contracting agencies in behalf of small contractors. In 1966, when the SBA Administrator abolished SBA's review of procurements for the purposes of setting them aside for small business, small business was receiving 20.9 percent of total Government contract awards. In 1969, the small business share had plummeted to 17.2 percent. In 1970, when the SBA review was reinstated, the small business share began to rise again, starting with a percentage of 17.8 percent in 1970, and increasing steadily, to 22.1 percent in 1976.

Should SBA and a procuring agency have a disagreement over what the goal for small business participation in that agency's contracting should be, the bill provides that the matter be submitted for determination to the Office of Management and Budget's Office of Federal Procurement Policy.

Section 101 of the bill also establishes a goal for increased participation by small firms in areas where small business has fared poorly. The objective of this provision is to provide an additional stimulus for procuring agencies to create more opportunities for small firms to compete for goods and services that have for the most part been supplied by larger contractors.

For example, small firms receive about 5 percent of Federal expenditures for research and development, as compared with an overall small business percentage that tends to hover around 20 percent of all goods and services purchased by Federal agencies. This section specifically authorizes the use of goals and set-asides as tools to substantially increase procurement dollars going to small research and development firms.

Additionally, section 101 provides that contracts having a value of less than $10,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive in terms of price, quality, and delivery of the goods or services being purchased.

Under present practices, purchases that amount to $10,000 or less may be made under simplified purchasing procedures. Many transactions under this amount are for commercial items for which prices are set competitively or by regulatory processes. Thus, under these procedures, competitive techniques are used, but neither the more cumbersome methods of formal advertising nor the administrative burdens of negotiated procurement are required.

Many regulations governing procurement above $10,000 require a great deal of unnecessary time-consuming and expensive paperwork and are extremely frustrating and costly for small firms, thus discouraging them from doing business with the Government. Increasing opportunities for small businesses to supply their goods and services in the below $10,000 price range would certainly make government contracting less burdensome and more attractive to small business.

SUBCONTRACTS

Section 102 of title I would update the small business subcontracting program, which has had no substantive change since 1963. Under the program as currently structured, the SBA has little leverage over Government agencies and their large primes in order to promote subcontracting to small firms. It is basically a program in which the prime contractors are free to cooperate or not bother with procuring agencies. The real meat in the program is simply that "in evaluating bids or in selecting contractors for negotiated contracts, the extensive use of subcontractors by a proposed contractor shall be considered a favorable factor." SBA is prohibited from doing anything other than encouraging primes, through the contracting agency, to subcontract with small business.

This bill would put some teeth into the subcontracting program by authorizing the SBA Administrator to help procuring authorities determine the small business subcontracting potential for small business. SBA would review a prime contractor's subcontracting plan to determine if small business has been afforded the "maximum practicable opportunity" to subcontract to that prime. Should SBA and the contracting official disagree with each other as to whether the plan affords small firms maximum practicable subcontracting opportunities, the matter may be referred by SBA to the head of the department or agency for determination.

In other words, this would cut out the necessity for SBA to have a "hands-off" posture with the decisions of prime contractors of whether or not to subcontract with small business. This might result in a more vigorous campaign by prime contractors to subcontract a larger portion of their work performed on Government contracts to small firms.

SMALL BUSINESS PROCUREMENT SIMPLIFICATION

Section II of the Small Business Procurement Expansion and Simplification Act would greatly simplify the elaborate and burdensome procurement procedures that discourage many small firms from doing business with the Government.

Section 201 of title II would provide for the consolidation of the two major statutes governing defense and civilian agency procurements. Small businesses have testified before the Small Business Committee that the complexities of doing business with Government agencies are greatly confounded by the inconsistencies between the two acts. A major step forward simplying Government procurement procedures would be the promulgation of a uniform set of regulations for all Government purchasing agencies.

And since small firms suffer most from the onerous burden of excess paperwork required by procurement regulations, section 202 of title II directs the Office of Federal Procurement Policy to simplify the bidding, contracting administration, and performance requirements of Government contracts. The Government now has the benefit of the work of the Commission on Federal Paperwork, and it is a particularly opportune time to streamline the procurement process to make it easier and more attractive for small firms to do business with the Government.

As an additional aid to small businesses that are preparing bids on Government contracts, section 203 of title II requires Government procuring agencies to provide to a potential bidder simplified and streamlined copies and summaries of major Federal laws or rules which a business would have to comply with should he receive the contract. Small firms simply do not have the legal resources available to research and fully comprehend all of the requirements made of Government contractors. Many of these requirements are in the public interest, but small firms have the right to clearly understand what their responsibilities and pitfalls are before they bid on Government contracts.

In order to assure that small firms have sufficient leadtime in which to prepare and submit bids to Government procuring agencies, section 204 of this bill requires procuring agencies to open bids no sooner than 30 days from the date the procurement is advertised in the Commerce Business Daily. Small businesses are often precluded from bidding on Government contracts because they have insufficient time in which to wade through the details of bid requests and to prepare their bids. This section also requires the Secretary of Commerce to devise methods of providing to small firms one-stop information on available contracts and subcontracts.

Section 205 of title II would simplify the complicated, time-consuming, and expensive procedures that small firms must go through in order to resolve disputes they might have as contractors by setting up arbitration panels. Often, by the time a dispute is settled, the small firm has suffered heavy expenses and production delays. Both the Government and small business could save money if a quicker, simpler way of resolving contracting problems were available.

Mr. President, there is nothing in this legislation that would require the Federal Government to award contract or encourage subcontracts to be awarded to businesses that are not qualified to do a good job for the Government at competitive prices. The purpose of the bill is simply to provide more opportunities to small firms to prove they can do the job as well as larger firms.

The Small Business Procurement Expansion and Simplification Act, if enacted into law, would be a major step forward in translating into action the mandate that the Congress placed into the Small Business Act in 1953 that "a fair proportion of the total purchases and contracts or subcontracts * * * be placed with small business-enterprise."

The time has come to give the small business person's agency—the Small Business Administration—the tools to help small business to get a fair share of

the Government market. If we are truly serious about small business, there can be no question that something must be done, and now.

Mr. President, I ask unanimous consent that the text of this bill and a section-by-section analysis be printed in the RECORD following the remarks of my colleague, Mr. HATHAWAY, who is joining me in cosponsorship of this measure.

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

Mr. HATHAWAY. Mr. President, I am pleased to join with my colleague, Mr. NELSON, in cosponsoring the Small Business Procurement Expansion and Simplification Act. As chairman of the Procurement Subcommittee of the Senate Small Business Committee, I have been deeply involved over the last 5 years with the problems smaller firms experience in doing business with the Federal Government. Hearings that I have conducted over this time period have indicated that the share of the Government market that small firms manage to capture is limited not by their capabilities as Government contractors, but primarily by a big government's bias against smaller firms.

This bias exists regardless of the mandate of the Congress that small firms receive a fair proportion of the Federal Government's total purchases and contracts or subcontracts for goods and services. It exists in spite of a 35-year-old national policy based on the realization that the industrial capacity of small business is vital to defense mobilization and on the economic theory that small firms are a necessary ingredient of competition in a free market economy.

If small businesses are given the opportunity to compete for every contract which they are capable of performing at a competitive price, I am confident that we will see small business participation in the Government market rapidly increase. To help achieve this, a major provision of this bill provides for the Small Business Administration, the agency that is the principal advocate of small business, to determine the capabilities of the small business community to deliver goods and services to the Government and to plug that determination into the goals that procuring agencies set each year for small business participation.

The bill also provides that all procurements made under simplified purchasing procedures (purchases under $10,000) be set aside for small business participation. In a poll conducted by the Procurement Subcommittee of over 130 small business contractors, the paperwork burden was cited as one of the chief and continuing problems experienced in doing business with the Government. Since small businesses suffer most from excessive red-tape, it follows that they will benefit most by doing business with the Government under these simplified bidding and payment procedures. Federal Government can at the same time reap the benefits of competition between capable small business firms. This provision, as well as others in the bill, will greatly simplify the procurement process for small business.

Here is an example of what the combined goal-setting authority for the Small Business Administration and the set-asides for purchases under $10,000 could mean for the small business community. During fiscal year 1976, small firms performed $12 billion worth of contracts for the Federal Government out of a total budget of $54.7 billion. Should the goals that procuring authorities and the SBA set average out as little as 25 percent of the total contracts awarded above $10,000, and if small businesses received all contracts below $10,000, we are talking about increasing the dollars that go to small businesses by about $7 billion.

And that could be only the beginning of an expanded Government market for small business, since these goals would be constantly adjusted to reflect the small business potential. And I submit that once the opportunities for participating in Government contracts expand, there will be a natural market response of expanded small business capabilities.

This point is well worth stressing. We are concerned with encouraging small businesses to do business with the Government, and we are concerned with encouraging contracting agencies to make available to smaller firms the same opportunities that are offered to larger firms. It is my belief that once small firms are aware of increasing opportunities, they will respond by rising to the occasion.

The provision for enhanced involvement by the Small Business Administration in subcontracting decisions has the potential of substantially increasing subcontracting dollars going to small business. When the Procurement Subcommittee held hearings on subcontracting by large firms to small business in 1973, testimony was given that large contractors for the Department of Defense were awarding 35.8 percent of their subcontracts to small business. Although there was a slight increase to 37.6 percent in 1976, the 1967 level of 43.3 percent has not again been reached.

As a percentage of the total prime contract dollars awarded, the small business share in subcontracting has experienced an almost uninterrupted decline from 21.1 percent in 1967 to 14.9 percent in 1976. Thus, larger firms are tending to cut back on what they are purchasing from small business in order to fulfill their Government contracts. Under the subcontracting provisions of this bill, the contracting officer and SBA will be required to take a long, hard look at these multimillion-dollar contracts that go to the giant corporations and satisfy themselves that all possible subcontract work has been designated for small business competition.

The bill would also make it possible for SBA to collect subcontracting statistics directly from prime contractors. Currently, the reporting system for subcontracts is a nightmare. Not all major primes report on their subcontracts to the procuring agencies, and when they do, their figures may be contaminated by commercial purchases. The primes are not the only culprits in the reporting process, however, since out of 54 civilian agencies only a dozen or so have ever bothered to report to Congress on their subcontracting during the past several years. And last, but not least, we in the Congress do not yet have a geographic breakdown of where subcontracting dollars are going. Thus, we have no idea whether there is a grossly inequitable geographic distribution of subcontract dollars going to small business. This situation will soon be remedied in part by language contained in one 1978 DOD appropriation bill, which I was pleased to support. But the provision in this bill is a vital one to apply to all procurement agencies.

Mr. President, the Small Business Procurement Expansion and Simplification Act would reemphasize and enhance our national policy that promotes opportunities for small firms to do business with the Federal Government. It is a measure that would help counteract the seeming reluctance of many procuring agencies to do business with smaller firms, turning around the "bigger is better" syndrome in Government procurement. The act would also greatly stimulate competition among firms wishing to do business with the Federal Government, with smaller firms coming into their own as providers of the goods and services needed to run the Federal Government.

S. 2259

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 "Small Business Procurement Expansion and Simplification Act of 1977".

TITLE I. SMALL BUSINESS PROCUREMENT EXPANSION

SEC. 101. Section 15 of the Small Business Act is amended—

(1) by inserting "(a)" after "Sec. 15."; and

(2) by adding at the end thereof the following:

"(b) The head of each department or agency of the Federal Government shall, after consultation with the Administration, establish goals for the participation by small business concerns in procurement contracts of that department or agency having values of $10,000 or more. Goals established under this subsection shall realistically reflect the potential of small business concerns to perform such contracts and to perform subcontracts under such contracts and may include goals for joint determinations by the Administration and the department or agency for the setting aside of contracts for small business participation as set forth in this section. Whenever the Administration and the head of the department or agency fail to agree, the matter shall be submitted for determination to the Administrator for Federal Procurement Policy, Office of Management and Budget.

"(c) Notwithstanding subsection (b), with respect to any category of procurement which the SBA determines can be produced by small business, which was procured by a Federal department or agency during any fiscal year, and for which less than 20 per centum of the dollar amount involved during such year was furnished by one or more small business concerns, the head of that department or agency shall, after consultation with the Administration, establish as an interim goal for each succeeding fiscal year until a fiscal year in which such concerns furnish at least 20 per centum of the dollar

value of such items, an increase by at least 10 per centum per annum of the dollar amount or participation by such concerns in the procurement of that item.

"(d) Nothing in this Act or any other provision of law precludes exclusive small business set-aside for procurements of research, development, test and evaluation, architectural, or engineering services, and agencies and departments are authorized to develop such set-asides to further the interests of small business in those areas.

"(e) Each contract for the procurement of goods and services which has an anticipated value of less than $10,000 and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competive in terms of price, quality, and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors."

SEC. 102. (a) Section 8(b)(5) of the Small Business Act is amended—

(1) by inserting "and statistical data" after "information"; and

(2) by striking out "encourage" and inserting in lieu thereof "review".

(b) Section 8(d)(1) of such Act is amended—

(1) by striking out ", the Secretary of Defense, and the Administrator of General Services shall cooperatively" and inserting in lieu thereof "shall";

(2) by striking out "through the appropriate procuring agency" in clause (B);

(3) by inserting after "any Government procurement agency" in clause (C) the following: "and its prime contractors"; and

(4) by striking out "in evaluating bids or in selecting contractors for negotiated contracts, the extensive use of subcontractors by a proposed contractor shall be considered a favorable factor" and inserting in lieu thereof the following: "before the award of any Government procurement contract over $500,000, the apparent low responsive bidder or offeror on such contract shall submit to the Federal department or agency letting such contract a written small business subcontracting plan. Such plan shall describe the type and percentage of work under such contract which such bidder or offeror expects to be performed by small business concerns and shall be incorporated as part of the contract requirements. Such plan and the bidder's or offeror's compliance with other such plans under other contracts shall be considered by the head of such department or agency in determining the responsiveness of such bidder or offeror for the award of such contract. No Government procurement contract shall be awarded to any bidder or offeror unless the department or agency letting such contract, after consultation with the Administrator, determines that the small business subcontracting plan submitted provides the maximum practicable opportunity for small business concerns to participate in the performance of such contract. Whenever the Administration and contracting procurement agency fail to agree, the matter shall be submitted for determination to the appropriate head of the department or agency by the Administrator.

(c) Section 8(d)(2) of such Act is amended—

(1) by striking out "which in the opinion of the procuring agency offers substantial subcontracting possibilities" and inserting in lieu thereof "to a large business concern"; and

(2) by striking out "which offers substantial possibilities for further subcontracting".

(d) Section 8(f) of such Act is added, to read as follows: "The head of each department and agency of the Federal Government shall review its large systems procurements and other procurements on which small business ordinarily cannot compete and take all feasible steps to subdivide such procurements into smaller components on which small business can compete and bid".

SEC. 102. Section 20 of the Small Business Act is amended by adding at the end thereof the following:

"(h) There is authorized to be appropriated to the Small Business Administration for purposes of carrying out sections 8(d)(1) and (2) a sum not to exceed $1,071,525, which shall be available without fiscal year limitation".

TITLE II. SMALL BUSINESS PROCUREMENT SIMPLIFICATION

SEC. 201. The Administrator of the Office of Federal Procurement Policy is authorized and directed, pursuant to the authority conferred by Public Law 93-400 and subject to the procedures set forth in such Public Law, to promulgate a single, simplified, uniform procurement Federal regulation and to establish procedures for insuring compliance with such provisions by all executive agencies.

SEC. 202. In carrying out section 201 of this title, the Administrator for Federal Procurement Policy shall (1) conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and (2) incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

SEC. 203. (a) Except as provided in subsection (b), with respect to any Federal agency having procurement authority, the head of such agency shall—

(1) in the case of any Government procurement contract to be let by such agency which may not exceed $100,000 provide to any small business concern on its request—

(A) a copy of bid sets and specifications with respect to such contract;

(B) a copy and summary of each major Federal law or agency rule with which such concern must comply in performing such contract, including Federal laws and agency rules relating to environmental impact statements, air and water cleanliness requirements, and occupational and safety requirements; and

(C) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(2) in the case of any Government procurement contract to be let by such agency which may exceed $100,000, provide to any small business concern on its request—

(A) a copy of bid sets and specifications with respect to such contract; and

(B) adequate citations to each major Federal law or agency rule (as described in paragraph (1)(B) with which such concern must comply in performing such contract.

(b) Subsection (a) shall not apply to any contract—

(1) which is for services which are personal in nature; or

(2) which, including all subcontracts under such contract, will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Documents and information required to be provided under subsection (a) shall be supplied, to the extent practicable, at the local level.

SEC. 204. (a) Except as provided in subsection (b), any Government procurement contract with respect to which a notice for bidding is published in the Commerce Business Daily shall be open for bidding until the later of—

(1) the end of a thirty-day period beginning on the date such notice is so published; or

(2) the date stated in such notice as the closing date for such bidding.

(b)(1) Subsection (a) shall not apply to any Government procurement contract to be let by any Federal agency with respect to which the head of such agency personally determines that emergency circumstances prevent compliance with such subsection.

(2) Subsection (a)(2) shall not apply to any Government procurement contract with respect to which an amendment notice for bidding is published in the Commerce Business Daily not later than fifteen days before the closing date for bidding stated in such amended notice.

(c) In the case of any Government procurement contract with respect to which a notice for bidding is published in the Commerce Business Daily—

(A) if such bidding is limited to only one person, such notice shall specify the law or rule under the authority of which such bidding is so limited; and

(B) if such bidding is limited to persons located in a certain region of the United States, such notice shall state the basis for so limiting such bidding.

(d) The Secretary of Commerce shall take such steps as may be necessary in order that all Government procurement contracts set aside for small business concerns under section 15 of the Small Busineses Act, and all awards of contracts to small business concerns, so identified, are published in a timely manner in the Commerce Business Daily.

(e) The Secretary of Commerce shall study the feasibility of, and to the extent practicable implement, the notification to any small business concern, on request of such concern, of all Government procurement contracts on which, or on any subcontract of which, such concern may bid.

SEC. 205. There is hereby established in the Small Business Administration such Government contract arbitration panels as the Administrator deems appropriate. Such panels shall provide an opportunity for resolving disputes between any small business concern and any Federal agency having procurement authority concerning any Government procurement contract which is let to such concern or which may be let to any such concern. Use of such panels shall be voluntary, and decisions of such panels shall be binding only to the extent that such concern and agency agree that such decisions are binding.

SEC. 206. For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Small Business Administrator;

(2) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, United States Code; and

(3) the term "Government procurement contract" means any contract for the procurement of any good or service by any Federal agency.

SECTION-BY-SECTION ANALYSIS

SEC. 1. The bill is cited as the "Small Business Procurement Expansion and Simplification Act of 1977."

TITLE I. SMALL BUSINESS PROCUREMENT EXPANSION

SEC. 101. Amends the Small Business Act by requiring heads of procuring departments and agencies to consult with the Administrator of the Small Business Administration in establishing goals for the participation by small businesses in contracts of the agency having a dollar value above $10,000. Declares that these goals shall realistically reflect the potential of small business concerns to perform such contracts. Provides that whenever

the Administration and the head of the department or agency fail to agree, the matter shall be submitted for determination to the Administrator for Federal Procurement Policy, Office of Management and Budget.

Provides that for any items in a category of procurement purchased by a Federal Department or agency during any fiscal year for which less than 20 percent of the dollar amount was furnished by small business, an interim goal shall be set of a yearly increase of at least 10 percent per year of the dollar amount of participation by small firms until at least 20 percent of the dollar value of the items is furnished by small business.

States that nothing in the Act or any other provision of law precludes exclusive small business set-asides for procurements of research, development, test and evaluation, architectural, or engineering services.

Provides that contracts having a value of less than $10,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive in terms of price, quality, and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, whenever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

SEC. 102. Amends the Small Business Act to add statistical data to the information that the Small Business Administration may obtain as to methods and practices which Government prime contractors utilize in letting subcontracts; substitutes the word "review" for "encourage" in the same section where the SBA Administrator is empowered to take action to encourage the letting of subcontracts by prime contractors to small business concerns at prices and on conditions and terms which are fair and equitable.

Amends the Small Business Act to provide that the SBA Administrator (rather than the Secretary of Defense, the Administrator of the General Services Administration and the SBA Administrator) shall develop a small business subcontracting program that will, among other things, insure that such prime contractor and subcontractor will consult directly with the Administration, rather than through the appropriate procuring agencies.

Amends the Small Business Act by requiring that a procuring agency approve the small business subcontracting program of a low-bidding prime contractor before a contract award can be made. The SBA is authorized to assist in the evaluation of these programs to determine that small business subcontractors have been afforded a maximum practicable opportunity to subcontract to the prime. Provides that whenever the Administration and contracting procurement agency fail to agree, the matter shall be submitted for determination to the appropriate head of the department or agency by the Administrator.

Amends the Small Business Act to provide that every contract for property or services (with certain exceptions) in excess of $1,000,000 made by a government department or agency to a large business concern (removes the condition, "which in the opinion of the procuring agency offers substantial subcontracting possibility") shall require the contractor to conform to the small business subcontracting program and to insert in all subcontracts in excess of $500,000 a provision requiring the subcontractor to conform to such small business subcontracting program (removes the condition that the subcontract offer substantial possibilities for further subcontracts).

Authorizes the expenditure of $1,071,525 for purposes of carrying out Sec. 8(d) (1) and (2) of the Small Business Act (subcontracting program).

TITLE II. SMALL BUSINESS PROCUREMENT SIMPLIFICATION

SEC. 201. Directs the Administrator of the Office of Federal Procurement Policy to promulgate a single, simplified, uniform Federal regulation and to establish procedures for insuring compliance with such provision by all executive agencies.

SEC. 202. Directs the Administrator for Federal Procurement Policy to (1) conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and (2) incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

SEC. 203. Directs procuring agencies to provide to any small business concern on its request concerning a procurement not to exceed $100,000—

(A) a copy of bid sets and specifications with respect to such contract;

(B) a copy and summary of each major Federal law or agency rule with which such concern must comply in performing such contract, including Federal laws and agency rules relating to environmental impact statements, air and water cleanliness requirements, and occupational safety requirements; and

(C) the name and telephone number of an employee of such agency to answer questions with respect to such contract.

Directs procuring agencies to provide to any small business concern on its request concerning a procurement exceeding $100,000—

(A) a copy of bid sets and specifications with respect to such contract; and

(B) adequate citations to each major Federal law or agency rule (as described in (B) above) with which such concern must comply in performing such contract.

Exempts from the above provision contracts for personal services and contracts for performance outside of the United States.

SEC. 204. Provides that any procurement contract notice which is published in the Commerce Business Daily shall be opened for bidding at least thirty days after the date such notice is so published.

Exempts from this provision any contract for which the head of the procuring agency personally determines that emergency circumstances prevent compliance with such provision. Also exempts any procurement for which an amended notice for bidding is published in the Commerce Business Daily not later than fifteen days before the closing date for bidding stated in the amended notice.

Requires that any notice for bidding appearing in the Commerce Business Daily which limits bidding to only one person or a certain region of the United States shall specify the law or rule under which the limitation applies.

Directs the Secretary of Commerce to take such steps as may be necessary in order that all Government procurement contracts set aside for small business concerns under section 15 of the Small Business Act, and all awards of contracts to small business concerns, so identified, are published in a timely manner in the Commerce Business Daily.

Directs the Secretary of Commerce to study the feasibility of, and to the extent practicable implement, the notification to any small business concern, on request of such concern, of all Government procurement contracts on which, or on any subcontract of which, such concern may bid.

SEC. 205. Establishes in the Small Business Administration contract arbitration panels for resolving disputes between any small business concern and any Federal agency having procurement authority concerning any Government contract which is let to such concern or which may be let to such concern. Use of such panels shall be voluntary and decisions of such panels shall be binding only to the extent that such concern and agency agree that such decisions are binding.

By Mr. MATSUNAGA:

S. 2260. A bill for the relief of Judge Louis LeBaron; to the Committee on the Judiciary.

Mr. MATSUNAGA. Mr. President, I am introducing a bill today addressed to the problem of a technical oversight in a law enacted back in 1948. Since that time, the oversight, which is contained in title 28 of the United States Code, section 373, has remained uncorrected, and this oversight has worked a substantial hardship on certain Federal judges.

Section 373 of title 28 establishes the retirement pay for judges in U.S. territories and possessions. Judges in territorial and possession courts are considered title I judges under the Constitution, much like tax court judges, since the courts are created by Congress. As tax court judges, judges in the territories and possessions serve for terms of years, rather than for periods of good behavior. However, when a qualified tax court judge retires, he continues to receive the salary of his office. The tax court judge's retirement pay is defined in terms of the salary presently paid to tax court judges. Thus, the retiree receives any increase enjoyed by judges presently serving, and the retiree's pay is kept in step with cost of living increases.

On the other hand, judges who served in the territories and possessions, under section 373 of title 28, upon retirement collect only the salary they had received when they relinquished office. No provision is made to adjust the retirement pay for any increase in the cost of living or for any increase in salary later received by active territorial and possession judges. Thus, the judge who retired more than 20 years ago, would receive the same retirement pay that he collected when he relinquished office.

The inequity of this retirement provision for territorial judges is illustrated by the case of Judge Louis LeBaron of Hawaii. Judge LeBaron served both as a judge on the Hawaii Federal district court and subsequently as a justice on the Hawaii supreme court, when Hawaii was a territory. He was appointed by President Roosevelt on July 8, 1937, and in 1942 was named to the Hawaii Territorial Supreme Court. Judge LeBaron served a total of 18 years as a Federal judge in the territory of Hawaii, until February 14, 1955, when he retired. At the time he retired, territorial supreme court justices in Hawaii received a salary of $10,000 a year. Under section 373, Judge LeBaron continues to receive $10,000 a year as his retirement pay.

To this date, Judge LeBaron still receives only $10,000 a year as his retirement pay, for section 373 does not provide for any increase in the cost of living, or for any increase later received by justices or judges in the territories. Since a dollar now is worth only one-third of what it was worth back in 1955, Judge Louis LeBaron has in effect had

his retirement pay reduced by 66⅔ percent.

Were he covered by the retirement provisions for other article II judges, that is tax court judges, he would receive more than 3½ times what his retirement pay is today. In other words, Judge LeBaron today receives only a fraction of what a comparable retired judge of the tax court receives today. To correct this technical oversight, my bill would treat Judge LeBaron as if he had retired as a judge of the U.S. Tax Court on February 14, 1955. This treatment would provide him with a fair and adequate retirement pay and correct the egregious hardship he has suffered under section 373.

From the standpoint of plain equity, the bill which I am introducing today should be passed without delay.

By Mr. HATHAWAY:

S. 2261. A bill to implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property; to the Committee on Finance.

Mr. HATHAWAY. Mr. President, it is my pleasure and privilege to introduce in the Senate a bill to implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

This bill provides legislation necessary for implementation of the UNESCO convention which the Senate approved on August 11, 1972.

The problems of pillage and illicit trade in antiquities and cultural objects is not a new one.

For as long as mankind has existed, there has been war between nations, plunder by the victors, and subsequent trading of the spoils in normal commercial channels.

But it has become increasingly clear that we must take steps to set some standards for the acquisition of art objects so as to discourage, in the future, the use of methods of acquisition which more and more institutions and governments deplore.

The demand for art objects has grown. And since, by definition, there is only a finite supply of antique artifacts, their scarcity is met by increasingly aggressive practices by which they may be acquired.

Grave robbing, and other examples of the theft of antiquities from historical locations in the Earth or in ancient buildings, is nothing new.

But with the advances of archeology, such crude mining of ancient artifacts robs not only the owner of the object, but all of us of the knowledge which that object, in its ancient repository, might have imparted to us upon the sophisticated analysis of a modern archeologist.

And "beyond the grave," so to speak, is the problem of international trade in art objects.

Different countries have different restrictions. While it may be illegal to remove an object from country A for export to country B, it is deemed legal if the object passes through country C and there receives pro forma documentation which serves to make lawful a transaction which in reality subverts the efforts to maintain the cultural heritage of the nation in which the object originated.

In order to begin to combat these practices, which threaten the patrimony of all nations, a concerted, worldwide effort is necessary. The United States cannot by itself eliminate the pillage of antiquities or the illicit trade in art objects.

This bill gives the President a defined sphere of authority, under which he may enter into bilateral or multilateral agreements with other nations whose cultural patrimony is endangered by pillage. The President is also given emergency powers to restrict the importation of such artifacts where a foreign state requests it.

Although the provisions of the bill enjoy wide support, the art constituency is a complex one with a wide variety of interests, goals and problems. So in order to help the President address the situation, section 5 of the bill establishes a Cultural Property Advisory Committee.

The bill also prohibits the importation of cultural property stolen from a museum and there are provisions dealing with recovery, return, seizure, and judicial forfeiture of such artifacts. The bill is prospective only.

The art community has played a large role in the development of this legislation and it is my hope that with the continued support of museums, dealers and other institutions and interested parties, we shall be able to pass this bill early in 1978.

ADDITIONAL COSPONSORS

S. 1882

At the request of Mr. GLENN, the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1882, to amend the Omnibus Crime Control and Safe Streets Act.

S. 1974

At the request of Mr. NELSON, the Senator from Louisiana (Mr. JOHNSTON) and the Senator from Nevada (Mr. LAXALT) were added as cosponsors of S. 1974, the Regulatory Flexibility Act, and of amendment No. 849, intended to be proposed to S. 1974.

S. 2066

At the request of Mr. MATHIAS, the Senator from New Hampshire (Mr. MCINTYRE) and the Senator from Alaska (Mr. GRAVEL) were added as cosponsors of S. 2066, a bill to protect the Appalachian Trail.

S. 2218

At the request of Mr. STONE, the Senator from Kansas (Mr. DOLE), the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUYE), and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 2218, to establish a program of aquaculture.

S. 2227 AND S. 2228

At the request of Mr. HARRY F. BYRD, JR., the Senator from Nebraska (Mr. ZORINSKY) was added as a cosponsor of S. 2227 and S. 2228, bills to amend the Internal Revenue Code.

SENATE RESOLUTION 219

At the request of Mr. ROTH, the Senator from New York (Mr. JAVITS) was added as a cosponsor of Senate Resolution 219, establishing a senior citizen internship program in the Senate.

SENATE RESOLUTION 305

At the request of Mr. KENNEDY, the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Minnesota (Mr. ANDERSON) were added as cosponsors of Senate Resolution 305, a resolution to name room S-120 in the Capitol for Senator HUBERT H. HUMPHREY.

SENATE CONCURRENT RESOLUTION 51

At the request of Mr. HUMPHREY, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of Senate Concurrent Resolution 51, relating to Americans missing in action.

SENATE JOINT RESOLUTION 95

At the request of Mr. HEINZ, the Senator from Pennsylvania (Mr. SCHWEIKER) was added as a cosponsor of Senate Joint Resolution 95, granting citizenship to William Penn and Hannah Callowhill Penn.

SENATE RESOLUTION 311—SUBMISSION OF A RESOLUTION RELATING TO GRAZING FEES ON PUBLIC LANDS

(Referred to the Committee on Energy and Natural Resources.)

Mr. WALLOP (for himself, Mr. MCCLURE, Mr. HANSEN, Mr. ABOUREZK, Mr. CANNON, Mr. DECONCINI, Mr. DOMENICI, Mr. GARN, Mr. GRAVEL, Mr. HATCH, Mr. HAYAKAWA, Mr. LAXALT, Mr. MCGOVERN, Mr. SCHMITT, Mr. STEVENS, and Mr. YOUNG) submitted the following resolution:

S. Res. 311

Whereas the Department of Agriculture and the Department of the Interior have announced a proposed new formula for computing fees to be charged for the grazing of livestock on public lands; and

Whereas the new formula will result in an additional cost of approximately $6,000,000 to grazing lease holders; and

Whereas the new formula will have devastating consequences on a substantial segment of the agricultural industry that is already facing severe economic problems; and

Whereas the announced new formula does not reflect the 1976 findings and recommendations of the interagency committee, known as the Technical Committee Organized to Review Public Land Grazing Fees which was established for the purpose of studying the fee structure for grazing on public lands:

Resolved, That it is the sense of the Senate that the Secretary of Agriculture and the Secretary of the Interior should, and are hereby urged and requested to, impose, with respect to any increase in the charges currently being made for grazing livestock on public lands, a moratorium for such a period as may be necessary to permit the appropriate committees of the Congress a reasonable opportunity to hold hearings on the proposed new formula.

Sec. 2. The Secretary of the Senate shall transmit copies of this resolution to the Secretary of Agriculture and the Secretary of the Interior.

Mr. WALLOP. Mr. President, last Friday, October 21, the Department of the

Interior and the Department of Agriculture announced the proposed new grazing fee formulas contained within a report submitted by the Secretaries of those agencies. Members of Congress, cattle ranchers, woolgrowers and the people in the rural communities of the West have been waiting for a report that would reflect the administration's understanding of the West and the problems of the stock grower. Apparently the agencies involved neither understand the conditions that make the Western livestock industry unique, nor does it care about the fate of the stock grower who depends upon the public lands for grazing.

The proposed grazing fee formulas endorsed reflect a disregard for the condition of the domestic livestock industry. This industry is facing its most difficult period of economic hardship since the depression. Stock growers are beseiged with production costs that continue to climb along with inflation, while the price that he receives for his product remains at an all time low. Cattle producers are hit particularly hard. Depressed prices and the market pressures created by continued imports of beef are forcing larger number of cattle producers out of business. In my State of Wyoming, the bankruptcy rate among ranchers will climb to 20 percent this year.

To these economic difficulties, there are serious problems facing stock growers which stem from government programs. The administration and clarification of the Organic Act is still in a shambles. Neither stock growers nor BLM administrators in the field are yet sure of the interpretation of this law and the impact that it will have on the livestock industry. Now the Government is proposing another economic burden, the consequences of which are unclear, in the form of a $6-million increase in grazing fees.

I do not need to continue to list the economic difficulties facing the U.S. livestock industry. Those who are concerned with the fate of the livestock producer are already familiar with its problems through testimonies before the International Trade Commission, public meetings on grazing fees, and reports in the media. The administration cannot help but realize the seriousness of the situation for the stock grower. This is our greatest disappointment. The administration is aware of this desperate economic condition yet it supports grazing fee formulas, which can only push more stock growers closer toward bankruptcy.

The Department of the Interior and the Department of Agriculture have not been without equitable alternatives to the formula that has been chosen. Agriculture groups such as the American National Cattlemen's Association and the American Farm Bureau Federation developed formulas that reflect years of research and took into consideration the effects the formula would have on the livestock industry. These recommendations were dismissed.

Even more surprising is the fact that the administration rejected the formula proposed by its own Technical Committee to Review Public Land Grazing Fees. The Technical Committee, composed of representatives from the Economic Research Service, USDA, Statistical Research Service, Forest Service, Bureau of Land Management, and the Department of the Interior, published its findings in the Federal Register on February 4, 1977. The Technical Committee recommended a formula that considered an index of private land lease rates, and an index of beef prices minus the cost of production. These agencies had conceded that some consideration had to be given to production costs and the price of the stockgrowers product if an equitable formula was to be achieved. The new proposed grazing fee formula rejected this consideration.

The rationalization of the administration's new grazing fee formula is that the grazing fees should not assure profitability but rather the formula should assure that the users of public lands pay fees equivalent to those paid on private lands. The new formula leans heavily on the assumption that grazing on public land is similar to grazing on private land, which it is not. There are economic reasons why the stockgrower has agreed to pay a premium for grazing on private lands. On private lands, the cost of fencing, water development, and other land improvements are not borne by the renting stockgrower as they are on public lands. Nor are they faced with the problem of public access. It is the permittee who makes the investments to improve our Nation's public lands to make them more productive for the benefit of us all. Will we enjoy the benefit of these improvements if the stockgrower is forced from the range and his occupation by higher grazing fees and other government policies?

The administration has made a tragic error in ignoring the grazing fee proposals that would consider cost of production and the price the stockgrower receives for his product. This proposal must not go into effect as planned by the Department of the Interior and the Department of Agriculture. I submit, along with my co-sponsors, that a moratorium be placed on all grazing fee increases until the appropriate Committees of Congress have an opportunity to hold hearings on this proposal, and an alternative grazing fee formula is adopted.

SENATE RESOLUTION 312—ORIGINAL RESOLUTION REPORTED RELATING TO THE SUBPENA AUTHORITY OF THE SELECT COMMITTEE ON ETHICS

(Placed on the Calendar.)

Mr. CANNON, from the Committee on Rules and Administration, reported the following original resolution:

S. RES. 312

Resolved, that section 3(d) of Senate Resolution 338, 88th Congress, agreed to July 24, 1964, is amended to read as follows:

"(d) Subpoenas may be issued (1) by the Select Committee or (2) by the chairman and vice chairman, acting jointly. Any such subpoena shall be signed by the chairman or the vice chairman and may be served by any person designated by such chairman or vice chairman. The chairman of the Select Committee or any member thereof may administer oaths to witnesses."

AMENDMENTS SUBMITTED FOR PRINTING

SOCIAL SECURITY AMENDMENTS—H.R. 9346

AMENDMENT NO. 1541

(Ordered to be printed and to lie on the table.)

Mr. TOWER. Mr. President, there is no longer any question that the financing of the social security system needs to be overhauled. This system has been ailing for some time and it is absolutely essential that Congress make it clear to all Americans that the commitment this Nation has to its social security system will be met and will not be defaulted. We owe this not only to the 100 million citizens who pay to support the system and to the 34 million who currently benefit from it, but to our next generation as well. They deserve, and we can give them, no less.

We must insist that the young people entering the work force today, who are obliged to pay an increasing tax on their earnings, be assured that their contributions will not be in vain. Congress must demand that the type of social security system which they contribute to and will look to for their future benefits will not be exorbitantly expensive and will reflect their contribution to the system.

Likewise, we cannot place this burden of lessening the financial ills of social security too heavily on our middle class and business community. Buffeted by inflation, middle income families cannot be made to bear a still greater share of the financing load for the retired generation. Applying a disproportionate share of this tax to employers would be equally unfair and ill advised. Employers will not pay increases in payroll taxes out of profits, but rather will shift the tax primarily to their employees, either through lower wages or by hiring fewer workers. Increased prices to the consumer would be an unavoidable product of this approach.

Equally as important, we must seek to remove immediately that continually discriminatory burden, the earnings limitation ceiling, so that the individual of retirement age can maintain his income level as high as possible to keep pace with inflation.

Mr. President, financial soundness can be achieved and a number of long standing inequities in the system can be corrected. I am convinced that the damage is not beyond repair. And for this reason, I am submitting today legislation that will work to stabilize the drain on the social security trust funds, reduce the effect of wage and price fluctuation on the system's benefit structure and eliminate the earnings test for retirement.

I am well aware that the Senate Finance Committee is reporting out extensive financing proposals of their own and I commend their tireless efforts to address this most urgent problem. I would hope, however, that when the Senate considers a legislative remedy it

may find merit in my midcourse suggestions and that the results of our combined efforts will effectively stabilize the drain on the trust funds and renew Americans confidence in an economically viable social security system once again.

Mr. President, I ask unanimous consent that a brief outline of the proposal I am submitting be printed at this point in the RECORD.

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

OUTLINE OF SENATOR TOWER'S SOCIAL SECURITY LEGISLATION

1. Shifting 0.3% of the currently scheduled (for January 1, 1978) tax rate increase from the hospital insurance trust fund to the old age, survivors', and disability insurance trust fund. (The full rate increase is scheduled to be 0.4%).

2. Completely ending the earnings limitation for persons from age 65–72, accompanied by a tax increase of 0.25% to fund it, effective January 1, 1979. In that event, the OASDI trust fund would be depleted in 1983.

3. Using a dependency test solution that would reduce benefits payable to dependent spouses (including surviving spouses) by the amount of any civil service, (Federal, State, or local) retirement benefit payable to the spouse. The provision would apply only to individuals applying for spouses' social security benefits in the future and only if the dependent spouse had a civil service pension based on his or her own earnings in public employment which was not covered in the Social Security system.

4. Using the price indexing method of decoupling, this solves the defective indexing problem which currently exists, and would put the Social Security Trust Funds on a completely actuarily sound basis over the long-term (the next 75 years). It assures the beneficiary that both his initial benefit and subsequent benefits will be computed on a price-indexed basis. This contrasts with wage indexing, where the initial benefit is based upon wage rather than price history; which is substantially more expensive and could not keep the funds actuarily sound without further increases in the tax rate or wage base.

5. Calling for a blue ribbon commission, of outside members, to review the OASDHI trust funds and report to Congress by January 1, 1980, on acceptable ways to solve the short-range problems of the funds, which would be depleted in 1983 under this overall proposal.

ENERGY TAX BILL—H.R. 5263

AMENDMENT NO. 1542

(Ordered to be printed and to lie on the table.)

HOME INSULATION SAFETY STANDARDS

Mr. HART. Mr. President, I am sending to the desk today an amendment which addresses a critical problem, the need for safety standards for home insulation. The entire Nation owes a debt of gratitude to Raymond D. Jones, chief counsel, Felicia Muftic, executive director and Philip Stern, consultant engineer of the Metropolitan Denver District Attorney's Consumer Office for bringing this matter to the attention of the appropriate Federal agency, the Consumer Product Safety Commission. Unfortunately, that agency has, in my opinion, failed in its responsibility to address the allegations contained in that petition.

Those allegations include: First, risk of injury from fires associated with cellulose home insulation; second, risk of injury of cancer and other problems in the respiratory and gastrointestinal tracts due to the inhalation and ingestion of particles from fibrous glass home insulation; third, risk of injury from fires associated with plastic foam/resin home insulation; and fourth, risk of injury of irritation and poisoning associated with the use of plastic foam/resin insulation by consumers. Clearly, the most pressing problem is the risk of flammability in improperly treated cellulose insulation.

Mr. President, the Consumer Product Safety Commission's own Denver area office notified its Washington office of this potential problem on June 18, 1975, and on February 20, 1976, the Consumer Product Safety Commission's Denver office pointed out the need for mandatory fire resistance standards for cellulose insulation.

It is unconscionable that the CPSC has not acted of their own accord. But, even further, they have not as of this time addressed the issues raised in the petition filed by the Metropolitan Denver District Attorney's Consumer Office in October of 1976, which, under law, should have been addressed within 120 days of the date of filing.

The fact that the CPSC has not acted on this issue should not and will not deter us from bringing this issue to the forefront. Consumers, ready and willing to comply with energy conserving techniques, such as insulating homes, should not be jeopardized by some insulation production practices that are lax by the most liberal measurements. If the Congress is providing, through legislation, the incentives for energy conservation, we should couple that effort with sufficient protection for the consumer. We cannot overlook the potential hazards of the energy conservation techniques we are advocating this very day.

Mr. President, let me briefly review the facts. Cellulose insulation is primarily made from old newspapers and other paper and wastepaper products. As we all know, these are easily obtainable and extremely flammable. When this paper is ground, it is treated with a dry chemical, usually borax, boric acid, or aluminum sulfate which should cover the fibers if they are ground fine enough, making them fire retardant. But, since these chemicals are dry, it is possible that they may separate from the cellulose fibers at a later date, making the cellulose combustible. Evidence indicates that certain chemicals designed to retard flammability can leach out upon exposure to moisture or can be lost through a process known as sublimation, under the temperatures often found in an attic in the summer months. Mr. President, I do not pretend to be an expert on all the ins and outs of home insulation safety. But, I do know that the Consumer Protection Safety Commission does have the authority to address this pressing problem, and I am only too aware of their failure to do so.

My distinguished colleague from Kentucky, Mr. FORD, chairman of the Consumer Subcommittee of the Senate Committee on Commerce, Science, and Transportation has been extensively involved in this issue for quite some time. I commend him for his diligence and fine efforts and hope he will recognize the need for this legislation.

I ask unanimous consent that the text of my amendment be printed in the RECORD.

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

AMENDMENT NO. 1542

On page 13, strike out lines 13 and 14, and insert in lieu thereof:

"(6) Consultation in prescribing standards; certain insulation standards.—

"(A) Consultation.—Performance and quality standards shall be pre-".

On page 13, between lines 18 and 19, insert the following:

"(B) Insulation standards.—To assist the Secretary in prescribing standards under paragraph (3) and to assist Congress in insuring credit shall be allowed under this section only for insulation which may be safely installed, the Consumer Product Safety Commission shall, as soon as practicable, but not later than 6 months after the date of the enactment of this section, issue final safety standards under the Consumer Product Safety Act (86 Stat. 1207) for cellulose insulation and submit to Congress and the Secretary its findings with respect to such insulation, together with any recommendations for the adoption or amendment of any law or regulation which it finds necessary to protect the public health and safety.

Mr. FORD. Mr. President, I commend my distinguished colleague from the State of Colorado for his strong statement on the subject of home insulation safety. As chairman of the Consumer Subcommittee of the Senate Committee on Commerce, Science, and Transportation, I held 2 days of hearings on this very matter on September 15 and 16 of this year. Also, on October 7, I held a day of oversight hearings involving the Consumer Product Safety Commission in which I voiced serious concern about CPSC's handling of the petition filed by the Metropolitan Denver District Attorney's consumer office.

On October 21, I sent a letter to Chairman Byington of the Consumer Product Safety Commission, and I ask unanimous consent that it be printed in the RECORD at this point.

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

OCTOBER 21, 1977.

S. JOHN BYINGTON,
Chairman, Consumer Product Safety Commission, Washington, D.C.

DEAR CHAIRMAN BYINGTON: In my capacity as Chairman of the Consumer Subcommittee and as a member of the Senate Committee on Energy and Natural Resources, recent testimony that I have heard in both forums has convinced me that home insulation safety questions seriously threaten our national energy goals. If we are to meet the President's goal of insulating 90 percent of American homes by 1985, it is essential that consumer confidence in home insulation products be maintained at a high level. Because home insulation is such a critical component of the national energy conservation effort, I believe the question of home insulation safety should be among your highest priorities.

In June of 1975 your own Denver field office notified the CPSC of a flammability problem involving improperly treated cellulose insulation. Subsequently, you received a detailed petition from the Denver District Attorney's office requesting home insulation safety standards. The Commission has now had one full year to deal with that petition. The period for written comments and submissions for the record on this matter expires today, October 21, 1977.

I am of the opinion that sufficient authority for dealing with the various aspects of the home insulation safety issue are presently contained in the Consumer Product Safety Act. If, however, the CPSC neglects or refuses to exercise that authority, I am prepared to introduce specific legislation directing the Commission to establish home insulation safety standards.

Please advise me within 30 days what action the CPSC plans to take on home insulation, and under what sections of the Consumer Product Safety Act it intends to proceed. Additionally, please indicate how many employees and what level of resources you intend to devote to the home insulation safety issue. If the CPSC current authorization level is not sufficient to deal with this specific problem, I would appreciate being advised what additional resources are needed. This information will be useful in my planning of reauthorization hearings on the CPSC which will be held early next year.

I believe that the Consumer Product Safety Commission can play a pivotal role in determining the success or failure of our national energy conservation effort. I look forward to hearing what concrete steps you, as Chairman, will urge the Commission to take in this important matter.

Sincerely yours,

WENDELL H. FORD,
Chairman, Subcommittee on Consumer.

Mr. FORD. I firmly believe that the Consumer Product Safety Commission possesses sufficient authority under its existing legislation to deal with this serious problem, which I believe threatens to undermine the consumer confiddence that is essential for the success of our national energy goals.

Chairman Byington recently traveled to St. Louis to attend the National Fire Prevention and Control Administration's convention. Of the many trips he has taken as Chairman, this should prove to be the most worthwhile. By listening to State and local fire officials, Mr. Byington has obtained a firsthand account of the serious nature of the home insulation safety problem. I am advised that Mr. Byington will bring the subject of home insulation safety to the full Commission on Wednesday, November 2, 1977, and will at that time propose various steps for dealing with the Denver petition on home insulation. In my opinion, the outcome of that meeting will determine whether additional legislation is necessary.

With full knowledge of the serious problem existing in Denver and in many other parts of the country, I ask that my distinguished colleague consider withdrawing the amendment he has just proposed, and join with me in insisting that the Commission move forward expeditiously under its existing authority. Should the Commission fail to act on this subject forthwith, I can assure the gentleman from Colorado that I will work with him to develop specific legislation that will mandate Commission action on home insulation safety standards.

Mr. HART. Mr. President, I commend the gentleman from Kentucky for his continued effort to see that the Consumer Product Safety Commission recognizes the urgency of this problem and exercises its existing authority. Based on your assurance that Commission action on the subject of home insulation safety will be forthcoming, I will withdraw my amendment at this time. However, I will continue to monitor the Consumer Product Safety Commission's activities on this subject, and will work with you to develop specific legislation should the Commission fail to act.

AMENDMENT NO. 1543

(Ordered to be printed and to lie on the table.)

Mr. PERCY (for himself, Mr. JAVITS, Mr. PELL, and Mr. HART) submitted an amendment intended to be proposed by them to the bill (H.R. 5263) to suspend until the close of June 30, 1980, the duty on certain bicycle parts.

AMENDMENT NO. 1544

(Ordered to be printed and to lie on the table.)

Mr. RIEGLE submitted an amendment intended to be proposed by him to the bill (H.R. 5162), supra.

NOTICES OF HEARINGS

HOME INSULATION SHORTAGE

Mr. SASSER. Mr. President, the Subcommittee on Intergovernmental Relations will hold a hearing on November 2, to examine the impact of the current shortage of home insulation.

Home insulation is an integral part of our Nation's program to conserve energy. The current demand for home insulation products indicates that a great many Americans realize the importance of home weatherization to help cut down their fuel bills.

However, insulation is in scarce supply. The unavailability of insulation is affecting homeowners and homebuilders. Housing construction is delayed, resulting in layoffs in the building industry, and increased costs.

The subcommittee intends to examine the extent of the shortage of home insulation, and to find out what we can expect in the months ahead. The hearing is a continuation of the subcommittee's hearings begun last month to determine the state of preparedness for winter.

The hearing will be held at 10 a.m., in room 6202 of the Dirksen Senate Office Building.

CONDUCT OF MONETARY POLICY

Mr. PROXMIRE. Mr. President, the Committee on Banking, Housing, and Urban Affairs will be holding 3 days of public hearings on the conduct of monetary policy pursuant to the requirements of House Concurrent Resolution 133 on November 9, 10, and 11. The hearings will be held in room 5302 of the Dirksen Senate Office Building and will begin at 10 a.m. on each day.

On Wednesday, November 9, the committee shall receive the testimony of Dr. Arthur F. Burns, Chairman of the Board of Governors of the Federal Reserve System. Chairman Burns will announce to the committee the plans and objectives of the Board of Governors and the Federal Open Market Committee with respect to the monetary and credit aggregates.

On Thursday, November 10, the committee shall receive the testimonies of two distinguished economists: Dr. Andrew F. Brimmer, a former member of the Board of Governors of the Federal Reserve System, and currently president of Brimmer & Company, Inc., Washington, D.C., and Dr. Robert V. Roosa of Brown Brothers Harriman and Co., New York.

On Friday, November 11, the committee shall receive the testimonies of three witnesses who have been asked to comment on both current and past monetary policy and on the need for better coordination of monetary and fiscal policy. The witnesses shall be the Honorable W. Michael Blumenthal, Secretary of the Treasury; the Honorable Richard Bolling, chairman of the Joint Economic Committee or his representative from the committee; and Ms. Alice M. Rivlin, Director of the Congressional Budget Office.

Anyone interested in obtaining additional information about the hearings should contact Steven M. Roberts, chief economist for the committee, at (202) 224-0893.

ADDITIONAL STATEMENTS

FORMER PANAMANIAN PRESIDENT COMMENTS ON TREATIES

Mr. DOLE. Mr. President, a statement by former Panamanian President Arnulfo Arias, on the proposed Panama Canal Treaties, was recently brought to my attention. Dr. Arias, who now resides in exile in Florida, served as President of the Republic of Panama during 1940 to 1941, 1949 to 1951, and served 12 days of a third term before being ousted by Gen. Omar Torrijos in October 1968.

As one who had had a long and close association with both the domestic and foreign policies of Panama, Arnulfo Arias brings a unique perspective to the current treaty issue. His statement should be a part of the historical record on this matter. Mr. President, I ask unanimous consent that the text of the statement by Dr. Arias be printed in the RECORD.

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

STATEMENT FROM DR. ARNULFO ARIAS, LAST CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF PANAMA

First: On September 7, 1977 two treaty proposals were signed in Washington, by representatives of Panama and the United States after negotiations have been held for several years. The proposed treaties and their implementations were negotiated and signed at a most difficult time in Panamanian history, when there had not been and there are not, genuine democratic institutions, nor freedom of expression, nor basic inalienable rights of the citizenry. In such a manner that none of the political parties which represent the vast majority of the whole electorate have been involved in anyway whatsoever, directly or indirectly, in the negotiations or the signature of the drafts.

Furthermore the proposed treaties have in themselves developed a quite large area of misunderstandings, doubts and double in-

terpretations in Panama as well as in the U.S.A. which invalidates them and makes them inadequate by the precedent it sets, besides the planting of tragic seeds of discord for the future.

Second: The treaty drafts do not take into consideration the vital interests of Panama, the U.S.A., and Latin America, and should therefore be rescinded. Firmly established trends of opinion are backing such clear judgment. In this way we will avoid an internal confrontation in both countries as well as between both nations.

Third: It is up to Panama to first reestablish the democratic process, all public freedoms, guarantees to the citizenry, the return of all political exiles and the full enjoyment of all human rights, and furthermore to bring the house to fiscal and economic order.

Fourth: Later, within a climate of progress and public faith in our future, return again to the negotiating table to obtain a just and equitable treaty for both countries since we are not in discord with one another and a special relationship binds us together in our mutual aims to protect the rights and aspirations of our people. We have the desire for a dignified cooperation and the responsibility to guarantee by all means a maritime passage for all people of the world.

THE 160-ACRE LIMITATION ON FEDERAL PROJECT LANDS—AGAIN?

Mr. METCALF. Mr. President, as one who has devoted all of my public career to the defense of the family farm, I was heartened by the recent decision of Interior Secretary Cecil Andrus to enforce the Reclamation Act of 1902. That act provided for limitations on farm acreage which could be irrigated from the waters of a Federal reclamation project. The idea was to settle as many people as possible on the farm where they could enjoy the fruits of their own labor and raise their children in the best atmosphere. Unfortunately, the law has not been enforced and increasingly smaller numbers of corporate landowners have captured an increasingly larger percentage of these irrigated lands.

I applaud Secretary Andrus' courageous decision to reverse this process and return to the original intent of the law. My beliefs are shared by Dr. Carl F. Kraenzel, an expert in rural sociology who taught for 33 years at Montana State University and is now retired. Dr. Kraenzel has written a short statement in support of the decision, a copy of which I wish to place in the CONGRESSIONAL RECORD.

Dr. Kraenzel makes several points, but the one which most impressed me dealt with the diversity permitted by small ownership—diversity in amounts of water delivered to the soil and the resultant physical impact on the land, and the diversity in the lives of the inhabitants. People living in close proximity require a variety of services; the provision of these services permits extra income to those farming modest-size farms.

I believe Dr. Kraenzel has made an eloquent contribution to the debate on this important matter, and I ask unanimous consent that the text of his statement be printed in the RECORD.

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

THE 160-ACRE LIMITATION OF FEDERAL PROJECT LANDS—AGAIN?

I am Carl F. Kraenzel, a PhD. in Rural Sociology, with more than 33 years at Montana State University in research and teaching and six years of teaching and retirement at the University of Texas at El Paso, and now living at Las Cruces, New Mexico, an irrigated area on the Rio Grande. Also I grew up on a dry land farm in Western North Dakota, and know something at first hand of what was the Fertile Crescent in the Middle East. I have always watched closely the dry land farming and irrigation agriculture of the arid and semi-arid West and know something of rural society and agriculture in the rest of the Nation, and of urban society too.

I want to say something about family farming, which I endorse heartily, as contrasted with corporate agriculture. And I want to say this in the context of maintaining the 160-acre irrigation unit when supplied by federally constructed irrigation project water as set out in the Reclamation (Newland's) Act of 1902, and as being reimplemented under order of the U.S. District Court for the District of Columbia in the case of National Land for People, Inc. v. The Bureau of Reclamation, et al., Civil Action No. 76-928.

I have before me numerous documents of the original law and amendments to it, plus irrigation project statements and rulings of procedure by the Bureau, the several Secretaries of Interior and the Solicitor General, many items from newspapers and journal articles that are pertinent, many books on the subject and other professional writings as those of Dr. Paul S. Taylor of the Economics Department, Univ. of Calif. at Berkeley, the Report On The Lands of the Arid Region Of The United States by Major John Wesley Powell, The Great Plains by Walter Prescott Webb, and my own writings. I also have before me several drafts of the statement as I originally wrote it, properly documented, and too long and boring. Hence this brief statement in support of the Reclamation Act of 1902, its spirit and philosophy.

Firstly. Semi-arid and arid lands are different from humid area lands in that the former are not leached. Therefore the soils of these lands have an inpenetrable layer of hard pan below them, and the application of irrigation water or more than normal rainfall will result in the surfacing of salt and the virtual destruction of the soil for the growing of usual crops. Even alternating years of dry land cropping may result in large areas of salt or alkali slicks, and ruin the soil, after several decades of such practices because the stored moisture (in the alternate non-crop years) is too much, i.e., the vegetation and evaporation do not take all the moisture out of the soil, leaving a cumulative excess, unless moisture absorbing crops are planted occasionally. The excess moisture has nowhere to go. With the irrigation of such arid and semi-arid lands, this process of bringing saline substances to the surface is much more intense, especially if the irrigation is in the lower or low elevation valleys.

Generally these are the last remnants of a former salt sea, as in the case of the Imperial and Central Valleys of California, the lower reaches of the Rio Grande, and the Salt Flats in Arizona. The leached humid area soils have had these saline particulates removed by underground flow and surface run-off after eons of surplus moisture. No amount of technology and mechanization, including elaborate drainage ditching and underground pipe installation and washing of soil by imported sweet water, will suffice, unless hanging gardens and hydroponics are employed. The saline soils are ruined for a long time; and the larger the irrigated area devoted to a single crop system such as cotton or certain vegetables because of large scale mechanization as in corporate farming, probably the larger the damage to the soil, as in the case of the Imperial Valley.

Secondly. There is something that corporation agriculturalists of the West, especially in the Southwest, and their banker and businessman allies, can learn from the more rural of the rest of the arid and semiarid western agriculturalists, if they would. Whereas humid area farming and traditional thought about agriculture has been steeped in the idea of diversification of and by a farm, there has emerged in the West the idea of area diversification for agriculture, and including also other occupations. There is nothing in the Reclamation Law of 1902 that says that an operator of a 160-acre piece of land (or less), cannot also own and/or operate additional dry land acreage for grain, even at considerable distance from the town or irrigated base on which he lives; and/or graze livestock on private (cooperative if you will) or public grazing land, also at considerable distance away. Nor is there anything in the law to keep him from operating larger machinery for special tasks for his neighboring operators if he is mechanically adept and the neighbors arrange a longer term lease for him to purchase the equipment or buy it cooperatively.

Raising bees for honey production; growing vineyards and fruit orchards; operating a smaller dairy or a livestock feeding yard, especially if neighbors cooperate; owning and operating a business in town; performing one or more of several of a dozen other kinds of services for his neighbors, for cash, such as blacksmithing, crop dusting, spraying for insects and weeds, artificial insemination of livestock, or regular farm labor are other supplemental alternatives for many who have small irrigated acres. None of this need be subsistence farming. In fact, area and occupational diversification are a wise managerial move, avoiding the need of putting "all eggs in one basket." Thus a small irrigated base acreage can lend income security and diversity to an operator, and can make for a cluster-like kind of settlement in otherwise sparse areas where public and social services have been extraordinarily costly or hard to come by.

This kind of diversification is what Major Wesley Powell was talking about in his arid lands report of almost a century ago. It is the kind of reserve, mobility and flexibility characteristics this writer has recommended for the survival of settlement in the arid and semiarid lands—a tieing together of Sutland and Yonland, a kind of adapted settlement to replace the anarchistic isolated settlement pattern that was inflicted upon this area from the homesteading era. The writer knows of many agricultural operations of this nature in the Great Plains and the Rocky Mountain area. There are fewer examples of this among the Anglos of the Southwest, because of the intransigence of most of the corporate operators, their failure to adapt to arid and semiarid conditions after coming from the humid area, and because of the urban domination that has invaded the arid and semiarid lands, especially from the Pacific and Gulf area states.

At one time there were several such irrigation projects built in Montana and adjacent states, including among the Mormons in Utah. But the evil perpetrated by "tail-gunner" Joe McCarthy, a humid area Midwesterner, and his ilk, destroyed these in his "red-hunting spree"—destroyed a way of agriculture that would, in all probability, have been more adapted than what now prevails, including the corporate devices on irri-

gated lands that are destroying the soil, the environment, and the water resources, entirely for self-gain.

Thirdly, Large scale corporate irrigation agricultural operators (Southern Pacific Railroad, Standard Oil, Kern County Land Company, Tejon Ranch Properties, O'Neal plantation, Arden Farms, California Packing Corporation, King Ranch, Balfour and Guthrie, R. T. Hoover Cotton Company (if they still go by these names) among them), their urban corporate satraps, and their coat-tail riders have perpetrated massive abuses against the general public welfare and against the Reclamation Act of 1902.

The subventions included failure to divest themselves of excess acreage when using federal irrigation project water (in some cases actually expanding acreage with such water uses even if purchased at high prices) in violation of the Reclamation Act; the aborting of the law in the case of the Imperial Valley via the California Supreme Court in 1933, without obtaining higher court rulings less prejudicial to Southwesterners; the actual with-holding of the salary of the Commissioner of Reclamation and that of the Western Regional Director, an act of castigation for not bowing to corporate demands via action of the 80th Congress (but restored by the late President Harry S. Truman in the 81st Congress). These are reprehensible acts by corporate powers and their handmaidens.

This was also the era of the California-Texas-Louisiana Off-shore Oil steal (a national tax-payer bilking act); and the later passage of a $1.75 billion state bond issue by California citizens (resulting in additional usurpation of state and federal funds), and causing a friction among Army Engineers and the Reclamation Service that bode only divisiveness and conquest. Somewhat later Texas politicians followed behind, this time with a $3 billion bond issue (with the promise of great over-runs); only the citizens resisted by popular vote—an issue still in the Texas wind. The importation of sweet water from the Columbia River and from Alaska and Upper Canada, via NAWAPA subverted, for washing salt out of extant corporate lands (rather than for larger public benefits on an international scale) is a prospect. The use of Upper Missouri water to slurry coal from the Northern Great Plains to White Bluff, Arkansas, and two slurry lines from the same area to Houston, Texas, are surfacing now, and are likely to be precedent setting.

Today's propaganda that modern farming, because of technology, is vastly different from that in 1902, is a lie,* forwarded as bait to recruit the public to the cause of corporate avarice, including now the plundering of energy resources other than oil—a corporate rape that is international in scope. There is nothing in modern technology for agriculture—whether large equipment for each operator, weedicides, insecticides—that would appear to make it possible for an operator and his family, with hired help, to irrigate more than 160 acres (and not destroy the soil) except in an area diversified way.

Unless he also uses alien labor—something industry does today by exporting capital and factories to low wage countries. The case of National Land for People, Inc. v. the Bureau of Reclamation et al. is an attempt on the part of urban and rural people—tax payers too—to use publically financed water from federal reclamation projects to furnish family-type employment and income to people who otherwise would crowd the cities with unemployment and other high social service costs. A study of Arvin and Dinuba in California by Goldsmith demonstrates the advantage of family farming and rural town and institutional services, considering the multiplier effect of the original income from two kinds of operations, one a corporate enterprise with migrant workers and few year around residents, the other with families, babies, schools, hospitals, libraries, shops, stores, services for older residents and the numerous other functions that go with community and community organization.

A Bernard DeVoto, writing his "Easy Chair" column in Harper's, would have "needled" the powerful and the big into knowing that they too belonged to the human race and couldn't "take it with them", even in a corporate way. The above are reasons to support Civil Action No. 76-928 enthusiastically, without modification of the Reclamation Act of 1902. That act envisioned this kind of struggle—the landed gentry against the family farmer in a democracy.

*In 1910-14 farm parity compared with other segments of the economy (income-cost ratio) was 100%, the ideal. On Aug. 15, 1977 this ratio was 64%, the lowest since Mar. 1933, largely because high costs of production, chiefly urban and technologically induced.

WATERWAY USER CHARGES—HOW MUCH DIVERSION?

Mr. HANSEN. Mr. President, following a recent hearing on waterway user charges, our colleague from New Mexico (Mr. DOMENICI) wrote to Transportation Secretary Adams. His letter sought figures on the level of possible "diversion" of traffic off the waterways that might result from the waterway user charge under the phase-in schedule that is contained in the bill passed in June and in Senator DOMENICI's amendment No. 1460 to H.R. 8309. Following Senator DOMENICI's departure from the Senate yesterday, Secretary Adams' reply was received.

The conclusion of Secretary Adams' letter, based on recent, voluminous studies on inland waterway traffic by the Department's Transportation System Center, was:

As a result of our analysis, I can tell you that all of the diversion would come out of future traffic growth, none out of current traffic. Taking the barge traffic growth of the last ten years, we get an annual growth rate of approximately 52 per cent. If this rate continues for the next ten years and there is 15 per cent diversion ten years out, then barge traffic at that time will be 41 per cent greater than it is now.

Because of the wide interest in the issue of waterway user charges, I ask unanimous consent that a copy of Senator DOMENICI's letter and a copy of Secretary Adams' reply 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 ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C., October 21, 1977.

Hon. BROCK ADAMS,
Secretary, Department of Transportation, Washington, D.C.

DEAR MR. SECRETARY: During hearings by the Senate Committee on Finance this afternoon, there was much discussion on the degree to which waterway user charges might cause a "diversion" of traffic from the waterways to other modes of transportation. It was argued that this diversion might reach 20 percent under the language adopted by the Senate last June 22.

It would be most helpful to me to have an evaluation of this assertion by your Department, particularly in view of the phased-in nature of the waterway user charge contained in the Senate-passed bill and in my Amendment No. 1460.

What is the maximum level of diversion that is likely to occur under the phased-in approach, and what are the assumptions in your analysis?

Will any diversion that does occur come from existing traffic or from new traffic?

If such a diversion comes primarily from new traffic, what anticipated annual growth rate in waterway traffic can still be anticipated for the inland barge industry?

Your assistance and cooperation in responding to these questions is most appreciated.

Sincerely,

PETE V. DOMENICI.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., October 27, 1977.

Hon. PETE V. DOMENICI,
U.S. Senate,
Washington, D.C.

DEAR PETE: I am writing in response to your letter of October 21, 1977. As a result of last Friday's hearings before the Senate Finance Committee, you asked me about the impact on barge traffic of charges sufficient to meet the cost recovery goals set by your bill.

According to our analysis, recovery of 100 percent of operating and maintenance costs plus 50 percent of new construction costs would result in a reduction of 10-15 percent in the ton miles of traffic carried by the barges on the inland waterways after full implementation, in 1990, of your amendment. Ten percent was our maximum estimate of diversion when considering only recovery of operating and maintenance costs. As you are aware, a critical assumption in this analysis is that the railroads do not raise their freight rates on traffic for which they are competing with the waterways.

Bearing in mind the phase-in approach of your bill, this is a level of diversion that would occur ten years from now. As a result of our analysis, I can tell you that all of the diversion would come out of future traffic growth, none out of current traffic. Taking the barge traffic growth of the last ten years, we get an annual growth rate of approximately 5.2 percent. If this rate continues for the next ten years and there is 15 percent diversion ten years out, then barge traffic at that time will be 41 percent greater than it is now. Even with the maximum diversion, then, large traffic would still be growing at an annual rate of 3.5 percent.

I am aware that at the hearing some people were suggesting that the rate of diversion might be as high as 20 percent. As I have already indicated, our analysis tells us that this is an unreasonably high figure. Let me state for the record, however, that even if the diversion were as high as 20 percent, it would still all come out of future growth. Diversion of 20 percent would leave the barges ten years from now with 33 percent more traffic than they are carrying today, and this is equivalent to an annual growth rate of 2.4 percent.

For the sake of comparison, let me note that in the last ten years total rail traffic grew by less than one percent per year. Increasing coal traffic may well raise the rail growth rate in the future. For example, a doubling of rail coal tonnage by 1985 would result in an annual growth rate for all rail traffic of 3 percent.

I hope this is helpful to you.

Sincerely,

BROCK ADAMS.

ADVANCEMENT OF SLAVIC STUDIES CONVENTION

Mr. BIDEN. Mr. President, a fortnight ago our Nation's Capital was fortunate to host the ninth annual national convention of one of our country's most prestigious academic organizations, the American Association for the Advancement of Slavic Studies. The AAASS, founded in the aftermath of World War II, is composed of the elite of the U.S. academic community which deals with the whole range of issues regarding the Soviet Union and Eastern Europe. This includes the historians and political scientists, linguists, and sociologists, indeed, every facet of academic inquiry.

For 4 days a capacity crowd—some 1,800 scholars, more than twice the number ever to attend a previous meeting—discussed in working panels such issues as "Dissent and Its Ramifications," "Arms Control in Soviet Studies," and "Soviet Science and Technology."

Among the high points of this year's convocation was the award of a special Distinguished Scholar Award to Prof. John Hazard of Columbia University, surely among the finest scholars on the Soviet Union ever produced by our country.

Another highlight, Mr. President, was a keynote speech given by my friend and colleague on the Foreign Relations Committe, Senator DICK CLARK, of Iowa. Senator CLARK was chosen for this assignment both because of his academic credentials as a lecturer on Russian and Soviet affairs on the university level, and because since coming to the Senate he has developed a wide range of contact among the outstanding figures in the field.

The subject of the Senator's speech grew directly out of this practice of inviting key academic figures to discuss with him important developments in the Soviet field. As he puts it, "I am concerned with observing how knowledge (academia) talks to power (the Congress)."

In addition to probing ways in which the academic world may better assist the Congress in reaching wise decisions, Senator CLARK also cites the dangers of the slackening of support for the Soviet studies programs for which this Nation has become famous. As you will recall, following an awareness in the mid-1930's of the inadequacy of our knowledge of Soviet affairs, the United States built up an impressive academic capability. But, as he points out, indifference and lack of a sense of urgency have combined to seriously erode this capability. It is this problem which he addresses with such insight and concern.

As a specific starting point for revitalizing Soviet studies, Senator CLARK suggests the merits of a special, interdisciplinary research project on Soviet agriculture, pointing out the great gaps in our knowledge of this vital aspect of Soviet life.

Finally, Mr. President, I would like to underscore Senator CLARK's appeal for an increasing sophistication in our analyses of Soviet and Eastern European affairs. As he describes it, in every respect these countries are becoming more complex, and the tired short-hand cliches of the past—"hard" or "soft," "hawk" or "dove" no longer serve to adequately describe the situation.

As chairman of the Foreign Relations Committee Subcommittee on European Affairs, I find these remarks very well taken, and ask unanimous consent that they be printed in the RECORD.

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

WHEN KNOWLEDGE SPEAKS TO POWER ON SOVIET AFFAIRS

(By U.S. Senator DICK CLARK)

I want to express my sincere appreciation for the opportunity you have given me this evening to step out of the role of an office holder, and to visit with my professional colleagues in the world of scholarship about a matter of common interest to our government and our profession.

I only wish that all drop-outs from the academic world could be welcomed back to school as warmly as this.

The truth of the matter, of course, is that I prefer to believe that I never really dropped out. For, as I hope to make clear this evening, scholarship is not determined by place of employment. It is more a matter of principles and of an approach to the human dilemma of reconciling mind with matter, will with intellect, and power with understanding. I would like to think that even in my present job I continue to share with you a commitment to those principles which characterize the scholar's response to this dilemma.

Tonight, I would like to address myself to two particular problems: (1) the worrisome decline in America's commitment to Soviet area studies at a time when we can ill-afford such a trend, and (2) the need to make scholarship more relevant to decision-making in our dealings with the Soviet Union. Finally, without seeking to spell out a detailed list of research priorities, I would like to suggest one proposal especially close to my own heart that might deserve further in-depth attention from the scholarly community.

In the 1930's, when some Americans first sensed the growing significance of Soviet power, the Department of State discovered to its dismay that it had no Foreign Service officers who had more than a tourist acquaintance with the language and people of the Soviet Union. Even more shocking was the discovery that America had very few qualified institutions to teach its diplomats, intelligence officers, soldiers, bankers and businessmen the language and area skills they needed to defend the nation and to promote its economic interests. The problem was first addressed by sending a few of our brighter young Foreign Service officers to Paris, Berlin and Riga for training.

By the 1950's and 60's, the situation had radically changed. We no longer had to send our diplomats abroad for training. On the contrary, the foreign offices of Europe and of other continents were sending their diplomats to American universities for training in Soviet language and area studies Following World War II, we had developed a capability for intellectually rigorous, broadly-based foreign area studies unmatched in the world. We not only had trained diplomats of the calibre of George Kennan, Chip Bohlen, Tommy Thompson and Loy Henderson, we had as well a community of political scientists and historians like Merle Fainsod or Phil Mosely, economists like Abram Bergson of Harvard, jurists such as John Hazard at Columbia, journalists such as Harrison Salisbury at the New York Times and a pool of military officers trained in the Foreign Area Studies Program of the Defense Department. This capability served us well. It broadened our horizons and it provided the information and insights needed to avoid nuclear war and to foster a climate for the halting but still significant steps toward detente.

Today, we are in danger of losing that capability. Language training is being cut back, major foreign area research centers are being disbanded or mothballed, experienced scholars are switching to other fields and applicants for university and governmental training programs have dwindled. Almost as serious as the decline of our existing capability has been our failure to move with the times and to develop other aspectes of the field. We should have been training Soviet area specialists in the physical sciences, in business and in related areas such as accounting, computer programming and other areas of modern management.

The basic paradox is that we are allowing our capability to study the Soviet Union to deteriorate specifically at a time when the country is becoming both more complex—and therefore more interesting—increasingly accessible and finally, more important to U.S. interests. We are mothballing experts just at the time when the Soviet Union faces us with increasing challenges.

I, for one, cannot understand the rationale for this decline in activity. Certainly, there has been no diminution of the role the Soviet Union plays in our lives or in the foreign policy of our nation. I can think of a half-dozen areas in which we desperately need new insights into the increasingly complex Soviet world:

We don't really understand Soviet strategic objectives or Soviet perceptions of the strategic balance.

Nor do we know for sure the impact of Eurocommunism, or how the Soviets feel about it.

How are environmental concerns being dealt with?

How will the demographic shifts impact on Soviet domestic politics and relations with foreign groups, such as the Arabs?

As a member of the Senate Foreign Relations Committee, and as a student with a personal interest in Russian society and culture, I can only say that we are still far from having the answers to these vital issues and to hundreds of others. In fact, in many such areas, we are not even able to state the questions correctly.

To state the questions is traditionally a function of the humanities. It requires people trained in history, languages, literature and philosophy. To answer the questions, we need both our newer methodologies in political science, sociology and psychology, and the applied arts and sciences I mentioned earlier. And we need these skills, both basic and applied, in a dimension which goes beyond the limits of our own language and culture. In an interdependent world, men and women cannot remain bound in their own national and professional areas. The scientists, bankers and businessmen of today must reach beyond those limits, as the diplomats and the journalists of yesterday did.

Now I know there are those—particularly in Congress—who look at such matters in historical perspective and suggest that this nation will respond when challenged. The Cold War, Sputnik, the international crisis of the 1960's gave us a sense of national purpose and an awareness of national dangers which compelled us to seek answers. And when we didn't find the answers in our existing store of knowledge, we had the vigor and the vision to develop new ways of asking questions. What we need, it's argued, is another Sputnik, another shock, and we'll respond with a crash program.

But of course this is an extremely dangerous way to go about things. I do not see the merits of waiting for a calamity as a catalyst for programs to put America's Soviet scholarship on the move again.

For one thing, a professional scholar is not something you can produce on short notice. Resources which are allowed to dwindle take years to recoup. Faculties which are permitted to disintegrate cannot readily be put back together. And, to an alarming extent, that disintegration is taking place right now.

But there's an even more fundamental reason for dissatisfaction with those who argue that "when we need them we'll have them," and this bears directly on my purpose in being here tonight. In a real sense, we need them now. As a senator, as a policy-maker, I am interested in the continuing relationship between scholarship and national policy-making. I am concerned with observing how knowledge talks to power; how academia impacts on policy.

Let me be specific. How can we, as scholars, help American decisionmakers apply power wisely, humanely and profitably? What do we have to say to the decision maker? How should we say it? When should we speak up, and when should we be silent? What, in other words, is our proper role in the conduct of the nation's business and the promotion of its security?

As scholars, we should only speak to power about things which we know or honestly believe to be the objective truth. Not contingent truth, not subjective truth, not partial or interested truth. A community of scholars who lose sight of the compelling need for objective standards of evidence in search of truth is in danger of becoming, as Fedotov said of his compatriots in the 19th century Russian intelligentsia, "a group of people united by the idealism of their aims and the unsoundness of their ideals."

Let us relate these principles to the role of scholarship on Soviet affairs, and to our perceptions of Soviet power. In the early days of the Cold War, it was the almost unanimous judgment of western scholarship that the nature of Soviet power was monolithic and immutable. The totalitarian model made this clear, and even in retrospect, it appears that there was much to be said for it as an approach to understanding the Russia of Stalin's day. Those who contemplate the Russian empire of our day are, I believe, in agreement that there have been changes. Although there is disagreement on the pace of those changes, there is by and large a willingness to accept that the Soviets have moved to some degree away from the totalitarian model and towards something which is at least slightly more compatible with the politics of the western industrial democracies. But I think it is equally clear to most observers of the Soviet scene that these changes are quite limited, and that by and large the Soviet decision makers and scholars are still committed to Leninist, if no longer purely Stalinist, ways of perceiving the world and their place in it. They are thus committed overtly, if not always in practice, to the principle of contingent truth. History for them is still politics projected backwards, and Bukharin—as well as Trotsky—remains a non-person of a propaganda caricature.

The significance of this for our ways of perceiving Soviet reality remains clear. So long as it persists, we cannot permit ourselves to depend, as we do for many other societies and cultures, upon information and insights which are generated by the scholars of that society. For the Soviet Union and its associated states and movements, we must continue to depend largely upon the information and insights which *we* can generate by our own scholarship. We must maintain as a matter of national interest a broadly based and sophisticated capability for intellectually rigorous, objective studies of the Soviet Union.

Let me say something about *how* knowledge speaks to power in our profession. I hope you will not mind if I speak frankly. I do so because I am aware of a number of proposals to place the funding of foreign area studies, including Soviet area studies, on a more stable, long-term basis. The recommendations of the group which met at Georgetown in April are convincing. As I indicated at the outset, I favor such proposals in principle and I would like to lend my support in bringing them to a productive conclusion. What I am about to say is therefore meant in a constructive sense.

I am not surprised that the Congress has been reluctant to provide further funding for foreign area studies. All too often its members have seen very little of the results. This is not, let me add, because there were no results, but simply because the results were not directly related to policy issues or were not presented in any way easily susceptible to comprehension and use by the Congress. Needless to say, the academic, research and policy-making communities have distinct tasks and methods. Yet these communities need not proceed in such isolation from one another. I recognize that there are serious obstacles to closer harmony. While the scholar is so often analyzing the past or making long-term future projections, and sometimes appears to feel threatened by deadlines, the policy-maker is forced to deal with existing problems, often under very rigid time pressures.

I can tell you from experience that time pressure is the most striking difference between my old job and my new one. Important information made available one day after a vote is useless, and we have about 700 votes a year.

What can be done about this? For starters, I would suggest that proposals for funding new research programs, or for reorganizing existing programs, should contain a clear commitment of utility to the Congress as well as to the Executive Branch. Honest scholarship need not fear exposure or the controversy that new information and significant insights will inevitably bring in train. We should be true to our best traditions of open intellectual inquiry, recognizing and preparing to cope with the problems that it may raise when it is government sponsored. Congressional oversight, if wisely applied, should bring executive research and academic studies into a public forum which will enhance its utility to all.

Let me emphasize the word "accessible." I do not mean by that only freedom from controls on access. I also mean plain readability. We are all busy people, but the decision makers who deal with national policy and international affairs in both Congress and the Executive Branch are often stretched beyond human endurance in the number and kind of printed documents which they must scan and absorb. Staffs, and briefings can lighten some of the burden. But ultimately, if an issue is to be properly understood and a person's decisions are to reflect a sound grasp of the issues, there is no substitute for sitting down and reading the original reports of the experts.

Unfortunately, the experts are not always readable or focused. If you note the kinds of scholarship and reporting which are cited by Congress you will find a commonality of approach: such reports are not only readable, they are also focused on issues of concern. Please not that I do not limit this point to issues about which the Congress is already concerned. Clearly, it should be the function of knowledge to help focus the attention of power on matters which should be of concern whether they are currently an object of interest or not. The point is that when knowledge speaks to such issues it should do so with a clear focus. The Congressional Research Service offers an increasingly valuable service in providing such a focus and in making the products of scholarship accessible to the Congress. But more needs to be done. Unless we present scholarship skillfully, we may be told by the Congress that it will not fund additional research for the simple reason that it cannot digest the volume of research already at hand. Maybe new avenues may need to be found to increase communications between Soviet specialists and members of Congress. Regular visits by scholars to meet with Senators—a practice I personally employ—may be one remedy.

Thus far I have stressed failings of the scholarly community. Of course, a large share of the blame rests with decision makers. Knowledge cannot speak if power is not listening. Too often, the Congress has not been listening. The Senate has focused very little attention on the Soviet Union. In a review of Congressional action over the past ten years, I have found that the Senate Foreign Relations Committee hearings, study missions and reports dealing with the Soviet Union have focused almost exclusively on problems of arms control and the strategic balance. It is interesting to note that there is not a single expert on Soviet affairs on any Senate committee staff.

Let us take a specific example of what's needed. I have noted that in our study of the Soviet Union and its associated states and movements we face many issues for which we either do not have answers or for which we have not yet properly formulated the questions. Many of these issues require long term study involving interlocking research projects broadly conceived along interdisciplinary lines. One of the most critical questions is the status of Soviet agriculture and its impact on world trade. Some of the work in this area has been quite valuable. Jim Millar and others here, for example, have taught me a great deal about the intracacies of Soviet agriculture. But the task has not yet been addressed with scope and long term commitment needed to provide the focused information we need. We simply do not know what we need to know if we are to make reliable forecasts of Soviet agricultural productivity and of Soviet involvement in the world economy.

This is an issue which directly affects the interests of the farmers and farm-product dependent citizens I represent in the state of Iowa. Today, one out of every four acres in America is cultivated for a foreign, rather than a U.S., market. This fourth acre often makes the difference between profitable or non-profitable operations for the farmer, as we are seeing this year throughout the farm belt. If our foreign markets can be stabilized, it means a great deal to the American farmer. In the past decade, the Soviet Union has been the most volatile element in the international grain market. We need to know whether it is realistic for us to expect the Soviets to stabilize their role in the market. And for that, we need to know much more than is now known about the interaction of climate, population and government in the USSR.

The dimension of these unanswered questions is so great that I would like to suggest the need for a broadly-conceived, long-range research project on Soviet agriculture, perhaps adopting the procedures applied back in the early 1950's with the Harvard Project on Soviet Society. As many of you here will recall, that project was funded by the Department of Defense Advance Research Projects Agency. Under the "Harvard Project," as it became known, basic research on the Soviet Union was conducted in many parts of the world.

And the basic point was that although it ran for only five years, the academic spinoff made it a major factor in Soviet scholarship for decades. Many of our basic concepts regarding the Soviet Union were formed by this project. Many of you sitting here today got your start in that operation.

Without being too specific on the mechanics—it might be under the National Endowment for the Humanities or the National Science Foundation or maybe even the State Department—what I'm suggesting is a Congressionally-funded research operation that would integrate scholarship from many disciplines: from economics and agronomy, of course, but also from sociology, demography and geography, plus an input from the advanced areas of political theory such as decision-making and bureaucratic conflict models.

The problems in this kind of research are immense. The data is now increasingly available, but we are failing to collect and use it. Our conceptual tools are often out of date, or related to other cultures than those of the USSR. Most serious, our trained manpower is dispersed in other areas or simply unemployed.

A national research program in this area will require the marshalling of our existing manpower resources and the creating of a new infrastructure of libraries, language schools and publishing facilities at a new level of complexity and magnitude. The lead times are comparable to those for major forms of military hardware or construction in civilian life. Five years will be the minimum required for any meaningful payoff, and ten years is probably more realistic.

Let us assume that the Congress and the Executive Branch are prepared to launch such a program and to make clear their sustained interest by appropriate legislation to support it over an extended period. And let us assume that the big payoff on the issue of Soviet involvement in the world economy will not come until the end of the program. What do the scholars involved do to meet the needs for information which decision makers of the country lay upon them during this period?

First, there should be continued and full reporting to the Congress as well as the Executive Branch on what is known as it emerges, recognizing that it is partial information.

Second, there should be full reporting to the Congress and to the country on what is *not* known. In many cases, the task of the decision-maker can be eased by an honest and authoritative statement of ignorance. I think we would have been better advised, in the history of our attempts to comprehend and deal with the implications of Soviet power, if we had been a little more willing than we were to suspend judgment.

Third, let us remember that research and analysis are useful not only to the decision-maker in Washington. Such information belongs in the first instance to the constituency which the decision-maker represents in the country.

Finally, let us insist on flexibility in research design. In Iowa, we have a saying that a good hog butcher uses everything but the squeal. We are also accustomed to something called the corn-hog ratio which tells a farmer when to convert what is basically the same commodity—protein—from one form to another depending on market conditions. Let us do the same with research. Let us, for example, keep in mind that language skills can be used for many aspects of national needs. More generally, let us recognize that answers to economic or political questions directly related to national affairs often depend on knowledge taken from other disciplines. Let us not construe our library acquisition for one program so narrowly that it cannot be applied to other programs. And when we seek to analyze the implications of Soviet involvement in the world economy, let us keep in mind the implications such involvement has for Soviet policy and society. In other words, let us continue to recognize the need for a multidisciplinary and interdisciplinary approach to area studies.

It is not my intention, of course, to attempt to lay out here a program of national priorities in Soviet area research. The Georgetown discussions of five months ago made a good beginning at that. But it does seem obvious to me that the one indisputable thing you can say about the Soviet Union is that it has become both more complex and more accessible. Marshall Schulman—who's probably the very best example here today of knowledge speaking to power—says that Soviet society was like a Spanish galleon, where one guy with a whip could keep things running reasonably well. Now, he says, it has become a steamship, with all the appropriate complexities.

It is vital for Western scholarship to keep pace with this change. It is important that our analysis become as differentiated as Soviet society. Old terms like "hard" or "soft" or "hawk" or "dove" serve us poorly in grasping this phenomenon.

But, above all, it is imperative that as the Soviet Union becomes ever more interesting, and our information about that great society becomes more accessible, that we not allow our academic resources to atrophy. It is essential that when knowledge talks to power, it has something to say. If the scholarly community is to have a greater impact on policy, it must speak to the relevant issues. At the same time, decision-makers must be prepared to listen. Once the decision-makers have begun to listen, they will hopefully better understand the need for scholarship and will add their own efforts to achieving the goal of revitalizing the field of Soviet area studies.

THE 50TH ANNIVERSARY OF SERVICE BY PAN AMERICAN WORLD AIRWAYS

Mr. CANNON. Mr. President, today is a special day in a special year for international air transportation. It marks the 50th anniversary of service by Pan American World Airways, the Nation's pioneer international airline. The birthday comes in a year in which we also pay tribute to Charles Lindbergh's historic flight across the Atlantic.

Shortly after Pan Am's inaugural flight from Key West to Havana on October 28, 1927, Charles Lindbergh became a technical adviser for Pan Am and subsequently helped survey many of the carrier's international routes. When Juan Trippe founded Pan Am, he foresaw a future for air travel far beyond the hop-skip-and-jump flights of that day. While most of the aviation leaders of the time concentrated on air routes over land, Pan Am turned outward to span the oceans in charting international links of air commerce. For this vision we are grateful. The pioneering efforts of Pan Am overseas have lead the way for increased trade and tourism for all Americans.

Just a few short years ago, Pan Am faced severe financial problems. I am heartened to read recently that the company has made great strides toward recovery. The thousands of Pan Am employees have made a major contribution toward the maintenance, strengthening and saving of our U.S.-flag system. Pan Am's recovery has been a visible bootstrap operation and I know that my colleagues in the Senate join with me on this 50th anniversary in saluting Chairman William T. Seawell and the employees of Pan Am.

INCREASES IN LUMBER PRICES

Mr. GARN. Mr. President, recently, the Banking Committee, of which I am a member, held hearings on increases in lumber prices and the effects on the housing industry. As the Senate should know, we have a goal in this country of 26 million housing starts over the next 10 years. That means we must build over 2½ million houses per year. Right now, we are starting just under 2 million units per year, and the price is rising for building materials.

Of course, Mr. President, that is simple economics. Increased housing starts means increased demand for materials, including lumber. Unless there is a way to increase the supply, the price will rise as builders compete for a scarce resource.

One of the most effective presentations of these facts was made to the committee in a statement submitted by our colleague, Senator McCLURE. As Senator McCLURE points out, it is possible for us to produce sufficient timber to permit 2.5 million housing starts a year. That is, there is enough timber in the forests, public and private of the Nation. Unfortunately, much of that timber on public land cannot be harvested, though it is a renewable resource that could be taken without harm to the forest stand. The difficulty lies in the policies of the Federal Government, and the interminable delays occasioned by environmentalist lawsuits. As things stand now, we might be able to get enough timber for 1 year, or even 2. But until other areas of the national forests are opened to the timber industry, we cannot harvest sufficient timber over a longer period without doing irreparable damage to the stands now producing.

Mr. President, Senator McCLURE's statement is excellent, and should be required reading for any Senator interested in the price of housing. I hope all Senators will take the time to read it, and in order to make that easier, I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT OF SENATOR JAMES A. McCLURE

Mr. Chairman, I appreciate the opportunity to testify on the subject of increases in lumber prices and the effect on our ability to meet our housing goals so the consumer is not priced out of the market. There are many factors associated with the rise in a cost of housing. My remarks today focus on timber supply from National Forest lands.

Secretary Harris of Housing and Urban Development is very unhappy with the lumber and plywood industry, and that's good.

She wants to investigate the evil industry that has driven the price of lumber and plywood up because that's hurting housing starts in this country. Well, as a matter of fact, every time we've got housing starts in the United States above a million and a half units a year we have run into a supply/demand crunch that has driven prices up, every time it's happened in the last decade or two. We get the housing starts up, the supply shrinks relative to demand, and lumber prices rise. It's happening now. We've gotten housing starts up, nearly two million housing starts a year. The fact of the matter is, if Secretary Harris looks at the problem very closely, it is not the industry that caused the shortage, it is the industry that has created supply. To the extent that supply is available, industry can take credit. To the extent that there is a shortage, somebody else will have to take the blame. We don't have enough timber in our inventory to sustain housing starts at the level of 2 million housing starts per year for three years. There isn't enough programmed cut in the United States to maintain housing industry at that level. There could be, but there isn't. And yet our national housing goal is 26 million housing units over a 10-year period, 2.6 million a year. We've never come close to that goal. But we can't come close to that goal with the current restrictions on production of timber resources in the United States. We can do it in one year. We might do it for two, I doubt it. We cannot do it for three years in a row. And I hope Secretary Harris and the Department of Housing and Urban Development takes a real close look at the resource base in this country. I hope they really analyze why we have the "chicken one day—feathers the next" cycle in the industry. I hope she'll find out why that chicken's going to be scrawnier in the future years—not fatter. I hope she will begin to analyze what government can do to level out the peaks and valleys and to increase the availability of lumber so that the supply/demand crunch will not be as severe as it otherwise would be. And if she is honest, and I have no reason to believe she is not, if she is honest in that evaluation, it can do nothing but help the industry because for the first time, then, in our inner circles of the Administration, the inside communication network, we'll have somebody who's not associated with the timber industry, who is not a spokesman for a natural resource state, who is saying we have to do something to increase the availability of timber that flows into the mills of the United States. Maybe, maybe then, some of the people who don't believe what has been said, will begin to believe, and then we can begin to rationalize the policies of government around the allocation of resources.

Somebody has asked, in this whole evolution of policy, how much wilderness should we have? As one of several questions that's an obvious one. Well, perhaps it's just as logical to ask, how much commercial, available forest should we have? Shouldn't we start from an inventory of the needs of this country, and an inventory of available resources and see how those two things match up, and see where the points of conflict are, determine why there are problems if, as a matter of fact, our resource base does not meet our future demand schedule? Rather than simply doing it case by case, making allocation of resources without ever having looked at the total resource need of the country this year or for future years.

Let's examine further the relationship among housing starts fluctuations, the Federal timber land base, and lumber and plywood prices. If you study the history of the housing industry you will note the wide ranges year-by-year in the level of housing starts. A direct relationship exists between housing starts and lumber price, with the higher the starts, the higher the price for construction lumber. In the past, when a housing slump occurs, a drastic downward trend in lumber prices results. It is important to note that in the past few years when housing has slumped there has been a less sharp drop in prices during the slump period. Some experts say this is due in part to a shrinking timber base associated with an imbalance of age classes of timber when considering all timber ownerships. In the West, where a great deal of the lumber and plywood is produced, most of the old-growth timber remaining is in Federal ownership. The ability to produce a given level of lumber volume rests in large part on the level of timber sales volume on Forest Service lands. Prior to World War II, most timber for forest products was supplied from private timber tracts. As these supplies have been depleted, and the National Forest developed for timber production, as one of the multiple uses, the lack of balanced standing timber age classes became apparent.

Congress focused on the timber management issue with the passage of the Resources Planning Act, as amended by the National Forest Management Act of 1976. The thrust of this legislation is to present a forest use plan to the Congress indicating the level of goods and services that can be produced and the costs involved. This will give the Congress something it hasn't had before, and that is a blueprint for the long range management of our National Forests that can be funded on a long term basis. The 1976 Act also lifted the dilemma of the Monongahela legal decision which had cast a cloud over the Forest Service ability to sell timber.

As resource plans are prepared pursuant to Congressional directive, a significant factor has developed, and that involves the roadless area review evaluation (RARE II) initiated at the directive of Assistant Secretary of Agriculture Dr. Rupert Cutler. He noted that roadless controversy has hampered the orderly planning process for several years because of an earlier roadless study (RARE I). The present RARE II expanded a criteria for roadless designation and added several million roadless acres for study to the earlier roadless inventory. In Idaho the number of roadless acres for study jumped to 12 million acres, up by 4 million from the earlier study. This puts the roadless study area at 60 percent of Idaho's 20 million acre National Forest System. Nationally, about 67 million acres are roadless study areas out of about 187 million acres of the National Forest System.

An example of the roadless area dilemma affecting the forest land base is the Gospel-Hump controversy on the Nez Perce National Forest in Idaho. This was settled legislatively by passage on October 20, 1977 in the Senate as part of the Endangered American Wilderness Act. This has all of the elements with which we're going to be dealing in the next several years. Grangeville, an embattled and threatened community pushed against the reality of real economic disaster, a planning process that has gone on for years without yielding management decisions, the gradual consumption of all federal timber which could move through the sale process, the diversion to non-federal sources until they have been used, and finally, the fact that time has run out. No alternatives remain! All the options have been pursued! And still no decision in sight! That community and the industry upon which it is dependent are faced with just one harsh reality—make an agreement or die. Compromise or go out of business.

Those interested in wilderness preservation, while holding most of the aces, recognized that they could not push too far without severe backlash and they, too, recognized the need for compromise. But while negotiation and compromise under these circumstances may produce decisions, it certainly is not the way to resolve tough public policy issues.

Is this situation characteristic of other areas? How many areas of our country have three years of timber supply under contract? How many have less? How many have to look forward for timber supply in the next three to five years that are now in currently roadless areas? Let me give you, as an example, the figures for the Nez Perce National Forest, the area in which the Gospel Peak and Buffalo Hump are located.

FIVE YEAR TIMBER PLAN PROJECTION

FY '78—104.8 MMBF total sell plan of which 43 MMBF in present roadless RARE 11, 19 percent.

FY '79—98.5 MMBF total sell plan of which 20 MMBF in present roadless RARE 11, 44 percent.

FY '80—100.5 MMBF total sell plan of which 36 MMBF in present roadless RARE 11, 36 percent.

FY '81—106.4 MMBF total sell plan of which 42 MMBF in present roadless RARE 11, 40 percent.

The two-year projection for all forests in Idaho is as follows:

FISCAL YEAR 1978 AND 1979 TIMBER SALES BY FOREST IN IDAHO, WITH PORTION OF THOSE SALES FALLING IN ROADLESS AREAS

[Board feet in millions]

Fiscal year	Total timber sell (board feet)	Area	Volume falling in roadless	
			Board feet	Percent
1978	179.0	Clearwater	12.0	7
1979	165.0	do	20.0	12
1978	308.5	Panhandle	35.9	12
1979	305.0	do	10.9	4
1978	104.8	Nez Perce	20.0	19
1979	98.5	do	43.0	44
1978	97.6	Boise	0	0
1979	88.5	do	0	0
1978	94.6	Payette	43.2	46
1979	77.8	do	32.5	42
1978	73.0	Targhee	3.0	4
1979	70.6	do	0	0
1978	34.0	Salmon	7.3	21
1979	39.5	do	13.5	34
1978	10.0	Caribou	6.5	65
1979	10.0	do	8.5	85
1978	21.2	Sawtooth	20.0	94
1979	24.2	do	20.0	83
1978	6.0	Challis	.8	13
1979	6.6	do	1.8	27

What happens if those planning processes are not completed and the planned sales cannot move into inventory. If there is any delay in the schedule, the imbalance between supply and demand will grow. Look again at the Nez Perce National Forest. The timber industry dependent upon the timber on that Forest has an installed mill capacity of 127 million board feet per year. The allowable cut has been established by the Forest Service at 122 million board feet per year. But that is optimum—the best you can hope for if everything goes as planned. Just recently the Forest Service announced that they would not be able to meet those goals and the volumes planned would have to be reduced by 25%.

Instead of being nearly 5% short, the supply shortage grows to 30%. That reveals the impact that is just now beginning to be felt in communities in Idaho.

It is possible to do a better job of managing the commercial forest lands and we can increase the yield of timber from all forests on public lands. We must if we are to minimize the pressure for development of lands which might more suitably be left to other

uses. We must if we are going to meet the nation's needs for timber products. But we have restricted the funds for resource management and imposed personnel ceilings on management agencies faced with increasing demands. We continue to take actions which reduce the capacity of the professional forest manager to do the increasingly more technical and more difficult job of assessing and managing those resources. And now we are told that the Office of Management and Budget has directed that fund requests be reduced by 30% for next year!

These constraints of time and money and personnel ceilings, as well as the complexity of the problems confronting us, tell me that Grangeville's problem is not unique, that it is a realistic expectation for all of Idaho and the Mountain states. There will be more Grangevilles. There will be more areas faced with a shrinking supply on the public domain and an increasing demand on non-federal lands. These latter lands must not be abused in order to cope with the shortages created by governmental policy and paralysis.

And yet we are going to be called on to deal with it because we have created an administrative structure that simply cannot function rapidly enough to meet the demands on our national resources.

I favor a different solution to deal with this question of interminable delay. The Congress has opened the process to public participation and I have supported that action even though it is time-consuming. But we can no longer afford both public involvement and an appellate procedure that halts decisions for endless years and requires a suspension of all management until the process is completed. I have no desire to cut off the right to appeal but I do think it is not outside the realm of possibility to change the immediate consequences.

I suggest that the status quo be maintained through all steps in the administrative appeal to the completion of the planning process but that the plan could then be implemented without stay even though appealed in the Courts, until it had been determined by a final order in a court of competent jurisdiction. That would at least allow us to breathe in the interim.

We have been forced to battle on the wrong terms. The battles over resource allocation have been in the areas where the conflicts are greatest and renewable and nonrenewable resource utilization values are the highest. We should try to reverse that process by identifying the areas in which the conflicts are minimal rather than maximum. We should make resource allocations to those uses which have the least conflict with other uses rather than choose to fight all the battles where the conflict is greatest. We can no longer follow the trail we have been following because we don't have the luxury of resources abundant enough to allow us to continue to operate while the process grinds on as usual.

We will be forced, just as the community of Grangeville was forced, to look at a situation of such urgency that it must be compromised under the harsh reality of economic disaster. That is a reasonable forecast of our course over the next five years. If it sounds gloomy, I must confess that in many ways it is. I don't foresee Congress appropriating the necessary money, the Forest Service being able to revise their procedures rapidly enough, the Congress cutting off the delays in Courts by legislative solution rapidly enough to deal with the problem.

We must inevitably face the fact that the continued utilization of forest products in the State of Idaho will be increasingly in currently roadless areas. That means we will face delays we cannot afford, and, inevitably, reductions in annual allowable cut that is beyond the capacity of industry to absorb. While I would wish it otherwise, I believe some economic dislocation will be visited on Idaho in the next five years.

It is not impossible to avoid this economic catastrophe and these human tragedies, but I am not certain that we will. There are some developments that are more than straws at which drowning men grasp. Whether RARE II succeeds or not, the effort is emphatic evidence that Secretary Cutler recognizes the need for a solution.

I hope the above comments on the frustrating dilemmas associated with the forest land base will provide some insight into the relationship of supply/demand to lumber prices. As a member of the Energy and Natural Resources Committee I will be pleased to work with this Committee in any way possible as we approach ways to resolve our housing problems.

A HISTORICAL LOOK AT THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, today I wish to urge ratification of the Genocide Convention, whose major objective is to preserve man's most precious right—the right to live. Genocide is defined as the deliberate destruction or persecution of national, racial, religious, or ethnic groups. A brief historical review follows in the hopes that it will serve as a reminder to my colleagues of the Convention's importance and impact.

In 1946, the General Assembly of the United Nations requested the Economic and Social Council to undertake the necessary studies in order to draw up a draft convention on the crime of genocide. At the request of the Economic and Social Council, the Secretary General prepared a first draft of the Convention and circulated it to member states for their comments in 1947. The Secretary General was at this stage assisted by an impressive group of international law experts. During the Paris session of the General Assembly, this draft was debated by the Legal Committee and eventually adopted by the General Assembly on December 9, 1948. Mr. President, the United States voted for its adoption.

The text of the convention confirms that genocide is a crime under international law, whether committed in time of peace or war. Of even greater importance, the convention states that all persons committing genocide shall be punished, be they constitutionally responsible rulers, public officials, or private individuals. Though genocidal crimes are not to be confused with political crimes, those guilty will be subject to the rulings of their competent national court.

Mr. President, we can no longer tolerate the possibility of a reenactment of any inhumane annihilation such as that carried out by the Nazi government of Germany during World War II. We can no longer tolerate the hideous crimes against humanity seen today all over the world. We can no longer tolerate a further delay in the ratification of this Convention.

DR. ARIS ALLEN ELECTED MARYLAND GOP CHAIRMAN

Mr. MATHIAS. Mr. President, I would like to congratulate the Republicans of the State of Maryland for electing Dr. Aris Allen as their statewide chairman. He will bring to the party's governing body a vast experience in politics and great powers of mind and persuasion. He can oversee a resurgence of the Republican Party of Maryland.

I have on numerous occasions stressed the importance to the Republican Party of reaching out for people, all kinds of people. We need a balanced membership that is representative of the total population. Dr. Allen will place special emphasis on broadening the base of the party.

An article by Christine Hall from the Baltimore Sun speaks to my point very well, and I ask unanimous consent that it be printed in the RECORD.

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

. . . AND WITH THE MARYLAND GOP

(By Christine B. Hall)

The appointment of Dr. Aris Allen of Annapolis as state chairman of the Maryland GOP is remarkable because Dr. Allen is black and the Maryland Republicans have been singularly unresponsive to the black constituent for more than 60 years.

What is the more ironic is the sense of coming full circle politically. The political gains made by black Marylanders during Reconstruction were largely accomplished in alliance with the Republican Party, founded in Maryland in 1869. But like many good things, the political marriage ended all too soon. What may or may not have been an inevitable separation was considerably helped along by political chicanery, subterfuge, self interest and racial antagonism on the part of whites.

The Repubican Party's near shutout of the black constituent is changing now and it is about time. With Dr. Allen's appointment as the state party chief, one senses that the Republicans are out to change their image and to mend some of their exclusionary ways. There may be some altruism involved here but realistically the Republicans need the black voter. They are in real trouble. So, after a lapse of some 65 years, Maryland Republicans are courting black folks again. For a variety of reasons, this is not all bad.

In the view of the new state-wide party head there are many positives in this whole matter. States Dr. Allen, "From a practical standpoint, we do not have a two-party system in Maryland. Thus, there is no system of checks and balances . . . It is disastrous for all of us to be united in one party We are taken for granted.

"Secondly, there is no room for bargaining or negotiation. If we do not support the Republican Party, they simply feel no obligation to us. Perhaps the cardinal rule of politics is that the party in office rewards its supporters and penalizes its detractors".

The Republican Party was lucky in getting a man of Dr. Allen's stature to accept the chairmanship. A modern-day Horatio Alger, Dr. Allen is a role model for black and white alike. For the poor and for blacks, Dr. Allen's accomplishments are the stuff of the American Dream.

From a background of poverty and being on his own from the age of 15, Dr. Allen's

odyssey is that of the black itinerant who tries his hand at everything: auto mechanics, radio repair, carpentry, sheet metal work and labor jobs. Slowly and steadily he puts himself through high school, college and medical school—only to be met by the barriers of racial segregation when it came time to hang out his shingle. He overcame through the same application of talent, wit, patience, a love of people and great satisfaction in working with and for them.

Looking back, Dr. Allen can recount a string of first accomplishments which are staggering in their implications and hopeful signs of progress on the racial front. Thirty years ago when he came to Annapolis he could not practice at the Anne Arundel County General Hospital. Today, he is chief of the medical staff and in charge of the full complement of 127 physicians associated with the hospital.

Initially denied membership in local, state and national medical societies, he is now a highly respected member of all of them. He is the first black physician to ever be pictured on the cover of the Maryland State Medical Journal.

Going on through the list of accomplishments, Dr. Allen is the first and only black member of the Annapolis Chamber of Commerce Board of Directors, the first black to become a Rotarian in Annapolis, the first black from Annapolis to get elected to the legislature, and so it goes.

Is his appointment as state GOP head a token? However talented and accomplished, why a black man elected to this position? Is he being used?

Dr. Allen responds:

"My appointment is not a token. It is a genuine and sincere effort on the part of the Republican Party to demonstrate that there is a place within the party for everyone.

"My appointment is going to have a considerable effect on states throughout the country. They will feel the need to follow suit. I feel we will see increased Republican Party appointments for blacks.

"Minorities feel that the Republican Party has simply scratched them off. To reverse this feeling the party has to demonstrate in tangible terms that all people have a place in the party. My election is a concrete indication of what the party is willing to do.

"My election was unanimous. There was not one single dissenting vote. This means an awful lot in my estimation and I interpret it as unity and support within the party.

"The fact that I am a black man was a factor. I do not deny that. By being a black man, I stand out. No one could miss me. As far as intent is concerned I do not believe the people in Maryland would be so irresponsible to elect any man not qualified to do the job. I think the people in the party think I am qualified.

"I'm not 100 per cent happy with my party. But turning your back is no answer. You make some meaningful input. That one voice will be heard by others. It will be joined by others. And so change can be promoted and brought about."

SENATOR GLENN'S OBSERVATIONS ON EAST ASIAN POLICY

Mr. HUMPHREY. Mr. President, last month, our distinguished colleague and friend from Ohio (Mr. GLENN) addressed the Fourth Japanese-American Assembly, held in Shimoda, Japan. The topic of his remarks was: "The Role of the United States in East Asia: A Legislative Perspective."

As chairman of the Subcommittee on East Asian and Pacific Affairs of the Senate Foreign Relations Committee, Senator GLENN has been a most diligent addition to the committee. Therefore, it was with considerable interest that I read his speech, which addressed not only the role of Congress in the foreign policy decisionmaking process and the perceptions of both East Asians and our policymakers as to the role of the United States in that part of the world, but also bilateral United States-Japanese relationships.

I found his observations refreshing, candid, and astute. Senator GLENN very effectively articulated not only common problems in our relationships but also the positive aspects of these relationships in a very important region of the globe. It is a most impressive contribution to the policy discussions as they impact on East Asia.

Mr. President, in light of the importance I attach to his remarks, I ask unanimous consent that they be printed in the RECORD.

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

THE ROLE OF THE UNITED STATES IN EAST ASIA: A LEGISLATIVE PERSPECTIVE

In the nearly two centuries since Americans first ventured to East Asia and Japan, our interests have become economically and politically intertwined. Yet despite these close relaionshtips, problems do arise, and perhaps more importantly, opportunities are missed.

This Conference to address both problems and opportunities is held at an opportune time and at a particularly appropriate place—Shimoda. Just 124 years ago, Commodore Perry came to Japan with the objective of opening diplomatic and trade relationships. The limited treaty resulting from that visit permitted the first American diplomatic representation in Japan, a Consulate at this very spot.

Too often we do not fully understand one another, but fortunately we persist in trying and these meetings attest to those efforts.

As a personal note, although I sit as a member of the Foreign Relations Committee of the United States Senate and am Chairman of the Subcommittee on East Asian and Pacific Affairs, I speak today not as a representative of the Administration, the Senate, nor the Foreign Relations Committee, but as an individual with concerns and hopes for the future regarding our mutual interests.

U.S. CHECKS AND BALANCES

To put the following remarks in perspective, I would point out an often misunderstood facet of our American democratic system; the checks and balances between the Executive and Legislative branches of government. While the President speaks with authority as the leader in foreign policy, that leadership is balanced with the check of Congressional, particularly Senate, approval on major issues.

This can be particularly disconcerting to others, for these counter-balancing responsibilities and approvals can sometimes give the impression that American foreign policy leadership speaks with the voice of an "uncertain trumpet," at best.

Despite this "uncertain trumpet," there is an even more fundamental factor that will determine long-term U.S. foreign policy; namely, the views of the American people, and it is abundantly clear to me that the overwhelming majority of Americans and their representatives in Congress strongly support the continuation of U.S. interests and concerns in East Asia, and with Japan in particular.

POST WWII POLICY

Our policy established at the end of World War II was not to further crush, not to humiliate, not to exploit, but rather to start the long process of building political and economic ties which would contribute to peaceful development. Japan stands today as eloquent testimony to the wisdom of that decision and to the strength of the Japanese people, as one of the strongest economic powers in the world, literally developed in the unbelievably short span of the last three decades. To somehow pull back now from such a success story is not realistic.

CHANGING RELATIONSHIP

Relationships, however, are not static. They change and develop as events transpire. But despite the end of the war in Indochina, the dramatic opening of China, and other necessary shifts in U.S. policy toward former adversaries in the region, U.S. determination to maintain close and cordial political and economic ties with Japan and other nations in East Asia has not been diminished.

U.S. INTENT

Recent actions of the United States prompted concern and misunderstanding over what many of our friends around the Asian periphery saw as signs of a U.S. recessional. This is not, of course, the first time in recent years that important U.S. policy moves have appeared to others less than well coordinated and have led to an adverse reaction by Asian friends.

But such interpretations are deceptive. Our primary objective remains the stability and prosperity of the East Asian region. Many Asian states have long looked to the United States as a prime supporter of their economic and strategic interests and a leader in Pacific affairs. Continued American presence is vital and I am confident:

The United States is and will remain an important source of economic and military cooperation;

The United States is and will remain a major market for raw materials and manufactured goods produced by these states and a major source of private capital investment;

The United States is and will remain committed to balancing other major powers in the area—the Soviet Union and China.

U.S. PREOCCUPATION AT HOME

It is no secret that in the recent past the United States has had problems at home. We had Watergate, an economic recession, an energy crisis, and the 1976 Presidential election, all following the collapse of the U.S.-supported governments in Indochina in 1975. U.S. friends in East Asia and Japan became deeply concerned over what they perceived as an increasing loss of interest by the United States in Asian affairs and a shift in the balance of power in the region.

Adding to Asian worries were calls by many U.S. politcal leaders for reductions in the number and size of U.S. forces in Asia. At the same time, increasing numbers of U.S. leaders were criticizing the growing volume of imported manufactured goods entering the United States from the nations of East Asia and were calling for restrictive tariffs and other measures to protect U.S. industries. There was also mounting criticism in the United States regarding the status of human rights in several East Asian countries closely aligned with the United States.

Some Asian concerns are understandable, but if we are to take a realistic approach to changing world situations, other concerns are not justified. For instance, I know of no one in the United States who prefers that our military forces remain spread around the

world as a "police force" in perpetuity, even though we very properly maintained many of our worldwide military alignments during the post World War II stabilizing period. The size and disposition of those forces obviously will and should change as nations are able to assume larger roles of responsibility. As another example, it is realistic to assume that as productive capacity grows and international commerce increases, agreements on trade must be forthcoming.

SPECIFIC EAST ASIAN CONCERNS REGARDING U.S. ACTIONS

But there are other more immediate East Asian concerns. While it was understandable that a new U.S. President wished to move forcefully and rapidly, new policy initiatives in many instances did not succeed in reassuring the nations of East and Southeast Asia. With the obvious advantage of perfect hindsight, it would undoubtedly have been advisable to more positively establish very broad understanding of U.S. overall commitment and general policy in the region before proceeding with individual initiatives.

A succession of East Asian Ambassadors have come to my office in recent months expressing their doubts and uncertainties regarding American actions and policies. I believe that if this Conference and other exchanges are less than candid and forthright in addressing these concerns we will limit the good which can accrue from these meetings.

Let me be more specific and share with you some of their views, comments, and questions:

"The United States seems to be far more concerned about improving relations with Hanoi, Peking, and even Pyongyang than in strengthening relationships with long-standing friends."

"Would our expressed concerns about Human Rights seriously alter our relationships with such places as South Korea, the Philippines or Indonesia?"

"In light of Soviet moves into the Indian Ocean, how can we even consider 'complete demilitarization' of the Indian Ocean?"

"Why are we not more concerned about movement of Soviet fishing fleets into the southwest Pacific and even Soviet airbase negotiations in that area?"

"Were press reports true, although later denied, that the United States would really consider closing its naval and air bases in the Philippines in light of increased lease payment demands?"

"Did the proposed cutoff of the last year's military assistance funds to Indonesia and Thailand, even though it did not pass in the Senate, indicate a lessening commitment?"

"Did the sudden trade sanctions against import of Japanese television sets indicate a changing trade relationship?"

"Will changes in our nuclear policies affect Japan's critical energy needs?"

"What will be our relationship with Taiwan in the future? Can that long-standing relationship be changed without reduction in confidence in American commitments? Will we sell arms to Taiwan?"

"Does our reduction of troops in Korea, even on a five-year basis, indicate reduced commitment to the East Asian overall balance of power? How long will our air and naval forces remain?"

That is sufficient to give you the general tenor. With Vietnam experience a recent memory, it is easy to understand why serious questions are raised in the minds of East Asian leaders. I would add that no one item on the above list seemed to be singularly critical in the minds of those to whom I talked, but taken together they form a pattern most disturbing to those in leadership positions. As expressed to me bluntly by one Ambassador,

"Can we still rely on the United States? We feel inundated by a tidal wave of change. What does it all mean? We don't know why you are doing what you are doing."

While I could reassure him of my confidence in American longterm commitment, specific answers to the many questions are not easy to answer either singly or as a whole.

CURRENT U.S. ACTIONS REASSURING

However, I am happy to say that in recent months U.S. leaders have taken greater pains to reassure our Asian allies and have managed to establish a better consultative framework in our Asian policy. Thus, the United States has recently worked hard to underline its continuing defense commitment to South Korea. Most notably, when Defense Secretary Brown met with South Korean President Park on 25 July, he gave the South Korean leader a personal letter from President Carter which reaffirmed the "firm and undiminished" U.S. commitment to support the South Korean government and advised that "neither North Korea nor any other nation should have any doubt about the continuing strength of this commitment."

The Brown mission subsequently announced that the bulk of American combat troops in Korea would not be withdrawn until 1981–82 and that the Administration had pledged—subject to Congressional approval—to provide the South Koreans with an estimated $2 billion in military sales and credits, as U.S. troop strength is reduced. He also spelled out in more detail the continuing commitment of U.S. air and naval forces which will remain indefinitely. These are precisely the type of positive signals needed for reassurance.

Elsewhere, the Administration substantially altered its position on demilitarization of the Indian Ocean. During talks with Australian Prime Minister Frazer in June, President Carter dropped his earlier call for "complete demilitarization" and endorsed the view that the United States should maintain a strategic balance in the area. He also assured Frazer that the United States will remain "a major power in Asia and the Pacific and would maintain a strong security position in the region."

Regarding the issue of U.S. security assistance to Asian friends, the Congress was not swayed by the arguments that there should be major cuts in the Administration's proposals for military aid in the area. Prior to final committee action, Military Assistance Funds for Indonesia and Thailand were restored, and that position was sustained by the full Senate.

At the same time prominent U.S. spokesmen—notably Secretary Vance in a major address on Asian policy on 29 June—have expressed a deeper realization of the difficulties some Asian states have in conforming to western standards of human rights. Thus, Vance expressed understanding that some Asian traditions—unlike the traditions of the West—stress the rights and welfare of the group over those of the individual and emphasize the fulfillment of basic human economic need over political rights.

Finally, the Administration and Congress have reassured Asia friends regarding U.S. trade policies by working well together to avoid protective tariffs or other harsh measures which would close U.S. markets to Asian goods and seriously disrupt our joint economic welfare. Thus, the Administration strongly reaffirmed the U.S. commitment to policies of free trade during President Carter's meeting with Japanese Prime Minister Fukuda at the London summit meeting in May. It subsequently negotiated compromise agreements with Japan, Taiwan and South Korea which established voluntary restrictions on the number of color television sets and shoes entering the United States from East Asia.

This spirit of cooperative friendship will also be evident, I believe, when the Association of Southeast Asia (ASEAN) officials meet, formally for the first time with the United States, to discuss opportunities as well as problems the ASEAN nations may have with current U.S. trade policies.

The above are but a few examples of other continuing assurances that will go a long way in restoring any erosion of confidence that may have occurred in the recent past.

JAPANESE-U.S. RELATIONSHIP

Apart from those general East Asian views, let us turn to specific Japanese-American relationships. Our ties are firmly and properly grounded in the self-interests of both nations and are essential to global stability.

The consultative mechanisms between our two countries are extensive but must be even further strengthened if misunderstandings in the future are to be avoided. No government likes surprises. Decisions made abroad with little or no prior consultation which drastically affect that nation's future naturally evoke a negative reaction as a defense to gain time for adequate analysis of new proposals.

The "Nixon shocks," for instance, arose in part because some American politicians believed the Japanese were unwilling to recognize legitimate American grievances. However, these feelings dissipated following the Tanaka visit of August 1973, when the final communiqué expressed a willingness to share a more equal and reciprocal relationship. In 1975, Japan for the first time participated as an equal with the major western powers in an economic summit.

My point is that our commitment to Asia is permanent, but must be based on mutual understanding. Determined diplomatic efforts to resolve problems, as in the case of Okinawa, are necessary.

And what of our Japanese-American military relationship? Critics in the United States habitually talk of the "free ride" or "free umbrella" provided Japan by the United States, and it is no small item. When we are running sizable trade deficits and Japan has a current account surplus, it is difficult to understand why Japan cannot increase its defense efforts in cooperation with the United States. Certainly the present U.S. Administration and a majority in Congress recognize and appreciate the domestic constraints on major expansion of Japanese military forces. However, to ensure qualitative sufficiency for Japanese self-defense forces, continuation of improvements should be made in such things as anti-submarine warfare equipment, fighter, and patrol aircraft, all of which may require far less strict adherence to the artificially selected 1 percent GNP "barrier" now used as a limit for defense budgeting. As a comparison, NATO countries average over 4.5 percent of defense expenditures. In time of need, less than an adequate defense force will be a poor bargain, whatever the percent of GNP.

What of the economic relationship between our two countries? This is an area of both opportunities and problems which Ambassador Mansfield recently addressed in considerable detail and which will be the subject of much of our other meeting time here at Shimoda.

The complications of further negotiations are indicated by the necessity of maintaining an economic system geared to exports which has led to a possible $7 billion current account surplus this year. Without further cooperative efforts to reduce that surplus, domestic politics are bound to hamper our trade relationship. Added to that is the concern over how, and to what degree, direct

investment between our two nations will be permitted to dominate particular product lines, with the obvious impact on employment. Reciprocity must exist or protectionism will arise.

There are no easy solutions, particularly so when non-agricultural American exports may sometimes suffer less from tariffs or quotas than from non-tariff, cultural barriers that are harder to penetrate—a marketing problem, in other words.

JAPAN'S INTERNATIONAL ROLE

On a larger scale than just Japanese-U.S. economic relationships, however, Japan is in a position to play a major and constructive role in grappling with the problems of a new economic order. Japan has the potential for being a pivotal nation in devising a new creative economic diplomacy emphasizing cooperation and peace.

Prime Minister Fukuda's recent meetings with ASEAN leaders and the pledge of substantial aid and assistance now known as the "Fukuda doctrine," is a highly commendable example of Japan's ability to contribute markedly to regional stability.

As another example, the newly-established $20 million "special assistance for the expansion of food production fund" will help others in the region to cope with a pressing problem.

But a word of caution is necessary. As this audience knows, other Asian states are keenly conscious of Japan's economic presence. Again, I would be less than candid and forthright before such a group as this if I did not say that many of the other East Asian nations have memories that have lingered too long of past Japanese militarism. While they have no fears today in a military sense, they express concern about the economic domination that might result from over-rapid Japanese expansion in the Asian area, expansion which could overpower their own economic improvement efforts. In other words Japanese aid and economic help cannot be "excessive" or dominating.

Since economic development, like self-government, cannot be exported, the infusion of capital and knowledge can best be used to supplement indigenous efforts, assuming there is to be a harmonious relationship.

Japanese national interests and an expanded international role do come together in the economic sphere. Increased foreign aid, less tied to export commodities, and private investment for development can help other nations to meet their goals and insure a more stable international system.

Economic power alone, however, is insufficient. Political muscle must accompany economics for major impact on global developments. For example, an activist Japan that mediates between the socialist and noncommunist states of the region as the Prime Minister suggested to ASEAN leaders, would help stabilize the international environment and also produce a greater sense of national identity. Japan has a historically unique opportunity. Never before has a rich and powerful nation chosen to exert itself in the international system through solely political and economic alignments. Japan now has that opportunity.

MOST IMPORTANTLY—ENERGY

Perhaps I have saved the largest and most underlying problem of all for last mention. What of energy?

Last fall, I flew over the Strait of Hormuz, the few-hundred-yards-wide outlet from the Persian Gulf and was told that, while 18% of America's total oil comes through that strait, some 70% of Western Europe's oil, and an astounding 85% of total Japanese oil supply passes through those narrow waters. For industrial Japan to be so dependent on that small, far-away piece of geography certainly emphasizes the magnitude of the problem and the importance of international relationships in an ever-increasingly interdependent world. Because of Japan's resource dependency—99.7% of oil is imported—her interests in energy security are paramount.

Since this too will be the subject of other more detailed discussion, I will not elaborate further, except to say that, in particular we are resolved to finding a mutually agreeable practical solution to the nuclear fuel reprocessing issue. Certainly our atomic weapons nonproliferation objectives are not directed against Japan. I would hope that the unique Japanese experience would encourage Japan to assist us in trying to stem the proliferation of nuclear weapons. Likewise we must, and will I am sure, resolve our differences so Japan can become more self-sufficient in the energy field through proper use of nuclear power.

This is a field in which I have been particularly active and have authorized several pieces of legislation dealing with nuclear matters. As a passing comment, I would add that I am firmly convinced we must also have some supplies of nuclear fuel internationally administered, and independent of national politics. I have introduced legislation to establish such an International Nuclear Fuel Authority.

"NEW ERA"

We are, I believe, entering into a "new era" of Japanese-American relations, a time of more equality, a time of more partnership, but still an era with so many as-yet unanswered questions. What will be the Japanese role in international politics? Will it center only on trade? Is Japan the Pacific bulwark of a Western economic and strategic system or is it primarily an Asian power, uniquely non-militaristic, that is also the principle economic power in the region? The answer, of course, is both, but then we must logically ask whether Japanese interest can be secured by passive diplomacy, or must a more active role be forthcoming? Thus, what is the yet-to-be defined role of Japan in Asia and the international system?

In February 1973, the Secretary-General of the LDP cited the lack of a permanent seat on the UN Security Council as evidence of the lack of a Japanese role commensurate with her power. Ambassador Mansfield, while in the Senate, urged such a shift. I was pleased to see President Carter reaffirm that objective when Prime Minister Fukuda met with him earlier this year. The rapid rise, fall and rebirth of modern Japan attests to the skill and character of the Japanese people and these talents certainly deserve a wider international forum.

"ASIAN AXIS"

The importance of Japan in this international forum can hardly be over-estimated. Within easy distance on each side of what I would term an "Asian Axis" from Tokyo to Canberra lies one-third of the world's population and untold resources yet to be developed. What happens along that Axis in the next few years will play a very major role, perhaps even a predominant role, in global developments for generations to come.

As we look ahead, we must continually consider and evaluate not only the above, but myriad other issues with continual, close consultation. Taking a Legislative branch viewpoint from Washington, I see no lessening of our continuing commitment to work together with you and other East Asian nations. America is not in retreat—far from it. That our cooperative efforts can succeed in the worldwide arena of competing ideologies is a foregone conclusion to me.

"WAVE OF THE FUTURE"

What is the "wave of the future"? Is it the super-socialistic approach, lesser brands of communism or free enterprise? We need only look to recent history for the answer.

At no place nor time in history has there ever been recorded such rapid advance in the status and general welfare of hundreds of millions of people as has occurred in those nations which following World War II developed along "free enterprise" lines. When we contrast the economic development of Japan, Germany, South Korea and Taiwan with what has happened under the deadening influence of the socialist states, the answer emerges with startling clarity. The systems of freedom under which we live are certainly far from perfect and we must work continually to make them better, but they certainly speak directly to age-old hopes for freedom, for dignity, for fair-play, for the right to determine one's place in a society, a nation, and the world, which are to me the "wave of the future."

Our challenge is to work together as partners in this framework of freedom toward a better, a more stable and a peaceful world. It will require our best efforts.

TO BALTIMORE: A LOVE SONG

Mr. MATHIAS. Mr. President, my colleagues have often heard me extol the virtues of Maryland's "Monumental City," Baltimore. Baltimore is a city of many faces and many charms. As is often the case, the full appreciation of a place can be heightened by a long period of absence. A recent article by Anne S. Haskell poignantly reflects the feeling of a Baltimorean who returned after a hiatus of many years. I ask unanimous consent that "To Baltimore: A Love Song" by Anne S. Haskell that was printed in the September 29, 1977 Baltimore Sun be printed in the RECORD.

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

TO BALTIMORE: A LOVE SONG

(By Ann S. Haskell)

BALTIMORE! With all the places in the world to choose from, why Baltimore?

There were lots of other choices, of course, some to return to, places I'd called home before.

Like Virginia, with lots of cousins, orange-gold Shenandoah autumns, and thin pink slices of country ham.

The Sea Islands and Up Country of South Carolina, with its smell of paper-white narcissuses at Christmas, the blue of mountains in the distance, and only the slamming of a screen door down the block to interrupt the quiet of a summer night.

I'd loved Swarthmore, strict, academic, and purposeful as a secure parent, sending its teaching and learning populace forth each morning from a Quaker-gray stone station, to deliver or receive messages from the past (mine from the Middle Ages), to pursue the arts, or practice the science; its avenues lined with elms and filiusante-patrus blooming in the fall.

Buffalo, which tries the winter soul like a great white whale, then tantalizes with brief, lush summers, in whose university I'd worked with the Barths, Burgesses, and Ginsbergs of this world.

And Provence, especially Provence, where people look like me, and I can watch the lavender and almonds, olives and grapes growing in the fields below my window, where tile roofs the color of purple plums and apricots hold the warmth of the sun, where the *Mistral* wails like a spoiled child, and remnants of the noontime ratatouille, set out in the street for strays, give off nostalgic, garlicy odors during the heat of siesta.

Why, then, indeed, Baltimore?

Call it a romantic choice, if you like; it would be dreary to answer only to practicality. Say it's because it is a city with a season, a town with a focus, both in sync with mine. There'd been so much of summer, fall and winter places. I needed a spring this time, a place waking up to itself, a place of rejuvenation to match my own. And it was the center of my personal history, as well, the focal point for my forebears, the ones who knew each other and the others who didn't. No matter, they all meet here in me, now.

I'd visited Baltimore in the fall of '76 and was strangely excited by what I found: everything in a state of passage, of change, of growth. As in the fairy tale, it wasn't only the Sleeping Beauty who was rubbing her eyes, but everyone and everything down to the flies on the kitchen wall were waking up too. Homesteading, shopsteading, painting brilliant colored murals on the walls. A sugar bowl botanical garden, ubiquitous art shows—I visited three that first weekend—and a live theater on every corner, it seemed. Tyson street renovation and the Belvedere renovation; Italianate architecture in an art school, and an art school in a train station; Fells Point low on the w ter, and the highest point of all, Federal Hill, with the city spread out around it, where I tried out the seesaws at midnight.

Baltimore, that penance we had to endure driving through, forever it seemed, when I was a child, in order to deserve our destination, New York. How it had changed!

And now I live here. I grew my first crop of corn and all the ingredients for ratatouille right in the city this summer. And from my study window I can see a lot of the place: the Calderesque Howard Street Bridge, the Jones Falls Expressway, and, in the foreground, beyond, the stadium whose lights blaze at night, the candelabra blinking laconic red eyes, and Foxtrot hovering like a hummingbird.

Several miles to my left is the place where my young grandmother with her firstborn, now eighty, waited an anxious three days so many years ago for her husband, the Rev. John Brenau Henry, to get home around the fire that had devastated the city; to my right there's the Lyric, where my great-grandmother McCormick died, as she'd always said she wanted to, watching Tannhauser; and the station over there where my grandfather Sullivan, an orphan, came east to the big city from Westernport, and where his future bride, then a Miss Frost, came in from time to time to visit the shops, hear the concerts, and keep medical appointments on Eutaw. Baltimore was their Big Apple.

These days I take guests to Haussner's, brag about the B.W.I., and strut with my thumbs hooked in my overalls about the research I do at the Enoch Pratt. I show them the Sugarman—sit on it, bounce on it, walk through it, burst with pride at renovated City Hall, and talk like an insider about the business of the Shot Tower.

As I said, it's a spring town, honoring its past, celebrating its present, anticipating its future. Why Baltimore? It's a city with a focus. To paraphrase Gertrude Stein, "because there's a there there."

THE MANDATORY RETIREMENT AGE

Mr. BAYH. Mr. President, last week the Senate voted to increase the mandatory retirement age for workers from 65 to 70. I think this legislation is an important first step in recognizing the economic needs of our Nation's older Americans.

The present practice of mandatory retirement works serve injustices against older Americans. For many of these individuals, retirement income from public or private sources is either unavailable or inadequate to provide an adequate standard of living. Indeed for some, the chance to remain an active member of the workforce is a matter of economic necessity. In 1975 14.6 percent of persons age 65 and older had annual incomes below the poverty level.

The inadequacy of income maintenance programs for many older Americans is clear. Social security payments to retired workers are frequently inadequate to meet the daily cost of living, and due to the practices of limiting outside earnings, these retired workers are left with few options to improve their economic status. For capable older workers the decision to retire at 65 should be an individual choice. We should not be in a position of dictating a poverty life style to many of our older citizens. Maximum freedom of choice should be given to employees in deciding when to retire, provided they are still psychologically and physically able to perform their jobs in a satisfactory manner.

Society as a whole suffers from mandatory retirement. Prof. James Schultz from Brandeis University testified before the House Select Committee on Aging that mandatory retirement of willing and able employees cost the Nation approximately $4.5 billion.

One concern that has been raised about this legislation is that it may increase the labor force participation rates of older Americans at the expense of younger ones. This concern does not seem to carry much weight when one looks at estimates by the Department of Labor that states if mandatory retirement had been prohibited for all workers under 70 years of age 1976, the male labor force would have increased by one-tenth of a percent. This represents an increase of only about 200,000 workers a year.

I support the basic concept of this legislation, and I believe that the policy we are establishing should be applied in an equitable manner. For that reason, I supported the Cranston amendment to H.R. 5383 which eliminated exempting from the increase in mandatory retirement elementary and high school teachers, tenured university faculty, and top-level corporate executives.

I look forward to the enactment of this legislation which will benefit so many of our older citizens.

THE CAREER EDUCATION INCENTIVE ACT—S. 1328

Mr. MATHIAS. Mr. President, I joined the majority of the Senate on October 20, 1977 in passing S. 1328, the Career Education Incentive Act. This is a bill that seeks to marry the world of work with the classroom. It seems to me that one of the measures of educational success is the degree to which instruction has prepared a student to meet the demanding choices of the adult world. Of those choices, one would be hard pressed to find a more crucial decision than the one that determines how a person spends 8 hours a day for 5 days a week. This decision has always been a difficult one at best, but the rapid rate of change occurring in the modern world has tremendously complicated the process of vocational choice. Thus the aphorism of Cervantes, "Fore-warned Fore-armed" is uniquely relevant to this bill.

S. 1328 provides Federal money on a short-term basis to encourage the States to provide a comprehensive career education program throughout all levels of public instruction. The intermediate aim is to integrate classroom teaching with the tools needed for future job selection and job performance. The ultimate goal is to provide students with the ability to find a job they like and will do well at rather than to provide a specific job. It is my belief that this can best be accomplished by providing students with a knowledge of the great variety of careers and their accompanying skill requirements as well as the ability to do self-assessments of their skills and interests. An additional thrust of this bill is to arm students with this kind of knowledge in such a way as to eliminate the intrusion of racial, sexual, economical and age biases and stereotyping. The result should be students better able to cope with the complexity of the modern world.

I believe this bill will make a valuable contribution to the youth of our country. I also feel that the business, labor, and professional sectors of America will receive benefits from this bill. Students who are better prepared to choose the right vocation for themselves should help to reduce worker turnover and to promote job satisfaction. This type of legislation is long overdue and I am pleased to have been able to support it.

SENATE TRIBUTE TO HUBERT H. HUMPHREY

Mr. ANDERSON. Mr. President, on Tuesday, October 25, 1977, the U.S. Senate paid an unprecedented tribute to our most distinguished colleague and good friend HUBERT HUMPHREY. Senator HUMPHREY is a man widely respected by both Democrats and Republicans and, most importantly, by the people all across the United States. The coverage of the Senate's welcome home ceremony by the national news media clearly demonstrated that his respect is universal.

I ask unanimous consent that articles from the Washington Star, Washington Post, Atlanta Constitution, Baltimore Sun, Los Angeles Times, and the Chicago Tribune be printed in the RECORD.

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

[From The Washington Star, Oct. 26, 1977]

A DAY THE SENATE WON'T FORGET

(By James R. Dickerson)

If Hubert H. Humphrey, the exuberant practitioner of the politics of joy, ever entertained a doubt about the love and affection of his Senate colleagues and fellow citizens it had to be dispelled after his moving and

emotional welcome back to the Senate chamber.

For 30 minutes yesterday the senators and their staff members who crowded the floor and the spectators who packed the galleries repeatedly rose to their feet to applaud and cheer the wan and drawn but ever ebuillient Humphrey, who is suffering from terminal cancer. It was a dramatic moment unprecedented in the memory of veteran Senate observers.

His voice occasionally quavering and moved to tears by the tribute of Sen. Wendell Anderson, D-Minn., one of his politcal proteges, Humphrey said that he was an optimist and conceded that some considered him a foolish optimist. "But I am optimistic about America and history is on my side," he said.

"My good friend, Sen. (Dale) Bumpers (D-Ark.), just whispered to me that 'this is just a little too much, isn't it Hubert?'" Humphrey said, his customary smile replacing the tears that followed Anderson's words. "I told him, 'Hush! I like it.'"

"I want you to know that I am old enough and sufficiently wise enough at this stage of my life to know that all you have said is not exactly according to facts," Humphrey continued, rising from his seat to acknowledge the tributes of Anderson, Majority Leader Robert Byrd and Minority Leader Howard Baker. "But I want you to know that I'm fragile and weak enough to want to believe every single word you have said."

Anderson spoke briefly but eloquently. "For those who say there are no heroes in the world today, to them I say they've never known Hubert Humphrey." Humphrey, seated just across the aisle, put his face in his hands as his chin quivered.

The tribute on the floor began with an explosion of cheers and applause as everyone in the packed Senate chamber and galleries stood at 2:01 p.m. when Humphrey entered for the first time in more than two months.

For six minutes he shook hands with his colleagues on both sides of the aisles and then their staff aides and finally the young pages. He embraced several, Vice President Walter F. Mondale, who leaned down from the presiding officer's chair to greet him, Byrd, Bumpers, Russell Long and Edward M. Kennedy. Each time the cheers and applause increased.

Humphrey blew a kiss to the galleries as he took a seat. Byrd dryly asked unanimous consent that the quorum call be rescinded and welcomed Humphrey back home.

"Nothing life has dealt him has dimmed his optimism or quenched his indomitable spirit," Byrd said and quoted Santayana:

Oh, world thou choosest not the better part
It is not wisdom to be wise
and on the inward vision close the eyes
But it is wisdom to believe the heart.

"Hubert Humphrey listens to his heart. He has changed our time through the impact of his personality, the vibrance of his intellect and the compassion of his heart. He is a man whose impact will reverberate for generations."

Baker took the light approach. "I want to welcome back our colleague, our friend and our compatriot," he began, leaning against his desk and smiling at Humphrey. "But I see dancing in his eyes the question, how many more times does he have to listen to all this before he can make some remarks of his own. For Hubert Humphrey this is cruel and unusual punishment.'

Humphrey responded in kind. "After all, I remember (Sen. James) Abourezk and (Sen. Howard) Metzenbaum going here for days. I see no reason that I should not come back and join in. I did not have a chance to really participate (in the recent natural gas deregulation filibuster). I was frustrated beyond end. Russell Long just thanked me. He said, 'There is nothing like having Hubert away.'"

Humphrey cited friendship and love as the best therapy for any ailment. "I have been going through a pretty rough struggle but one of my doctors back home said, 'Hubert, we have done about as much for you as we can for a while. Why don't you go back to Washington where you want to be, where your colleagues in the Senate are to be and where you can be with your friends, those whom you love so much?' And I said, 'Doctor, that is good advice.'"

Humphrey noted that he had followed this advice and referred to President Carter's detouring through Minneapolis on his way back from the West Coast on Sunday to bring Humphrey and his wife, Muriel, back in Air Force One. "I waited, however, because I am a frugal man, until I could get a free ride."

This gave Humphrey the opportunity to joke about his unsuccessful presidential campaigns. "For at least 20 years I have been trying to get on Air Force One," he told his laughing, appreciative audience. "I realize it was not a prolonged experience, but just the thought of it, the vibrations, gave me new hope and new strength."

Humphrey was met by about 40 reporters and television cameramen at the curb in front of the Dirksen Senate Office Building, where his office is, when he arrived in his limousine at 1:15 o'clock. He hid his face with his hands in mock embarrassment, grinned broadly and quipped: "I'm not Jimmy Carter, I'm Hubert Humphrey. Where were you all in 1968 when I needed you?"

He promised to concentrate his efforts on helping get Carter's energy program passed in the Senate this year. "I like him, I have confidence in him and I believe he's doing a good job," he said.

[From The Washington Star, Oct. 26, 1977]

THE HUMPHREY STYLE: GRACE, EVEN IN DEFEAT

(By Jack W. Germond and Jules Witcover)

It was the old Hubert Humphrey for a few minutes on the Senate floor when the Happy Warrior returned to the legislative body with which he has had a running love affair for nearly 25 years. He was physically wracked by his terminal illness, but his spirit remained what it always has been—buoyant and unconquerable.

Humphrey stood for a standing ovation in the chamber that he has left only to run for and serve as vice president, and he beamed at the bipartisan admiration he had just won.

In reflecting on Humphrey, however, what comes to mind are not so much his successes in winning repeated terms to the Senate, as his defeats along the way—the defeats that he met invariably with courage and good will.

The first in our recollection was the Democratic presidential primary in West Virginia in 1960, when he ran and lost to a young Massachusetts senator named John F. Kennedy. Humphrey ran not only against Kennedy, but against a shrewd strategy to make the primary a test of West Virginians' fairness and open-mindedness.

Kennedy declared that he did not think the voters of West Virginia—a predominantly Protestant state—were prejudiced against Catholics like himself. He said West Virginia had an opportunity to strike a blow against bigotry by demonstrating they could support a Catholic for president. The West Virginians largely bought the argument and Kennedy won a clear victory over Humphrey, who had campaigned his heart out.

One of the clearest memories of political reporters was the sight of Robert Kennedy, his brother's campaign manager, walking through the streets of Charleston after midnight to wish Humphrey well in his hotel. Humphrey took that defeat hard, because it knocked him out of the race, and he had to think that his presidential dreams were shattered with finality. But he put on a good front, as he always did.

When Kennedy died and Lyndon Johnson picked Humphrey to be his running mate in 1964, it seemed like a second chance for Humphrey. He became vice president, but under Johnson he let himself be used. Humphrey later said he was just doing as he was told in supporting the Vietnam war, but when he had the chance to be critical of the war in 1968, running for president himself, he waited too long.

On the day before the 1968 election, Humphrey received a huge reception in downtown Los Angeles. He and Sen. Ed Muskie, his running mate, stood in an open convertible and let a cloudburst of confetti fall on him. He returned that night to Minnesota, hoping to win, but the best he was able to do was a near-miss against Richard Nixon.

In 1972, there was his poor showing in the Florida primary behind George Wallace, and his defeat by George McGovern in the primary in Wisconsin, where he was known as "Wisconsin's third senator."

Finally, in 1976, there was his early statement that he would not be a presidential candidate—along with the very Humphrey-like caveat that if his party wanted him, he was "raring to go." As it became increasingly clear that he was not going to get that call, he toyed twice with the possibility of entering the ranks against Jimmy Carter. But in the end, tears welling in his eyes, he bowed out, having tasted defeat too often.

Humphrey had already faced serious illness and seemed to be on the mend when his doctors told him recently that his cancer was inoperable. Telling a man like Humphrey that he was going to lose his life was like telling the sun it could not rise tomorrow. Well, almost, Humphrey always had been like one of those big dolls with a wide round bottom that keeps popping back up when you hit it.

The word from the doctors, of course, is that old Hubert will not be bouncing back this time—that is, his wan body will not be bouncing back. As for his spirit, it never depended on how he felt physically, and it remained high as his Senate colleagues paid tribute to him while he could still hear the words ringing in his ears.

The history books may not be as effusively kind about Humphrey as his colleagues were, chiefly because of his knuckling under to Johnson on the war. But after his vice presidency, when he returned to the Senate, he addresed himself vigorously to the Senate's business and has been a strong hand for President Carter. Humphrey, in accepting—at length, of course—the Senate's applause, said, "I didn't intend to be that long." He paused, then added: "But that is the story of my life."

Hubert Humphrey is indeed a talking machine. But there is nothing mechanical or artificial about the spirit that he put on display once again in the Senate he has loved.

[From the Washington Post, Oct. 26, 1977]

A TRIBUTE TO HUMPHREY—SENATE CHEERS HIS RETURN TO WORK

(By Myra MacPherson)

It was one of those rare days in the Senate when the floor was crowded and no gavel rapped the demonstrating galleries back to order.

For five emotional minutes the chamber resounded with applause for Sen. Hubert H. Humphrey (D-Minn.), who stood at his desk

for the first time since learning he has inoperable cancer.

Though his voice was weak, he managed again to out-talk all his colleagues combined. They got up, one after another, to pay their tributes to the Democratic Party's Happy—though ailing—Warrior.

"I got wound up," Humphrey conceded. "I didn't intend to be that long—but that's the story of my life."

Humphrey looked up into the galleries and blew kisses to his wife, Muriel, who waved back and struggled with her tears while others in the galleries swallowed hard.

Though his body was wasted by the ordeal of sickness, Humphrey spoke of the politics of joy and love and faith. He also spoke with self-deprecating humor.

His doctors, he confided, had approved his return to the chamber, his home—"but because I am a frugal man I waited until I could get a free ride." He referred to his jet hitchhike with President Carter from Minnesota to Washington on Sunday.

The laughter died down and Humphrey went on: ". . . for at least 20 years I've been trying to get on Air Force One." In those 20 years he sought the presidency three times and was rejected twice as his party's nominee.

He listened as Robert C. Byrd (D-W.Va.), who has the majority leader post Humphrey also coveted, called him "a great political leader who combined the best of mind and soul. He has indeed believed his heart."

And Wendell R. Anderson, the junior senator from Minnesota, quieted the room with, "to those who say there are no heroes left in the world—to them, I say, they have never known Hubert Humphrey."

When Humphrey entered the Senate at 2 p.m., the applause welled up and he moved around the floor like a campaigner. All that was missing was "Happy Days Are Here Again."

The applause swelled as he hugged many senators—Russell B. Long of Louisiana, Edward M. Kennedy of Massachusetts, Anderson—then bounded up the steps to where his "special friend," Vice President Mondale, presided, for another hug. Then he turned and shook the hand of every Senate page standing by.

Earlier in the day, Humphrey, who calls himself "the old professional policy-maker," said he had returned to be Carter's emissary on the Hill, an oft-alien world these days for the President.

That Carter should need the one man he ridiculed in campaign rhetoric as too old and a has-been, was forgotten in the unanimity of the spirit of the chamber.

Humphrey spoke of Carter only in supportive terms.

"The energy question, tax reform—there's an awful lot on the table. For that the President is criticized for trying too much, too soon, but a President has to lay out the program. In a democracy you don't move rapidly. Congress will have to feel its way," he said. "I want to help, doing the little errands that sometimes add up to small achievements."

He said he is "revved up" to "push hard for the basic principles of the Humphrey-Hawkins" employment bill, and predicted the President would get 65 per cent of what he is seeking in his energy package.

Humphrey, who has learned there are no miracle cures—"Listen, if there was any miracle cure, I'd have it by now"—said, "I told the President the greatest contribution he could make is to give people a sense of confidence—to give them hope and to have patience to solve their problems."

It was pure unabashed Humphrey, corn and all, when he said, "Gosh, this is a great country."

But more than that, it was a class act.

[From the Baltimore Sun, Oct. 26, 1977]

SENATE GIVES HUMPHREY BIG WELCOME—OR FAREWELL

(By Stephen E. Nordlinger)

WASHINGTON.—Senator Hubert H. Humphrey, exuberant but gaunt from the ravages of cancer, came back to the Senate yesterday to a long, standing ovation and the tributes of his colleagues.

Quoting his old leader, Lyndon B. Johnson—"Come let us reason together"—Senator Humphrey brought with him a message for Congress and the American public to try to compromise the vexing issues before the country.

In his remaining days in public office, he said he would serve as a "kind of free spirit" candidly advising President Carter and congressional leaders on resolving their differences.

The galleries were packed and almost all the 100 members of the Senate, Republicans and Democrats, were there to applaud the 66-year-old Minnesota Democrat, whose service as a senator and vice president spans three decades.

Erect and smiling, Mr. Humphrey circled the chamber as the applause mounted around him to shake the hands of the members, the clerks, parliamentarians and even the pages as he returned to his political home from two months of cancer treatment and rest.

Mr. Humphrey, overjoyed by the outpouring of affection, blew a kiss to his wife, Muriel, in the gallery, he embraced Vice President Mondale, his old friend who presided, and Senator Robert C. Byrd (D., W. Va.), who defeated him earlier this year for majority leader.

Senator Humphrey plans to stay through the remaining few weeks of the session, but the thunderous greeting seemed also to serve as a possible farewell from his colleagues to the "Happy Warrior." There was no certainty that he would be returning next year.

"To those who feel there are no heroes left in the world, to those I say they have never known Hubert Humphrey," said Senator Wendell R. Anderson (D.), who serves with Mr. Humphrey from Minnesota.

Senator Byrd, speaking for the Democrats, and Senator Howard H. Baker, Jr. (Tenn.), the minority leader, speaking for the Republicans, also praised Mr. Humphrey.

"Sitting there and listening to all these remarks for Hubert Humphrey is cruel and unusual punishment," said Mr. Baker, referring to Senator Humphrey's well-known desire to speak.

Mr. Humphrey, when his turn came, acknowledged with a broad smile that he relished the accolades from his colleagues.

"My good friends, when Dale Bumpers (D., Ark.) leaned over the aisle and said to me, 'This is a little too much, isn't it,' I said, 'Hush.' "

When the laughter subsided Senator Humphrey, dressed in a gray tweed sports jacket, gray vest and gray trousers and a blue shirt, turned serious.

"The greatest gift of life is the gift of friendship and I have received it," he said. "And the greatest therapy is friendship and hope. All the doctors, chemicals, pills, radiation and nurses are helpful but without faith in yourself, in your own ability to win over difficulties, there is no healing. I know that because I have gone through a rough struggle."

Turning to his trip back to Washington, Senator Humphrey said that his doctors had told him, "We've done all we can for you," and it would be best to return to the Senate.

"I'm a prudent man and I waited until I could get a free trip," he said, referring to being picked up by President Carter in Minneapolis Sunday. "For almost 20 years I've tried to get on Air Force One. It was a short trip but the vibrations sent through me gave me new strength."

"I have been known through my life to be an optimist, sometimes a foolish optimist," he said. "At times I ignored reality and lived in a dream world, but I say to its critics that I am optimistic about America and I rebuke cynicism."

Then, Senator Humphrey added:

"I'm old and sufficiently wise enough to want to believe that all you have said is not in accordance with the facts and I am sufficiently fragile and weak to want to believe every single word."

In winding up his message, Mr. Humphrey told his colleagues:

"In the words of Isaiah, as a great President used to say, 'Come let us reason together.' There are no problems that cannot be solved if we are willing to give a little and share a little."

Senator Humphrey, accompanied by his wife and his physician, Dr. Edgar Berman, of Baltimore, was mobbed by newsmen and well-wishers when he arrived at his office shortly before the 2 P.M. Senate ceremony.

At an impromptu news conference, he said he felt "so much better now" and was eager to fulfill a role as a compromiser between Congress and the President on such issues as energy.

"He [Mr. Carter] has done a good job, but he needs a friend," said Mr. Humphrey. "I want nothing for myself. I don't want an ambassadorship. But I want to give a lot. I think I can be most helpful by talking candidly with the President. I'm kind of a free spirit. I will tell him what I think."

[From the Atlanta Constitution, Oct. 26, 1977]

HUMPHREY GETS HUGS, CHEERS

WASHINGTON.—They hugged him and kissed him, they cried and applauded like fools, and then they simply turned the Senate over to Hubert Horatio Humphrey Tuesday in a wild, roaring love feast of a welcome home.

Humphrey, looking gaunt but not infirm, picked his way slowly through the packed chamber during a lengthy standing ovation, shaking hands, slapping backs, and even embracing Strom Thurmond, who led a walkout of the 1948 Democratic convention after Humphrey's historic plea for civil rights.

The long fight with cancer has wasted his body, but the Humphrey grin was broad as he acknowledged the prolonged applause.

"Most of you know me as a sentimental man, and that I am," he told his colleagues and jam-packed Senate galleries in quavering voice, after the bedlam had ceased and a hush had fallen.

"Today is a very special day in my life. The greatest gift in life is the gift of friendship and I have received it, and the greatest healer there is is the friendship of love."

"My good friend, Dale Bumpers, just leaned across the aisle and said, 'This is a little too much, isn't it Hubert?' " Humphrey recounted. "I said, 'Hush,' " he added with a grin.

Earlier Sen. Robert Byrd D-W. Va., the majority leader, had said: "Nothing that life has dealt him has ever diminished his optimism or quenched his unquenchable spirit."

Sen. Howard Baker R-Tenn., the minority leader, ended his tribute by saying of Humphrey: "I can see dancing and glistening in his eyes; he's sitting here wondering how many more of these tributes he'll have to hear until he can speak."

Humphrey had met with newsmen before the Senate ceremony, and "Where were you guys in '68—I could have used you all," referring to his presidential campaign against Richard M. Nixon.

His recuperation, he said, had been "a really rough time, the worst I ever felt in the life."

Humphrey returned to Minnesota early in August and did not come back from the month-long summer recess. On his return Tuesday he found the legislators working on an energy tax bill that seemed certain to touch off a long, bitter fight.

Humphrey, who earlier told reporters he was ready to plunge in and work for support for President Carter's program, appealed to his colleagues to work out their differences.

"In the words of Isaiah, as a great president used to say, 'Come, let us reason together,'" Humphrey said. "There is no problem that can't be solved if we're willing to give a little and share a little."

He was referring to Lyndon B. Johnson, whom he served as vice president, and whose photographs adorn his office.

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7 MINUTES OF APPLAUSE GREET HUMPHREY

(By John H. Averill)

WASHINGTON.—The Senate extended an affectionate and moving welcome Tuesday to Sen. Hubert H. Humphrey (D-Minn.) as he returned to the Capitol after an 11-week absence and a second cancer operation.

"I've been going through a pretty rough struggle," said the 66-year-old Minnesotan, his body frail but his voice vibrant, as he thanked his colleagues for their kindness.

Word had circulated earlier that Humphrey would arrive in the Senate chamber at 2 p.m. By 1:55, most of the Senate's 100 members were at their desks. The galleries were jammed. Looking on from the family gallery were Humphrey's wife, Muriel, and his sister, Mrs. Frances Howard.

Senators and visitors alike arose in standing applause as Humphrey, flanked by an aide and Sen. S. I. Hayakawa (R-Calif.), who coincidentally arrived at the same time, entered the chamber precisely at 2. The applause continued for seven minutes as Humphrey, his eyes glistening, moved about the historic room shaking hands.

Humphrey had embraces for some special friends. The first was Sen. John C. Stennis (D-Miss.), the aging spiritual leader of the Senate's Dixie bloc, to whom Humphrey was once anathema for his civil rights views.

Also embraced were Majority Leader Robert C. Byrd (D-W.Va); Russell B. Long (D-La.); Edmund S. Muskie (D-Me.), Humphrey's 1968 vice presidential running mate; Sen. Edward M. Kennedy (D-Mass) and Sen. Wendell R. Anderson (D-Minn.), a Humphrey protege.

Humphrey then spotted another protege, Vice President Mondale, sitting as the Senate's presiding officer. Humphrey strode to the dais and embraced him.

It was an extraordinary scene, and there were few dry eyes as the Senate welcomed back an old friend who had learned during surgery in August that he has an inoperable pelvic cancer and that his case is terminal. A year ago his bladder was removed in another cancer operation.

Yet Humphrey, describing himself as always the optimist, sought to look at the cheerful side.

"The greatest gift in life is the gift of friendship, and I have it," Humphrey, standing at his desk, said in thanks for the affectionate welcome.

There have been many moving scenes in the Senate over the years, most recently the farewell last December to Sen. Mike Mansfield (D-Mont.), who was retiring after 16 years as majority leader. But the welcome for Humphrey seemed particularly memorable.

"In my 27 years in the Senate press gallery, this was the greatest demonstration of affection that I have seen," said Don C. Womack, the gallery superintendent.

"It was the most moving scene in my 20 years here," said William F. Hildenbrand, secretary to the Senate's Republican minority.

In brief remarks before Humphrey spoke, Byrd, who defeated Humphrey for the majority leadership last January, said:

"The presence of Hubert Humphrey in the Senate enhances the greatness that already inherently belongs to this distinguished chamber."

Minority Leader Howard H. Baker Jr. (R-Tenn.) followed. He told Humphrey: "We're glad you are back and that we have this opportunity to show our love."

"To those who say there no longer are any heroes in the world, I say, 'You don't know Hubert Humphrey,'" said Minnesota's Anderson in concluding the tributes.

Then Humphrey took over and, characteristically, spoke longer than intended. "I sort of got wound up," he said in apologizing for talking for 10 minutes. "I didn't intend to be that long, but that is the story of my life."

Humphrey returned to Washington Sunday aboard Air Force One. President Carter picked him up in Minneapolis on a return flight from Los Angeles.

Alluding to the flight, Humphrey said that his doctors had told him a week ago that he could return to the Senate. "But I waited, because I'm a frugal man, until I could get a free ride," Humphrey said amid laughter. "For at least 20 years, I have been trying to get on Air Force One. Just the thought of it sent vibrations through me that gave me new hope, new strength."

Later, just outside the Senate chamber, Humphrey encountered an old friend with Los Angeles connections, embraced him and exclaimed, "I hate those damn Rams."

Humphrey's favorite team, the Minnesota Vikings, was trounched by the Rams, 35–3, Monday night.

CRIME AND UNEMPLOYMENT: TWO SIDES OF THE SAME COIN

Mr. HUMPHREY. Mr. President, vitally important hearings, displaying the strong link between the Nation's rampant level of crime and high unemployment, are being conducted by Representative JOHN CONYERS of Detroit, chairman of the Subcommittee on Crime of the House Judiciary Committee.

Viewed comprehensively, the hearings clearly show that one of the most effective ways of fighting crime in general is to establish and sustain a full employment economy that will provide meaningful job opportunities paying decent wages for the families of the 25 million people who constitute the country's poverty stricken.

Testimony obtained by Representative CONYER'S subcommittee overwhelmingly shows that the billions upon billions of dollars spent in the name of law and order to strengthen police departments throughout the Nation, and build bigger and presumably better jails and prisons have not succeeded in checking and turning the tide of crime.

To the contrary, Mr. President, in my opinion, the hearings tend to show that our emphasis on law and order, to the exclusion of comparable efforts in other directions, have succeeded in perpetuating a terrible system that presents crime as the only desperate alternative available to a large number of our disadvantaged people. Without the illusion of successful criminal activity, many of the poor would have no hope whatsoever of achieving a better standard of living. They would, in effect, be forced to consign themselves to a hopeless future.

This dismal outlook is most prevalently held by disadvantaged teenagers and those in their early twenties, as indicated by testimony during the hearing that showed arrest rates for a variety of crimes were far heavier for those in this age group than it is for older members of the impoverished.

One of the most noteworthy aspects of the hearings was the testimony given by Professor Harvey Brenner, school of hygiene and public health, Johns Hopkins University.

As the result of a highly important, pioneering study, Dr. Brenner last year reported to the Joint Economic Committee, that clearly discernable correlations exist between increased unemployment and increases in physical and mental illness, suicides, murder, and admissions to mental institutions and prisons.

In further pursuit of this work, Dr. Brenner, for the first time, reported to the Subcommittee on Crime that a 1-percent increase in the unemployment rate in 1970 was associated with: 23,151 narcotics arrests out of a total of 832,624 such arrests reported by the FBI for that year; 8,646 burglary arrests out of a reported total of 284,785; 23,151 larceny arrests out of a total of 832,624; 5,123 embezzlement arrests out of a total of 85,033; 648 homicide victims out of a total of 16,848; 3,340 State and Federal prison administrations out of a total of 67,304.

Through a series of charts, Dr. Brenner graphically displayed the close correlation between increases in prison admissions as a result of homicide, burglary, and larceny for the United States as a whole, the State of Massachusetts, Canada, and the United Kingdom during periods ranging as far back as 1902. The correlations between rising unemployment, crime, and prison admissions are virtually exact and undeniably alarming.

Concerning other aspects of his testimony, Dr. Brenner observed that increased numbers of women and youth entering the labor market during the present period of high unemployment effects the level of crime. Dr. Brenner said:

> The impact of this (circumstance creates) incredible pressures on persons already with jobs and makes for far more intensive competition than there ever has been in our economy. We are therefore going to have to do far more than we ever did as a Nation in terms of creating jobs, because there are so many more people who wish them and who take them, which means that our chronically unemployed will probably have a much more difficult time of obtaining work.
>
> This in turn means that criminal activities, as an alternative, becomes more attractive to those who have the least education and job skills.

Dr. Brenner added that with increased numbers of women entering the labor force,

> We have the emerging phenomenon of female crimes. This was noted recently by a number of governments in Europe, by the Council of Europe, as well as by the United Nations as a problem—the sudden emergence of crime by women.

In discussing narcotics-connected crime, Dr. Brenner said that this area of criminal activity was "rather well contained" prior to the early 1950's when mandatory sentences were imposed for possession or selling such illegal drugs. Until this time, he said, the cost of feeding a heroin habit amounted to about $2 a day. The impact of the crackdown pushed the cost of supporting addiction to $200 a day, a cost that virtually required criminal activity to support.

He added that a New York Times investigative team "was unable to find any alteration of behavior in the sale or use of heroin in New York City following the crackdown" which is pretty well astonishing in my view. But even if it is fractionally accurate, it must indicate that the application of severity in penal law in this case certainly does not reduce the situation of criminality connected with drug abuse.

In this connection Dr. Brenner asserted that:

"To a marginal" extent law enforcement does have inhibiting effects on crime. However, there is a counter-balancing phenomenon which is really very peculiar. In instances of extraordinary heavy law enforcement, police are effective in that violators are arrested, prosecuted, convicted and imprisoned. This results in overloading the criminal justice system. The courts become disrupted and jails and prisons become overcrowded to such a degree that people are let go early.

And what ultimately results is that we do not have a harsher and more sustained and more substantial law enforcement policy. It is an absolutely self-defeating and totally destructive policy of the criminal justice system itself for which the potential criminal loses—for perfectly rational reasons—all respect.

His chances of being caught then becomes so much less that it nearly begins to pay for him to engage in a life of criminal activity.

Cutbacks in heroin traffic from Turkey and Mexico seemed to occasion in much of the United States, particularly New York, not a decrease but an increase in crimes associated with drug abuse.

He stated that in order to maintain the same level of income, persons who traffic in heroin have to charge more. The purity falls, resulting in an increased level of deaths and hepatitis due to drug related activity. Mysteriously, at the same time, the number of new users increases.

Dr. Brenner also stated that ironically,

To the degree that we enforce the law, and imprison our convicted persons for a reasonable length of time, we reduce their employability. It becomes even more difficult for them to manage within the economy. Few employers will look seriously at an individual with a criminal record.

The problems created by rising prison admissions following periods of rising unemployment feed on themselves, according to Dr. Brenner. Prison facilities become overcrowded, particularly so when the next period of rising unemployment is reached. As a consequence there is an early discharge of prisoners as well as increased prison admissions during such periods. Individual prisoners enter the prison system during or immediately following periods of high unemployment and leave it when the same conditions prevail. The prisoner "is at least as bad off as he was before" in terms of being able to find employment.

In concluding his remarks, Dr. Brenner said, "If we understand and can demonstrate statistically that changes in the rate of unemployment have a bearing on the percentage increase or decrease in crime, then crime itself has a cost to society" that extends beyond the cost in human injury.

It may, said Dr. Brenner, be dollar efficient in terms of preventing crime to aim greater resources toward the goal of creating increased, meaningful employment opportunities and a better future for those who are most vulnerable to adverse economic conditions, the undereducated, and the unskilled.

But Dr. Brenner viewed the possibility of developing a new prospective to address the problems of crime and unemployment with some pessimism. He asserted the man on the street is not always economically secure and it is difficult for him to endorse efforts to achieve full scale employment or other benefits for persons less fortunate while he fails to see that he himself is benefited by such efforts.

Mr. President, we must turn things around. We have got to make the Nation realize that crime and unemployment are closely linked, and that we are never going to effectively address the problem of crime unless we provide the disadvantaged with a better alternative than criminal activity as the most attractive means to survive. In effect, this means achieving and sustaining a full employment economy and providing the disadvantaged with the education and the skills to find rewarding and productive roles in that economy.

Representative CONYERS is to be congratulated for displaying the leadership and the initiative to give us all valuable insights into this fundamentally important problem.

THE STEEL INDUSTRY AND POLLUTION CONTROL

Mr. ANDERSON. Mr. President, the Senate-House conference committee now meeting on the Clean Water Act of 1977 is under considerable pressure from the steel industry to exempt for several years the discharges of steel plants to the Nation's waters from the 1977 best practicable treatment (BPT) deadline of the Federal Water Pollution Control Act of 1972.

One of the myths often promoted by businesses out of a need for allies and by some liberals out of arrogance or ignorance, is that working people are against strong environmental laws. As an example of the strong commitment of working people to environmental protection laws, particularly the workers who could potentially be affected by threatened layoffs in the steel industry, I request unanimous consent that three documents be printed in the RECORD for review of my colleagues.

First, an article from the October issue of Steel Labor, "USWA urges no retreat in air and water pollution standards," that reports the views of Jack Sheehan, legislative director of the United Steelworkers of America on the steel industry's compliance with air and water pollution standards. Second, a letter of October 25, 1977, addressed to me and all members of the Clean Water Act Conference Committee from Mr. Sheehan, stating the views of USWA President Lloyd McBride, in a letter to members of the Congressional Steel Caucus, that "our union does not seek any congressional relaxation of the industry's taxation or EPA/OSHA regulations." Third, a letter of October 10, 1977, to me from the United Steelworkers of America local 1010 in East Chicago, Ill., whose 18,000 members are employees of Inland Steel Corporation. This letter says, in part,

We are aware of attempts by industry to weaken the provisions of the 1972 Clean Water Act. These attempts should be resisted. We do not agree with the statements of the steel industry that pollution control eliminates jobs.

Mr. President, the article and letters will be weighed carefully by me and, I am confident, the other Senate conferees as we consider the proposed exemption for the steel industry from the 1977 BPT deadline.

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

USWA URGES NO RETREAT IN AIR AND WATER POLLUTION STANDARDS

WASHINGTON, D.C.—There is no retreat by the USWA in worker protection provisions of existing air and water pollution control laws, according to Jack Sheehan, legislative director of the Steelworkers.

Work has been completed on the Clean Air Act, and the amendments to that law now have been signed by President Carter. The most highly publicized aspect of the air pollution was the extension of time granted to the auto makers. However, time extensions were also made available to steel facilities, copper smelters and other industrial sources. Another important part of the new air pollution law is a group of worker protection provisions which were included only as a result of efforts by the USWA, Mr. Sheehan says.

The action has not yet been completed on the Water Pollution Control Act. The House and Senate have both passed amendments to the water law, but some of the differences between the two versions are great and Congress is facing a major controversy in resolving those differences. Most of the remaining controversy, however, centers on the wetlands issue (i.e., control of development in the coastal and estuary areas) and thus does not directly involve effluent control at existing industrial sources.

A problem which Congress has had to face is that in both the air and water programs the compliance deadlines have not been met by many industrial sources. As a result, the deadlines set in law for attainment of natural standards have not been reached. In both air and water pollution control, the steel industry has had the worst compliance record of any industry.

As for air pollution control, there is not a single steel facility which is in full compliance with emission reduction requirements that are necessary for meeting public health standards for ambient community air. These health standards were to have been achieved by mid-1975 under the 1970 law, Mr. Sheehan reports.

In water pollution, over 85 per cent of all industrial sources have met the July 1977 requirement of installing the "best practicable technology" (BPT) for effluent control. But in the steel industry, less than half the facilities have been brought into compliance.

Because of the large scale noncompliance Congress was confronted with three possible courses of action: (1) relax the standards; (2) extend the deadlines; or (3) retain both the standards and the deadlines and require EPA to undertake massive and drastic enforcement action.

The USWA consistently maintained that there should be no retreat from the health standards. Maintaining the policy of attaining healthful environmental quality is important not only for the general public good, but also is linked importantly with our efforts of attaining workplace health standards, especially regarding coke ovens.

On the other hand, strict enforcement of the deadlines in the air and water laws was unrealistic because it would have resulted in widespread shutdown confrontations. Congress has chosen the middle route of making compliance date extensions available. Under the new clean air law, extensions can be granted until mid-1979. Similar extensions are likely to be placed in the water law as well. The Senate version would grant an additional 1½ years, while the House bill would allow two-year extensions.

In allowing more time, however, Congress has also served notice to industry that further failure to come into compliance will not be taken lightly. Beginning in 1979, any source not meeting the control schedule will be subject to noncompliance penalties.

The USWA has supported this penalty procedure for several reasons. Mr. Sheehan points out that it removes the current incentive for the companies to delay their compliance efforts knowing that they can thwart EPA's enforcement moves through litigation and through shutdown threats. The lack of an effective penalty system has invited the companies to use our members' jobs as pawns in a game of procrastination and environmental blackmail. The automatic nature of the penalties should be an incentive for compliance and help prevent the need for enforcement.

Also, if enforcement should be necessary, the penalty system is preferable to forced shutdown, which was the only effective tool under the old law.

UNITED STEELWORKERS OF AMERICA,
Washington, D.C., October 25, 1977.

Re: Water Pollution Control Conference Committee.

Hon. WENDELL R. ANDERSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ANDERSON: In the course of deliberations on the Water Pollution Control Act Amendments in the conference committee, the current situation in the steel industry has received considerable attention. For your interest, enclosed is a copy of the letter recently sent to members of the congressional steel caucus by USWA President Lloyd McBride.

In that letter it is pointed out that we feel the current steel imports pose a very real and immediate problem which requires both immediate and long range solutions through our trade policies. We also feel that it is necessary for the steel industry to commit itself to a program of modernizing marginal facilities. Until the marginal facilities are modernized they will persistently confront steel communities with the possibility of massive disruptions through permanent shutdowns and resistance to pollution abatement efforts.

We do not feel, however, that the current trade situation is related to pollution control requirements. Thus, as President McBride states in the letter, "Our union does not seek any congressional relaxation of the industry's taxation or of EPA-OSHA regulations." Relaxation of abatement requirements is not a substitute for modernization. Rather, abatement should be an integral part of modernization.

Sincerely,

JOHN J. SHEEHAN,
Legislative Director.

LOCAL UNION 1010,
UNITED STEELWORKERS OF AMERICA,
East Chicago, Ill., October 10, 1977.

Re: Clean Water Act of 1977.

Sen. WENDELL ANDERSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ANDERSON: On behalf of our nearly 18,000 members at Inland Steel Company, I urge you to support strong Federal Clean Water Legislation. All of our members work and live near Lake Michigan, which is a source of drinking water, for most of them. Most of our members swim, fish and/or boat in Lake Michigan.

We are aware of attempts by Industry to weaken the provisions of the 1972 Clean Water Act. These attempts should be resisted. We do not agree with the statements of the Steel Industry that pollution control eliminates jobs. On the contrary, it is our belief that strong Federal Legislation, properly enforced will result in a net increase in jobs.

We feel the final bill should contain the following provisions:

1. Strongest possible protection from dredging and filling activities, including all navigable waters, main stem rivers, tributaries and headwaters.

2. Approval of Senator Nelson's Amendment, which bans phosphate detergents.

3. Mandating of "Best available Technology" for control of Industrial Pollution by 1983. Industries which send wastes to Municipal Treatment Plants should be required to pay the full costs of treating their effluents.

4. Rapid development of standards for and abatement of all toxic and hazardous substance discharges.

5. Approval of the "Clauson Amendment", providing funding for new or innovative pollution treatment methods.

The preservation of Clean Water is a matter of highest priority to our members. It is our hope that the 1977 Clean Water Act will reflect this priority.

Sincerely,

MIKE OLSZANSKI,
Chairman Environmental Committee.

BORROWING COSTS GOING UP FOR NATION'S CITIES

Mr. HUMPHREY. Mr. President, the administration has let it be known that the planning of an urban strategy is underway. The intent of such a strategy would be to assist in revitalizing the deteriorating economic base of many cities. I wholeheartedly endorse this effort and applaud the Carter administration for undertaking this difficult, but vital task.

I am concerned, however, with the narrow scope of the approach being recommended by the Treasury Department. The Department has indicated that their recommendations, albeit in draft form, are limited to assistance to private businesses to encourage their investment in the central city. Treasury officials have repeatedly emphasized their view that municipalities are not in need of an alternative or supplemental source of long-term credit. Based on my extensive contact with local officials from all across this Nation, I strongly disagree with the Treasury perception. A recent article which appeared in the Wall Street Journal indicates that a serious oversupply of municipal bonds presently exists which is forcing bond prices down and yields up in municipalities nationwide.

Our municipalities must have an alternative source of long-term credit and I urge the administration to give this option careful consideration.

Mr. President, I ask unanimous consent that the Wall Street Journal article be printed in the RECORD.

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

OVERSUPPLY IS FORCING MUNICIPAL ISSUES TO THEIR LOWEST PRICES SO FAR THIS YEAR

(By Phil Hawkins)

NEW YORK—A serious oversupply condition has forced municipal bonds to their lowest prices and highest yields thus far in 1977.

New York bonds have become especially plentiful since their market acceptability was restored through progress in solving the well-publicized financial woes. One of the state's agencies sold $236 million last week; another will offer $255 million this week, and still another might put out up to $800 million in an advance refunding.

About $986 million of fresh tax-exempt bonds poured into the market last week, including large offerings of $236 million by the New York State Housing Finance Agency, $150 million by Oregon and $107 million by Tennessee. More than $1.2 billion of unsold old bonds already were piled on dealers' shelves.

Generous terms were set on the huge new array, but additional concessions soon became necessary. For example, Tennessee's seven-year bonds initially were priced to yield 4.05%, well above the going rate on similar state issues a week earlier, but their return had risen to 4.1% by early Friday.

Drastic price adjustments were made on various Municipal Assistance Corp. bonds after the New York agency said it might advance refund up to $800 million in existing issues. MAC's 10¼% bonds of 1993 soared about three points, while its 7½% bonds of 1995 plunged by the same equivalent of $30 for every $1,000 face amount.

Typical state and city issues were marked down about $23.75 for each $1,000 face amount during the week, as measured by a change in the Dow Jones municipal bond yield index to 6.33% from 6.14% the previous week. It put their net loss at about $43.75 over the past month while the index was moving from 5.98% in early September.

The current index level is the highest since a 6.38% late last November. Bond yields and bond prices move in opposite directions, of course.

An end to the oversupply condition isn't in sight. More than $1 billion of new tax-exempt bonds are being readied for sale this week, including formidable offerings of $255 million by the New York State Project Finance Agency, $150 million by Connecticut, $100 million by Philadelphia and $95 million by the Maryland Community Development Commission. None of the key sales will get under way today.

Utility bond prices also have been weakened by excessive supplies. More than $1 billion of new telephone, electric and gas company obligations are scheduled for sale in October, a sharp increase from the recent monthly average of about $710 million.

Last Friday, for instance, Consumers Power Co.'s 8⅝% bonds were released into the resale market while an estimated $40 million remained available from the $100

million offered only two days earlier at 99¼, where the return was 8.7% in 30 years. The bonds plunged about 1¼ points—$12.50 for every $1,000 face amount—to a level yielding 8.76%.

Only two new utility sales are planned this week, however. They involve offerings of $50 million by Southern California Gas Co. tomorrow and $60 million by Dayton Power & Light Co. on Wednesday.

Several other corporate and foreign offerings will get under way during the week. Among them are Wednesday sales of $150 million by Venezuela plus $100 million by Private Export Funding Corp. and a Thursday sale of $250 million by Aetna Life & Casualty Co., which on Friday increased the amount from $200 million originally.

A recent Treasury issue performed poorly last week. The department late Wednesday sold $2.5 billion of 7⅛% notes, due Nov. 15, 1982, at a price yielding 7.18%, but by Friday the notes had fallen in resale trading to 99 12/32 bid, 99 14/32 asked, where the return was 7.26%.

Older Treasury issues plummeted as much as 12/32 point in very light trading on Friday. The lengthy 7⅝% bonds of 2002–07 closed about 11/32 point lower at 98 23/32 bid, 98 27/32 asked, where the return was about 7.72%.

Nevertheless, Treasury securities remained fairly unattractive in relation to corporate bonds. They were yielding about 0.6 percentage point less than high-grade utility bonds and about 0.3 percentage point less than high-grade industrial company debentures, whereas the yield spreads usually are only about 0.55 and 0.25 percentage point, respectively.

In European markets last week, bond prices fell an average of about a point, the sharpest weekly decline so far this year. Investors were said to be avoiding purchases due to the double peril of rising short-term interest rates and falling foreign-exchange value of the U.S. dollar.

ALABAMA POWER CO. AND THE NRC

Mr. KENNEDY. Mr. President, a few weeks ago I proposed an amendment to the utility legislation before the Senate which would have installed antitrust review provisions in that bill. The antitrust review process would not have been part of any Federal licensing procedure, and thus the question of whether that review might cause any delay was not relevent to my amendment.

Nonetheless, during debate on my amendment the discussion turned to a proceeding before the Nuclear Regulatory Commission relating to a case involving the Alabama Power Co. I have recently received a letter from an attorney representing that firm, pointing out the company's interpretation of the outcome of the proceeding and questioning my characterization of some of the practices complained of in the case.

I believe that it is only fair that my colleagues have the opportunity to read first hand Mr. Balch's perspective on this issue. At the same time, my own observations, I believe, are borne out of reference to the record of the case as well. I have responded to Mr. Balch's letter pointing out the bases of my earlier statements, and I ask unanimous consent that both of these letters be printed in the RECORD.

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

OCTOBER 20, 1977.

Hon. EDWARD M. KENNEDY,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: I have read with concern the statement which you made relating to Alabama Power Company on the floor of the Senate on October 5, 1977, reflected at Page S. 16400 of the Congressional Record. Your statement is incorrect and misleading.

By way of background, you should be aware that the proceeding before the Nuclear Regulatory Commission (which apparently is what you referred to as the "Alabama case") was initiated by the "Advice Letter" of the Department of Justice pursuant to Section 105c of the Atomic Energy Act in August, 1971 and related to the licensing of the Company's Farley Nuclear Plant. Hearings in that proceeding began in December, 1974 and were not concluded until May, 1977 after more than 165 hearing days during which a transcript record in excess of 28,000 pages was compiled. In addition, the record involved literally thousands of pages of exhibits. This *six-year* ordeal resulted ultimately in the delay of the operation of the plant, which cost the consumers of Alabama in excess of $10,000,000.00. Had construction of the plant not been "grandfathered", the cost of the delay would have been even greater as in the case of Louisiana Power & Light. The net result of the "Alabama case" in the opinion of the Atomic Safety and Licnsing Board issud on Jun 24, 1977, was to afford Alabama Electric Cooperative, Inc. the unit power interest in the Farley Plant which Alabama Power Company had offered to that entity *before the evidentiary hearings began,* but to deny the joint ownership interest for which it contended for the stated purpose of extending its federal tax and interest subsidies. I fail to understand how the imposition of $10,000,000.00 on the consumers of Alabama Power Company can be justified as being in the public interest, and would strongly urge that Section 205c of the Atomic Energy Act be revised to assure that such delays not be permitted in the future.

With respect to your statements on the floor of the Senate, you stated that ". . . Alabama Power Co. refused to coordinate its bulk power supply with Alabama Electric, a cooperative, when it performs in coordination with other utilities. That is a clear violation, in terms of discrimination and refusal to deal, of the antitrust laws." The Licensing Board, after considering the evidence, did not agree with your statement. At Page 250 of its Initial Decision, the Board stated:

". . . we find that the 1972 interconnection agreement between Applicant and AEC is not anticompetitive in and of itself, and does not deny AEC power exchange services in an anticompetitive fashion."

The 1972 interconnection agreement, which provided for an expansion of the coordination which had existed between Alabama Power and Alabama Electric since the inception of operations of AEC in 1944, had also been approved by the Rural Electrification Administration and by the FPC. I would hasten to add that prior to 1972, the agreements for coordination between Alabama Power Company and Alabama Electric had also been reviewed by the Alabama Public Service Commission, and after the mid-1960's, by the FPC. In fact, the arrangements were subjected to extensive hearings before the FPC in its Docket No. E-7183. The FPC, in 1967, issued its opinion that the provisions of the agreement were not unreasonable. FPC did require the parties, together with the FPC staff, to explore, under Section 202 (a) of the Federal Power Act, additional coordination to take account of new generation the Cooperative was constructing and new federal hydro projects then being constructed, the first of which was completed in 1970. The representatives of Alabama Power engaged in joint engineering studies with the staff of the FPC, REA, SEPA and Alabama Electric to determine what new interconnection arrangements would be required in the light of the new generation referred to by FPC. It is out of these discussions that the 1972 interconnection agreement was developed.

Alabama Power Company has never refused to deal with Alabama Electric, and in fact has been continuously interconnected with it at multiple points since September 1944. Alabama Power Company has been providing Alabama Electric with back-up power supply as well as firm power every single day since their first coordination contract was executed in 1944! Moreover, the Board in the case you referred to, did not find that Alabama Electric had violated the antitrust laws. The Board did rule that the failure of Alabama Power Company in the discussions during 1970 and 1971 leading up to the February 1972 Agreement to agree to the demands of Alabama Electric was anticompetitive conduct. However, the Board also found that Alabama Power Company, during such period, was concerned about the impact of the 35-year all-requirements, exclusive dealing contracts which Alabama Electric had entered into with Alabama Power Company's wholesale customers. These contracts required that such customers disengage from Alabama Power Company whenever Alabama Electric had capacity to serve their loads and requested them to do so. Alabama Power had sought to persuade Alabama Electric to suspend such long-term (35-year) contracts during any new coordination agreement between Alabama Electric and Alabama Power because the impact of such contracts would simply be to assure that Alabama Power would lose the affected customers at the option of Alabama Electric, and foreclose any opportunity during the aforesaid 35-year contract term for Alabama Power to compete for service to these wholesale customers, some of which it had been serving since the 1930's.

Another reason why Alabama Power Company and Alabama Electric were delayed in reaching agreement on a new coordination agreement during the negotiations in 1970 and 1971 was that Alabama Electric was insisting that Alabama Power agree not to serve any new retail customers in the state of Alabama which located "closer to" a distribution line of any of Alabama Electric's distribution cooperative members, regardless of the distance—even as far away as several miles or more. It was the position of Alabama Power Company that such a demand was not only anticompetitive, but unreasonable in that it would inhibit Alabama Power from serving new loads and would preclude members of the public which desired service from Alabama Power Company, in counties where it served, from obtaining such service. It was only after this last demand by Alabama Electric was withdrawn that the 1972 Agreement was reached.

Your next comment concerning the "Alabama case" is the greatest distortion imaginable. You stated:

"Second, it attempted to get the cooperative to agree on territorial allocations, clearly an unlawful territorial allocation."

The consistent objective of the cooperatives in Alabama, which they have pursued both in negotiations with Alabama Power and before the Alabama legislature, has been to establish exclusive territories for the provision of service. I will be glad to furnish you copies of the legislative bills proposed by Alabama Electric and its members if you desire to see them. As indicated above, during the discussions leading up to the 1972 interconnection agreement, a major portion of the

time was involved in responding to the cooperatives' insistence that the State be carved up so as to assure them exclusive service territories.

The Company does feel that provisions to avoid wasteful duplication of electric service facilities are in the public interest, and this has been the regulatory policy of the State of Alabama for many years. When cooperatives first began their organization in the late 1930's and early 1940's, negotiations were conducted between the Company and the cooperatives at the direction of Gordon Persons, then President of the Alabama Public Service Commission, and later Governor of Alabama, to avoid such duplication. Mr. Persons, incidentally, formerly had been the consulting engineer retained by many of the cooperatives to assist in the development of their electric systems. These negotiations produced an agreement which was designed to avoid wasteful duplication, but which still permitted reasonable competition. These agreements were approved by the Alabama Commission as being in the public interest. At present, the Company's tariff, filed with the FPC, contains a successor version of these agreements. This tariff provision has also been explicitly approved by the Alabama Public Service Commission. During hearings before the FPC, the Company offered to strike the provision so that there would be absolutely no restrictions on competition; however, the cooperatives insisted that the provision remain. Their expressed concern was that the provision did not restrict competition enough in that they wanted exclusive service territories predicated on the "closer to" concept which was pressed by Alabama Electric and their representatives during the 1970–1971 negotiations described above.

It is my feeling that in the interests of truth and honesty, you should be aware of the cooperative's position on competition before you presume to make statements on the floor of Congress or elsewhere about the "Alabama case."

Finally, you stated on the floor of the Senate:

"The third was a requirement in the contract that all or none of the power purchased at wholesale come from Alabama Power—a sole source requirement—which the cooperative was unprepared to do."

This statement is false. The record shows that with respect to Alabama Electric, it has been purchasing wholesale power from Southeastern Power Administration (SEPA) since the early 1960's. Even before the 1972 coordination agreement referred to herein, the contract between Alabama Power and Alabama Electric expressly contemplated that Alabama Electric would purchase power from SEPA simultaneously with purchases from Alabama Power.

Prior to 1970, Alabama Power Company, like nearly every wholesale firm power supplier in the country, had reciprocal provisions in its wholesale rate schedules approved by the FPC that required (a) the Company to build transmission and generating facilities to supply (for the limited term of the contract) the specified loads of the customer; and (b) the customer to purchase all of its specified requirements from the Company at the delivery point which the contract covered. In Alabama Power Company's case, the term was for five years, subject to cancellation upon six months' notice at the end of such five years. Such a term is consistent with prudent planning. All of the witnesses who testified in the Nuclear Regulatory Commission proceeding to which you refer, including the experts sponsored by the other parties, stated that it is customary and reasonable for power supply contracts to commit purchasers for a reasonable planning period of up to five years.

The other two wholesale suppliers which operate in Alabama have all-requirements provisions in their contracts, but the terms of their contracts are much longer. TVA, which supplies wholesale customers in North Alabama, has a provison which states that the customer must purchase all of its power requirements from TVA for the entire 20-year term subject to cancellation after the first 10 years. Alabama Electric's current wholesale contracts, provide that the customers must buy all of their power requirements from Alabama Electric for a period of 40 years in the case of distribution cooperatives, and 30 years in the case of municipalities. Alabama Electric is quick to point out that these long-term exclusive-dealing contracts are required by federal policy as expressed by the Rural Electrification Administration. It is not only illogical, but unfair for you to criticize the five-year all-requirements provision in Alabama Power Company's tariffs without leveling the same attack at the longer-term provisions insisted upon by federal agencies.

I would hasten to add that neither we nor other utilities, federal or otherwise, have these provisions in wholesale contracts simply because everyone else does it. The electric utility industry is a capital-intensive business requiring the attraction of enormous investments before service can be rendered. Both TVA and the Rural Electrification Administration recognize, just as private utilities recognize, that some security of market must be achieved in order to assure that revenues will be available to pay for the facilities. The type of security of markets which TVA and REA have demanded, running from 20 to 40 years, has not been available generally to private utilities because of regulatory policy. Nevertheless, FPC itself prescribed the term for the requirements provision of Alabama Power Company's tariff, and found such terms to be reasonable.

With respect to the assertion that the Company's tariff is an all-requirements tariff, I would further note that when power marketed by the Southeastern Power Administration, a branch of the U.S. Department of the Interior, first became available for sale to other wholesale customers of Alabama Power Company in 1970, the Company readily agreed, notwithstanding the "all-requirements" feature of its then existing wholesale power supply contracts, to accommodate the supply of low-price SEPA power to such customers and to wheel such power for the government to such customers. These developments were a product of voluntary negotiations and resulted in a mutually beneficial coordination arrangement between SEPA, Alabama Power and more than twenty wholesale (preference) customers in Alabama.

The law firm of which I am a member served as co-counsel for Alabama Power Company in the NRC licensing proceeding to which you referred. I am, therefore, familiar in detail with the facts and circumstances involved in that case. The contracts referred to above, as well as the FPC and other agency action described, are all a matter of public record. I will be pleased to document from the public records any of the matters you wish to have so verified.

I bring these matters to your attention so that you can correct misstatements in the Congressional Record, and with the hope that being better informed, you might avoid misrepresentations in the future as you participate in legislation affecting the electric utility industry and the public it serves.

Yours very truly,

S. EASON BALCH.

WASHINGTON, D.C., *October 28, 1977.*

S. EASON BALCH, Esq.
Balch, Bingham, Baker, Hawthorne, Williams & Ward, Birmingham, Ala.

DEAR MR. BALCH: This responds to your letter of October 20, 1977 concerning my comments on the floor of the Senate regarding the antitrust review preceeding before the Nuclear Regulatory Commission (NRC) involving Alabama Power Company's Farley Nuclear Plant. Your letter asserts that my remarks concerning Alabama Power Company were incorrect and misleading and you further claim that the antitrust review resulted in a delay of the nuclear plant, costing consumers in Alabama in excess of $10,000,000.

Since your letter is a quite lengthy one, I will not undertake to respond to each and every point, but will instead deal with the two essential points you raise: the conduct of Alabama Power Co., as found by the NRC Licensing Board, and alleged delay in licensing the plant because of the antitrust review proceeding.

Contrary to your statements, my remarks relating to anticompetitive behavior engaged in by Alabama Power Co. are amply supported by the findings of the NRC Licensing Board. Your letter, largely a defense of Alabama Power's conduct, fails to note that the Board's ultimate conclusion was that Alabama Power had acted inconsistently with the antitrust laws and that relief was necessary to correct the anticompetitive situation shown by the record. The Board found:

". . . that Applicant possesses monopoly power in the generation and transmission of electric power in the relevant market of central and southern Alabama, and that it has used its dominant position to hinder or foreclose competition or potential competition for wholesale power supply. . . . " (Initial Decision—Phase I (ID–I), 321).

In view of the Board's findings of anticompetitive behavior by Alabama Power Co., it is clear that the antitrust proceeding that you condemn, has performed a public service by exposing prior to licensing of the plant, competitive wrongdoing by a major electric utility.

The NRC Licensing Board's conclusion that Alabama Power had utilized its monopoly power to foreclose and hinder competition was based on a number of specific findings of anti-competitive conduct, which are set forth below. With regard to Alabama Power's interconnection and coordination activities:

". . . Applicant consistently refused to make fair interconnection and coordination arrangements with AEC, for the sole purpose of maintaining and protecting Applicant's wholesale customer business from competition by AEC." (ID–I 243);

With regard to restrictive provisions in Alabama Power's wholesale contracts:

"That they are anticompetitive in regard to precluding alternative sources of supply." (ID–I 259);

With regard to formation of regional coordination agreements:

"Applicant clearly intended to, and did, deny in concert with other utilities, publicly owned utilities in its service area, the benefits of economic coordination in order to eliminate competition from them." (ID–I 311–12);

With regard to a restrictive provision in Alabama Power's contract to transmit surplus power from Government hydroelectric projects:

"We find this to be inimical to the antitrust laws" . . . and additionally, ". . . an exclusive dealing arrangement . . ." (ID–I 270–71).

With regard to Alabama Power's efforts to monopolize service to a Government military installation, Ft. Rucker:

". . . Applicant abused its monopoly power in the generation and transmission of wholesale power to attempt to foreclose competition and to gain a competitive advantage" (ID-I 287), and additionally, to constitute "unfair methods of competition proscribed by Section 5 of the Federal Trade Commission Act" (ID-I 291).

These are the anticompetitive acts and practices to which I was referring in my remarks on the Senate floor. Even though the Board found that some of Alabama Power's activities at issue in the proceeding were not anticompetitive, the elimination of Alabama Power's ability to act anticompetitively, as the evidence showed that the Company had acted, was certainly a public interest goal well worth pursuing.

It seems to me that your letter largely reargues from your perspective the matters which were involved in the NRC proceeding. My remarks to the Senate, however, were based not on any personal perception that I may have had of the competitive situation in the electric power industry in Alabama but rather on the findings of the impartial panel which actually heard the evidence presented by all parties.

The second essential point in your letter was that the delay in licensing the Farley plant resulted from the NRC antitrust review. Apparently, the delay beyond the point when the plant was otherwise eligible for an operating license amounted to about five weeks. As I understand the situation, Alabama Power Company's litigation tactic of insisting that the hearing be conducted in two phases resulted in an unnecessary prolongation of the proceeding. If the NRC Licensing Board had completed the taking of all evidence in April, 1976, as the Department of Justice and other parties urged, and had thus avoided the need for further evidentiary proceedings, briefing, and additional ruling by the Licensing Board in 1977, the Licensing Board's full and final decision could have been rendered before the Farley plant was ready to operate in May, 1977. I am informed that when in 1974 the Company proposed this bifurcation procedure, the Department of Justice, the NRC Staff, and the other parties strongly opposed it. The prediction of the latter parties that "[b]ifurcation . . . will almost certainly cause delay," was obviously borne out, and it is unfortunate that you have chosen to blame others for the delay and resulting costs which may well have been brought about by Alabama Power's litigation tactics.

I do not agree with your suggestion that Section 105c of the Atomic Energy Act be amended. Under the Nuclear Regulatory Commission's present procedures, ample time is available for antitrust hearings when such hearings are necessary. On the other hand, if there were no pressure to have antitrust review completed, it is likely that the antitrust proceedings would become even more protracted. The procedures followed by the NRC under existing Section 105c have served the public well, in my opinion, and I see no reason to change them because of the unique experience in the Alabama Power proceeding.

Sincerely,

EDWARD M. KENNEDY.

MINNEAPOLIS FULL EMPLOYMENT HEARING: MR. WILLIAM NORRIS

Mr. HUMPHREY. Mr. President, the people of my State never cease to surprise me with their sophistication, warm me with their conviction and concern, and make me proud to be a Minnesotan.

I have in mind Full Employment Week. Thousands marched from coast to coast the week of Labor Day demonstrating their desire for policies to achieve and sustain full employment, and testifying to the costs of falling short.

The costs are human and individual: Broken families, low self-esteem, and the gnawing futility of entrapment among the impoverished in a society of plenty. The costs are social: Higher mortality and illness, property crimes of survival, and subsequent imprisonment. The costs are economic: Hundreds of billions of dollars of potential production gone forever, and the consequent inflation from supply outstripped by reasonable demand.

In Minneapolis, Mr. President, emotions were high but the mind ruled. It was an exemplary performance. The Minneapolis Full Employment Action Council (FEAC) held a public hearing on September 6 at the Regional Native American Center on the need for full employment, and heard from 18 witnesses, including authorities on unemployment costs, planning, political leaders, and the unemployed themselves.

The local FEAC provided substantial funding for bringing in out-of-town experts, prepared a record, arranged media coverage, and did the sundry other tasks which dedicated people do without thinking twice. They did them, and the result was an excellent and serious exploration of the issues well attended by area citizens.

Janet Deming and Doug Peterson of FEAC thoughtfully sent me a full transcript. I, in turn, would like to share with my colleagues over the next few days selections from the testimony received.

The first witness was Mr. William Norris, president of Control Data Corp., one of the largest firms headquartered in Minnesota. Control Data, with offices and outlets across the country and throughout the world, is a fine corporate neighbor to the Midwest. It pays its taxes and provides jobs; it builds assembly plants in depressed areas of our large cities; it innovates to stay at the frontier of a complex vital industry; and finally, it provides quality services and products to our citizens in healthy competition with other computer companies also situated in our part of the country.

Mr. Norris' statement stressed the importance of full employment, calling the present situation "the Nation's No. 1 problem." In pointing out the need for 20 million new jobs in the next decade, Mr. Norris cited the role of business in developing new products and sharing information on useful technological improvements. But sharing information in a world full of paper is a big job that requires organization to obtain economies of scale. And that, he tells us, is a long way from happening:

The reluctance of private industry, coupled with the grossly inefficient methods of government and academia for communicating information, result in the technological wheel being wastefully reinvented every day. Moreover, technologies are lying on the shelf grossly under-utilized.

He suggests some ideas of how to facilitate technological information exchange. These views are well considered and deserve attention from Congress.

Among the other insights Mr. Norris was a candid assessment of the hesitancy of some segments of the business community to embrace enlightened objectives in employment and social policy:

But the increase in technological innovation that could reasonably be expected in today's environment would fall far short of what is required. The reason is primarily the indifference of business toward major societal problems. For too long business has been preoccupied doing the things that are the most profitable and leaving the solutions to most of the major problems of society as the responsibility of government. Meanwhile, these problems are growing to disastrous proportions.

Let me add my voice of assurance to those in the private sector who are listening: We in Government welcome all the help we can get.

Finally, Mr. Norris addressed the legislative context for sustaining balanced growth with full participation of dynamic, innovative commercial enterprises:

The legislative actions required to more effectively convert technology into jobs through the concentration of resources on a regional basis to focus efforts and achieve widespread cooperation appear to be embodied in the provisions of the Humphrey/Hawkins (Full Employment and Balanced Growth) bill. As noted earlier, the types of projects that need to be undertaken to meet societal needs are the same as those, or could be, that are to be implemented by the full employment and balanced growth plan of the bill.

I wish Mr. Norris hearty success in persuading his business colleagues of the benefits of sensitivity toward the needs of society including full employment.

Mr. President, I ask unanimous consent that Mr. Norris' full statement be printed at this point in the RECORD.

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

STATEMENT OF WILLIAM NORRIS, PRESIDENT CONTROL DATA CORPORATION

Mr. EARL CRAIG, Jr. (moderator). Again, the fact that we have an incredible list of witnesses scheduled, I don't think that Senator Humphrey or I need to make an opening comments except to say that the two of us plan to be fairly tough in terms of keeping within some reasonable time, and secondly, I would point out to you that it's probably appropriate or inappropriate, depending upon your perspective that the Bureau of Labor Statistics figures for movement for the month of August was from 6.9 percent to 7.1 percent official rate. The movement for whites was from 6.1 percent to 6.1. The movement for blacks was from 13.2 percent to 14.5 percent. With that kind of backdrop I would like to call our first witness, Mr. Bill Norris, who is the president of Control Data Corporation.

Mr. NORRIS. Proceed?

Mr. CRAIG. Just proceed. (Minnesota State) Senator Humphrey is used to being in these kinds of positions, I'm going to make believe.

Mr. NORRIS. Thank you. The opportunity to participate in this forum is greatly appreciated. It would be most gratifying if I were able to contribute to a long-term solution

to unemployment, because I believe it is the nation's number one problem.

Not only are more jobs needed, but almost as important, more skilled jobs. The unemployment problem will become even more critical as in the next ten years another twenty million new jobs will be required. This would be the largest increase of any decade in our history; thirteen million were created in the last ten years.

The basic question is, "Can the U.S. increase jobs and still improve poductivity or is this another situation where we only can make trade-offs—between more automation, better productivity, and fewer jobs on the one hand, or more jobs, less efficiency, more inflation, increased government payouts and deficits on the other?"

This apparent dilemma is solvable through increased technological innovaiton. Technological innovation is the wellspring of new jobs. Capital investment is also a source of jobs and capital is required to support technological innovation. A dollar invested in technology will create more jobs and return more income than the same amount invested in capital equipment.

Technological innovation is also one of the key factors in productivity improvement, along with capital investment and employee training.

To avoid misunderstanding, I should mention that the definition of technology I use is "a way of doing things". I also use the words "technology" and "knowhow" interchangeably. How to grow two stalks of rice in place of one is knowhow or technology. How to design a nuclear power plant is another example. Obviously there is a broad span of technology.

Now let me give you a clear example of how technology or knowhow creates jobs. You have probably heard of or seen the portable sanitation units—or portable chemical toilets—that are used on construction sites. Before these portable units, there was both environmental pollution, unsanitary conditions, and lost time by workers due to improvisations. Then some innovative individuals in various parts of the country combined chemical knowhow, low cost construction technology and servicing management to provide the answer to the problem at an economical cost. Jobs were created, in the manufacture of the units, in the chemicals, in the servicing. Today in the U.S. there are over a thousand manufacturing jobs and another three thousand servicing jobs throughout the country. It is now a $100 million industry with over a thousand small businesses contributing to the economy of communities in every state. And it continues to grow.

As more knowhow is put into manufacture of the units, costs are reduced. As you know, this is called productivity improvement. Lower unit costs, combined with efficiencies in service, open up new uses and the employment of more people. In addition to construction sites, the units are being used at fairs, athletic events, parks, boat landings, summer cottages and home barbecues.

Although this example clearly illustrates job creation and productivity improvement, in most cases these results are not so viable; however, there have been many studies made that verify the processes. For example, one study of the linkages among jobs, productivity and technology shows that growth of employment in high technology industries is almost nine times as fast as in low technology industries with output growing almost three times as fast and productivity twice as fast.

But the increase in technological innovation that could reasonably be expected in today's environment would fall far short of what is required. The reason is primarily the indifference of business toward major societal problems. For too long business has been preoccupied doing the things that are the most profitable and leaving the solutions to most of the major problems of society as the responsibility of government. Meanwhile, these problems are growing to disastrous proportions.

For example, one of the most serious societal problems and closely related to employment is the achievement of more abundant and less costly sources of energy. Our economy is utterly dependent on cheap and readily available gas and oil for energy. Within twenty to thirty years, world production will begin to fall off. Considering that fifteen to twenty years are required to get meaningful results from the average new development, there is precious little time available to avoid disaster.

There are many other major societal problems crying for more attention. These include the improvement in energy conservation, greater environmental protection, new materials, less costly food production, more efficient water conservation, revitalization of inner cities, better education, better health care and improved productivity.

Solutions to this vast array of major problems, along with a nation-wide increase in technological innovation, will provide millions of private industry jobs that must be part of a systematic route to full employment. What is required are jobs that are created from products or services that meet the country's long range needs. This should be our main thrust for job creation. As a businessman, I have been involved during a period of over thirty years in establishing two small businesses that have grown and have provided needed products and services and, along the way, more than 40,000 jobs.

So I believe that leadership for planning and implementing full employment programs must be provided by business, working in cooperation with universities, government, labor and other major segments of society. These programs should be planned so that they are in accord with the national goals and priorities embodied in the full employment bill. Our major societal problems are massive ones and massive resources are required for their solution. The best approach is that they be viewed as business opportunities with an appropriate sharing of cost between business and government. Economic growth will be stimulated along with job creation. The key resource needed is technology; the knowhow to solve the problems.

In order to achieve the most timely solutions and increase technological innovation nationwide at affordable costs, we need to make existing technology more available to accelerate the creation of new technology and to devise more effective means of putting technologies to work in creating jobs and improving productivity.

BETTER AVAILABILITY

In elaborating on improved availability, it should first be noted that there is a vast amount of valuable technology throughout the world. But much of it is little known and little used because of lack of efficient mechanisms and incentives for communicating knowledge of it and then actually transferring it for productive use. In other words, the transfer of technical information and technology is grossly inadequate within our society—in government, in industry and in our universities.

The federal government spends more than $1 billion annually to disseminate results of federally-funded research and development. Yet it is frequently impossible or extremely difficult for either government or industry to obtain these results in a useful form. And let me repeat—in a useful form.

The reasons include inadequate records, ineffective coordination of federal programs, lack of attention to the needs of industry, and inattention to the information and technology transer needed by the scientists and the engineers who do the work. Since most university research is government-sponsored, it suffers from similar patterns of poor dissemination of results.

In the private sector, there is relatively little transfer of technology across industries. Yet studies show that many major innovations are the result of applying the technology of one industry in another; e.g., the high speed computer initially came from the electronics industry, not the business equipment industry; instant pictures were not invented by Eastman Kodak, and so on. The bottleneck in industry preventing more of this happening is the concern for maintaining an exclusive proprietary position. In the private sector we find a dichotomy between "over-protection of rights to technology" and "responsible sharing of technology for economic and social good"; a new attitude of cooperation by private companies is needed.

The reluctance of private industry, coupled with the grossly inefficient methods of government and academia for communicating information, result in the technological wheel being wastefully reinvented every day. Moreover, technologies are lying on the shelf grossly under-utilized.

Obviously we must use our technical information and technologies more efficiently in creating jobs and in improving productivity. Further, we must remain aware that productivity improvement alone can be counter-productive to full employment. It must therefore be accompanied by a creative force for new products and services that will absorb both the newly unemployed, and the expanding work force.

Technologies, wherever obtainable, should be viewed as the single richest potential source for the creation of new jobs by providing the basis for whole new businesses and new and improved products and services for existing business.

A major need, then, is to increase greatly the efficiency with which information on the vast reservoirs of technologies in government, universities and industry are communicated to those who can create new jobs by converting those technologies to new products and services. Increased efficiency in communications is essential. But not sufficient, because such sharing would be non-traditional and difficult. Special incentives are also needed, including tax breaks, to induce the private sector to make its technologies more available.

Policy changes and productive legislation are needed, summarized as follows:

1. A clearly stated redirection of policy to achieve the broader use of government-sponsored R & D results in the creation of jobs.

2. Stimulation of government laboratories and universities to make their technologies more available and to aid in their efficient transfer.

3. Provision of tax incentives or direct payments to encourage private companies to sell and/or lease their technology for the public good.

While more efficient transfer of existing technologies will be of enormous benefit, there are also new technologies needed for solving our major societal problems. However, the investment and risk required for many such developments are beyond private industries' resources and/or they do not provide an acceptable return on investment.

A whole new round of innovation is necessary. Innovations are needed like electrical power, the telephone or the beginning of the chemical industry in the 1880's. There are many likely targets, such as solar energy, nuclear fusion, new products using much less energy, new materials, water conservation methods and new agricultural technol-

ogies. The costs will be very high and the risks great, both because of uncertain technological outcome and unpredictable market reception.

The diverse technologies created will be useful in creating new products, processes and services and improving existing ones over a range much broader than covered in the initial projects. Hence they will have far greater value to society than can be realized by the individual companies involved. Clearly government should join with private companies to pursue these projects. Leadership and management should come from the private sector and funds from the government until experimental models prove feasibility and the risk is manageably reduced. Thereafter, the balance of the cost should be borne by industry.

Projects that meet societal needs, such as those for new energy sources, better transportation, environmental improvements, water conservation, should be supported under the priorities and programs part of the full employment and balanced growth plan of the Humphrey/Hawkins bill. In meeting these needs not only will jobs be created, but many of them will be skilled jobs. This is particularly important so that those who take lower-level, shorter-term employment in jobs corps and public works can look forward to job opportunities at a higher skill level.

Increasing the availability of existing technology and developing new technology are both essential, but we must put technology to use more effectively in order to achieve the most timely solutions to major societal problems.

The major deterrent is the widespread lack of understanding of the role of technology in the economic process, particularly that new jobs are derived from the application of technology. Moreover, just the use of the word "technology" often causes people to turn off with the attitude that technology is for the long hairs—don't bother me—or worse. More recently, technology has been thought of by some people as a synonym for pollution and dehumanization. So there is not only lack of support for increased technological effort, but opposition by some—both reactions stemming primarily from a lack of real understanding.

Yet, there is a deeply-rooted and growing concern in our country, and indeed worldwide, over unemployment. Efforts, albeit not very effective, are being made toward more permanent means for creating jobs as opposed to the short-term job corps/public works-type of approach.

Most of these efforts have been concentrated on facilitating the formation, development and more efficient operation of small businesses for achieving economic growth and creating new jobs.

In another, the small business administration made $300,000 available in 1977 to test the concept of establishing small business development centers at eight cooperating universities to aid small businesses with their management problems, particularly those involved in starting new companies and in finding and applying technologies required for new or improved products and services in existing organizations. This program will be expanded in 1978.

There are other similar organizations like the New Enterprise Institute in Maine, which started in 1974 with the belief that entrepreneurship and innovation in the small business sector was the fastest route to healthy economic growth in Maine. The funding level is about $700,000 over five years, and is provided mostly by a grant from the Kellogg Foundation.

One organization in a formative stage is the Committee of Urban Public Universities. This group's objective is to coordinate and apply university resources more effectively in cooperation with other public and private organizations to help solve unemployment, urban blight and the like.

There are many other community organizations that are engaged in facilitating economic growth in various ways by helping to finance new plant construction, inner city housing revitalization, public works, etc.

These many types of organizations do help to create jobs but usually on too small a scale, and they are fragmented, duplicative, and too often problems are merely studied instead of being solved. There is not adequate involvement of big business, labor unions, churches, universities or local governmental units, and most of the organizations have low visibility. They are micro solutions to macro societal problems. These are massive problems requiring massive resources and entailing many controversial issues.

What is needed is a pulling together of available resources on a regional and national scale to identify, prioritize and facilitate solutions with the implementation of problem solutions being done in the traditional manner by the private sector.

The major focus must be on unemployment—identifying and stimulating the private sector to undertake projects for creating new jobs. Although the main emphasis is on unemployment, other societal problems are addressed whose solutions would help to create jobs.

This approach has several advantages. One is that only by much more direct involvement of major segments of society will there be adequate general awareness of what technology is all about and what its relationship is to jobs and productivity. Another benefit is that of societal consensus—most will agree that the number one need is more jobs. Many who would reject proposals for increased government spending in development of alternate energy sources for fear of increased pollution or unjust enrichment of business, would seriously study and more likely support actions leading to more jobs.

The central vehicle for new job creation would be the establishment of regional development offices. These would be highly visible and would involve all segments of society.

Functions would include:

1. Selection of appropriate societal problems for attack.

2. Encouragement of businesses to assume the leadership of projects for solving the problems.

3. Encouragement of cooperation among businesses and between business and universities in implementing the projects.

4. Assistance to aspiring entrepreneurs and inventors in evaluation and preparation of business plans and start-up efforts, together with identification of financing sources.

5. Promotion of state and federal legislation to increase support for technological innovation.

6. Provision of inputs for helping establish national priorities and goals.

The method of operation of an area development office is best explained by looking at four programs that might be undertaken.

ENTREPENEURIAL ENTERPRISE

One important type of program is that of fostering the start-up of new, small enterprises. A new business means new jobs. An inventor has an idea for a new product or service, and wants to start a company to develop and market it. Financial backing from the usual sources is not available. The area development office provides assistance. A volunteer team of experts are assembled from local business and universities to review the idea, and if sound, to help in the preparation of a business plan and in promptly completing the many other steps in setting up a business. Since there is substantial risk, the initial capital is spread among a number of investors, including all types of businesses, banks, insurance companies, larger industrial companies, venture capitalists, plus labor unions, religious organizations and local civic and government units.

The potential for job creation can be glimpsed by noting that the small business administration estimates that there are 800,000 would-be entrepreneurs in the U.S. If half were able to succeed in starting a business employing an average of ten persons, there would be 4,000,000 new jobs created.

SOLAR ENERGY

In view of the critical importance of alternate sources of energy, more effort is needed to develop various forms of solar energy.

The approach should be to identify the projects with the best potential and encourage implementation by existing companies. When the risk is too high, or financial commitments are beyond the means of individual companies, then joint ventures should be encouraged—either by collaboration between existing companies or through the formation of new companies.

Here again, there is an enormous potential for job creation. There are about 180 companies in this field, most of them small; so if more technology were available, not only would the present ones expand, but many new businesses would start up.

Another important program is one helping to revitalize declining inner-city areas and to alleviate the nation's housing crisis. Entirely new technology is not needed because much of what is required already exists, but its existence isn't widely known.

The inexorably rising costs of transportation will reduce drastically the distances people can afford to commute daily. Hence, there will be residential clustering around employment centers and incentive for industry to locate amid existing housing.

Resolution of the nation's housing crisis will require a much expanded level of effort in the construction and maintenance of affordable housing. Preservation of existing urban housing offers the greatest entrepreneurial opportunities and potential for job creation.

A longer range program to be considered is one that stimulates and supports migration back to the countryside, including a movement toward smaller farms, if encouraged and properly managed as part of a national program and accompanied with appropriate broad-based research and development, would have great benefits for our society. Unemployment would be materially reduced. Food production would be increased, and food costs decreased. Greater conservation of natural resources and more environmental protection would be achieved along with the provision of a greater availability of a life style of growing popularity.

Many elements of change affecting agriculture and food processing are already apparent that not only support this thesis, but dictate its adoption. These include the steeply rising costs of energy, decreasing availability of fossil-based fuels and fertilizer, rising costs of equipment and land, the growing scarcity of water, unacceptable environmental degradation and diminishing returns from many of the present directions of agricultural crop breeding research.

Finally, the legislative actions required to more effectively convert technology into jobs through the concentration of resources on a regional basis to focus efforts and achieve widespread cooperation appear to be embodied in the provisions of the Humphrey/Hawkins bill.

As was noted earlier, the types of projects that need to be undertaken to meet societal needs are the same as those, or could be, that are to be implemented by the full

employment and balanced growth plan of the bill.

Also, the proposed area development offices would be the best source of data for establishing national priorities that are specified by the Humphrey/Hawkins bill and indeed are needed for achieving the most timely solutions to major societal problems.

In summary, what I am saying is that the old ways are not working, partly because solving the unemployment problem is always "someone else's" problem. Everyone really only wants to keep doing what he is doing and doesn't want to change. What I am proposing is to enlist all sectors of society to solve the problem of unemployment. In working together to help solve it, there will be not only a better understanding of the origin of jobs, but the enormous difficulty of creating them. Out of this effort will also come a much better and badly needed understanding and respect for each sector of society by the others. And most important, more jobs. Thank you.

Mr. CRAIG. Thank you, Mr. Norris. I have one question which you touched on in your early part of your speech that you talked about trade offs. One of the major trade offs that we hear about particularly from the business sector is the trade off that must be made between stopping inflation and stopping unemployment, and I guess my question to you is—was your comment in the beginning that you didn't think we had to make those kinds of trade offs, that you would reject the notion that other business people are saying that clearly inflation is more insidious for society than unemployment?

Mr. NORRIS. No. I'm saying that we can solve the problems of inflation along with the problems of unemployment providing you're doing useful things in the process like solving problems of society. That's the key.

Mr. CRAIG. Any other questions?

Mr. NORRIS. Thank you.

Mr. CRAIG. Thank you, Mr. Norris.

THE PANAMA CANAL TREATIES: ENHANCED BY INFORMATION

Mr. CRANSTON. Mr. President, a recent Gallup survey indicates that "the more Americans know about the Panama Canal Treaties, the more likely they are to favor Senate ratification of the pact." The survey also showed, however, "a serious lack of knowledge about the treaties."

For both these reasons, the Senate's decision to postpone final action on the treaties until next year was well advised. I believe the American public, and perhaps even Members of the Senate, will benefit from additional time to learn about and study the Panama Canal Treaties.

This survey also asked people what they regarded as the best arguments for and against the treaties. The argument that the treaties would "remove the stigma of colonialism" was considered the strongest argument for ratification. To me, this means that many Americans agree that we cannot continue to use the Canal Zone as an American colony. The few remaining colonies are anachronisms in a world which has long since rejected colonialism as an acceptable form of government. By attempting to continue our control of the canal itself as an adjunct to a Canal Zone colony, we unnecessarily weaken our ability to maintain our right to use the canal. Moreover, colonialism is totally inconsistent with our national traditions and principles. Our Nation was born in the first major successful revolt against colonialism.

How can the United States—of all countries—defend colonial ownership anywhere in the world?

We did not build the canal to establish a colony: We built it to guarantee open access to the United States and the rest of the world of a transit between the Atlantic and Pacific. And we have efficiently operated the canal that way. Ratification of the Panama Canal Treaties would give us the right to defend the canal and to guarantee future world access to it while recognizing legitimate Panamanian national interests.

Mr. President, my colleagues may find interesting the full report of this Gallup survey on the Panama Canal Treaties which appeared in the Washington Post on October 23, 1977. I ask unanimous consent that this report be printed in the RECORD.

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

CANAL TREATIES ARE ENHANCED BY INFORMATION

(By George Gallup)

PRINCETON, N.J.—The more Americans know about the Panama Canal treaties, the more likely they are to favor Senate ratification of the pact, lending support to President Carter's thesis.

When those surveyed who have not heard or read about the debate over the treaties (26 per cent) are given a brief description of the pact and are asked to vote on it, they vote it down by nearly a 2-to-1 ratio (39 to 23 percent with 38 per cent undecided).

However, when the results are limited to just those who have heard or read about the debate (74 per cent), opinion is more closely divided, with 48 per cent opposed, 40 per cent in favor, 12 per cent undecided.

Finally, the survey measured the views of the better informed. The informed are defined as those who can correctly answer three key questions about the pact: the year the canal is to be turned over to the Republic of Panama, whether or not the United States has the right to defend the canal against third-nation attacks and whether or not the biggest U.S. aircraft carriers and supertankers are able to use the canal.

The vote among this "better informed" group—the one person in 14 who can answer all three questions correctly—is 5 to 4 in favor of the treaties.

The survey reveals a serious lack of knowledge about the treaties, with about four in 10 Americans aware that the United States has the right to defend the canal, only about one in four aware that the canal is to be turned over in the year 2000 and only about one in seven aware that aircraft carriers and supertankers cannot use the canal.

The poll was taken between Sept. 30 and Oct. 3.

(Overall, the poll shows 36 per cent favoring the treaties, 46 per cent opposed and 19 per cent undecided, regardless of awareness of details of the treaties.

(These results show a slight drop in approval from Gallup poll released in early September, when 39 per cent favored the treaties, 46 per cent were opposed and 15 per cent undecided. The earlier poll, however, was designed before the treaties were written and asked respondents their views based on a brief summary that stated, incorrectly, that the United States would "maintain control over the land and installations necessary to operate and defend the canal" after the turn of the century.)

Those who have heard or read about the debate were asked what they regard as the best arguments in favor of and against the treaties. Here are the responses, in order of frequency of mention:

BEST ARGUMENTS IN FAVOR

1. A good public relations move—remove stigma of colonialism.
2. Canal is not important to U.S. interests.
3. Maintaining canal is too expensive.
4. To avoid a conflict/prevent hostilities.
5. Not giving it totally away—we would be able to defend it against attack from third nation.
6. It belongs to the Panamanians—it's part of their land.

BEST ARGUMENTS AGAINST

1. U.S. has economic stake in canal.
2. U.S. should not pay them to take the canal.
3. Panama may not stick to terms of treaties.
4. They will soon keep us from using the canal at all.
5. Communists will take it over.
6. Canal is important to our national security.
7. We built and paid for it—we should keep it.

ARSON FOR PROFIT: A MAJOR CRIME

Mr. GLENN. Mr. President, on July 19, 1977, I introduced S. 1882, the Arson Control Assistance Act of 1977 which reclassifies arson from a "part two" to a "part one" major crime under the FBI's Uniform Crime Reports System and gives LEAA specific authority to make grants to localities for development of programs designed to combat arson.

This bill is designed to combat the astonishing growth of arson for profit, a particularly vicious crime that has grown by over 400 percent over the past decade. It is absurd and ridiculous that this crime is not now considered a "major crime" for purposes of FBI crime statistic reporting. At present, for the purposes of Federal crime statistic reporting, arson is equated with vagrancy, public intoxication and other petty crimes. It is not even required to be reported under its current classification. This, Mr. President, even though we are speaking of a crime that costs us 1,000 lives, 10,000 injuries, and an estimated $15 billion in damages annually.

What a spectacle it is to have neighborhoods burned block by block and for us to stand here in Congress passively calling for "neighborhood revitalization policies." One of the best revitalization policies is to declare arson a "major crime" and focus national attention and resources on an effort to stem the tide of a crime that is now going virtually unchecked.

Mr. President, I ask unanimous consent that five recent articles on arson-for-profit from Time and Newsweek magazines, the Washington Post and the New York Times be printed for the RECORD to further illustrate the scope of this problem. I also ask unanimous consent that Senator CHAFEE be added as a cosponsor of S. 1882, the Arson Control Assistance Act of 1977.

The PRESIDING OFFICER. Without objection, it is so ordered; and without

objection the material will be printed in the RECORD.

The articles are as follows:

ARSON FOR HATE AND PROFIT

In the chill, predawn darkness one day last week, 80 Massachusetts state policemen fanned out through Boston and its suburbs, ringing doorbells, rousing residents and hauling off to jail 22 surprised and discomfited citizens. Among those indicted: six attorneys, eleven real estate operators, four public insurance adjustors, one police officer and a retired fire chief. By week's end a total of 26 men had been arraigned in Suffolk County superior court on charges as varied as fraud, bribery and murder. But all of them were alleged to have committed one crime: arson. They were accused of contracting with landlords, financially troubled shopkeepers, warehouse owners and others to burn down their buildings for the insurance, with the arsonists taking a percentage of the claim.

Boston police had been investigating 95 suspicious fires that occurred between 1973 and 1976, including one that led last year to a Pulitzer-prizewinning photograph of a woman and little girl plummeting from a collapsed fire escape (the woman died, but the child survived). Last week the police came up with enough evidence to bring arson indictments on 35 of the fires that destroyed property worth $6 million and killed three people. Massachusetts Attorney General Francis X. Bellotti denounced the torch ring as "a conspiracy to burn down Suffolk County for profit." Added Stephen Delinsky, head of the state criminal bureau: "This is just the tip of the iceberg."

Whether for profit or for revenge, arson has become one of the most deadly, costly, and, for law enforcement officials, maddening crimes in the country. Deliberately started fires now exceed 100,000 a year, up 400% since 1967. Last year there were 6,776 reported arsons in New York City alone. In Chicago, arson has tripled in less than three years, and in crime-plagued Detroit it is up 12% over last year alone. But the most shocking statistics come from San Francisco, which has experienced a 700% increase in arson in five years. Says Lieut. James Mahoney, chief investigator for the San Francisco Fire Department: "Arson is the cheapest crime in the world to commit. All you need is a box of matches."

Cheap to commit, perhaps, but staggeringly expensive for society to endure. Officials blame arson for more than 1,000 deaths and 10,000 injuries a year. Insurance companies estimate that in 1976 arson cost $2 billion in claims. As a result, fire insurance premiums have risen sharply in the past five years. Adding other, related costs such as business failures, loss of jobs and tenant relocation, Walter D. Swift, vice president of the American Insurance Association estimates last year's total arson price tag in the U.S. to be between $10 billion and $15 billion.

"Arson is a barometer of urban decay," says New York City Deputy Chief Fire Marshal John Barracato, "and most city fathers are ashamed to admit they have this problem." But the ruinous dimensions cannot be hidden. In New York City's South Bronx, where Jimmy Carter took an impromptu walking tour earlier this month, there have been more than 7,000 fires in the past two years. "The destruction is reminiscent of the bombed-out cities in Europe," says Bronx District Attorney Mario Merola, who was a navigator in World War II. Chicago's Humboldt Park area has some 400 charred, abandoned buildings. In Detroit, 10,000 houses stand vacant, victims of fire. "The city is burning down," said an anguished Lieut. Robert McClary, head of Detroit's fire-fraud squad.

An estimated 40% of arson nationwide is economically motivated, as in the Boston cases that led to last week's roundup. Blazes are set by quasi-professional "torches" hired by landlords, real estate brokers, store owners, or welfare tenants who want to be relocated. The purpose, as New York Columnist Jimmy Breslin has put it, is to "build vacant lots for money." Charging up to $3,500 or a cut of the insurance money, the torch frequently mixes a brew of acid and sophisticated oxidizing agents to ignite a chemical fire that is all but impossible to trace.

In ghetto areas like the South Bronx and Humboldt Park, landlords often see arson as a way of profitably liquidating otherwise unprofitable assets. The usual strategy: drive out tenants by cutting off the heat or water; make sure the fire insurance is paid up; call in a torch. In effect, says Barracato, the landlord or businessman "literally sells his building back to the insurance company because there is nobody else who will buy it." Barracato's office is currently investigating a case in which a Brooklyn building insured for $200,000 went up in flames six minutes before its insurance policy expired.

Usually deadlier than the professional torch is the psychopathic amateur who burns once for strictly personal reasons such as jealously or revenge. A federal study puts 55% of adult arsonists in the burn-for-hate category. In New York, a jealous suitor and two friends have been charged with setting a fire last year in a Puerto Rican social club in the South Bronx. Twenty-five partygoers died in the blaze. The alleged motive: the man's girl friend had attended the party against his wishes. Says Donald Mershon manager of the Metropolitan Chicago Loss Bureau, which handles property insurance claims for more than 100 firms: "Kids used to throw rocks or settle an argument with their fists. Now they simply burn a house down. Arson is being used as a weapon."

In ghetto areas around the country, arson is often a means of feeding drug habits. Unable to afford the tools to remove valuable brass plumbing, sinks, bathtubs and refrigerators in abandoned buildings, junkies pour inflammable liquid around the rooms, set a blaze and wait for firemen to chop up the floors, exposing the loot. Then the "mango hunters," as New York cops call them for their practice of reaping a harvest of stolen goods, move in, drag out the fire-resistant fixtures and sell them—a bathtub is worth $25 on the open market, a wash basin $15. Some areas of New York are being burned systematically block by block as frightened residents move out, slumlords make no move to protect their all but empty—and insured—buildings, and the torches move in.

Whatever the motive for arson, the result is fright and despair among innercity residents. Says Dorthy Maeda, chairman of Humboldt Park's arson committee: "It's a terrifying feeling never knowing when you go to sleep at night whether a fire bomb will come through the window." Along Boston's once elegant Symphony Road, where fire has gutted 29 of the 74 apartment buildings in the past four years, tenants live in constant fear of flames. "Everybody around here is jumpy," says local resident Sadie Ellis. "Whenever I hear sirens I turn the radio down to see if they're coming here."

Arson is one of the easiest crimes to commit and the hardest to prevent—and prosecute. District Attorneys must prove the fire was set intentionally.

Understaffed fire departments are usually too busy fighting fires to prevent them. But in response to the epidemic of arson, cities around the country are hiring more fire marshals. Largely under pressure from community leaders in Brooklyn, Mayor Abraham Beame recently authorized the New York City Fire Department to increase its force of investigators from 77 to 152—but that is still barely half the number of marshals experts believe New York needs to cope with its arson problem.

San Francisco's seven-man fire investigation squad had not been increased since it was founded in 1940. In July, however, the squad took on an eighth man, and two weeks ago the city formed a "combined services arson ask force," adding the District Attorney, his assistant and an investigator from the D.A.'s office, plus a police inspector, to the fire department's arson team.

The insurance industry has begun to train its own arson investigators. With the aid of the federal Law Enforcement Assistance Administration, insurance companies and city officials plan to create arson information banks to help apprehend torches. Unfortunately, catching arsonists requires enterprising detective work—and luck. The U.S. Attorney for western Pennslyvania, Blair Griffith, for example, has won 20 arson convictions based on the federal crime of mail fraud. Griffith relied on an arsonist turned informant: Merrill H. Klein, 53, a self-styled "business consultant" who worked as a "broker" for landloards eager to torch their property. After pleading guilty in 1974 to helping burn down a hotel in Bedford, Pa., Klein agreed to testify for the Government in three other arson cases he was also connected with, hoping his five-year sentence would not be increased (it wasn't).

Last week's mass arrest in Boston also depended partly on the grand jury testimony of a suspected torch who turned state's evidence, pointing the finger at local landlords and corrupt city officials. Until then, private investigators for insurance companies had been sniffing around the remains of burned-out houses, working the streets and doing undercover work in Boston bars with an eye out for well-known torches. With evidence of a conspiracy growing, 15 teams of city and state polic joined the private eyes, and finally, after 16 months of probing suspicious fires in the Boston area coupled with the talkative torch's testimony, they rounded up 100 witnesses and paraded them before a second grand jury in September.

But the initial breakthrough in the investigation was the result of mobilized anger on the part of residents in one of the burned-out sections. After appealing to local politicians and city agencies to investigate the wave of fires that had been destroying their neighborhood since 1973—and getting little action—a group of Symphony Road residents went to State Attorney General Bellotti with their own evidence that landloards and others were deliberately torching buildings in their community. Armed with these documented complaints, Bellotti ordered the state's criminal bureau to begin the probe that led to last week's indictments against what officials charge is the largest known arson ring in the U.S. One lesson of the Boston arrests is that in order to fight back against organized arson, the victims themselves may have to get organized and join forces with beleaguered—and all too often insufficiently interested—city officials.

BOSTON SYMPHONY ROAD A MEDLEY OF FIRES, DRUGS, DECAY, AND FEAR

BOSTON, Oct. 24.—A scent of smoke still lingers in the air along Boston's Symphony Road, although it has been nearly eight months since the last major fire. The smell is more noticeable at night on this narrow block of dilapidated brick apartment buildings, many of which were burned out in a series of suspicious fires over the last four years.

Garbage litters the incongruously new brick sidewalks and planters that the city installed last year in an effort to upgrade the street. A parking lot now occupies a long, thin strip of land where Nos. 46 through 70 stood before the fires.

It is not a happy street.

The Symphony Road area encompasses a decaying, racially mixed, six-block area near such well-known Boston institutions as Symphony Hall, the Museum of Fine Arts, the Christian Science Church complex, Northeastern University and several other academic and cultural institutions.

A low-income, low-rent neighborhood, its population of 4,000 is somewhat transient, consisting mainly of students, welfare families, young working people and elderly people. It has long had a reputation for street crime, drugs and prostitution and was once one of Boston's more notorious red-light districts.

This area was once occupied by families and longtime elderly residents, but as property taxes and maintenance costs increased over the last several decades real estate companies acquired ownership of many of the properties. And, as absentee-ownership grew, building maintenance declined and deterioration set in, according to one neighborhood study done by a local consulting concern.

There have been at least 23 major fires on Symphony Road since No. 40 burned in 1974, marking the beginning of a pattern of terror and fear in the neighborhood.

"It got so you couldn't sleep too heavy around here," one resident, who has lived here five years, said. "We were scared."

"I've lived in the ghetto, and I've lived in hell, but this is worse," said another resident, Ellen Machado, 70 years old, of 67 Symphony Road.

In September 1976, after a fire at 70 Symphony Road in which a five-year-old child died, residents formed a Symphony Tenants' Organizing Project to protect themselves.

"We were feeling fear, paranoia and a little desperation," David Scondras, a founder of the organization, said. Mr. Scondras, formerly an instructor of mathematics at Northeastern University, lives on Hemenway Street, which runs perpendicular to Symphony Road.

"It had become increasingly obvious to a great many of us that our buildings were being burned down for profit," he said.

Frustrated by a lack of action by city officials, the organization began searching the legal and financial histories of properties on Symphony Road in an attempt to prove that the fires had been set intentionally. Its investigative work led the Massachusetts Attorney General's office to conduct a yearlong arson investigation that resulted in the indictment of 33 persons here last week.

Only four of the indictments, however, were issued in connection with fires in the Symphony Road area.

In neighborhoods such as Symphony Road, organizations like STOP are not uncommon. But what the residents here find has distinguished STOP from its predecessors is the role it played in touching off the arson investigation.

"Before all the arrests were made," 15-year-old Sandy Leaphart of 21 Symphony Road, said, "I thought those STOP people were just another bunch of crazies. But I ate my words."

Mrs. Freddie Lewis, 62, lived on Symphony Road for 19 years before moving across the alley to Westland Avenue in 1972. There has been a rash of fires on Westland Avenue since February 1977. Four people died in one of them.

"We're crying for help here," Mrs. Lewis said. "Those STOP kids, I love them. They've done a marvelous job on the fires. But Symphony Road is pretty much gone now. "I love this neighborhood, and I'd like to continue to live here, but . . ."

While most of the residents here are proud of STOP's accomplishments, the organization says that much remains to be done.

"The indictments last week vindicated our original analysis, but in the long run that doesn't answer our central problem of how to develop a system where people have safe, decent housing," Mr. Scondras said.

"Sure. It's a victory for the Attorney General's office, but it's an empty victory for the five people who have died here and the 400 people who have had to relocate.

"It's like playing a football game and scoring a touchdown, but when you look up to the bleachers"—Mr. Scondras paused and gestured to a vacant, boarded-up building. "Look, there are the cheering multitudes."

MANY AUTHORITIES REGARD ARSON AS RAPIDLY GROWING NATIONAL PROBLEM

(By Linda Charlton)

WASHINGTON, Oct. 24.—A welfare family in Brooklyn was reported recently to have collected more than $40,000 in relocation benefits after being burned out.

In Jersey City, seven persons were * * * venge on one occupant of an apartment building.

Elsewhere, a landlord was charged with having set a fire that damaged one of his apartment buildings. Two chiropractors collected nearly $90,000 in insurance on a medical center that they allegedly set on fire.

And in Boston last week, the arrest of 22 state and local arson officials, public adjusters, lawyers and businessmen was said to mean the break-up of an established and profitable arson-for-hire ring that was reported to have set 35 fires destroying $6 million worth of property.

All these reported incidents, and thousands of others like them, are symptoms of what many authorities are convinced is a rapidly growing problem: the deliberate setting on fire of buildings of all kinds for reasons ranging from teen-age bordeom to economics to anger.

COSTS ARE FOUND RISING

The costs are mounting. In 1975, the most recent year for which comprehensive statistics are available, the guess of one expert is that there were 144,000 "incendiary" or purposely set fires. Victor Palumbo, a former Bronx fire marshal who is now arson program manager at the National Fire Academy, a part of the Federal Government's National Fire Prevention and Control Administration, said that his "guess" is that the total economic cost of arson in 1975 was $1.2 billion, with a $633 million cost to taxpayers.

Mr. Palumbo also said that he believes about 10 percent of the approximately 7,500 deaths by fire in that year, or 750, were caused by arson. After a recent personal telephone check of 20 cities of various sizes around the country, Mr. Palumbo said, he believes that "at least 25 percent of all fires are arson."

114,000 INCENDIARY FIRES

Paul Swain of the National Fire Protection Association, pointed out that "the trend on the table has been nothing but up since 1964" for arson; in 1974, the estimate was 114,000 incendiary fires. He, like Mr. Palumbo and others concerned with the arson problem, would like to see arson reclassified and placed with crimes such as murder, rape and burglary. At present, it is classified with the so-called "victimless crimes" such as prostitution.

Robert May of the International Association of Arson investigators feels that the Boston situation be duplicated in virtually every city in the country."

Mr. May gave what he said was a common scenario for arson-for-profit, starting with the acquisition at "distress prices" of property in inner-city neighborhoods. The landlords, he said, "do little in the way of maintenance and frequently blame the tenants." The property changes hands on paper frequently, Mr. May said, adding that "each time there's an increase in insurance, allegedly because the landlord's going to improve it."

The property continues to deteriorate, he said, and then come the first fires which cause the tenants to vacate the property, or some of it. "Then you begin to see the property stripped of appliances—copper plumbing, wiring, doors." Mr. May said, and then there are more and more destructive fires. Finally, the authorities order the building condemned as uninhabitable, and the landlord collects his insurance, he said.

LIKES NEW YORK STATE LAW

Mr. May said he believes that legislation such as that signed into law in New York State in August, which requires that outstanding taxes on property be paid from insurance proceeds before the landlord is paid, is likely to help curb the trend. A similar bill is now before the Massachusetts Legislature and another would require a landlord to pay the costs of demolition of a condemned building.

Although arson-for-profit is highly publicized, few experts believe it is the largest category of incendiarism. Other factors believed to be more significant—Mr. Palumbo rates them as about even—are vandalism, including fire-setting by juveniles, particularly teen-agers; revenge or personal rage against an occupant or building owner and pyromania.

Mr. Sawin pointed out the categories sometimes overlap: "In ghetto areas," he said, "you can give a youngster $50 and he'll set a building on fire."

Arson-for-insurance, however, is believed far more prevalent in some areas than in others, particularly in decaying inner-city slums where local merchants are losing their customers as residents move out. The possibility that Federal insurance programs such as riot insurance may be encouraging arson-for-profit was raised recently by Senator Charles H. Percy, Republican of Illinois, who has asked for an investigation by the General Accounting Office.

Senator Cites Chicago Figures

In Chicago, the largest city in his state, Senator Percy said, "Arson-related property damage rose approximately 15 percent from $18.9 million in 1975 to $21.7 million in 1976."

In New York City, 68 fire deaths are listed as arson deaths for 1976; there were 29 such deaths listed in 1975.

Mr. Palumbo, among others, feels that the national arson estimates are probably low, because of a lack of training in recognizing suspicious fires. Better training, he said, would lead to better law enforcement.

Mr Sawin agreed: "We've always felt if arson was properly investigated and prosecuted, the rate would drop," he said. Most authorities believe that arson has risen by as much as 300 percent over the last 10 years The first Federal arson task force was set up recently in Philadelphia.

In the office of the Massachusetts Attorney General, Francis X. Bellotti, a spokesman said that for the time being because of the recent arrests, the office was not commenting on any indications it might have turned up of similar arson rings elsewhere.

Mr. Palumbo cited a California situation to support his contention that specialized training may be a big part of the solution.

In Yolo County, California, he said, "they didn't have any arson problem until they formed an arson squad." Then, he said, the arson rate rose from one per month to 20; in a five-month period, 14 arrests were made.

AMERICANS ARE BURNING DOWN AND CASHING IN

New York.—Americans have been burning down their own buildings, and sometimes

their homes, at an increasing rate in the past few years in an effort to "cash in" when they're in financial trouble, insurance officials here report.

"Arson is a negative economic indicator," said General Kacson, vice president of the Insurance Information Institute. "During times of an economic downturn, we always have an upturn in arson claims."

He commented after the Insurance Services Offices, a statistical, advisory and rating organization, reported that fire in the United States caused an estimated loss of $310 million in July, the latest month for which statistics are available. That was 12.7 per cent higher than July 1976.

The total value of all fire losses, both insured and uninsured, is based on individual company reports of insured losses, according to the report.

The July figure was up $35 million from the same month last year and estimated fire losses for the first seven months of this year totaled nearly $2.3 billion, compared to about $2.1 billion during the same period in 1976.

"We estimate that 11 per cent of all the fire losses are attributable to arson," Kacson said. "Arson has grown over the last several years. But during periods of bad economic conditions, arson does rise."

Arson "tends to be commercial rather than personal," Kacson said.

"If they were residences, they would be apartment houses, more than single-family dwellings," he said. "People very seldom burn down their own homes. We just don't find that occuring very often. It only happens sometimes when someone wants to sell their house and can't.

"If people have structures that are not useful in an economic sense, there may be an inducement to cash in," Kacson said. "Secondly, some people may find expenses are high and will use arson as a way of getting out from under a negative situation.

"In general, this is accepted, by police, fire and government officials," he said. "During difficult business cycles we will find warehouse fires at a higher level than during prosperous times."

Al Haggerty, another spokesman for the insurance institute, described arson as "a real serious problem in this country.

"A lot of people . . . would rather burn it down, and that's straight, pure fraud," Haggerty said. "They decide, in effect, to sell a building to the insurance company."

TORCHES FOR SALE

Haverhill, Mass., is a dying factory town with a booming low-risk, high-profit industry: arson. From 1971 through last year, 96 residential buildings worth $2 million in insurance claims were set afire, and in May, nine men—including several prominent property owners and local real-estate agents—were indicted on charges of burning down their property for profit. Haverhill isn't alone. Arson for profit, says Clifford L. Karchmer, director of the Massachusetts Organized Crime Control Council, "is probably the largest growth area of white-collar crime in the country."

Nationwide, arson has grown to near-epidemic levels, especially in old, urban neighborhoods. "It's a disease, it's costing a lot of money, and it's growing," says New York City deputy chief fire marshal John Barracato. The insurance industry estimates that arson caused almost $2 billion in property damage last year, up sharply from $1.2 billion in 1975. And in Detroit, for example, arson is running 19 per cent ahead of last year. Buildings are sometimes torched for revenge, sometimes to cover other crimes such as murder; and sometimes just for kicks. But a great many deliberate fires, perhaps the majority, are the work of the arson industry—a shadow world of property owners, mortgage men, corrupt fire officials, insurance adjusters and mobsters.

Everyone Pays: The fires destroy more than just property and anyone unlucky enough to be trapped inside. Entire urban neighborhoods have collapsed into heaps of blackened debris. And as these wastelands spread, jobs, housing a sorely needed tax dollars are lost. "We're losing 300 to 400 buildings a month by fire and the majority are arson," says Nicholas Borg, a coordinator of New York's new 250-member arson task force. "That's a lot of property to lose from our city's tax rolls." Because Federal law requires that insurance companies extend their fire coverage to arson-prone neighborhoods through state-run insurance pools, all their customers must help foot the bill. "These losses are astronomical and in effect the private sector is forced to pay," says Walter D. Swift, vice president of the American Insurance Association.

Sen. Charles H. Percy of Illinois wondered aloud last week whether the Federal rules "facilitate arson-related insurance fraud by permitting any property owner in a core city to insure his holdings far beyond their market value and to burn them for the proceeds." In fact, that's just how it worked in Milwaukee, where Roland C. Hansen and his 20-year-old son, Steven, ran a thriving little business in real estate and insurance—burning real estate and collecting insurance. Shielded by "front" buyers, they would purchase run-down buildings, insure them for more than their worth and, a short time later, either set them afire or hire a professional "torch" for $1,600 to do the job. In April, the Hansens were convicted on Federal racketeering, conspiracy and mail-fraud charges

Bonanza: In big-city slums, some owners of decaying tenements turn to arson to recoup their losses. Others wait for tenants themselves to do the job. Last month, for example, two Bronx women were arrested after they allegedly paid a neighbor $100 to burn their apartment so they could be placed on the city's priority public-housing list and collect $2,000 in relocation fees. Cash-short small-business men sometimes look for a quick insurance bonanza, and arson can also be a handy way to knock out the competition. Last month, three men allegedly linked to the Colombo crime family were charged with setting fire to a Northfield, N.J., theater projection room to block the showing of the hit movie "Star Wars."

"It's hard to say exactly how much organized crime is involved," says a Justice Department official in Chicago. "But we know it's happening." In Rochester, N.Y., reputed capo Frank Valenti and many in his crime family have been indicted in an arson-for-profit ring, and in Boston, two suspected mob leaders have been involved with bars and lounges that repeatedly burn down. But many of the torches are rank amateurs. A New York police investigator, for example, recently traced $1,000 paid by a businessman to burn out a rival: before the match was struck, the job was subcontracted six times—and the ultimate torch was a 14-year-old who said he was paid little more than a six-pack of beer.

Low Risk: To cope with the business of arson, many cities have established special task forces, cooperative efforts by police and fire departments and the private sector. The most successful is in Seattle, where arson losses last year were cut by almost a quarter. States are changing laws, as in New York where local governments now are able to collect delinquent taxes from insurance proceeds before the building's owner is paid—thereby discouraging arson as a means of beating unpaid property-tax bills. And insurers are banding together to establish an information bank to prevent multiple claims on a single fire. But arson is a difficult crime to control. Despite a few dramatic arrests, the arson business remains a low-risk occupation. Nationwide, fewer than 2 percent of all suspected arson cases result in convictions.

22-SEIZED IN BOSTON IN ARSON CONSPIRACY

CHARGES RANGE FROM BRIBERY TO MURDER—11 OTHERS STILL SOUGHT

(Special to The New York Times)

BOSTON, Oct. 17.—In raids that started before dawn today, the state police arrested 22 state and city arson officials, public adjusters, lawyers and businessmen after a four-month investigation of what officials called the largest arson ring in the nation's history.

Among those arrested were a former detective in the state fire marshal's office, the retired captain of the Boston arson squad and a former millionaire financier who was described by the authorities as "a onetime boy wonder of the Boston financial community.".

A Suffolk County grand jury returned 121 indictments against 33 persons last week, charging them with crimes ranging from murder to bribery in an alleged arson ring operating for the last four years in the Greater Boston area. The remainder of those indicted were expected to be brought into custody soon.

LOSS PUT AT $6 MILLION

Francis X. Bellotti, the state's Attorney General, described the operation as the most extensive arson-for-hire ring ever uncovered, adding that the property lost in the 35 fires ascribed to the ring was valued at $6 million.

Most of this amount had been fraudulently collected, Mr. Bellotti said, through a conspiracy involving arsonists, property owners, real estate speculators, insurance people, public adjusters, attorneys and law enforcement officials.

Three persons died in the fires, and hundreds of persons were injured, officials said. Murder charges were bought against three persons—Kevin Doherty of Boston, Nicholas K. Shaheen of Dedham and Robert Trainor, address unknown.

Among those arrested and arraigned today was James F. DeFuria, a former detective in the state fire marshal's office who resigned after he was called before the grand jury last week. He was charged with 11 counts of bribery, two counts of conspiracy and one count each of arson, burning to defraud and being an accessory after the fact.

Leo Weisentaner, the retired captain of the Boston arson squad, was arrested on a charge of two counts of bribery.

FORMER FINANCIER CHARGED

Christopher Fitzpatrick of East Boston, the former financier, was arrested and charged with one count each of arson and burning to defraud. A member of the state Attorney General's said Mr. Fitzpatrick, now in his early 30's, once held a seat on the Boston Stock Exchange, but later went bankrupt.

Charged with one count each of arson, burning to defraud and submitting fraudulent claim was John E. Fothergill, a retired captain of the Chelsea Fire Department. Mr. Fothergill, whose brother Herbet is now the Chelsea fire chief, was employed as a public adjustor, that is, one who is responsible for negotiating settlements between insurance companies and those insured.

The murder charges were based on the Massachusetts "Donny murder" statute. This states that, if a death occurs in the commission of a felony, such as arson, the accused is also culpable of murder. It was under this statute that Susan Saxe, a radical feminist, was tried for murder last year for her part in a bank robbery in which a guard was killed.

"One of the most disturbing things about this case is the kind of people involved," Mr. Bellotti said. "They are allegedly respectable people, lawyers, public adjustors, law enforcement officials."

TENANTS' GROUP PROMPTED INQUIRY

The state investigation, headed by Assistant Attorney General Stephen R. Delinsky, began last June after members of a tenants group from the Back Bay area conveyed their suspicions about a number of fires in their neighborhood to Mr. Bellotti. The investigators included members of the state police, the Boston Fire Department and representatives of local insurance companies who had held the policies on the burned buildings.

Most of these buildings, the authorities said, were in Boston, while the others were in the adjacent cities of Chelsea and Revere. The investigation found that many of the structures had been purchased by real estate speculators, who then doubled the insurance coverage on the pretext of rehabilitating the buildings. Once the insurance was obtained, the investigators said, arsonists were hired to burn the buildings.

The state fire marshal's office and city arson squads were responsible for inspecting the damage and determining the cause of the blaze.

"Partly because of corruption and partly becauses of the lax way fires have been investigated, there has not been an atmosphere of deterrence against this sort of crime," Mr. Bellotti said, adding that he expected this investigation to lead to a further crackdown on arsonists.

THE DEATH OF JUDGE THOMAS B. GRENEKER

Mr. THURMOND. Mr. President, during the August recess, one of the most eminent jurists in my State passed away. Judge Thomas B. Greneker was a South Carolina circuit judge for 23 years, from 1947 to 1970. Among his other distinctions were two terms in the South Carolina State Senate and decorated service in both World Wars. When death claimed him at the age of 83, the legal profession lost an exemplary member, South Carolina lost a dedicated public servant, and I lost a valued friend. I wish to put on record my sincere regard for, and admiration of, Judge Greneker as a man, and my gratitude for his many accomplishments.

I felt particularly close to Judge Greneker because we had so many experiences in common. His home town of Edgefield is where I grew up. We both spent some time in early manhood in teaching school and coaching athletics, and afterward we both turned to law. I succeeded Judge Greneker in the State senate when he gave up his seat in 1932. He succeeded me as circuit judge when I became Governor of South Carolina in 1947. Finally, in later years, Judge Greneker worked out of my old law office in Edgefield.

After careers that intersected so many times, my colleagues can well imagine the bond that had developed between us. They can also imagine the sorrow I feel now that this bond has been severed.

Judge Greneker spent almost all his life in South Carolina. For a brief period, though, he lived and worked here in Washington. In fact, he served as an assistant to a man whose name will be familiar to all students of American, and particularly of Southern, history—Senator Ben Tillman of South Carolina. In view of his connection with the Senate, it is particularly appropriate that his memory should be honored here.

It was in Washington, at Georgetown University, that Judge Greneker commenced the study of law. He had received his undergraduate degree at Wofford College. Thereafter, he devoted his life to the law. He practiced in Edgefield County, and won so much esteem and respect among his fellow lawyers there that the Edgefield bar nominated him for the circuit judgeship when that post became vacant.

As a judge, his conduct was characterized by patience, courtesy, and above all, fairness. It was the common opinion of knowledgeable observers around the State that his character was perfectly suited to his judicial office. He lent dignity and authority to any proceedings over which he presided.

Judge Greneker spent 19 years as a full-time judge and heard occasional cases for 4 more years. When he retired from the bench altogether in 1970, he resumed his practice of law in Edgefield, and was always ready to dispense advice and assistance to his friends and neighbors, and especially to his younger colleagues.

Judge Greneker was still going strong, at 83 years of age, when he was struck by a car in Edgefield. His death is the result of that accident.

Mr. President, keenly as I feel this misfortune, there are those who feel it more keenly still. Judge Greneker was deeply devoted to his family, and they returned his devotion in full measure. In this time of sorrow, I extend my sincere condolences to his widow, Mrs. Gladys Rives Greneker of Edgefield; his daughter, Mrs. J. W. Barnhill of Clemson; his son, Mr. T. B. Greneker, Jr., of Edgefield; and his five grandchildren and one great-grandchild.

It was a privilege for me to have known Judge Greneker so well. I hope it will be of some comfort to his mourning family to reflect upon the privilege they enjoyed in having him as husband, father, grandfather, and great-grandfather.

Mr. President, Judge Greneker was not a man to seek publicity. Nevertheless, his distinguished career brought him frequent recognition in the press. His daughter, Mrs. J. W. Barnhill, has been kind enough to send me a number of newspaper articles about him that give further details about his life—in the service, in politics, and in the law. In order that these materials may be readily available to my colleagues, I ask unanimous consent that they be printed in the RECORD.

There being no objection, the articles are ordered to be printed in the RECORD, as follows:

LT. THOMAS B. GRENEKER OF EDGEFIELD, S.C., RESUMES LAW PRACTICE 1945

EDGEFIELD, S.C., Dec. 4.—Lieutenant T. B. Greneker Sr., has returned to Edgefield to resume his practice of law after two years service in the United States Navy in the European and African theaters of war.

Lietuenant Greneker wears the legion of honor ribbon as commendation for his work in planning a syllabus of training, preparing schedules and conducting classes in the execution of a training program to indoctrinate operational personnel engaged in the formation of French bombing squadrons. He also wears the African-European theatre of war ribbon.

In addition to honors won in the present conflict, the Naval officer also has the victory medal ribbon on which repose two battle stars for campaigns of World War I in which he fought with the 118th Infantry, 30th Division. During World War I he was advanced from the rank of private to captain, returning to his home in Edgefield to practice law from 1919 until he volunteered for service with the Navy in World War II.

Before going overseas Lieutenant Greneker was commander of a Naval flight school near Clarksburg, W. Va.

His son, Thomas B. Greneker Jr., of the U.S. Navy, was attached to a Marine Corps unit during the invasion of France. A daughter is attending college at Furman University, Greenville, S.C., and his wife makes her home in Edgefield.

Lieutenant Greneker was formerly South Carolina state senator for eight years.

[From the Columbia (S.C.) State, Dec. 8, 1946]

EDGEFIELD BAR BACKS GRENEKER FOR JUDGESHIP

EDGEFIELD, Dec. 7.—At a recent meeting of the members of the bar of Edgefield county a resolution was passed endorsing T. B. Greneker for election to the judgeship of the Eleventh judicial circuit and a copy of this resolution has been sent to all of the members of the general assembly.

Mr. Greneker is a graduate of Wofford college and studied law at Georgetown university. He is a veteran of World War I, serving with the 118th Infantry, 30th Division in World War I and in the Navy in World War II from 1942 until discharged in 1945.

With the exception of those periods of military service, Mr. Greneker has lived and practiced law at Edgefield since 1919. He has participated in many of the important cases, both civil and criminal, in this and adjoining counties. He is recognized as an experienced lawyer of ability and has served on a number of occasions as special judge.

From 1925 to 1932 he was state senator from Edgefield county, retiring undefeated. His next candidacy for public office was in the recent election for house of representatives from Edgefield county, to which office he was elected by a substantial vote.

Mr. Greneker married Miss Gladys Rives and they have a son and daughter, both of whom are now in college, the son, T. B. Greneker, Jr., is also a veteran of the last world conflict.

Mr. Greneker is and has been active in church and civic affairs and has given freely of his means, time and services in all movements for the betterment of his community and is recognized as an outstanding citizen of this county.

The people of Edgefield are hopeful that he will be elected to the judgeship.

[From the Columbia (S.C.) State, Apr. 13, 1948]

JUDGE GRENEKER OPENS COURT HERE; CALLS JURY SYSTEM THE BULWARK OF CIVILIZATION

"Our courts and our juries may be criticized but they still are the bulwarks of our civilization," declared Circuit Judge Thomas B. Greneker of Edgefield as he opened the spring term of general sessions (criminal) court in Richland county court house yesterday.

Presiding here this week for the first time since his elevation to the bench last year, Judge Greneker gave a short address to the

grand jury emphasizing the meaning of the courts in American life. He is here this week pinch hitting for Judge J. Henry Johnson of Allendale, who is sick.

Urging the grand jurors to do their duty, he said, "When we lose respect for the sacredness of an oath we will have lost that which we should hold most dear. You never know when your daughter or friend will be brought into court and you want to see them get fair treatment. God grant we shall ever have honest jurors."

Just before he began speaking, the judge refused to excuse a man from jury service because he based his request on the fact that his business would suffer. "A juror is a sacred person and I'm not going to excuse anyone for business reasons," Judge Greneker explained. "Jury service is as important as anything you do as a citizen."

He made reference to the fact that grand juries began in England to protect citizens from being hounded into court for no cause by the king (the grand jury had to pass on a case before it could be tried before a judge, just as is now the case).

"We no longer fear persecution by the crown," the judge continued, "but we still have the heritage of the grand jury system. You have seen and I have seen cases brought against people and the grand jury is here to see to it that no such cases are brought into open court. The courts are here to protect the innocent as well as to convict the guilty."

On the other hand the judge strongly urged that no case be dismissed (by a grand jury verdict of "no bill") until all witnesses have first been heard and unless there is strong probability that there is nothing to the case. (Recent Richland county grand juries have not been remiss in this respect; rather, they have returned "true bills" on practically all cases submitted to them.)

"I'd rather be tried by 12 jurors than by any one judge," the Edgefield jurist continued. "Twelve men are not likely to make as many mistakes as any one man. After 30 years of observing the courts in my own county I know of no improper jury practice there."

[From the Charleston (S.C.) News and Courier, Sept. 17, 1951]

JUDGE GRENEKER MIXES DIGNITY WITH KINDNESS IN PRESIDING OVER GENERAL SESSIONS COURT

The man in the black court robes leaned over toward a soft-voiced and obviously frightened witness last week in the Court of General Sessions here.

"Are you married, son?" he asked in a kindly voice.

"Yes," came the almost inaudible answer.

"Then just imagine you're talking back to your wife like you do sometimes and talk up so everyone can hear," said Judge Thomas (Benjamin) Greneker of Edgefield.

Displaying an impressively human sensitiveness, and a keen sense of humor the 56-year-old judge of the 11th judicial circuit, didn't waste any time in letting court officials and members of the Charleston bar realize the dignity of the court would be upheld while he was on the bench.

Shortly after court convened Monday, attorneys and officials were notified they must appear in court wearing coats. Judge Greneker, whose voluminous robes undoubtedly cause him more discomfort than a summer coat, Friday suggested an air-conditioned court room for the county court house.

Shortly afterward, William F. Condon, chairman of county council, entered the court-room as a spectator. Court officials told Judge Greneker of his presence and the judge, with characteristic directness, asked Mr. Condon to come to the bench, where they discussed the matter.

Although this is Judge Greneker's first appearance here as a judge, he knows Charleston intimately. A daughter, Gladys (Sis), is married to Capt. Wallace Barnhill, U.S. Air Force, son of Mrs. T. S. Barnhill and the late Dr. Barnhill of Charleston and Mt. Pleasant. A son, Thomas B. Jr., also a veteran of World War II, is now farming at Edgefield, the Greneker home.

Last week, in delivering a blistering humiliating pre-sentencing talk to an air force AWOL private, one could sense the judge's indignation, his feeling of almost personal affront and his sympathy for the family of the prisoner.

After graduating from Wofford College, he attended Georgetown University Law School but left before completing his course to enter World War I as an infantryman. He served as a captain with the 30th division, AEF, and went into naval service during World War II as a lieutenant with the 15th Fleet Air Wing.

In 1922 he married Miss Gladys Rives, of Edgefield. There he has served as city and county attorney and, for 18 years, was chairman of the Edgefield county Democratic Executive committee. By appointment of the South Carolina Supreme Court, he served as a special judge.

In 1924 he entered actively into politics and was elected senator from Edgefield county, being succeeded in 1932 by a fellow townsman, J. Strom Thurmond, later governor of South Carolina.

In 1947, while a member of the state house of representatives he was elected judge of the 11th judicial circuit, this time it was he who succeeded J. Strom Thurmond, then circuit judge. He resigned his seat the same year before taking oath of office as judge.

The same year he refused to accept additional expense money voted judicial members by the state general assembly.

Earlier this year, charging the Greenwood County grand jury, Judge Greneker said "one of the major American responsibilities today is strengthening the home front. If American blood is continued to be spilled in a thin veneer all over the world it will be impossible to protect ourselves at home."

In charging the Charleston County grand jury here Monday, Judge Greneker lashed out at immorality and corruption in high governmental places.

There is an apparent undertone of immoral leadership in Washington which could become the means of destroying this country. It is a shame that our boys are dying in Korea without knowing what is behind them at home. Their lot is unhappy enough when they fight knowing that their war is an undeclared one. The realization that the very people they are supposed to respect are not worthy of respect must be most disheartening.

"I feel very strongly about this. I believe the circuit judges of America should speak out for what they know to be right. It is their duty. They should not remain silent in the face of an undermining of the moral strength of the nation," he told the jury.

Watching him gently chide a younger lawyer for an inadvertent breach of court-room rules, or seeing his face as he sternly reprimanded a young transgressor along with the environment which may have caused him to err, one could see the workings of a movingly human mind.

Perhaps the greatest tribute handed Judge Greneker here was the remark of a veteran of some 50 years experience and observance of courts.

"He knows what to say and when to say it; and he doesn't mind saying what's on his mind," he said as the judge left the courtroom.

[From the Lauren (S.C.) Advertiser, Nov. 14, 1957]

GENTLEMAN JUDGE

South Carolina has a unique judiciary system under which its circuit judges cover every county in the state over a period of six or seven years.

Under that system Judge T. B. Greneker of Edgefield, who has been holding court in the 8th judicial district of which Laurens is a part, for the past month or two, will not be seen here again for around seven years after the completion of this term of court.

The genial judge has won the respect and affection of court observers during these several terms he has presided over lately. We risk the opinion that the lawyers feel the same as the observers.

Judge Greneker has appeared to be conscientious in the pronouncement of sentences, taking into account the frailty of human beings as well as their worse traits. He has interspersed his judicial observations with a rare wit which has made the droning proceedings at least bearable.

He has been polite to everyone, yet firm in maintaining the dignity and decorum of the court. Although the same may be said of others, he may be aptly described as the gentleman judge.

As the governor of South Carolina said to the governor of North Carolina, "It is a long time between" or vice versa, but we express the hope that in the seven-year interim he will continue to flourish.

[From the Charleston (S.C.) News and Courier, Jan. 9, 1958]

EDGEFIELD MAN ONE OF S.C.'S MOST OUTSPOKEN JUDGES

"There's one thing that pleases me most about being a judge—that is the respect which people have for the office."

That is the comment of one of South Carolina's most outspoken circuit judges, Thomas Benjamin Greneker. It shows, too, that behind what sometimes appears to be a tough exterior lies a sympathetic attitude.

"The respect with which people hold the office of state judge makes me feel most humble. If that isn't enough to make a person do the best he can, I don't know what it would be," he commented in his chambers at the Charleston County courthouse yesterday.

SPEAKS HIS MIND

The 62-year-old jurist is known for speaking his mind on various subjects from the bench. Such topics have covered national leadership, the U.S. Supreme Court, drunken drivers and the attitude of some Northerners toward the South.

He makes no secret that his heart and interests lie with the Palmetto State. He also thinks most state court systems—and their judges—are held in high esteem by the citizenry.

Being a judge has its difficult moments, too, the Edgefield jurist says. Handling juvenile offenders is his hardest task.

HARDEST TASK

"By far the most difficult cases are those involving young offenders," he said.

He is a staunch defender of the probation system.

"About 85 per cent of the probationers make good," he said. "But you don't hear about them. The ones we hear about are those that come up with probation violations."

Greneker says he makes a special effort to be considerate of young people who are first offenders.

He classes sex offenders as the most dangerous cases and the ones most likely to repeat.

The graying jurist often scolds offenders before him as a teacher would a misbehav-

ing schoolboy. Then he'll "make every effort to give him the benefit of the law."

NO FORMULA

He says he usually can tell whether a defendant is guilty by the accused's attitude. But there is no formula for handling any defendant or any case.

"My experience—and the experience of other judges I've talked with—is that no two cases are alike."

Some offenders regret their acts while others don't, he said.

This is Greneker's second time to preside in Charleston. He was here in 1951, five years after he donned the black robes. He was elected judge of the 11th Circuit while serving in the State House of Representatives. He served in the State Senate in 1924–32.

Greneker is a veteran of both World Wars. He was city and county attorney for 18 years and once headed the Edgefield Democratic Executive Committee. He was born there July 14, 1895, and is a graduate of Wofford College and attended Georgetown University.

[From the Columbia (S.C.) Record, June 12, 1963]

JUDGE FIGHTS DRUNKEN DRIVING PROBLEM

(By Betty C. Leopard)

Eleventh Circuit Judge Thomas B. Greneker of Edgefield is in the midst of an experiment which he believes may be an answer to South Carolina's problem of drunk driving.

The Judge's idea came to light during the recent session of Lexington County General Sessions court, when several cases were continued until the next session that Greneker holds in Lexington.

This would mean that the case would not be called for another 12 months.

"This practice has been an experiment on my part," Judge Greneker said. "It is something I began in South Carolina several years ago. It is an experiment, I know, but do feel that it is effective with drunk drivers and it was prompted in the hope of providing some means of fighting the temptation.

"I find that, too, there has been a great increase in housebreaking and larceny charges—the greatest increase for that charge than any other charge to come before me—particularly for first offenders. In continuing such cases for a year and stipulating probation, there is some hope for those first-time offenders. I firmly believe that many fourth and fifth-time offenders might never have become such offenders if the practice of continuing their cases under probation had been in practice a long time ago."

He noted that the same situation applied to those charged with driving under the influence.

"If a defendant thinks he doesn't know what a judge is going to do with him—that he could be sent to jail for his offense—the fear of violation of probation will make them abide by that probation and continuance," he said.

Judge Greneker said that many lawyers have advised him that this practice has had an effect and believe it worthwhile. He noted that very few cases which have been continued from year to year have not been successful.

"I feel that the state, as well as myself has been repaid by the action of case continuance—not only in dollars and cents, but by the complete rehabilitation of the people involved," he said.

By the practice of continuing these cases, Judge Greneker said that he has found that attorneys have kept in close touch with their clients, showing a very humane interest as well as a professional interest in their welfare.

"By so doing, they are aiding their clients in keeping themselves straightened out and avoiding the great temptations that would lead to the breaking of their probations."

He noted that it has been particularly effective in pursuading men who have been subject to too much whiskey drinking in seeing the advantages of leaving it alone.

"Many of these people have become active in Alcoholics Anonymous and are rendering today a great service to others," he said.

"I have noticed that when a case in handled in this manner—that of continuance—the people in the community take an interest in the individual involved. I have known employers, family and friends, including the sheriff, to testify in open court in behalf of these people. They speak concerning a period of no less time than a full year as to the conduct of the person involved."

Judge Greneker has been in the practice of law since 1919, following his discharge from the Army after World War I. He served in the Navy during World War II and while in service and abroad, spent whatever time he found available to observe judicial practices throughout the world.

He has been a circuit judge for the past 16 years.

[From the Spartanburg (S.C.) Herald, Oct. 25, 1963]

SURE JAIL SENTENCE THE BEST MEDICINE

"It's time to break up this stuff," said Judge T. B. Greneker as the confessed tipboard operator stood before him.

Then the judge took the only action that will put a brake on the gambling traffic in this community.

He sentenced Wilbur Cash to jail, in addition to a fine.

"This is straight time; no probation," declared Judge Greneker.

The man can't pay his way out. He must go to jail.

Judge Greneker was entirely correct when he added, "A fine apparently does little good."

We have had plenty of experience to prove that in this county.

Time and time again the police have brought tipboard operators into court. They normally plead guilty, pay their moderate fines, walk out of court, and continue business as usual.

Fines have been considered as a necessary cost of operation—a license fee, if you will. Reports in this newspaper repeat case after case of that nature.

The typical good citizen in Spartanburg would be shocked to know the depth and breadth of the gambling operation in his community. Tipboards don't worry him, because they don't pose an immediate or obvious threat.

But big gambling money—and it is really big in tipboards right in this county—invite corruption and lawlessness.

Although gambling on sports events has flourished here, a reasonable degree of control has been maintained. Police authorities have kept constant pressure on the violators.

Now the courts are getting more vigorous in applying proper punishment.

The certainty of a jail term is the most effective medicine that can be given.

Spartanburg commends Judge Greneker for administering it.

[From the Greenwood (S.C.) Index-Journal, June 22, 1966]

JUDGE GRENEKER THINKS COURT SERIOUS BUT OCCASIONAL HUMOR IS PRICELESS

(By Danny McNeill)

McCORMICK.—Judge Thomas Benjamin Greneker feels that courtroom proceedings are extremely serious but humor injected occasionally is priceless.

The 71-year-old judge has become extremely popular with residents of the eleventh judicial circuit since his appointment in 1947.

The judge, noted for his words of advice and humorous comments during sessions of court, completed his last term of General Sessions Court in McCormick yesterday.

Judge Greneker is scheduled to retire in October after 47 years as a lawyer and 19 years as a judge. The judge has many friends in McCormick and calls many of the people there by their first names.

"While I am retiring, I want to retain a position of retired circuit judge with greatly restricted activities," Judge Greneker said yesterday.

Born in Edgefield County in 1895, the judge has lived there all his life. The former teacher and athletic coach at Greenville High school studied law at Georgetown University in Washington, D.C.

The judge is a veteran of two world wars and a firm believer in the importance of prayer. He thinks the most terrible decision handed down by the supreme court in recent years is the one "which placed a damper on prayer in our schools."

"Once during World War One, in June of 1917, we were on patrol and being shelled," the judge said. "A young soldier now living in the eastern part of South Carolina asked me if I believe in God and when I answered yes he asked me to lead the group in prayer. I have never forgotten that experience."

Judge Greneker is married and has two children, Thomas B. Jr., 41, and a daughter, Mrs. J. W. Barnhill.

The judge, who practiced law in Greenwood for a short time, points to three cases as the most dramatic he has tried.

These cases include a Columbia trial in which a University of South Carolina professor had become involved with a student nurse several years ago, a case last year in Greenville in which a defendant was charged with slaying a policeman, and a trial in which five men were tried in McCormick for a slaying in Charleston and all five sentenced to death.

"The most humorous case I can remember took place last month in Saluda when a man I remembered sentencing denied having been sentenced by me," the judge continued.

"After thinking a few moments I asked him who had sentenced him in 1962 in Aiken to which he replied, 'Some old judge from Edgefield, your Honor.' As he realized who he was talking to, he grinned and said, 'You shore do look a lot younger now, Judge'."

Another amusing case the judge remembers concerns a Negro minister convicted a number of years ago in Columbia for driving under the influence.

Several days after sentencing the man, the judge received a note from the deacon of the preacher's church which read: "Due to your services, we are now without a minister. We do not feel that the preacher meant any harm, he was merely overenjoying himself."

The judge, who has presided in all counties in the state, describes himself as too old to do anything but help his fellow man.

He says he is opposed to the administration revolution now going on in Washington and feels the supreme court, composed of what he terms "unexperienced judges is now overruling decisions made by some of our greatest judges, especially in the field of law enforcement".

The judge sees a possible reversal of present trends in decisions now being handed down but says this would depend on the next two judges appointed to the court.

[From the Columbia (S.C.) State, Aug. 14, 1977]

THOMAS GRENEKER, RETIRED JUDGE, DIES

EDGEFIELD—Judge Thomas Benjamin Greneker, 83, a retired 11th Circuit Court Judge

and a former state legislator, died Saturday from injuries received when he was struck by a car in Edgefield.

Born in Edgefield County, he was a son of the late Thomas Bailey and Hallie Nicholson Greneker.

Judge Greneker, a graduate of Wofford College and Georgetown University, was a member of the American Bar Association and the American Legion.

He served as a circuit court judge from 1947 until 1970 and was a member of the South Carolina House of Representatives and the State Senate.

During World War I, Judge Greneker served as an Army captain in France and during World War II he was a Navy lieutenant commander in North Africa.

Judge Greneker practiced law in Edgefield County for several years and was a former steward of the Edgefield United Methodist Church.

Surviving are his widow, Mrs. Gladys Rives Greneker of Edgefield; a daughter, Mrs. J. W. Barnhill of Clemson; a son, T. B. Greneker Jr., of Edgefield; five grandchildren and a great-grandchild.

Services will be 11 a.m. Monday in Eastview Cemetery in Edgefield County.

Honorary pallbearers will be members of the S. C. Bar Association.

The family suggests that those who wish may make memorials to the Methodist Home for the Aged in Greenwood.

Hollingsworth Funeral Home is in charge.

[From the Edgefield (S.C.) Advertiser, Aug. 17, 1977]

THOMAS GRENEKER, RETIRED JUDGE, DIES

Edgefield was shocked and saddened Saturday when the news spread that Judge Thomas Benjamin Greneker had been struck by an automobile that morning about 10:30 near his office on Buncombe Street. He was removed to the Edgefield County Hospital where it was hoped his injuries would not prove fatal but such was not to be the case and he passed away about 2:30 the same day. It appears that he stepped from the curb near his office into the path of the coming car.

Judge Greneker was born July 14, 1895 at Cedar Grove, the Nicholson family home. He was the son of the late Thomas B. Greneker and Hallie Nicholson Greneker. He was a nephew of the beloved June Nicholson, missionary to China whose life is portrayed in the book, "Days of June."

Benjamin Greneker as he was familiarly known, grew up in Edgefield and later attended Wofford College. He was also a graduate of Georgetown University and was a member of the American Bar Association. He was a member of the Hezzie Griffis Post No. 30 of the American Legion by virtue of his service in World Wars 1 and 2. During the first World War he served as an Army Captain in France and during World War II he was a Navy Commander in North Africa. He served simultaneously with his son, Thomas B. Greneker, Jr., in the last conflict.

Judge Greneker served as a circuit judge from 1947 until his retirement in 1970. He was previously a member of the South Carolina House of Representatives and the State Senate. He had previously practiced law and resumed his practice after retiring from his judgeship.

Judge Greneker was a faithful member of the Edgefield Methodist Church. He had served as Sunday School teacher for 40 years and had also been Sunday School superintendent and church treasurer. He was on the Board of Stewards and was an honorary member of this board at the time of his death. He loved the church and pastors found in him a constant source of help.

In the community Judge Greneker supported activities that made Edgefield a better place in which to live. Just recently he and Mrs. Greneker made an appreciated donation to the Edgefield County Hospital. He held a warm place in the hearts of the people of Edgefield who found in him a friend at all times. Many will remember the cheerful smile and the ready handclasp as words of greeting were exchanged.

Judge Greneker married Miss Gladys Rives—a lovely and gracious lady—who survives him with one daughter, Mrs. J. W. Barnhill of Clemson, and one son, Thomas B. Greneker, Jr., of Edgefield; five grandchildren and one great-grandchild.

Funeral services were held Monday at 11 o'clock at Eastview Cemetery. His pastor, Rev. John G. Hipp, was assisted by Rev. J. T. Littlejohn, in paying tribute to the life of one who meant so much to the church and community. Local friends served as active pallbearers while honorary pallbearers were members of the S.C. Bar Association. The Hollingsworth Funeral home was in charge of arrangements.

[From the Edgefield (S.C.) Advertiser, Aug. 17, 1977]

JUDGE GRENEKER

Not in a long time has this community felt so deeply and lingeringly the gloom on learning of the death of a fellow citizen, one whom they saw almost daily and spoke with as he made his rounds as though to find someone to cheer up, visiting the stores, stately in his stride befitting his long career and becoming to his distinguished service as Circuit Judge.

He walked on hallowed ground if for no other reason than that he had walked on it so long; but there were other reasons dear to him in his rich memory and in every landmark, and his manner and speech paid tribute, as this community pays tribute to him in spoken and silent memory.

WATER RESOURCES POLICY

Mr. HUDDLESTON. Mr. President, former Congressman Frank E. Smith of Mississippi wrote an excellent book in 1966 called "The Politics of Conservation." The book opens with these words:

> The first session of Congress, in 1789, passed an act providing that "a lighthouse shall be erected near the entrance of Chesapeake Bay." That lone lighthouse put the United States government into the business of public works—the utilization, development, and conservation of the natural resources of the country. The lighthouse has grown into a multibillion dollar investment, but there is little more real agreement on comprehensive resources policy today than there was in 1789.

As I said, that was written in 1966. I have not been in Washington since 1966, but from what I see there today, Congressman Smith's words still ring true.

Smith points out that it was 35 years after the authorization of that lighthouse before Congress and the White House could agree on any responsibility for waterway development, and it took 150 years for the Government to assume any responsibility for the conservation of our basic resources.

Many people wonder why it is taking so long for the Government to develop an agreed upon set of energy policies. After all, my colleague from Washington (Senator JACKSON) made the first major energy policy recommendations about 7 years ago. Most people agree that we have a bona fide crisis. So why does not the Government do something in a hurry?

But I would suggest to you that when you compare how long it has taken us to develop national policies on water—how to get it, clean it, control it, protect it, save it, store it, and use it—one must be pleased with the speed with which energy policy is developing.

And if the citizens of this Nation agree with me that water, along with energy, is going to determine the future growth of this country, then it is high time we come together and make some decisions on how to proceed.

On May 23, President Carter said in his environmental message that the establishment of a national water policy was one of the pressing issues of his administration. He gave the Water Resources Council, the Office of Management and Budget, and the Council on Environmental Quality, 6 months to review the existing hodge-podge of existing policies.

On May 24, Secretary of the Interior Andrus outlined nine points for consideration in the study. They were:

Revision of the Water Resources Council's principles and standards for the management of water.

Deauthorization of old water projects.

Increased cost sharing by non-Federal entities.

Reforms of laws, regulations, and practices governing water allocation.

Wise use of water.

Quantification of Indian and Federal-reserved water rights.

Evaluation of water quality with conventional water resources allocation and development.

Improved dam safety.

And increased water conservation.

The administration held what many people believed were hurry-up hearings around the country. Dave Firor testified on behalf of the National Association of Conservation Districts. The hearing officers asked him no questions at all.

President Georgie Bagley wrote in NACD's Tuesday letter:

> It appears to NACD that the recent exercise in public participation was designed to secure endorsement of predetermined conclusions about reforms in water policy desired by the Carter Administration. These, we would judge, are to (1) reduce federal input to water resource development projects; (2) broaden the number of objectives used in planning projects; and (3) require more stringent water conservation measures.

If I had all of the money that the Government has spent on studies related to water policy I would be a wealthy man.

Section 80 of the Water Resources Development Act of 1974 provided for a Presidential study of major water resources policies and called for recommendations to the Congress within a year after money was appropriated.

President Ford wrote that—

> The study represents a unique opportunity to move further toward principles and standards and cost sharing arrangements for federal water and related land programs that can be supported by both the executive branch and the Congress.

You see, President Ford had the same high hopes for a national water policy as President Carter.

The section 80 study disappeared from view because there was so much disagreement between the Federal water

agencies and the Office of Management and Budget over the discount rate for figuring the benefit of projects that nothing happened.

That study was about a foot high and contains 22 volumes.

Mr. President, I might point out that the Water Resources Planning Act was in itself supposed to be a device whereby we get a handle on water policy. And the Water Resources Council was to have been the focal point at which all Federal water activities were pulled together into a common coordinated place.

But some serious shortcomings have been well pointed out with the existing system.

The fact that the Chairman of the Water Resources Council is always the Secretary of the Interior creates a number of difficulties. Foremost among these is that the focus of WRC activities centers around the water agencies within the Interior Department.

I might point out in this connection that the Department of Agriculture virtually had to force its way onto the program of the National Water Conference this year and was all but ignored insofar as planning and work on the water policy hearings were concerned.

Second, the Water Resources Council is a weak sister insofar as its ability to have critical issues studied and acted on.

Third, although the present water policy study may change things, the director of WRC does not have the authority to appraise present water policies or make recommendations to the President.

In general, I think the Federal Government is organized so that too many people are reporting to the President. But, since water policy is so important, Presidential contact is needed.

Fourth, there is no coordination of the grant authority under the Water Resources Planning Act with other programs of the Government. This creates problems of duplication of effort and incompatible plans.

Mr. President, there are other specifics, but what they all boil down to is that the Water Resources Council has found it easiest to go with the flow—to get along by going along, rather than facing and trying to solve water policy problems.

And while we have been concentrating on the Federal approach, we have neglected the important role that the States must play in water policy.

If I may, I would like to pilfer liberally from a speech made last August by Gov. Scott Matheson of Utah in reviewing where we have come in the development of water policy.

The Governor divided this evolution into a number of phases, the first of which he calls the period of conflict phase from the end of the Civil War to the New Deal.

During this period it was assumed that there was a natural adversary relationship between State and Federal Governments. A strict enforcement of the reserve powers clause of the Constitution kept each from encroaching on the province of the other.

This period was replaced by the cooperative phase which was brought on by the Depression. There was increased cooperation to meet the enormous economic and social challenges facing the country. It was the beginning of the categorical grants-in-aid, formula grants, and the investment tax credits to States.

The Governor's third phase is characterized by the needs of the post-World War II society. Between 1946 and 1960, 29 new grant-in-aid programs were set up dealing with capital construction projects by State and local governments. State and local governments began to see the Federal Government as a reservoir of money that could be tapped.

The fourth phase occurred between 1958 and 1968 during which there was a dramatic increase in program planning and project grants. By 1969 there were about 160 major programs, 500 specific legislative authorities, and 1,315 different Federal assistance activities.

This effort bypassed the States and had a strong urban-metropolitan bias. The Governor admits that during this period the States sat by and defaulted on their responsibilities.

The present phase, which began about 1965, is labeled "competitive federalism," whereby it was attempted to decentralize decisionmaking, except that this device relied on the old competitive relationships between the State and Federal Governments in play prior to the New Deal. But that competition has long ago gone by the boards.

While the States have regained some of their assertiveness, while they are in many respects where the action is insofar as government activity is concerned today, all layers of government are now interrelated and codependent as a result of the sharing of the wealth from the Federal Treasury. I think this pattern is too ingrained at this time to return to pre-New Deal structures.

In his presentation, Governor Matheson discussed the administration's water policy study. He said many of the options proposed by the Secretary of the Interior were unclear while others were unrealistic and unworkable. He argued that there could be no worthwhile water policy study without including the States in the process.

I find myself in agreement with the Governor. But I have also been made aware that the administration is now taking the States much more seriously as a result of the complaints they have made.

Mr. President, it has been estimated by Charles C. Bradley in an article, "Human Water Needs and Water Use in Amerca," published in the journal Science, that it takes 125 gallons of water to produce one egg; 1,000 gallons to produce one quart of milk; 3,000 gallons to produce one pound of beef; and 300 gallons to make a pound of bread.

In addition to the water costs of food production, enormous amounts of water are also needed for the production of fibers, lumber, paper, and steel. The average daily use of water in this country probably averages out at 75 gallons per person.

If Uncle Sam is going to make some major decisions on how water is used—even if he does it in conjunction with the States—it will have a profound effect on every person in this country.

We have been working on amendments to the Clean Water Act in Congress for about 2 years now. And I suppose you could characterize my own efforts as trying to strike a balance between the need to keep our water clean and the need to keep our overall economy healthy. That is not an easy balance to keep when you are being fired at on one side by the environmental movement, and on the other by industry, which would rather not spend the money to make some changes that seem needed.

In the middle is the farmer, who is sometimes scorned by the environmental movement, even though he has been in the conservation business longer than anyone else. Like industry, he has to make a profit, and dislikes being burdened by laws and regulations that keep him from doing so.

On the other hand, he is in the camp with the environmentalists because he cannot make his operations pay if he is silted in by runoff, or if his ground water supplies are contaminated.

I suppose you might say that since that poor farmer is trying to do the same balancing act on his own property that I am engaged in in water policy, he and I are close allies.

And since we are in the same boat I strongly believe that he and I, as well as the Department of Agriculture, are being ignored by the Water Resources Council. I think it is also fair to say that based on a study done at Iowa State University for the National Water Commission, a decision has been made by WRC that there is no need for concern about agricultural water needs.

It seems to me that this is shortsighted and would be disastrous if applied as a national policy.

There has been a lot of criticism about our technology-oriented agriculture. It uses a lot of fuel for equipment, and water for irrigation and food processing.

But before they do anything else, people have to eat. If we are going to avoid mass starvation here and abroad our only hope of survival is to use and improve on our agricultural technology.

Therefore, I think we will continually have to evaluate what we are doing on the ground in relation to the long-term protection of our resource bases of soil and water. This will have to be done at all levels—from the policymakers in the Federal Government down to the individual farmer trying to protect his own property.

It is pretty clear to me that the job of adjusting our technologies to meet the changing needs of agriculture—while at the same time protecting and conserving our resources—are going to change from time to time. I have confidence that the farmer has the ingenuity to make adjustments to this change.

Mr. President, I wish I were equally confident that the Government could make the changes as well.

I think it is essential that the Federal Government continue to help in the planning and construction of water resource development projects. And particularly

in regard to the small watershed program, the Federal share cannot be so low that it places an impossible burden on small communities with limited resources. Otherwise, there will be no small watershed program.

Public Law 566 has served us well. But it has some age on it now, and some changes are clearly in order. Many of the recommendations of the 25th National Watershed Congress should be given serious consideration.

The Senate Committee on Agriculture, Nutrition, and Forestry, of which I am a proud member, is working slowly and carefully on a total evaluation of how USDA soil and water programs can be changed to make them better—both from the standpoint of serving farm and rural needs, and to spend the taxpayers' money more wisely.

My own Land and Water Resources Conservation Act, S. 106, is dedicated to this end. It was vetoed during the 2d session of the 94th Congress. Both Houses have again passed it this year but the threat of a veto still remains. However, I am hopeful that some responsible compromise can be worked out with the White House.

The bill provides for an appraisal of the condition of all farm and open land in the country, and then a program of work is developed based on priorities discovered in the appraisal. This whole thing is then tied to the budget process.

The concern of both the Ford and Carter administration has been that the budget increment will commit the President to long-term spending for the future that might get in the way of other national priorities.

I am very sensitive to this. I have no wish to embarrass the President. But it has been my experience that unless planning is tied to how you spend your money, the planning report gets shelved.

The mountain of planning and policy papers already developed on our Nation's water should be evidence enough of that.

In one's own family, planning expenditures for food, clothing, et cetera, are based on how much money one expects to have so that dollars go first to meet the most important needs.

I do not see why the Government cannot use the same process in trying to devise soil and water conservation programs for the Department of Agriculture. I feel strongly about this.

Mr. President, the appraisal of the condition of our rural land, called for in my bill will continually make the case for soil and water conservation activities within the Department of Agriculture, while at the same time assuring that Federal tax dollars are put where they can do the most good. I urge my colleagues to join me in working for sound and viable soil and water conservation programs for the lands and water of America.

ROBERT K. WILMOUTH ELECTED PRESIDENT OF THE CHICAGO BOARD OF TRADE

Mr. PERCY. Mr. President, the Chicago Board of Trade has ended a careful and thorough 6-month search for a new president. The 22-member board of the commodities exchange has shown sound judgment in electing Robert K. Wilmouth. The exchange, founded in 1848, has enjoyed tremendous success in recent years, and I am confident that under Mr. Wilmouth's leadership that success will continue. Mr. Wilmouth replaces Warren W. Lebeck, who has been president since 1973, and is retiring after 24 years of dedicated service to the board of trade.

Mr. Wilmouth, a 48-year-old banker from Worcester, Mass., is an expert in foreign commodity trading patterns. Currently president, chief administrative officer and a director of the Crocker National Corp. of San Francisco, Mr. Wilmouth began his impressive career with the First National Bank of Chicago. I am delighted that he will be returning to the Chicago area as president of an exchange which handles half of the commodities futures contracts traded throughout the Nation.

Mr. William D. Haggerty, chairman of the 1,402-member Board of Trade, believes that the new president "brings to the exchange a broad background in finance, executive capability and an ability to be an excellent spokesman for the oldest and largest commodities futures exchange in the world."

I congratulate Mr. Wilmouth on his election and wish him the best of everything in his new position with the Chicago Board of Trade.

I also congratulate the board of directors of the Chicago Board of Trade on their outstanding selection.

DEPARTMENT OF EDUCATION

Mr. RIBICOFF. Mr. President, the Governmental Affairs Committee began hearings October 12 and 13 on legislation to create a separate, Cabinet-level Department of Education in the Federal Government—the first time in more than 20 years a committee of the Congress is seriously studying the concept.

The 21 witnesses testifying before the committee in those first 2 days highlighted many problems caused by the present uncoordinated, duplicative, and fragmented situation in administering the Federal Government's 300-plus education programs.

Educators complained of time-consuming Federal paperwork burdens imposed by the nearly 40 agencies involved in education. Among the testimony, Winfield Kelly, county executive for Prince Georges County, told of the runaround his education system takes every year in going from one agency to another for different school-related programs. The National Education Association cited an NEA survey showing wide discrepancies between Office of Education records of funds distributed to States, and several States' records of funds received—as much as $71 million in one State alone. Dr. Sam Halperin, a respected expert in Federal education program administration, pointed out the "extreme instability" in the position of U.S. Commissioner of Education, where 13 men served in just 12 years—from 1965 to 1977.

Because Federal education programs are scattered among many different agencies without coordination, and because the Education Division of HEW is subordinated to the overwhelming size and complexity of pressing health and welfare issues, badly needed leadership in the Federal education effort is simply not forthcoming.

We need a Secretary of Education to deal with serious education problems that have reached near-crisis proportions. Today, for example, the Toledo, Ohio, school system is threatening to close its doors for several months—no more funds are available. The American taxpayer is voting down budget requests for schools more frequently out of the frustration of rising taxes. Scholastic aptitude test scores have fallen considerably in the last decade, which the public interprets as evidence of the decline in quality of American education.

As these and other difficult problems continue to surface, educational institutions will be turning more to the Federal Government not only for financial help, but also for research, direction, and most importantly, leadership.

There are now 57 Senators sponsoring S. 991, the Department of Education Act of 1977. Together, we will attempt to remedy an organizational weakness in the Federal structure, to give education the high status it deserves in our Government. The committee plans to hold more hearings in the near future on this important legislation, and we will try to secure final passage before the end of the 95th Congress.

Mr. President, two distinguished American newspapers, the Hartford Courant and the Washington Star, examined the arguments for the establishment of a separate Department of Education and now support this concept in recent editorials. I ask unanimous consent that they be printed in the RECORD.

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

TAKE THE E OUT OF HEW

The federal government's role in education is too large to contain any longer within the triple-headed framework of the Department of Health, Education, and Welfare.

HEW's total responsibilities involve administration of more than 300 individual programs with an annual cost of more than $118 billion. Often the cause of the astronomical expense is lack of direct control over expenditures and inability to detect and correct fraud and abuse—welfare cheating and mock clinics, for instance.

The largest of HEW's three parts is education, which involves three out of every ten Americans.

Senator Ribicoff, a former Secretary of HEW, is spearheading the drive to put education in a department by itself, where it belongs. He told the opening session of hearings on the change, that with costs rising there has been a faltering in confidence in school's performance. Youngsters leave school and enter college without the ability to read, write and do sums. The public wants quality education, he said, "but it is having trouble trying to finance it."

The Supreme Court has ruled that property taxes cannot be the measure of educational quality. Then how is it maintained? Who pays? The federal government currently as-

sumes only eight per cent of total education costs, while half of all property taxes go to the schools. As escalating salary levels, maintenance fees, and equipment costs move continually upward, there is an understandable resistance by taxpayers to foot the bill, particularly when the results are so disappointing.

Yet, working within the framework of the giant HEW bureaucracy is too complicated and the focus too diffused for efficient handling of the multitude of problems currently facing education at all levels today. Nor is there a person responsible to speak principally for education in the president's cabinet, and as Mr. Ribicoff pointed out, HEW Secretary Califano has yet to make a major statement on the subject.

Since HEW was pasted together 24 years ago, education's costs has multiplied 35 times. Before this year ends, federal, local and parental spending for education will amount to $140 billion. Educational avenues have been opening up in many new fields—vocational, computer sciences and adult and continuing education, to mention a few. It is unfair to those who must foot the bill—all Americans in one way or another—for less than full attention to shed necessary light so important part of American life.

Senator Ribicoff has the aid of 54 other Senators co-sponsoring the drive to put education in its rightful place as an agency by itself. If this was done, it could receive the undivided attention of its leadership rather than, as now, sharing leaders with two other giant interests.

EDUCATION IN THE CABINET

There's almost nothing people feel strongly about that hasn't raised cries for a new government department. Consumers, women, the handicapped—what group wouldn't like to have its own cabinet member, the better to nudge the President and the public on its behalf?

Most proposals for new government departments have their momentary flare and sink back into ordinary iinterest promoting. Education is different, though. There's a strong case for dignifying the federal programs in this area with cabinet-level status. And, although President Carter has not said the final word, his earlier statements indicate that he is for it.

Disassembling HEW, the unmanageable administrative behemoth that now presides over what the United States does about education on the national level, is another issue. A fairly clearcut one, to be sure—there aren't many defenders of the way things are now.

Perhaps the most important point in favor of a federal Department of Education is the obvious matter of prestige and focus. To have a Secretary of Education in the Cabinet gives symbolic weight to the nation's concern for an area of dismaying failures.

Neatness, of course, can be over-rated in government. Real-life situations are often best served by measures that violate the symmetry of the organization chart, not to mention the orderly flow of procedures through channels.

Furthermore, we continue to cherish the diversity and localism of American education. Few would want the kind of centralized system that has had every class studying more or less the same page of the same book at the same time in French schools anywhere in the world.

But we are emerging from a period of experiment in education, much of it good tries that didn't work. Meanwhile, there's evidence that we're doing worse all the time about developing young people's capabilities.

They can't read, they can't write, they can't make change. They can't turn off the TV. Everybody knows the appalling dimensions of the problem.

Albert Shanker, president of the American Federation of Teachers, is afraid regrouping federal education programs in a new department would substitute a gesture for action. And, to be sure, bureaucracy is not known for its creativeness in this sort of problem-solving. But, placing education higher on the national agenda, as it would be with a place in the Cabinet, could stimulate creativity elsewhere and help to implement the new ideas.

Even if constructive originality turns out to be going back to old ways of teaching and learning.

COOKING WITH BRAILLE

Mr. MATHIAS. Mr. President, each of us here in this Chamber is convinced that his own State is the best. And I am no exception. But, Maryland is such a truly remarkable State and has done so many remarkable things that my pride is, I think, realistic rather than chauvinistic.

Today, in proof of my claims for Maryland, I would like to share with my colleagues the details of a very unusual and commendable project sponsored by Maryland's Department of Economic and Community Development (DECD).

Maryland is world renowned for its seafood and its seafood recipes. But, until very recently, not all cooks have been able to try their hand at Maryland's cuisine. Now, three Maryland seafood recipes are available in braille for the blind and the visually handicapped.

Joseph G. Anastasi, Secretary of the Maryland DECD, announced earlier this month that the department had published a total of 1,000 copies of each of the recipes on a highly durable plasticized paper, generally impervious to the ordinary hazards of cooking and storage.

Then, on October 10, in Annapolis in the kitchens of the DECD's Seafood Marketing Agency, Mrs. Hellen Tullis, a blind Baltimorean and a gourmet cook, gave a cooking demonstration on Maryland Lady Crab Cakes, using the brailled recipe.

Mrs. Tullis, who lives with her husband, George, a retired Coast Guard CPO, has been totally blind since age 14. She is a graduate of Hunter College and received her masters degree in speech therapy from Brooklyn College.

For 3 years in the mid-1950's, Mrs. Tullis hosted a Baltimore TV program called "As You Can See" and in 1953 was given a "Golden Mike" award for excellency by McCall's magazine.

Mrs. Tullis believes the recipes in braille will assist many of the visually handicapped to "expand one more area of self-sufficiency."

The 3 brailled recipes were chosen as the most popular of the 68 delicacies published in the Maryland Seafood Cookbook, now in its third printing, with 150,000 booklets sold throughout the United States. The recipes use oysters, clams, crabs, lobsters, and a variety of fish, all found in abundance in the Chesapeake Bay.

Mr. Anastasi said that the Maryland State Library for the Blind and the Physically Handicapped, now has the capability for brailling and may braille and record on cassettes many or all of the seafood recipes, depending on the demand and requirements of the blind.

Notice of the availability of the brailled recipes is being sent to the Library of Congress and nearly a dozen other organizations for dissemination to an informational network for the visually impaired in seven States and the District of Columbia.

DECD is cooperating with the Division of the Blind and Physically Handicapped of the Library of Congress and its affiliated network in seven nearby States and the District of Columbia. These include State libraries for the Blind and the Physically Handicapped in Maryland, Virginia, New Jersey, and Ohio (Cincinnati and Columbus).

Notice of the availability of the brailled recipes will also be made through the facilities of several other groups serving the visually handicapped, including: Washington Ear Radio Service for the Blind and the Physically Handicapped (Silver Spring); Services for the Physically Handicapped (Rockville); the Maryland School for the Blind (Baltimore); Blind Industries and Services of Maryland (Baltimore); and the National Federation of the Blind (Baltimore).

In addition to the "Maryland Lady Crabcakes," the other recipes in braille are "Broiled Chesapeake Delicacy," and "Scalloped Oysters."

So that my colleagues may judge for themselves the gustatory delights now available to blind cooks, I ask unanimous consent that one of these recipes "Maryland Lady Crabcakes" be printed in the RECORD.

MARYLAND LADY CRABCAKES

1 pound Maryland crabmeat.
1 cup Italian seasoned breadcrumbs.
1 large egg (or 2 small).
About ¼ cup mayonnaise.
1 teaspoon Worcestershire sauce.
1 teaspoon dry mustard.
½ teaspoon salt.
¼ teaspoon pepper.
Margarine, butter or oil for frying.
Remove all cartilage from crabmeat.

In a bowl, mix breadcrumbs, egg, mayonnaise and seasonings. Add crabmeat and mix gently but thoroughly. If mixture is too dry, add a little more mayonnaise. Shape into 6 cakes.

Cook cakes in fry pan, in just enough fat to prevent sticking, until browned; about 5 minutes on each side.

Makes 6 crab cakes.

NOTE.—If desired, crab cakes may be deep fried at 350°F. 2 to 3 minutes, or until browned.

Mr. President, I am sure my colleagues will agree that my pride in the resourcefulness and creativity of Maryland's DECD is fully justified. I hope they will let organizations which deal with the blind and partially sighted in their own States know that these recipes have been brailled and are available.

ERIC SEVAREID

Mr. MATHIAS. Mr. President, on a recent flight I came across an article in Passages, the magazine of Northwest Orient Airlines, which carried a profile of a great American journalist and commentator we all know and respect, Eric Sevareid. The article was entitled "Signing Off," and discussed Mr. Sevareid's distinguished 40-year career in

American journalism, and his retirement on November 26 when he reaches the mandatory retirement age of 65 at CBS. Mr. Sevareid, in my judgment belongs in that small group of writers, thinkers and commentators who have had profound influence on American Government and its policies and processes throughout the course of history. I refer to individuals such as Tom Paine, James Madison, Horace Greeley, Mark Twain, H. L. Mencken, Upton Sinclair, Will Rogers, Walter Lippmann, and James Reston.

Eric Sevareid's incisive commentary phrased in lean and sharply honed English has always reflected the best expression our language is capable of imparting.

I ask unanimous consent, Mr. President, to print the article on Mr. Sevareid's retirement in the RECORD.

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

SIGNING OFF

(By Robert Gregory)

Whoever it is that gets Eric Sevareid's job (and the choice is Bill Moyers at this writing) CBS News will never be the same. For it's losing the last of the best, the most influential survivor of that prestigious group of zealous and young pioneers assembled by Edward R. Murrow in 1939 to broadcast radio news of World War II.

They were "Murrow's Boys," those "embattled comrades" whose kinship was commensurate with their anticipatory youth (most were in their 20s or early 30s) and their marvel at the potential of radio. Intoxicated with a new gadget to cover a developing World War, they wondered only whether they had the wisdom to handle such vast power with responsibility and truth. Not only did history long ago redeem their deeds; it also invested them with romantic legend.

But Eric Sevareid's approaching retirement as television's No. 1 news analyst-editorialist-essayist implies far more than the consummation of an era, an age. It is a serious loss of elegance, style and gentle authority that have long given CBS News a competitive psychological edge and motivated its veteran news personnel. Because of Sevareid, and the continuity that he represented, they somehow thought that they were better than any other group of news broadcasters, and that preserving the Murrow-Sevareid legacy of excellence was almost obligatory.

Sevaried is not voluntarily retiring, though he is getting tired, and an old back injury and arthritis conspire to cause some rather unpleasant days. CBS policy mandates retirement at age 65, which he'll reach November 26; four days later he'll be gone. And the adjustment doubtless will be easier for him—even if "it's really a radical change after all these years"—than for much of the American public, which for almost two generations has come to look to him for analytical eloquence, fetching wit and astute fairplay, whether the topic was the possibility of war in the Middle East or the conduct of shirtless bleacher fans during a World Series.

Gone will be that familiar facial expression of Nordic pain, as though the news often just hurt too much to talk about; that deliberate voice that sounded like a fine tweed rustling against some autumn ivy; and above all that exactness of expression that charmed television audiences into believing they'd been thinking the same thing all along, but only Sevareid could put it into the right public words.

He's heard he has that effect on people, Sevareid says, but "if there's anything to it, it's my typically American background."

He's just a pretty average guy, he thinks, a small-town boy whose thinking developed in the ceremonies of innocence in Velva, North Dakota, where he was born in 1912, strengthened itself on harsh adventures and stable traditions in the Midwest and matured in Europe in the late '30s, as he turned to journalism and a lifetime's embrace of books and learning.

Murrow discovered him in 1939, saying, "I like the way you write, and your ideas." A close association developed that lasted until Murrow's death in April 1965. By then, Sevareid's nightly analysis on the Cronkite newscast had been a regular feature for more than a year.

Few of his pieces were ever as moving or as "rough on the emotions" as his eulogy to Murrow: "There are some of us here, and I am one, who owe their professional life to this man . . . who owe Ed Murrow their love of their work, their standards and sense of responsibility. He was a shooting star . . . an original, and we shall not see his like again.

"He was an artist, passionately alive, living each day as if it were his last, absorbing and radiating the glories and miseries of his generations: the men, the machines, the battles, the beauties. The poetry of America was in his bones. He believes in his family, his friends, his work and his country. Himself, he often doubted."

The words could apply equally well to Sevareid, particularly those about country, family, friends, work, self. But then he and Murrow were very much alike; the differences were few.

One major difference, however, was how each reacted to radio and television. "Murrow," says Sevareid, "was the first great natural. A remarkable presence. I used to look at his scripts and think they would never go, but he was writing for the ear, words to be listened to, not read. And he was very effective. Highly literate, he'd been trained in college in speech and drama, and that contributed to his easy adaptability to radio and later to his engaging manner on television."

Sevareid didn't find it so easy, although he was a much better writer than Murrow. "I'm not an actor and it was tough going on television, since I was just getting used to radio. Even that was never simple, at least to me; but television was a problem. I can't smile at machinery, and my eyes can't stand strong lights."

That accounts for his strained "look of gloom" beneath a thrice-creased forehead of becoming solemnity, along with a companion distrust of posturing, of seeking to fool people into believing that he's overjoyed instead of profoundly anxious.

Before writing a typical nightly piece, he thinks about it most of the day ("just deciding what to say has always been the hardest part of getting ready"). Once the topic is firmly selected, he turns to the typewriter, lights up a True cigarette (unless the CBS machine is out of that brand), and then pecks away, seldom revising, changing not a word—positive evidence of his clear ideas. Forty minutes later he's finished from 600 to 750 words, which approximates 2 to 2½ minutes of air time. A secretary then transfers the script to a teleprompter; when it's ready, Sevareid walks to the studio, on the floor below the CBS newsroom in Washington.

Sevareid always chooses his own subjects; there is not, and never has been, any interference. But throughout the years, he's argued gently with just about every executive, including Murrow—soft disagreements, though, never spiteful rages. Only once have I ever heard him speak contemptuously of an executive, and that dealt with an early discussion of how the TV viewing public would accept his analysis. The executive, now a ranking figure with *60 Minutes*, sought to persuade the network, as well as Sevareid, that no one in America would sit still to watch a man talk. Just talk. There would have to be pictures also. The executive argued that if Sevareid were to describe, say, a Supreme Court decision, then the audience should see a picture of the Supreme Court building. And so on. Sevareid cursed the nonsense into obscurity. "I won that one," he says.

He clashed with Walter Cronkite once, years ago, following a Sevareid piece on Dallas, Texas, where a jailbreak was attempted while Jack Ruby was waiting trial. Sevareid was not especially hard on Dallas, saying only that its frontier characteristics had not totally vanished. When the camera cut back to Cronkite, he cleared his throat uneasily and said, "And we might add, Eric, that's true of a lot of towns. And that's the way it is. . . ."

Sevareid's anger was majestic. It was an example—and Sevareid's only criticism of Cronkite, ever, for he admires him very much, "a remarkable man"—of open rebuke and correction of a colleague, which, according to Sevareid, "you just never do. Ever." So touchy did the episode become, that Cronkite grabbed the first plane to Washington. There, behind Sevareid's closed office door, which customarily is always open, an understanding was reached, a friendship preserved, and a holy war averted. Cronkite never again sought to explain what Sevareid meant to say or should have said.

To this day, the goal of every CBS News reporter of any consequence is to make Cronkite's money, but to have the respect and prestige of Sevareid. And CBS doesn't want to lose that prestige and respect either, or so it says.

News President Richard Salant says that Sevareid's retirement does not mean that their relationship is over. No, "Eric will stay on as a 'consultant,' " to provide "in-house critiques, to work closely in evaluating CBS News policy and direction." Which is fine, and well-intentioned. But when Frank Stanton reached mandatory retirement age as head of the network—fully expecting the rule to be waived—he, too, became a "consultant." And since then he's had as much impact on CBS as a tennis pro in Darien, Connecticut. So Sevareid looks upon these early messages of love with skepticism, even though Salant insists to anyone who'll listen that Eric's "a wise, wise man."

The decision on Moyers as "the next Sevareid" was also the handiwork of Salant, who explains "it's just a matter of scheduling, because we want to keep Bill on *CBS Reports*." Salant is sure that he's found the right man—even though "Eric is irreplaceable, and had we not had Bill, we would have never considered continuing nighty analysis."

Sevareid was not asked for his opinion on his replacement, which he might refuse to give anyway. But what he will say is that the television networks should present early, hour-long newscasts, but can't because local affiliates want to sell the time themselves. And he thinks that tlevision news is "much better now that it's ever been, although some local stations have gone wacky with happiness."

And, as for the 1950's, the Golden Age of Television, "to tell the truth, it was awful," Sevareid says. "We were experimenting, trying to figure out what to do and how. You look at some of that stuff today that we used to do and it's embarrassing, just terrible. A lot of nonsense."

He's also suspicious of "instant analysis"—the network practice that Spiro Agnew found so dreadful—in which major events are followed by roundtable talk by correspondents

who are expected to unload with "immediate eloquence." Unlike Agnew, though, whose disgust was self-righteously political, Sevareid believes that post-analysis is "a dangerous form of journalism" because it imperils professionalism.

"The whole thing started as filler material and then became tradition; but at times I've refused to be a part of it. Once or twice during Nixon's reign, I ignored it for reasons that were not political, just lack of preparation." Even so, Sevareid has consistently excelled at it; and his colleagues have always had the good sense to defer to his opinion. Indeed, the thinking inside CBS News has been that the network was often selected by audiences for a special event because Sevareid would appear afterward to put everything into understandable perspective.

But now those days are almost over, as a fashion of life that was never boring and sometimes a lot of fun."

Regrets? Savareid's had a few, mainly stories that he missed by happenstance, but on the whole he thinks his batting average has been pretty good. He says he enjoyed the early days of "reporting" much more than the later years as resident intellect—or, as his enemies have described him, "that pompous, high-sounding, condescending ass."

There'll be a small farewell party at CBS, and a special TV broadcast in which Charles Kuralt will interview Sevareid for an hour on his near-40-year career at CBS, and on those events and figures that often seemed larger because he was part of the coverage.

After that, a glass of dry sherry, maybe; several days in a rocking chair to sift out his thoughts; time with his beloved family, and then down to Warrenton, Virginia, and a fishing hole that welcomes earnest men whose only memorable lines belong in the water.

What he may also get involved in is Public Broadcasting's possible dramatization of *Not So Wild a Dream*, the autobiography written when he was 32 and recently re-published. He's proud of the book, for it's become a minor classic—"That's what you want, you know. Something that will last, like a good book."

Sevareid will last in memory, too, for his integrity, his search for truth when it often was hard to find, for his high professional standards, his love of language, for his ability to clarify complex ideas when clear thinking was urgently needed, for his quiet dignity, warm humility and loyalty to reason.

"I end this business honorably," Sevareid says. "What more could one want?"

ALCAN PIPELINE

Mr. DURKIN. Mr. President, every Member of this Congress recognizes the national need for bringing Alaskan oil and gas to market in the lower United States, but a recent report and testimony by a distinguished expert presents startling evidence that we may only get this natural gas by sacrificing up to 6 billion barrels of Alaskan oil.

The Prudhoe Bay reserves represent the greatest oil and gas accumulation ever found in North America: over 20 billion barrels of oil and 42 trillion cubic feet of natural gas. Their production could play an important role in alleviating the shortages we face in the near future.

That is why on October 12, I was shocked to hear testimony before the Energy and Natural Resources Committee that production of Prudhoe Bay gas may result in the permanent loss up to 6 billion barrels of crude oil. At that hearing, Dr. Todd M. Doscher, professor of petroleum engineering at the University of Southern California, expressed concern that gas withdrawal from Prudhoe's Sadlerochit reservoir, as presently planned by the oil companies, would seriously impair reservoir pressure and could cause the loss of 4 to 6 billion barrels of oil that might otherwise be recovered. This amount of lost oil represents nearly one-sixth of our total national recoverable reserves. Dr. Doscher asserts that no commitment should be made to gas production which might harm oil productivity without several years operating data. Without this data, we simply are not sure that gas production will not deprive the United States of enormous amounts of crude oil.

Dr. Doscher is a credible witness. He spent 25 years with Shell, where he became their chief petroleum engineer. He initiated the development of thermal techniques and steam injection for recovery from tar sands. He is now on the faculty of the department of petroleum engineering at the University of Southern California, and serves as a distinguished lecturer for the American Society of Petroleum Engineers.

Last spring, Dr. Doscher was contracted by the State of Alaska to prepare a report, "An Appraisal of Operating Plans for the Prudhoe Bay Pool." This report raises serious questions about the feasibility of the companies' operating plans for Alaskan North Slope oil. I believe the Congress must carefully consider its findings prior to a decision on the President's Alcan recommendation, and answer the serious questions this report raises. I believe Dr. Doscher's testimony and report to be of utmost importance and concern to every Member of Congress and I ask unanimous consent that his testimony of October 25 and the text of the final report be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. DURKIN. As part of our effort to answer the disturbing questions raised by Dr. Doscher's report, the Energy and Natural Resources Committee requested the General Accounting Office to examine the various studies which project oil and gas recovery potential at Prudhoe Bay. The committee also held another hearing on Tuesday, October 25 and heard testimony from the field operators, the State of Alaska as well as Professor Doscher. From these hearings we are able to conclude that:

First. There is general agreement between the operators, Professor Doscher, and studies completed on the subject, that early gas sales will result in a loss of oil production.

Second. There is disagreement over how much this oil loss could be, ranging from about 200,000,000 barrels estimated by the operators to 6 billion barrels estimated by Doscher. This is because all projections are based on computer simulated mathematical models which are subject to a wide array of variances.

Third. As a result of this uncertainty, there is no current method of determining the effect of early gas sales upon oil production without acquiring several years of operating data.

The General Accounting Office findings essentially agree with these conclusions, and confirm my fears that commitment to a gas line at this time poses a serious risk to the potential development of Alaska oil. I ask unanimous consent that the GAO findings and an explanatory cover memorandum be inserted in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

I. LOSS OF OIL

Mr. DURKIN. At the hearing October 25, the operators, BP and ARCO, agreed with Dr. Doscher's testimony that, yes, they too, expect a loss of oil from early gas sales. The operators estimated this loss of oil at 1 to 1¼ percent of the total oil in place, or as much as 250 million barrels, considerably less than Dr. Doscher's estimate of 4 to 6 billion barrels. Yet 250,000,000 barrels of oil is worth over $3 billion at world prices which equals the current U.S. trade deficit for 2 months. Against this backdrop, it is ironic that the companies also stated gas sales will not significantly harm oil productivity.

II. HOW GREAT A LOSS?

Due to the lack of field operating data all production predictions are based on computer simulations which vary greatly in their results. H. K. Van Poollen, a respected Denver-based reservoir consultant, was contracted by the State of Alaska to complete simulated computer runs to predict the potential oil and gas recoveries for the Prudhoe Bay Field. Van Poollen's first study was completed in January 1976 and concluded that the highest oil recoveries were obtained by water injection and no gas sales. The State later requested additional analyses and Van Poollen completed supplement A in February 1977, which concluded that the operating plans submitted to the State (including early gas sales) "appear to maximize the oil recovery according to the results of this study."

There is a clear contradiction between Van Poolen's two reports. In his second study Van Poollen compared oil production at identical rates both with and without simultaneous natural gas sales. His results, set out below, show that natural gas and oil can be produced simultaneously without large reductions in oil production. This study was relied on by the State of Alaska, the operators, and the administration:

Run, cumulative oil production, and water injected:

3A Gas sales, 7.84 b. bbls., 15.9 b. bbls.

9A No gas sales, 7.56 b. bbls., 3.4 b. bbls.

Yet this is a misleading and inaccurate distortion of the facts. An earlier run by Van Poollen shows that the amount of oil production could be much higher if the reservoir pressure were kept higher. This simulation, relying on greater water injection, shows that production would rise 350 million barrels, the size of a major oil fields, if reservoir pressure remains high.

No. 10 no gas sales, 8.18 b. bbls, oil, 11.1 b. bbls. water.

But it is textbook geology that the pressure could be kept still higher—yielding even more oil—if more water was reinjected with gas, rather than relying on limited water injection. In other words, Van Poollen's first study shows that his second study underestimates the oil loss which will accompany gas sales, and even his first study underestimates this figure. Since these projections are both contradictory and inadequate, it is clear that the State based its conclusions on insufficient data.

Moreover, in their testimony before the committee, spokesmen for the State of Alaska confirm this general relationship between reservoir pressure loss due to increasing gas sales and declining oil productivity. Computer simulated models that have been completed for the Alcan Pipeline Co. by Core Laboratories concur:

The highest oil recovery occurred when all the available gas was reinjected and pressure was maintained in the aquifer.

However, extrapolation of Van Poollen and Core Lab findings indicate that the production difference between primary oil production with gas reinjection (over 9 billion barrels) and without gas reinjection (about 7.5 billion barrels) is in the range of 1 to 2 billion barrels of oil, depending upon operating conditions.

Loss of conventional production potential, however, is only part of the problem we face. The decline of reservoir pressure that accompanies early gas withdrawal could also result in the loss of tertiary recovery potential estimated at 4 billion barrels of oil. Thus the total loss of Alaskan oil due to construction of a gas pipeline at this time could approach 6 billion barrels, nearly one-third of the total petroleum resource at Prudhoe Bay. And only about one-third of Prudhoe's 20 billion barrels of oil might be recovered leaving over 12 billion barrels of valuable oil in the ground. In effect we could be sacrificing more than all the oil that will be discovered onshore in the United States between now and 1985.

III. WHAT SHOULD BE DONE?

Because of this uncertainty and potential loss of oil a safe course of action that would maintain reservoir pressure and maximize field productivity is to reinject gas together with water to replace all volumes of oil produced. While maximizing oil productivity, gas reinjection will prolong stable reservoir pressure. During the first 3 to 5 years of oil production, reservoir data that can reliably determine the optimum operating plan will become available. The decision to construct a gasline and produce Prudhoe gas should be made at that time.

It may be surprising to some of my colleagues that according to the oil companies, in 8 years oil production at Prudhoe Bay will peak and begin a dramatic decline. It is at this point that gas withdrawal could save billions of dollars by not necessitating construction of a gasline. The gas instead could be shipped through the oil line; larger and larger volumes of gas to replace the declining oil production. The reason why this option has not been studied by the operators escapes me.

Although Prudhoe Bay oil and gas represents this Nation's largest single hydrocarbon resource, it will only supply about 5 percent of our total consumption over the 25 year life of the field. We must do everything we can to maximize oil and gas recovery, and we must not permit anything to reduce production. That is why I believe commitment to a mode of gas production that may cause substantial loss of oil is not in the national interest at this time.

While a temporary deferral of the Alcan project may ultimately increase aggregate production of Alaskan oil and gas, I recognize that the United States desperately needs to increase domestic energy supplies immediately. In this regard I would like to point out a hypothetical alternative use of the vast amounts of capital that would be used to construct an Alcan pipeline. Assuming a total project cost of $12 billion, which GAO has stated may be a low estimate, we can estimate what increase in domestic gas production this investment could produce if invested entirely in new gas development:

Gas well cost: $50/ft., high estimate (FPC 1975: $38/ft.)

Well depth: 7,500′ (FPC average depth 1975: 7,500′)

Average well cost: $375,000/well

Production estimate: 2,000 Mcf/day (low FPC estimate for new wells)

Success Rate: 10% low estimate (API 1975: 14.4%)

Thirty-two thousand wells could be drilled with an investment of $12 billion. Assuming an average success rate of 10 percent, 3,200 wells would produce a low average of 2,000 Mcf a day each, or an aggregate of 6.4 bcf a day, or approximately 2.34 trillion cubic feet a year, about three times the anticipated production of Prudhoe Bay.

The above figures should only be considered a hypothetical calculation. The figures are conservative and refer to only new field wildcat wells, not production wells. Nonetheless, the final result indicates clearly that a $12 billion investment in domestic gas development could make a crucial difference in improving our gas supply picture far more significant than Alaskan gas. In contrast, the expenditure of $12 billion without considering the inevitable cost overruns on a project which will increase gas supplies by 5 percent and which may cost billions of barrels of crude oil, must be thoroughly scrutinized.

I would also like to draw attention to the tremendous new oil and gas fields that our southern neighbors, Mexico, is now developing. In his report to Congress on the Alcan proposal, the President has already recognized Mexican gas as an "economically attractive means to supplement traditional domestic supplies by 1985."

There is presently pending before the Federal Energy Regulatory Commission an application to import substantial quantities of gas from Mexico. FERC expects initial deliveries to be made later this year, with deliveries of 2 billion cubic feet per day by 1986. This is the same amount of gas that would be delivered via Alcan, but there is compelling evidence to indicate this volume could be easily doubled within a much shorter time frame.

Mexican gas is clearly a feasible alternative because it is economically competitive, poses far fewer technical and environmental problems than the proposed Alcan, and most importantly, it is abundant. In fact, Mexican engineers are now indicating that by 1982 they will have so much gas they would not know what to do with it.

A recent Oil and Gas Journal article (September 19) summarizes the situation:

Pemex engineers involved in planning development of the (Reforma) fields agree that the 2.5 million cfd line will not absorb the gas surplus expected by 1981–82.

By then, some of them believe, Reforma could be producing 8–10 billion cfd. If the local market could absorb 4 billion and exports 2 billion, there still would remain a surplus of at least 2 billion cfd.

This vitally needed gas, only 800 miles from our southern border is easily transportable to the United States through the pipeline Pemex, the Mexican oil company, is already constructing. If necessary, another parallel pipeline could easily be built to accommodate additional deliveries. Mexican gas would give us the opportunity to ensure optimal production of our Prudhoe Bay reserves, while providing the necessary supply increment to avoid gas shortages in the near future. Mr. President, I ask unanimous consent that a recent article in the Los Angeles Examiner describing the advantages of Mexican gas be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 3.)

Mr. DURKIN. Mr. President, until convincing evidence is presented that resolves reasonable doubts that production of Prudhoe Bay gas will significantly reduce overall productivity of the reservoir, I must question this project at this time. I recognize the urgent need for the gas that would be made available from such a project, but I believe that there are viable alternatives to increase gas supplies that would also result in less economic disruption to our hard-pressed consumers.

Clearly Congress should question seriously a commitment to a course of action we may later regret. When reliable and adequate field operating data regarding the Prudhoe Bay reservoir becomes available in 3 to 5 years Congress will be able to make a definitive judgment. A decision prior to that time without resolving these questions would be premature and possibly disastrous to the national interest. I urge my colleagues to carefully review the facts regarding this problem and join me in seeking the answers as soon as possible because I am certain we want to insure maximum production of oil and gas from our Nation's greatest energy resource.

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

EXHIBIT 1

TODD M. DOSCHER, PH. D.

At the time I was requested to appear before you on October 12, I informed you that my professional attention, and that of my colleague, Dr. Elmer Dougherty, Jr., was brought to bear on the Prudhoe Bay Oil Field because we were retained by the Legislative Affairs Agency of the State of Alaska to assess the operating plans that were submitted to the State's Division of Oil and Gas.

You are apparently here concerned with one of the conclusions which we reached in that study. We believe it is necessary for you to assess this one conclusion concerning gas sales within the total framework of our study.

Our overall conclusion is that studies prepared by the operators of the field, and those prepared on behalf of the Division of Oil and Gas as well as those prepared by still other groups have not been juxtaposed, scrutinized and challenged well enough for an unequivocal decision to be reached at this time as to what is the best operating plan for Prudhoe Bay. Certainly not to the extent as I and my colleague would have done had we been given the responsibility to do so.

Of course, a definition must be given to "the best" operating plan. The best may be variously defined as the best for maximizing the immediate flow of royalties and taxes to the state, or for maximizing the profitability of the operators, or for maximizing the recovery of crude oil, or a maximum flow of benefits to the people of Alaska.

Our studies explicitly used these two yardsticks for defining best: the maximum recovery of crude oil, and the maximum flow of benefits to the state. We were retained by the State of Alaska.

It is always a goal of the reservoir engineer to maximize the recovery of crude oil. At this time the need for attaining such a goal is intensified by the fact that our nation's access to supplies of crude oil is sorely limited and the limitation increases daily. The National Petroleum Council's prediction of future supplies of crude oil in the absence of Prudhoe Bay and new discoveries is shown in their Figure 5 of their December 1976 study. America's supplies will have dwindled to less than 1.5 million barrels a day by 1990, and even with Prudhoe Bay will be only 2 million barrels a day. Compare this with the 8 million or so we produced last year and the 20 million barrels we burned each and every day. It will be a stroke of sheer luck to be able to double this rate by successful exploration and enhanced recovery. A Prudhoe Bay discovered every other year would just keep our supplies constant if we could continue to import oil.

We must also look forward to severe limitations with the coming decade of our ability to import crude oil. The oil in the subsurface of the mid-East is limited too by nature, and production will surely peak within the decade ahead. Our basic yardstick therefore of assessing whether the proposed operating plans for Prudhoe Bay will maximize the recovery of crude oil is well justified. We concluded that the evidence for the claim that gas sales from Prudhoe Bay would not interfere with maximizing crude oil production is weak. We believe the evidence for reaching such a decision will not be available for several years during which time reservoir surveillance will provide the required data.

It is to be noted that the Prudhoe Bay field is so large that a mere 1 percent difference in recovery efficiency amounts to a volume of oil that is produced from some very large oil fields. So large, in fact, that less than a handful have been discovered in the United States since 1960. Whereas in former times one could be sanguine about sacrificing a percentage point in recovery efficiency for greater convenience, a smaller investment, or somewhat higher profitability, the same standards can no longer be applied.

Further, by conventional technology some twelve billion barrels of crude oil will not be recovered from Prudhoe Bay. It is folly to adopt an operating plan that doesn't consider the possible effect of such a plan on the potential implication of tertiary recovery processes that may succeed in capturing some of that twelve billion barrels of oil that will remain in the largest reservoir ever to have been discovered within the United States.

So much for our first yardstick.

Now for the second: the maximum flow of benefits to the State of Alaska. We concluded that this matter had not been given the attention it merits. We do not believe the sale of gas is in the best interests of the State or the nation; that is, the sale of gas now envisioned.

It will be impossible to sell more than two billion cubic feet of gas a day without seriously hurting the crude oil recovery even using the optimistic analysis of the operators therefor. It will be impossible to envision selling more than this short of the immediate implementation of a water flood that would balance withdrawals of gas and liquids. There are no plans for doing so. A daily sale of two billion cubic feet a day through a pipe line that might well represent an investment of 25 billion dollars, which we have observed in the literature, will require a transportation tariff of some $5 per thousand. This in itself, the transportation cost, is so much greater than current pipe line delivered costs for natural gas, and so much greater than those envisioned by any proponents of deregulation that the well head price of the gas itself will be pushed back to marginal values. The State will reap but a fraction of the value of the gas.

There is also a major question as to whether the gas will be marketable, on the proposed schedule, unless the price of all other gas supplies are raised to its equivalence.

The State would gain much more from their resources by ultimately converting a significant amount of the gas to liquid fuels, alcohols, and petrochemicals. The State could envision starting gas movements in the present crude oil line within fifteen to twenty years. The Prudhoe Bay reservoir is a short lived reservoir. Within eight years, oil production will start a precipitous decline, when our needs for additional liquid fuels will be verging on the desperate, and within fifteen years its potential will be less than 500,000 barrels a day.

The State could envision a long future of profitable and valuable utilization of its gas resources for over a century, particularly if such use is combined with utilization of its coal resources, should it not consent at this time to gas sales. The nation would be little the worse for not having the Prudhoe Bay gas available for immediate burning. It will amount to less than 5% of current consumption. An equivalent amount of gas could probably be made available from other sources, far cheaper and within the same time framework, if exploration and production of marginal sources were promoted by trivial increases in regulated prices. This would be true for a decade or two, but for longer periods of time you must address more fundamental issues.

I will close by bringing to your attention that it was more than Americans' know-how, more than their vim and vigor, more than their pursuit of free enterprise and freedoms that made America what it is. It was cheap and abundant sources of energy. Without the latter, America would not be America. We no longer have cheap and abundant sources of energy. We no longer have yesterday's potential. I implore you to take this into account when you deliberate on matters concerning the future of our nation.

REVIEW AND ANALYSIS OF THE PROPOSED OPERATING PLAN AND OF THE STUDIES AND COMPUTER SIMULATIONS OF THE DYNAMICS OF THE SADLEROCHIT RESERVOIR

TODD M. DOSCHER

Todd M. Doscher is Pahlavi Professor of Petroleum Engineering at the University of Southern California, Los Angeles, and a consulting petroleum engineer. He is licensed in the states of California and Texas and the Province of Alberta, Canada.

Dr. Doscher was formerly consulting petroleum engineer to the Exploration and Production Department of a major, integrated oil company. He has over thirty years of experience in petroleum production operations, research and development activities, and in the valuation of energy and mineral resources. His work has ranged from reserve audits to economic feasibility studies, the development of field operating practices, the invention of specialized drilling fluids, and the logistics of capping gas well blow-outs.

Among other achievements he developed the membrane filter, now in world wide use, for the evaluation of water quality for subsurface fluid injection and was Division Engineer in charge of the development of the first in-situ process for recovering the Athabasca Tar Sands. He has been chairman of the American Petroleum Institute's subcommittee on crude oil recovery efficiency and was the first chairman of the Implementation Committee of Society of Petroleum Engineer's Improved Oil Recovery Field Reports. He was a Distinguished Lecturer of the Society in 1976–77.

Dr. Doscher has been elected to membership in the honorary societies of Phi Beta Kappa, Sigma Xi, Tau Beta Pi and Phi Lambda Upsilon for his achievements in a variety of scholastic disciplines. He holds a bachelor's degree, summa cum laude, and a master's degree in chemical engineering from the College of the City of New York and the Case Institute of Applied Sciences, respectively. He also has a doctorate in colloid chemistry from the University of Southern California.

ELMER L. DOUGHERTY

Elmer L. Dougherty, Jr., is Professor of Petroleum Engineering at the University of Southern California at Los Angeles and a consulting petroleum engineer.

Prior to joining the faculty of the University of Southern California in 1971, Dr. Dougherty was employed by several major U.S. petroleum and chemical companies. His work included refinery chemical engineering, reservoir engineering and directing operations research efforts. In addition, Dr. Dougherty has served in senior management capacities with two firms in the management consulting and computer software fields.

Dr. Dougherty's work has been widely published in the fields of petroleum engineering and operations research. In 1964 he received the Cedric K. Ferguson Medal, awarded by the Society of Petroleum Engineers for the best paper by a junior member. Some of his work includes "Simulation of Oil Reservoirs on a Digital Computer", "A Computerized System for Planning Major Investment Decisions in Oil", and "Optimizing the Scheduling of Oil Field Development". He has also given several papers in the area of statistical and mathematical analysis of oil lease bidding.

Dr. Dougherty is a member of numerous professional associations, including the Society of Petroleum Engineers, the Society of Petroleum Well Log Analysts and the Operations Research Society of America. He is also

a member of the professional honorary societies Sigma Xi and Tau Beta Pi. Dr. Dougherty holds a Bachelor of Science degree in Chemical Engineering from the University of Kansas, and has received his masters and doctorate degrees in Chemical Engineering from the University of Illinois.

PREFACE

The authors of this study wish to express our appreciation to the Legislative Affairs Agency for the confidence and trust they put in us in executing this study of the State's most important physical resource, the Prudhoe Bay Oil Field. For the purpose of executing this study, we have relied heavily on published information in the public domain. In addition, we contacted the operators of the Prudhoe Bay Field, the Division of Oil and Gas of the State of Alaska, and the Division's consultant, H. K. Van Poolen and Associates, as well as other engineering firms which, for one reason or another, had prepared analyses for the prediction of performance of the Prudhoe Bay Field.

As a requirement for technical discussions with their engineering staffs, the operators requested, and we executed secrecy agreements with the operators, in accordance with approval from the Legislative Affairs Agency.

We intentionally did not overreach what we believed were the limits of our privileges and the necessities for information under our contract to the Legislative Affairs Agency. Therefore we may not have delved into certain details that we believed were proprietary and would add little to our conclusions. Our primary attention was to the methodology employed in the performance predictions and to the source of the input data. The agreed-upon remuneration for our services also posed limitations on the pursuit of overly detailed examination of documents and conference follow-ups. Again, we believe such additional examinations would not have any significant effect on our conclusions.

CHAPTER I—INTRODUCTION

This study was prepared in accordance with an agreement entered into by the Legislative Affairs Agency of the State of Alaska and Todd M. Doscher and Elmer L. Dougherty, Jr.

The purpose of the agreement is to provide, through the Agency, professional consulting services in oil and gas reservoir analysis to the Alaska State Legislature.

The statement of work, parts (A) and (B), of the agreement follows:

(A) The Contractors shall provide a written review and analysis of the proposed Prudhoe Bay operating plan, and the studies and computer simulations that have been made of the dynamics of the Sadlerochit Reservoir, including the studies made for the Alaska Department of Natural Resources by H. K. Van Poolen and Associates, Inc., and for the U.S. Department of the Interior by H. J. Gruy and Associates. In addition, the Contractors shall contact the principal owners of leasehold interests in the Prudhoe Bay Field and obtain from them such information as is relevant to this analysis and as the owners may be willing to release to them.

(B) The purpose of the written review and analysis shall be to provide the legislature with an independent audit of the practical and theoretical implications of the reservoir operating plans that have been and may be proposed by the field operators and the Alaska Department of Natural Resources.

Todd M. Doscher and Elmer L. Dougherty, Jr., the contractors, herewith submit the attached report in fulfillment of the agreement to provide the specific services requested.

The contractors are individually responsible for the opinions, interpretations and findings that are presented in this report. The opinions, interpretations and conclusions are not necessarily shared by the Legislative Affairs Agency of the State of Alaska, nor by associates, clients and employers of the contractors.

CHAPTER II—MAJOR OBSERVATIONS AND CONCLUSIONS

The dynamics of a petroleum reservoir are a function of (1) the physical and chemical characteristics of the fluids contained within it, (2) the geological configuration of the reservoir and its lithology, (3) the pressures and temperatures to which the fluids and rocks are subjected, and (4) the rates and total volumes of fluids that are withdrawn from it and injected into it.

Accurate prediction of reservoir behavior turns upon knowing as much as possible about the first three factors and being able to describe them numerically. Then the values ascribed to the parameters which describe the reservoir and its fluids are inserted into mathematical equations which represent the physical laws controlling fluid flow. The particular mode of operating the reservoir, fluid production and injection as a function of time through wells deployed at specific locations in the reservoir, is then stipulated and the production behavior of the reservoir results from the simultaneous solution of the mathematical equations.

The physical laws, which are represented mathematically in carrying out such a reservoir prediction, are inviolate. However, to facilitate solution of the many simultaneous equations that represent the laws governing flow of fluids from point to point in the reservoir, mathematical approximations are frequently employed even when using high speed digital computers. The accuracy of the predictions become primarily a function of how reliably the reservoir analyst knows the correct values of the parameters of the subsurface fluids, of the relationships between reservoir fluids and the reservoir rock, and how well the reservoir has been described mathematically. The reliability of such predictions increases as observations are made of reservoir performance and the values of the reservoir and fluid parameters are adjusted to account for observed behavior. The reservoir is only completely understood the day that it is shut down, and then only with respect to its response to the particular operating plan that was used.

Nevertheless, early predictions are important and necessary. It is only by predicting the behavior of various modes of operation that the operator can choose that scheme which promises to be the most rewarding—an optimum combination of produced volumes and economic return. The prudent operator usually allows for sufficient flexibility in implementation of his chosen mode of operation should performance of the reservoir indicate that the values of the dominant parameters as gleaned from reservoir performance are different than those chosen at first based on diagnostic tests, laboratory analysis and analogy with his experience.

Crude oil reservoirs tend to be unique entities, and analogy has proven not to be too reliable except in broad generalizations. The American Petroleum Institute has studied the possibility of correlating reservoir performance of fields in the United States, Bulletin D-14, 1967. The correlations that were achieved are inadequate to predict the performance of any one reservoir with an acceptable degree of reliability although they can predict the average performance of a group of reservoirs.

The Sadlerochit reservoir in the Prudhoe Bay Field is the largest reservoir that has ever been discovered in the Western Hemisphere. The physical laws governing fluid in this reservoir are the same as those governing fluid flow in any other reservoir. The task of modelling the reservoir and the description of the reservoir is simply a bigger task. Because of the tremendous financial investment that will be made to produce this reservoir, the operators have made a great investment in time and expense to model the reservoir and predict its performance. The Department of Natural Resources, Division of Oil and Gas, has also modeled the reservoir and carried out reservoir predictions. This work was contracted to H. K. van Poolen and Associates, consultants to the Division of Oil and Gas. Still other predictions of reservoir performance were executed for other private and public purposes by other consultants.

This study was conducted, not to make additional predictions, but to audit the content and conclusions of these reservoir predictions which had already been published. The major conclusions of this study follow. Additional conclusions will be found in Chapter VII.

MAJOR CONCLUSIONS OF THIS STUDY

I. With respect to the State's responsibility to its citizens to analyze the operating plans for the Prudhoe Bay field.

The State of Alaska's Division of Oil and Gas has not adequately represented the State in ascertaining the reliability, sensitivity and economic impact of the operating plans for the Prudhoe Bay Field proposed by the operators of the field, nor has the Division adequately compared the work presented by the operators to the work carried out on their behalf by their consultant.

The inadequacy of the Division's review of the work of the operators and of their consultant is primarily due to the fact that the Division of Oil and Gas is not adequately staffed to oversee the State's interests in the largest crude oil reservoir discovered in the United States. The Division has not been assigned the responsibility for assessing the economic impact of the operating plans of the State, but neither has any other agency of the State. This is a vital function in the exploitation and management of the state's resources. It is therefore mandatory for the State to increase the competence and scope of the Division of Oil and Gas at the earliest possible date in order for the State to be assured of deriving maximum benefits from its resources for the citizens of the State of Alaska.

Immediately, the staff of the Division of Oil and Gas should be strengthened to guarantee that adequate surveillance of reservoir performance, and data collection and recording does occur for the necessary task of reviewing and analyzing reservoir performance to protect and strengthen the state's interests. The plans for such surveillance and data collection should be comprehensive but well planned so as not to interfere with or be an undue burden on the operators in their pursuit of efficient management of producing operations.

2. With respect to the approval of plans for future operation of the Prudhoe Bay field.

No operating plan should be approved or committed to by the State at this time which does more than assure the minimum orderly development of the field to attain crude oil production at the rate required for successful operation of the Aleyska Pipeline.

This conclusion is based on the belief that it is necessary to confirm from field performance supplemented by special tests and testing procedures and continuing analysis that the most likely values of the parameters of the reservoir and reservoir fluids have been chosen as input for the mathematical predictions of reservoir performance. Further, that the mathematical description of the reservoir is adequate to account for observations made of field performance.

It follows that net withdrawals (sales) of gas should not be committed to at this time. A period of no less than two and possibly as much as five years will be required to make the necessary observations and tests to validate the values of the various reservoir parameters that affect reservoir per-

formance. Only by the accumulation of such data can performance predictions be made which will confirm to the state the desirability and/or necessity of selling the gas from the Sadlerochit reservoir. During this period the State should embark on studies which will reveal the desirability and advantages to the state of other modes of utilization of the gas (other than pipe-line sales some five years hence as proposed by the operators) should it be concluded that it is not necessary for economic production of the crude oil for such early sales to occur.

The State need not have any fears of relinquishing any economic benefits from the early sales of gas, all other factors being unaffected or rendered more favorable by such a delay.

3. With respect to potential recovery of additional quantities of crude oil over and above that which the operators believe is recoverable by conventional technology.

Twelve billion or more barrels of crude oil will be left behind in the Sadlerochit reservoir at the conclusion of conventional operations sometime after the turn of the century. This is not due to the inadequacy of any of the specifically proposed operating plans, but due to the limitations of conventional technology in exploiting crude oil reservoirs. Because of the magnitude of this volume of unrecovered oil, and because of the unique nature of reservoirs, the State should not rely solely on the spin-off of technology being pursued for other reservoirs for the development of a tertiary recovery process that may be applicable to Prudhoe Bay.

The state should, on its own if necessary, but preferably in conjunction with the operators and the federal government embark on an intensive research and development program to ascertain the feasibility and applicability of a tertiary recovery process for the Sadlerochit reservoir. Since the primary recovery process being used may affect the applicability of a tertiary process, the implementation of such a research and development program should be expedited immediately.

Chapter III

POROSITY, OIL SATURATION AND THE OIL IN PLACE

An oil reservoir is not a uniform accumulation of sand grains. The interstitial voidage, the porosity, varies throughout the reservoir. In order to estimate the pore space that is filled with oil, gas and water, cores are taken from a number of wells in the field and analyzed in the laboratory. Since it is impossible to sample every inch of every well, electric logs are used to make such estimations on a routine basis.

In a sandstone such as that of the Prudhoe Bay reservoir, it would be expected that the density log would give the most reliable result for estimation of porosity. Unfortunately, at the top of the formation there is a significant concentration of iron sulphide (pyrite), a very dense material which prevents a reliable calibration being made between the log response and the true porosity. Iron sulphide occurs to a lesser, but erratic degree throughout much of the rest of the formation. The density log (a type of radioactive log employing the Compton scattering of gamma rays by electrons) does not give reliable porosity values in such a situation.

In lieu of the density log, the acoustic log was used as the standard tool for measuring porosity. The log was calibrated in the laboratory against cores whose porosity was subsequently determined. This cross checking of the acoustic log response against actual cores was done to obviate the problems that are usually encountered in using standard relationships between porosity and acoustic velocity. There are three factors that tend to make the standard response relationships result in estimates of porosity that are too high: 1) presence of interbeded shale; 2) lack of complete consolidation and compaction of sandstone matrix; and 3) presence of residual oil saturation in the flushed zone measured by the sonic log.

The laboratory calibration should tend to reduce these errors. However, the core porosities determined in the laboratory are themselves probably higher than the true values in the formation. The principal reason for this is the change in effective stress between the in-situ conditions and those on the surface. In a well consolidated sandstone such as that of the Sadlerochit, the difference in porosity may be small, but not trivial, when estimating the amount of oil originally in place in a reservoir.

A censored report made available to us by the Division of Oil and Gas indicated that the analysis of the cores from one well showed a one porosity percent reduction when the cores were stressed to reservoir conditions. However, the validity of this correction and its applicability to all measurements could not be verified by us since the actual data had been removed from the report. From our discussions with the operators we would conclude that they did not make such corrections in their resource studies although some of those working on the mathematical reservoir simulation studies suggested that such corrections had been made. We were not able to verify just what had been done but the greatest evidence suggestd no attempt had been made to take into account porosity changes as a function of confining pressure.

The important conclusion is that since both the acoustic log porosity and the core porosity both tend to be too high, a cross plot between these two quantities does not demonstrate that the calculated porosity is the correct in-situ value. It is possible of course that neither of these measurements deviated significantly from the correct, in-situ values but no evidence to support such a contention has been provided.

Obviously, if the porosity measurements result in porosity values that are too high, the estimate of void space and of oil in place will be too high. Actually, the error in the estimate of oil in place will be somewhat larger (on a percentage basis) than the percentage error in the porosity. This is so because porosity itself enters into the calculation of the oil saturation.

Use of porosity values that are too high in the Archie equation to evaluate water saturation from resistivity logs will result in water saturations which are too low; the oil saturations will be correspondingly too high. The net effect is to further increase the upside error in the estimate of oil in place.

It is our belief that the estimate of the oil in places as a result of neglect of the effect of pressure on porosity could be too high by a factor of 5% to 10%.

The consultant to the Division of Oil and Gas has presented an estimate of original oil in place which is some 10% less than that calculated by the operators. Although this difference can be traced to his use of a porosity value consistently lower than that used by the operators, it is not certain whether the deviation in porosities resulted from differences in interpretative technique or from the fact that a much smaller data base was available to the consultant. The consultant did not correct for the effect of pressure on porosity as far as we could determine. It must not be assumed that the two estimates of oil in place represent the probable range within which the true estimate of original oil in place falls. There may be a consistent difference in interpretation or in the data base which only a detailed study could reveal.

Although the estimates of the oil in place do not affect the relative estimates of recovery efficiency nor of the conclusions concerning the preferred operating scheme, there is some concern about the difference between the two estimates. It is somewhat surprising that this significant point was not raised for discussion at the hearing in Anchorage this past May. A 10% difference in original oil in place is some two billion barrels. Such a difference between the estimates of two reservoir engineering groups is worthy of serious attention.

Chapter IV

RESERVOIR PERMEABILITY, CONFIGURATION, AND RECOVERY MECHANISMS

The permeability of the formation, just as the porosity, varies throughout the reservoir. Actually, in a single sedimentary unit it might be expected that the variation in permeability can be studied statistically and an average permeability assigned to the unit. This is basically true, but it does not take into account local extremes which may occur randomly within the unit and cause marked differences in behavior. For example, shale deposition within a sandstone member may have occurred because of a marked reduction in fluid velocity in the stream from which deposition took place, or a very coarse, heterogeneous deposition (conglomeratic section may have occurred in a high velocity stream. The occurrence of such variations in rock structure across the producing section may cause a marked change in the flow of fluids in the reservoir. Perturbations in the rock composition and structure can greatly vary the advance of one fluid into another thereby exacerbating or ameliorating phenomena such as viscous fingering, channeling, and coning. These effects become most pronounced of course, when the production mechanism relies on the encroachment of water or gas into the oil column.

A reservoir can be sampled only by drilling a hole through it. The nature of the reservoir between the holes can only be conjectured. The Sadlerochit reservoir, unfortunately, is not, as noted several times earlier, a uniform reservoir. The Sadlerochit comprises several sedimentary units, varying from high energy, conglomeratic sands to low energy shaly sands. In the former the permeability is likely to be high throughout whereas in the latter the possibility is great that marked changes in permeability will occur over relatively short distances. As a result of such changes the ability of fluid to flow within or through shaly sands is greatly reduced. As will be discussed below, this uncertain variability in rock characteristics makes constructing a realistic model of the Sadlerochit a difficult job.

A further complication is that the reservoir is intersected by several faults across which fluids may or may not flow. Not until significant volumes of fluids have been produced from the reservoir and the associated pressure changes carefully analyzed will it be possible to reduce the uncertainty in the reservoir configuration and in the effect which non-homogeneities in the reservior configuration will have on future reservoir behavior.

It is, nevertheless, necessary to construct a model in advance in order to make an initial choice from the possible production schemes that could be used to produce the reservoir. To construct a model, at each point in the reservoir a permeability value must be assigned for each of the several fluids contained within the pore space. Unfortunately, permeability cannot be measured in-situ. Production tests provide transient pressure data which can be interpreted to determine "kH" values, the product of the permeability and the thickness of the productive formation. The value of kH thus ob-

tained is an average value representation of the rock in the immediate neighborhood of the well when filled with the particular fluid saturations which exist around the well bore at the time the test was made. It was noted in Chapter III that the permeability of the rock to oil and water and gas varies as the saturation of these fluids vary. Since the saturations will change during production, to predict reservoir behavior it is necessary to have more than one value of permeability at one particular saturation.

Cores brought into the laboratory can be mounted in an appropriate apparatus, and the relative permeability to oil and water, or to oil and gas, can be measured over a fairly wide range of saturation. The data is obtained by simultaneously flowing the two fluids through the core until an equilibrium condition is reached. However, the values of relative permeability obtained are not unique functions of saturation; different values will be obtained depending upon the direction in which the saturation of oil (or water) is changing. The drainage relative permeability values are those which control fluid flow when oil saturation is increasing, and the imbibition values are those which are obtained when the water saturation is increasing.

Even though there are standardized laboratory methods for measuring relative permeability, there is some question concerning the significance of laboratory derived relative permeability data. The operators did use preserved cores and reservoir fluids to determine the relative permeability functions recognizing the fact that cleaning of cores and the use of laboratory fluids frequently give different results. Relative permeability data obtained on cleaned cores usually result in significantly higher relative permeabilities to both oil and water. On the other hand, the reliability of data obtained on composite cores (a series of small cores butted against each other), which were used by the operators to develop the oil-water relative permeability data, has not been established in the technical literature. The multiple end effects encountered at each joint may have an effect on the derived values for the relative permeability.

The most serious problem in regard to relative permeability arises in estimating the end point values of relative permeability, viz., the saturations at which the permeability to either fluid (most importantly, of course, to oil) becomes zero (if it does so at all when saturation is greater than zero). As noted in Chapter III, for oil the end point saturation and the shape of the relative permeability determine in great measure the actual efficiency with which the oil is displaced by water or gas. A very low end point (residual) saturation to oil is of little consequence if an excessively larger number of pore volumes of water must be forced through the rock to reduce the oil saturation to that value. The problems arising in the definition of the relative permeability curve at low oil saturations are highlighted by the differences in the conclusions of the operators and of the consultant to the Division of Oil and Gas, H. K. Van Poolen and Associates.

The averaged relative permeability curves of the operators do not appear to differ greatly from those used in the study prepared by H. K. Van Poolen for the Division of Oil and Gas.

The Division of Oil and Gas would not permit us to view the original data they had on hand; the only curves available to us were those published in the Van Poolen report and those presented by the operators at the Anchorage hearings in May. We are therefore unable to rate the quality with which the curves actually fit the experimental data nor the quality of the experimental data points themselves.

Van Poolen's curves give somewhat higher values for the relative permeability to oil for both the oil/water and oil/gas systems, and a significantly lower relative permeability to gas in the oil/gas system. The most significant difference between Van Poolen and the operators results from the interpretation of the basic data from which the curves were derived.

Van Poolen interprets the relative permeability data to indicate that sizeable end point saturations exist. Average irreducible oil saturations of 0.42 ± 0.10 and of 0.23 ± 0.10 were reported by Van Poolen for the oil/gas and oil/water systems, respectively. (However, in the simulation studies, Van Poolen used an irreducible oil saturation of 32% to gas). The operators do not believe that irreducible oil saturation to gas is this large. They have attempted to verify their belief by measuring residual saturations resulting from subjecting the fluids to a large centrifugal force developed by placing the cores in a rotating device. By plotting and extrapolating their results on semi-logarithmic graph paper (relative permeability on a logarithmic scale vs. saturation on a linear scale) they obtain a continuous curve which can be extrapolated down to very, very low oil saturations. The corresponding relative permeability values are several orders of magnitude below a value of 0.01 (an approximate lower limit to laboratory measured values of relative permeability).

We are not certain of the validity of the centrifugal results, particularly in regard to the scaling of possible time-dependent effects. Over geological time periods we can expect the non-wetting oil phase to have been practically completely drained from a gas cap. We have no evidence that such drainage is approached under dynamic operating conditions and a producing life of twenty-five years.

Although much careful laboratory work and theoretical analysis was probably carried out to justify the use of the low residual saturations secured in the laboratory centrifuge, ultimate validation can only be secured from observations in the actual reservoir. When the operators' curves were used in the simulation studies, the residual oil to gas invasion in the areas where gravity stabilizes the displacement falls to values well below 20%, and average significantly less than the end point residual saturation reported by Van Poolen.

This result from the operators' simulation studies is the most crucial one in their representation of the preferred operating plan, since it provides the basis upon which expansion of the gas cap is chosen as the preferred operating scheme for the Prudhoe Bay Field. It is again surprising that the Division of Oil and Gas did not raise this matter at the Anchorage hearings in May. The contention of the operators that such low residual saturations to gas invasion would be achieved was in opposition to the interpretations that were reported in the studies which they sponsored.

To find support for the operators' contention that such low residuals of oil will be attained by gravity drainage at the rates called for in the planned operation of Prudhoe Bay, we searched the literature for supporting case histories. Unfortunately, there is not much published data on this score. Certainly, the results reported by Exxon for the Hawkins Woodbine Reservoir in 1975 tends to support the concept that residual oil saturation can be driven down to extraordinarily low values by gas cap expansion-gravity drainage. The Hawkins Woodbine producing formation contains a much more viscous crude than does the Sadlerochit, and on this basis it would be expected that the efficiency with which oil is displaced by either water or gas would be low because of viscous fingering. On the other hand, the permeability of the reservoir sands is very high, 1194 mds. for the Lewisvillive member and 3396 mds. for the Dexter (six to seventeen times greater than that of the Sadlerochit). The residual saturations to both gas and water invasion are quite low in the cores taken from the reservoir, 3% and 15%, respectively. These residual saturations are extremely low for such a crude and raises the possibility that these cores were flushed during the coring operation itself as suggested by the operator. It should be added that the higher saturation of gas in the gas invaded zones could have promoted flushing and given rise to the apparent low residual saturation. Woodbine reservoir sands are known to be driven to very low residual oil saturations by water encroachment, viz., in the East Texas field cores have been revealed to have saturations less than 10%.

However, the volumetric results are impressively different. A low rate of production may have contributed significantly to these results; for many, many years withdrawal rate from the reservoir was limited by the Texas Railroad Commission's imposition of allowable production rates. For results from the operation of the Hawkins Woodbine reservoir to be extrapolated to Prudhoe Bay or any other reservoir, consideration must be given to rates of withdrawal; and in particular the rate at which the gas cap did in fact move southward in the Hawkins reservoir. It is worth noting that the operator of the Hawkins Field in opting for enhancing recovery from the field by gas injection into the gas cap will repressure the gas cap and maintain the pressure during the subsequent production life rather than depend exclusively on gas expansion to lower pressures.

In a Venezuelan reservoir familiar to us efficient gravity drainage is being achieved by complete reinjection of produced gas and maintenance of reservoir pressure.

The writers have had the opportunity to review the performance of a relatively small group of some twenty reservoirs in Texas which have been subject to recovery by gas reinjection into the gas cap. The reported average recovery efficiency from such reservoirs is of the order of 44 percent. This efficiency is somewhat greater than that from a much larger sample of sandstone reservoirs subjected to an induced water flood, viz., 38 percent. An analysis of reservoir properties of the two groups indicates that the former (gas cap reinjection) have significantly better parameters (particularly, permeability) than those in the latter group. When the performance of the reservoirs being produced by gas reinjection is compared to that of a group of reservoirs having approximately the same parameters, but subject to a natural water drive, they do poorly in comparison, 44 percent vs. 54 percent recovery. Unfortunately, a substantive comparison of performance, given equivalent reservoir parameters and drive mechanism could not be found. In summary, we could not find an unequivocal verification for the supposition that in the Sadlerochit the residual oil saturated to gas expansion will be significantly less than that to water invasion, viz., that less oil will be left behind by gravity drainage than by water encroachment.

The occurrence of a strong natural water drive in the Sadlerochit has been virtually ruled out because of the deterioration of reservoir properties in the water column downdip from the oil accumulation. Encroachment of water may be further limited by the existence of an altered, more viscous crude at the oil water contact. It is not certain whether the tar mat per se would be a significant barrier to fluid flow.

Had there been a strong water drive in the Sadlerochit, then the chances would have been great that the operators would have chosen to produce the reservoir by taking

advantage of the water drive. The oil water contact would have been allowed to rise and produced solution gas would have been reinjected into the cap to maintain its pressure.

One is then led to inquire why, in the absence of a natural water drive, a water flood is not initiated to execute the same function that a natural water drive would have played. The primary reason for not choosing to do so is the contention of the operators that allowing the gas cap to expand to lower pressures will result in the high displacement efficiency (low residual oil saturation) already alluded to. Additionally, there are questions concerning the continuity of the shales in the lower sedimentary units and the tar mat over various areas at the oil water contact. These latter problems could probably be overcome by the judicious choice of injection locations. Then, too, there is the cost of implementing a large scale water flood at this time. With such heavy investments already made over a significant period of time without the production of revenues, and in the perceived absence of clear cut advantages, a choice would be made by any prudent operator to chose an operating plan that did not require additional investments.

Gas expansion-gravity drainage, the preferred production method of the operators, leads to a reduction in reservoir pressure. A significant lowering of the reservoir pressure before final blow down acts to reduce oil recovery, in the absence of compensating factors, in a dual manner. First, the loss of pressure reduces the rate of influx of crude into the producing wells thereby accelerating the time at which production falls below the minimum economic limit. Secondly, the pressure loss allows dissolved gas to come out of solution in the crude oil thereby increasing the oil content of the oil phase (a solution of gas in oil) that is left behind the displacement front. The total amount of unrecovered oil is increased. In addition, the loss of solution gas results in an increase in crude oil viscosity which again reduces the influx of oil into producing wells.

The operators eventually intend to offset some of the effect of that component of the pressure reduction due to gas withdrawal from the cap by injecting water into the gas cap. This is preferred by them to a greater degree of reinjection of the produced gas because of the presumed saleability of the gas and because of the energy consumed in gas injection. However, no data has been presented by the operators to compare the cost of eventual water injection with the cost of reinjection of gas.

The operators have presented results of their studies which indicate that the recovery efficiency of the preferred operating plan could be increased from approximately 36% to approximately 40% by the initiation of source water flooding five to ten years after production starts from the Prudhoe Bay Field. It appears from the limited information made available to us that a major fraction of the water to be injected would be injected into the gas cap where it would serve primarily to retard the rate of pressure reduction. Some water would be injected into the oil column to increase the sweep of displacing fluid in the reservoir. However, we would estimate that the reservoir would be far from having been completely swept by water and expanding gas at the time of abandonment.

Prudent analysis of alternative producing schemes would in our experience have required a thorough technical and economic comparison of early implementation of a water flood to an extent sufficient to approach complete pressure maintenance and of total reinjection of produced gas without any injection of water other than that produced from the reservoir. These would have served as references for the evaluation of all other plans. Although these may have been studied by the operators for their own use the results of such analyses were not presented to the State. The Division of Oil and Gas did not request such studies from its consultant.

The operators are planning to conduct a small scale water injection operation sometime in the next two or three years to get information on the actual residual oil saturation to water encroachment. This, together with observations on the residual oil saturation behind the advancing gas contact, will serve to erase any doubts on the comparative efficiency of the two displacement mechanisms. Should the results of such observations lead to conclusions concerning the values of important parameters that are different from those used in the current simulations then consideration can be given to a revision in operating plans. Should the reservoir performance be considerably different from that which is anticipated, then the opportunity for revision will exist only if the necessary options are still available. Thus, it does not appear prudent at this time to commit to the withdrawal of gas from the reservoir for pipeline sales until it is certain that such sales will not interfere with the adoption of possibly superior production schemes. It would also appear to be more than prudent for the operators to accelerate their field verification of the residual oil saturation to water flooding.

A major contributing parameter to the choice of the gas expansion-gravity drainage process as the preferred process is the conclusion that the vertical permeability in much of the Sadlerochit reservoir is a high fraction of the horizontal permeabiltiy. Because of the nature of the deposition process, it is a general observation that vertical permeability is less than horizontal permeability. The sand grains tend to align themselves parallel to the direction of flow of the water from which they were deposited. Thus, the more elongated the sand grains, the lower will be the ratio of vertical to the horizontal permeability. Measurements on individual, small cores indicate that the vertical to horizontal permeability ratio is not significantly less than 0.5. However, the existence of interbedded shale streams and shale beds can seriously reduce this ratio over greater thicknesses. Obviously, an impermeable layer of shale will reduce the vertical permeability to zero across any vertical macrosection of reservoir that contains such an impermeable layer.

Although shales have been observed in cores and on log traces throughout the Sadlerochit, correlation of the shales from one well to another is common only in the lower sedimentary units which are shalier than the upper zones. The operators have made statistical analyses of the occurrence and areal extent of shales based on the observations in the wells, and have used these observations to introduce shales into their reservoir model. Based on these analyses the operators divided the reservoir into two sections, a shaly one and a non-shaly one; and conducted simulation studies on each to estimate the difference in behavior that may be anticipated.

Again, this is very critical input into the mathematical model since if the frequency and impermeability of the shales have been underestimated, then the areal sweep of the oil column by the expanding gas cap will be less than now anticipated by the operators.

A high ratio of vertical to horizontal permeability has been indicated to promote efficient oil recovery by gravity drainage. It also promotes gas coning which works against efficient recovery of the reservoir crude oil.

Gas coning is a very complex phenomenon which involves excessive production of gas from the gas cap along with the crude oil. Significant reservoir energy is thereby lost as the gas is produced. Gas coning occurs because of the differences in density and viscosity between the overlying gas and the oil. Under the influence of the pressure drawdown required to cause the influx of fluids into a well bore, the gas oil interface will tilt downwards around the well and may reach the level of the perforations. This phenomenon is highly rate sensitive. As the velocity of the fluids converging on the well bore increases, the pressure drawdown around the well bore also increases. Since the tilting of the gas oil contact increases as a function of the pressure drawdown, the tendency to suck the gas cone into the perforations increases with production rate into any single well.

The operators are completely aware of the potential damaging effects of gas coning on production performance and have already requested permission to reduce the spacing in the field to 160 acres in order to minimize such coning. An increase in the number of wells, while keeping the total production rate constant, will, of course, lower the production rate per well. The lower production rates, in turn, lower the pressure drawdown around each well and therefore reduce the extent of gas coning.

Water coning, the upwards tilting of the oil water interface and excessive water production accompanying oil production, will not be as severe as gas coning. However, the operators will choose the intervals to be perforated in the producing wells so as to minimize both gas and water coning.

Because of the importance of the vertical permeability within the reservoir, it is somewhat surprising that neither the state nor the operators sought to use a published technique which has the potential for measuring the in-situ vertical permeability, at least within the vicinity of a well bore.

It is certain that if the Sadlerochit reservoir is produced according to the plans set forth by the operators (or by any other conventional technology) the oil left behind in the reservoir when it is abandoned will exceed twelve billion barrels.

Neither the operators nor the state have as yet pursued any detailed studies, to our knowledge, of the potential of tertiary or enhanced recovery techniques in recovering some of this residual crude oil. We do not wish to imply in any way that such techniques are currently available, although many have been proposed and are under study for reservoirs in the lower 48. Because of the enormity of the residual and the critical supply situation for crude oil in the United States, which will only worsen in future years, it is of utmost urgency to consider as soon as possible the development and applicability of enhanced recovery techniques for the Prudhoe Bay Field. It is none too early to do so because the operating scheme to be used during primary operations may have a significant effect on the successful implementation of tertiary recovery processes. A successful tertiary recovery process might well recover an additional four billion barrels of crude oil. This will be again discussed in Chapter V.

Chapter V

PERCENT RECOVERY ESTIMATES AND COMPUTER SIMULATION MODELS

In the absence of any data to indicate trends in Prudhoe Bay's production performance, theoretical reservoir prediction methods provide the only means of making recovery estimates. To apply these prediction methods to Prudhoe Bay computer models of the reservoir were constructed. These models use well established equations to predict over time (a) the simultaneous flow of oil, gas and water throughout the reservoir system and (b) the fluid pressure at each point in the reservoir resulting from different rates of production from and fluid injection into the reservoir. The computer programs used to

obtain these predictions have been used many times in other equally complex reservoirs. Because of the relatively recent (a little more than a decade ago) development of these sophisticated computer based schemes for reservoir prediction, it is not possible to find a large number of reservoirs whose history was predicted from scratch, and which have been operated long enough to evaluate the match of prediction with performance. On the other hand, there is a significantly larger body of documented successful predictions of reservoir performance that were made for reservoirs for which some historical production performance was already available. In these cases the model could be fixed by history matching procedures.

There is an old adage in the computer game, viz., garbage in equals garbage out. Interpreted here this means that if the models constructed do not reasonably approximate the configuration of the reservoir and the distribution of fluids within it, the results will be worse than meaningless; they will be misleading. Likewise, if the values of the parameters which are used in the model to represent fluid flow through the porous media under the continuing changes in pressure and saturation resulting from production are not a compatible blend of the important physical-chemical properties of the fluids and the rock with the model's aggregated representation of the reservoir, the results will be meaningless.

Accomplishing the first requirement necessitates a careful analysis of the structure and composition of the producing formation, and of the distribution of fluids within the pore space. Both the consultant to the Division of Oil and Gas and the operators carefully interpreted data from well logs and cores to define the structure of the producing formation. The operators gave much more consideration to the composition of the formation, however, than did the consultant. The important composition parameter is the amount of shale interbedded within the sandstone producing member. The major impact which this constituent has on fluid flow was discussed earlier.

The operators concluded that several correlatable interbedded shale layers act as total barriers to vertical flow over considerable portions of the Sadlerochit. They also conducted extensive statistical and computer modeling studies of vertical cross sections of the Sadlerochit to estimate the reduction in vertical permeability caused by shale stringers visible in individual wells but not readily correlatable between wells. The reduced values of vertical permeability were then fed into the large computer models used to predict reservoir performance and percent recovery. In its prediction model the consultant simply fixed vertical permeability equal to 0.1 times horizontal permeability; in the layers of the model representing cleaner sand sections this factor was increased to 0.3 or 0.5.

As a result of these differences in accounting for the effects of interbedded shales, the flow patterns in the consultant's model must have been drastically different from those in the operators' models. It is surprising that the significance of this difference was not examined during the Anchorage hearings.

To determine the fluid distribution within the formation both the operators and the consultant appear to have thoroughly analyzed all available basic data. These include well logs, flow tests and fluid samples. With the exception of the anomalous behavior observed in the Eileen area where clean oil is produced from a section of the Sadlerochit for which the calculated water saturation is surprisingly high, the fluid distribution obtained seems eminently correct. Of course, the extent to which the several faults in the Sadlerochit will affect flow will not be known with certainty until sufficient production data are available. In the present studies the effect of faults has been assumed minimal, a reasonable assumption based upon the fact that the elevations of gas/oil and water/oil contacts are fairly uniform throughout.

Accomplishing the second requirement that the values of the parameters used in the modeling studies comprise a satisfactory translation of the basic reservoir data into numbers within the model which will cause it to make realistic predictions is a subtle art. The efforts discussed above to determine the most likely value to assign to vertical permeability throughout the recovery prediction model illustrate both the advantage of having considerable practical reservoir modeling experience to decide the proper way to proceed and the painstaking work required to obtain a suitable translation.

Other important situations which had to be dealt with were the assignment of values to the parameters, of the aquifer, which determine the amount of water influx and pressure support to be derived from the aquifer; and the way in which to model the effect upon water influx of the heavy oil zone of variable thickness which lies just above much of the water/oil contact. The basic data for the first situation are the porosities and the permeabilities of cores taken from wells penetrating the Sadlerochit formation outside the limits of the oil-bearing region. Sufficient data points were available to establish with reasonable certainty that the reservoir properties deteriorate downdip; and the parameters introduced into the model reflect the poor qualities of the aquifer.

Deciding what to do in the model to reflect the heavy oil zone is a more subjective problem. Heavy oil or tar barriers have been observed at the water/oil contact in many reservoirs throughout the world. A tar barrier of varying flow resistance underlies the Hawkins Field mentioned earlier; similar tar barriers exist at the water/oil contact in both the Abqaiq and Ghawar Fields in Saudi Arabia. Interpretations of production data from these fields indicates that these tars act as an impediment to flow of water from the aquifer, but constitute complete flow seals only in limited areas, if at all. In Prudhoe Bay the generally held opinion seems to be that the heavy oil is more mobile than in these examples just cited so that the reduction in the model's permeability at the water/oil contact to reflect the flow barrier should be less. The correct value to assign is, however, uncertain and will remain so until sufficient production data are available to allow a quantitative analysis to be made. The effect of this uncertainty on reservoir predictions is reduced by the fact that the aquifer has such low transmissibility.

Two other important translation problems which had to be dealt with in constructing the recovery prediction models were how to represent the effects of water and gas coning and what relative permeability curves to use. As discussed previously the high pressure gradient around a producing well can suck a cone of gas down (or water up) into the perforations. In terms of reservoir dimensions the radius of the top of this cone is small, say 50 feet or so. In the reservoir prediction models the dimensions of the grid blocks used to represent the reservoir are much greater than the dimensions of such a cone. Typically, the grid blocks had a length of 1000–5000 ft. and a thickness of 40–100 ft. In the model the pressure and saturations calculated are volume averages over the grid block, and the composition of fluids flowing out of a grid corresponds to these volume average saturations.

In order to realistically incorporate the effects of coning into their prediction models the operators first constructed single well coning models. These are cylindrical with a single producing well at the center; the length of the cylinder spans the producing formation, and the maximum radial dimension is, say, 2–10 times the radius of the fully developed cone. The coning models are used to determine the amount of coning as a function of the distance from the fluid contact to the nearest perforations, pressure drawdown between the perforations and the surrounding average reservoir pressure, and ratio of horizontal to vertical permeability, including, of course, any local shale barriers. (Coning is also influenced by the densities and viscosities of the fluids, but these are fixed by pressure and temperature.) The production performance of the detailed well coning models was transformed into a set of curves which were then used in the reservoir prediction model to more accurately predict the producing ratio of each well in the recovery predictions.

H. K. Van Poolen in his study prepared for the Division of Oil and Gas did not use this rather painstaking approach to determine producing ratio. It would be expected, then, that his results should tend to be more optimistic than those of the operators, i.e., his gas oil ratios (GOR) and water oil ratios (WOR) should tend to be lower. The significance of these differences was not considered at the hearings in Anchorage.

Three important aspects of the relative permeability curves had to be considered in the prediction models; how to account for gravity segregation within a single grid block, whether to use the drainage or the imbibition curve, and what values of end point or residual saturations to use. The operators assumed that the fluids were segregated within each grid block containing a fluid/fluid contact. For example, in some instances if the gas/oil contact fell in a cell it was assumed that the portion above the contact the cell was filled with oil saturated with gas at the average pressure in the cell. The relative permeability curves used in the model were adjusted to reflect the fact that flow from this cell into its neighbor would consist of gas above the contact and oil below the contact.

The operators assumed that the drainage relative permeability curve applies on first opening the reservoir to production. This curve is assumed to continue to apply until water influx into a cell begins at which time a rapid transition is made to the imbibition relative permeability curve. No such assumption was made by Van Poolen.

As discussed previously the most critical considerations in the recovery models are the values to assign to the end point or residual saturations. Aside from the uncertainty discussed earlier about what values will be representative of behavior in a small sample of the reservoir rock, another uncertainty arises from the modeling process itself. The values measured in the laboratory are representative of conditions within a microscopic pore volume, which for purposes of discussion can be thought of as that contained within 1 to 2 to 3 cubic inches of rock, which has been thoroughly swept with gas or with water. In the prediction models the volumes of the grid blocks varied from about 1 million cubic inches to 50 trillion cubic inches. The models compute average oil saturation vs. time. Given the laboratory values, considering the discrepancy in volumes just cited, what values of residual oil should be used in the reservoir models to cause them to predict most accurately the percent recovery which will be observed in the reservoir. None of the reservoir blocks will be as thoroughly swept as was the microscopic pore volume in the laboratory, but the difference will not be uniform and is not predictable with certainty. The operators assumption of intracell gravity segregation deals partially with this problem.

As the above discussion indicates there are many uncertainties surrounding the recovery predictions. These uncertainties can only be eliminated or reduced by collecting produc-

tion data and comparing observations to predictions. This process of modifying a model to improve the agreement between prediction and observation is standard procedure in the use of reservoir models; this process, alluded to earlier, is commonly called history matching. The operators indicate that they plan to continue working with their models and that as production data become available they will examine it looking for ways to improve the reliability of their models.

Likewise, the Division of Oil and Gas indicated that as soon as sufficient production data become available to warrant the action, they plan to request their consultant to update their model.

Whereas one can be sanguine about the thought that by observing performance the reservoir models can be increasingly fine-tuned, and thus made better able to predict subsequent performance; it is still necessary to choose what is believed to be the superior production process based on predictions which are made before any performance is available. In order for such a selection to be made, it is necessary to rate the comparative reliability of the input parameters that will control performance by different production methods and to rate the overall mathematical simulation procedure which is used.

With no doubt or reservations, we believe that the simulation scheme used by the operators is superior to those used by any others who have attempted to predict the performance of Prudhoe Bay. On the other hand, we do not believe the operators have in their public presentations reported on the effect on production performance of a sufficiently wide range of operating conditions. H. K. Van Poolen has studied the effect of a wider range of conditions, but still the variability was somewhat limited and somewhat arbitrary so that inter-comparisons between the results from changing conditions is not easily achieved.

The consensus conclusion of the operators as reported at the Anchorage hearings is that about 40 percent of the original oil in place may ultimately be recovered if their proposed operating plan is followed. This plan includes:

1. Oil production to be initiated at the rate of 1.5 MMB/D.
2. 160 acre spacing to be used (with some 80 acre spacing).
3. Low pressure gathering systems and artificial lift.
4. Injection of all produced water and apparently, at a later date, source water.

In our contacts with the operators, we found that one of the operators appeared to take the lead in discussions with us and the supply of information. Although the other operators indicated their results were somewhat different than those of the principal spokesman they agreed that the differences were minor. Therefore, in the subsequent discussion we will refer to the results presented by one of the operators as being representative of the group.

The spacing of 160 acres and less (rather than the 32 acres originally believed to be suitable for Prudhoe Bay) and the low pressure gathering system and artificial lift were demonstrated to be necessary to raise the crude oil recovery efficiency from the high twenties to 34 percent while committing to the sale of natural gas of 2 BCF/D starting five years after crude oil production was initiated. By injecting the water produced along with the crude oil, recovery is raised to 36 percent.

The operators did not present a base case to demonstrate what recovery efficiency might be expected in the absence of any gas sales. A case in which gas sales were delayed for fifteen years, by which time over 80 percent of the ultimate crude oil has already been recovered, with the ultimate amounting to 37.5 percent of the reservoir crude oil. The comparison is not sufficient since when considering the total economics and cost benefits of the project a run with no gas sales and higher spacings would be in order.

Van Poolen, on the other hand, shows a significant effect of gas sales on recovery efficiency when sales are increased from 2 to 3 and then 4 billion cubic feet a day. The recovery efficiency is gradually reduced from 41 percent to 32 percent (a loss 1.9 billion barrels). Again, Van Poolen does not give a case without gas sales that can be directly compared with the three runs just cited. Extrapolation of the results of these three cases to zero gas sales would suggest that the recovery efficiency would increase to 9.1 billion barrels, or 47.7 percent of the oil in place.[1] Such explicit extrapolation is not justified, but the implicit trend certainly is in the absence of any other information. We therefore believe the State Division of Oil and Gas should have delved into these matters at the Anchorage hearings in May 1977. Again, it must be emphasized that there are some significant differences in the simulation techniques used by Van Poolen and the operators, and there are significant differences in the input data (see below). However, we believe the trends established in any one modeling procedure are significant even though absolute values of predicted performance may be open to question.

It is worthy of note that H. J. Gruy and Associates also found a significant difference in recovery with and without gas sales, the effect of no gas sales being such as to raise the recovery efficiency from 29 percent to 39 percent even without waterflooding. Gruy and Associates used the basic input of the Van Poolen model, but a simulation scheme of their own.

The operators did not present the results of a full scale pressure maintenance program by water flooding without any associated gas sales. Van Poolen did in part, showing a recovery of 7.8 and 8.2 billion barrels, or 40.8 percent and 43.0 percent of the oil in place at maximum crude oil rates of 1.6 and 1.2 million barrels a day, respectively. These were the highest efficiencies reported by Van Poolen, and would have probably been higher if the reservoir pressure was eventually drawn down to that of the reference case with gas sales. Van Poolen implied in a subsequent report study that the production scheme used in reaching such high recovery efficiencies might have been unrealistic. We see no evidence for this although there has been no economic feasibility study made of the implied scheme of production.

Van Poolen does show that the effect of gas sales on reducing recovery can be compensated for by carrying out a water flood and changing the operational limits on gas oil ratios. Thus, the recovery is increased from 7.1 billion barrels (Run 8) to 7.9 billion barrels (Run 21). However, the latter result (gas sales, water injection and changed operational limits) is even slightly greater than the case for no gas sales and water injection, 7.8 billion barrels (Run 11). We believe that the result for no gas sales would be significantly higher if the run were continued, blowing down the reservoir to reach the same terminal pressure as in Run 21. It would seem to be in order for the Division of Oil and Gas to have sought to have performance predictions prepared for them that were compatible for direct comparison.

The operators did study the effect of limited water flooding, starting five to nine years after the initiation of production of crude oil (with gas sales starting five years after crude oil production) as already noted. Their studies indicate an increase in recovery can be achieved by such injection; a gradual increase from 36% to 40% as a function of the rate of water injection and its timing. A good amount of this increase appears to be due to the increase in the gas cap pressure, since a large fraction of the water is injected directly into the gas cap. The increase in recovery is not primarily due to a major sweep of the crude oil column by the injected water.

We believe that the operators have stressed gas expansion and gravity drainage as the principal modes of production because of their belief that the residual oil saturations to such a drive will be less than that to water. Gas sales are looked on with favor because of the reputed cost for continuing gas injection, and because of the relatively low present value of water flood recovered oil which doesn't speak well for additional capital investments during the early life of the operation.

We believe that the State must look on the matter of crude oil recovery from a somewhat different standpoint than that of the operators. The State, whether or not it is interested in reinvesting its earnings from the operation of Prudhoe Bay in other profitable ventures, does not have the same opportunities for doing so nor the same freedom to do so as a private enterprise. The state has responsibilities to its citizens and the citizens of the nation that the private enterprise does not.

First of all, there is the matter of the absolute value of the recovered oil itself. A difference in a percentage point in recovery can be sacrificed with impunity in ordinary reservoir operation in past times if a significantly higher profitability is achieved. A percentage point in the recovery of oil from Prudhoe Bay represents 200 million barrels, a major oil field in itself.

Secondly, just what is the trade off between the cost of gas reinjection and water injection even as proposed by the operators, and what are the corresponding recovery efficiencies for such base case operations?

Thirdly, are the interests of the State and the Nation better served by stretching out the period of utilizing the natural gas from Prudhoe Bay? In the possible absence of future discoveries, say from the Beaufort Sea, the present crude oil pipeline will not be highly utilized after fifteen years of operating Prudhoe Bay. Crude oil production begins to decline precipitously after some eight years of operation, and within fifteen years the production rate is down to less than 500,000 barrels a day. Should consideration be given to using the crude oil line for two phase flow of gas and oil at that time with gradual increases in the gas oil ratio of the throughput?

The gas arriving at some convenient destination within Alaska could be converted to liquid fuels and petrochemicals from which the State and the Nation will derive greater ultimate economic and social benefits than those to be gained by delivering the gas at this time at great cost to the lower 48 for mere burning!

These are vital matters to be examined by the state, and such examination is possible only by having available a more comprehensive series of reservoir performance predictions, economic studies, and gauges of practicality.

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[1] Core Laboratories, Inc. in their report prepared for the Alcan Pipeline Company present results of mathematical simulations which show a monotic decrease in oil recovery from 8.36 billion barrels of crude oil to 6.23 billion barrels as the gas sales are increased from 0 to 4 billion cubic feet a day. At the time Core Laboratories conducted their studies it was believed that gross production had to be only 117 percent of gas sales. Subsequent information indicates that the gross will have to be closer to 135 percent of net. Thus, the effect of a given value of net gas withdrawals (sales) would have even been more pronounced in the Core Laboratories study.

In concluding this review of the analysis of the prediction of recovery efficiency, a comparison of some of the results of Van Poolen and the operators will bring into final focus some of the problems in appreciating the differences between the results of various mathematical simulations.

For the Van Poolen cases which are most closely comparable to the preferred plan of the operators (Runs 3A and 5A) an average recovery of 41% is predicted compared to 39% for the Exxon runs 6 and 7. (The 2% difference is of the order of 400 million barrels.) However, considering the differences in the two models it is surprising that the results are so close. The biggest difference between the two models, from our somewhat arm's length remoteness, is the assumed residual oil saturations to gas invasion. As stated earlier, the residual oil saturation in the operators' model can be driven to quite low values by the continuing invasion of gas whereas in the Van Poolen model there is an end point saturation of 32%. Since recovery is proportional to pore volume swept multiplied by the reduction in oil saturation, Van Poolen must predict a considerably higher sweep efficiency than do the operators. Van Poolen's higher sweep is consistent with the fact that they built less realism into their model than did the operators; the simplifications they made could well lead to apparent improved sweep efficiency in the model output. What is startling is that these two effects almost exactly offset one another, and that the Division of Oil and Gas did not bring this matter up for discussion at the Anchorage hearings.

The fact that two different schemes provide answers of such similar numerical value cannot be used to indicate that the common result is correct. Attention must be given to the nature of the input data, the nature of the reservoir model, the scheme for solving equations, and the exact nature of the operating conditions imposed on the model reservoir behavior. Again, we point to the necessity of production data for calibrating these models. When predictions are made before the accumulation of real reservoir performance data, it is necessary to leave options open for the operator to respond to the accumulation of real knowledge about reservoir performance.

Chapter VI

ACCUMULATION OF RESERVOIR DATA, PERFORMANCE OF RESERVOIR TESTS, AND SURVEILLANCE OF PRODUCING OPERATIONS

No mortal now knows exactly how the Prudhoe Bay Field will perform. This fact has been exemplified and stressed many times in the previous discussion. None of the parties involved would likely question the many uncertainties in reservoir performance which need to be dealt with. An extensive and thorough program of test and measurement and general surveillance of reservoir operations has been laid out to provide the necessary data to unravel these mysteries.

The planned program of data collection to which the operators have agreed is specified in Rules 1–15 in Conservation Order No. 145. These rules call for a continuing program of testing well performance and collecting a large body of data indicative of how the reservoir is performing. Pressure surveys, gas-oil ratio tests and productivity profiles (spinner surveys to indicate where produced fluids are entering the well bore) will provide a growing volume of data indicative of what is happening in individual wells. A thorough program of well logging is planned to track the movement of the gas/oil and the water/oil contacts throughout the field.

Interpretation of these latter two sets of data will indicate the degree of gas and water coning and the effect of permeability barriers. These data will be particularly valuable in selecting optimum perforation intervals in new wells and in planning workovers of existing wells. Reservoir material balance calculations, initially, and later reservoir simulation studies incorporating these data will begin to reveal the vitally important values of residual oil saturation and to throw light on the many other uncertainties built into the reservoir prediction models. All of this information should be of particular value in planning and implementing water injection.

These rules also provide for minimum well spacing of approximately 100 acres, prohibit gas flaring, limit pool offtake rates and specify safety practices to be followed in drilling and producing wells. The procedures to be followed in cementing and casing a well are also specified, and particular concern is given to avoiding serious problems with the permafrost.

Surprisingly omitted from these completion procedures was a provision to test the integrity of the cement seal through the productive formation. For the benefit of those uninitiated in oil well completion procedures, when a well is drilled a piece of pipe (called either a casing or a liner depending on whether it does or does not extend to the surface, respectively) is inserted through the hydrocarbon bearing strata and cemented in place. A sufficient volume of cement is forced into the annulus between the pipe and the rock face of the productive formation to fill the annulus to a level of at least 500 feet above the highest potential productive formation (Rule 3). The cement must overlap by at least 100 feet the next deepest casing string (obviously of larger diameter) (Rule 3). Perforations are simply holes blown through this deepest section of pipe by bullets or jets of metal fired at selected depths.

In order to have complete control of the producing well the cement must bond securely to both the outer wall of the pipe and the rock face. A cement bond log can be run in the well to determine if the seal is complete. If a faulty section is detected, a hole is cut in the pipe opposite and more cement is squeezed under high pressure into the angular region outside the pipe. The operators indicated that such logs are run and the drilling reports which are examined confirmed this. It is surprising, however, that running and carefully interpreting a cement bond log in all wells, both injection and production, is not incorporated in the completion rules. A faulty cement seal can greatly exacerbate gas coming since a leak between the casing and the production formation can provide a conduit with effectively infinite permeability from the gas cap into the perforations. (A noise log or a temperature log will frequently reveal such leakage behind the casing in a producing well.)

At the Anchorage hearings in May the operators testified to their plans to conduct all of the surveillance activities called for in Conservation Order No. 145. In our discussions with them they indicated that in their judgment they have assigned sufficient experienced engineers to adequately monitor performance and to interpret the data so that it can be put to use to improve the operation of the reservoir.

The Division of Oil and Gas was not, however, adequately staffed at the time of our discussion with them in July to handle its surveillance responsibilities. They were actively recruiting for an engineer with 5 to 10 years experience to be assigned full time to this watchdog activity. It seems a fair question to ask whether the Division will, after it recruits the one person for whom it is now looking, have sufficient capability to do its job properly. Attempting to answer this question requires careful consideration of what the Division's role should be. Certainly, it should not be envisioned that the Division should approach the level of staffing required to duplicate the reservoir engineering studies performed by the operators. The engineers carrying out these studies for the operators are experienced and are backed up by large staffs of specialists and research scientists providing a complete cross-section of talent and experience. On the other hand, very few would argue that Alaska's interests are being properly looked after if its watchdog group is so thinly spread and lacking in the required competence and skills that all it can effectively do is rubberstamp the operators proposals.

Even without even beginning to duplicate the operators' efforts, there remains a very large amount of work which the Division must do to properly oversee operation of the Prudhoe Bay Field. This work falls into three categories: on-site inspection and supervision; data acceptance, review, organization and storage; and independent interpretations and analyses. The first category is an essential part of knowing that things are being done properly and that accurate data are being collected; regular visits to the field are also necessary to keep an engineer tuned in to the significant problems being faced and how the data collected relate to these problems. The second category is to make certain that the data are reasonable and that the measurements seem to be made correctly. Because the volume of data to be delivered to the Division is large, procedures for storing it in a readily retrievable and useful form need to be devised. The last category feeds off of the first two; the Division will need to perform independent analyses to arrive at its own interpretations.

The charter of the Division does not call for it to consider economics in its analyses, but at some point such considerations must come into its deliberations because (a) the operators' proposals are necessarily developed against a back drop of economic factors, and (b) the people of Alaska are interested in achieving the maximum economic benefit from their interest in Prudhoe Bay.

In addition, the Division of Oil and Gas, the Legislative Affairs Agency, or some other agency or agent of the State must be, assigned the role of assessing the end use and utilization of the state's resources in Prudhoe Bay (and other oil and gas and mineral accumulations) that are not yet committed.

Finally, the Division of Oil and Gas, or an appropriate research board should pursue under their own auspices or jointly with lease holders and the Federal Government, research, and development programs that will increase the absolute recovery of wealth from the Prudhoe Bay field and the maximum conversion of the crude oil and gas into economic and social benefits for its citizens and those of the other forty-nine states.

Considering the enormous treasure in the Prudhoe Bay Field, and the magnitude and multiplicity of the tasks which must be performed to insure its maximum utilization, there is considerable doubt that the current staffing plans of the Division of Oil and Gas are adequate. Not only must the staff of the Division be increased, but its scope and responsibilities, must be greatly extended or supplemented by other agencies of the State of Alaska.

Chapter VII

CONCLUSIONS

1. Concerning the adequacy of the review of the operating plans submitted by the operators and the studies prepared on behalf of the Division of Oil and Gas of the State of Alaska.

It has been concluded on many counts that the results of the simulation studies presented to the State by the operators and others prepared for the Division of Oil and Gas have not been as adequately reviewed as required to protect the interests of the

state in their great resources in Prudhoe Bay.

In reaching this conclusion we do not impugn that the studies are manifestly incorrect or improperly conceived. We appreciate that they are built on an input which can be debated, operating conditions which can be varied, and a reservoir model that can only approximate the real Sadlerochit reservoir.

The studies prepared by the operators emphasized the plans which the operators had selected based, in part, on their interpretation of laboratory tests and their need to maximize their interests. Theirs is a proper course of action. The studies prepared on behalf of the Division of Oil and Gas of the State, although more comprehensive in the range of variables addressed, were not sufficiently internally consistent for positive trends in the variation of operating characteristics to be adequately revealed.

There are sufficient differences between the Van Poolen studies and those of the operators so that the Division of Oil and Gas should have addressed these differences, despite the differences in the sophisticated and apparent realism of the models. We call attention, specifically, to the differences in the estimates of the orginal oil in place in the reservoir, and the differences that are implied in the effect of gas sales on ultimate oil recovery even under water flooding conditions. Both the Van Poolen and Core Laboratories studies indicate a substantial effect of increased gas sales on decreasing oil recovery.

We have attempted to show throughout this report the basic limitations of reservoir performance predictions in the absence of actual reservoir performance. Because of these limitations, it is not possible to make sufficiently accurate performance predictions in the absence of some performance data to history match, or calibrate the model and the simulation scheme chosen. We are impressed, as should all Americans, with the enormity of the Prudhoe Bay reservoir and that at this time it contains some thirty percent of the reserves of liquid fuels of the nation. Whereas a difference of one percentage point in recovery efficiency for lesser reservoirs in past times could be sacrificed with impunity for greater convenience in operations, or greater profitability, a one percentage point difference in the recovery of crude oil from Prudhoe Bay is some 200,000,000 barrels. Only some sixty fields with larger ultimate recovery than this volume have ever been discovered in the United States, and only three (including Prudhoe Bay) since 1960.

We have therefore concluded that the State should make no commitment beyond that which is required for the orderly development of the field to permit attainment of crude oil production at the rate required for the economic operation of the crude oil pipeline.

The State should seek to have prepared an internally consistent set of reservoir performance predictions that explore the effect of individual variables, economic costs and a wide range of operating conditions. Such base case information is necessary for informal assessment of preferred operating plans.

2. With respect to staffing of the Division of Oil and Gas of the State of Alaska and other agencies of the state that will be required to maximize the wealth of Prudhoe Bay for the citizens of the State and the Nation.

The present and planned staffing of the Division of Oil and Gas is inadequate for the role the Division of Oil and Gas must play in order to provide the necessary surveillance, data collection, and independent analysis of the performance of Prudhoe Bay.

In addition to these conventional activities the State should add to the responsibilities of the Division, or assign to currently activated agencies or newly created ones, the tasks of economic assessment of various operating plans for the Prudhoe Bay Field, and of the economic and social benefits of the end use and utilization of the oil and gas that is not already committed; further, the state should sponsor and participate in research and development programs that hopefully will increase the recovery of crude oil from Prudhoe Bay beyond which can be recovered by conventional technology.

Whereas increased staffing on all counts is needed, the greatest urgency resides in developing a sufficiently competent staff to exercise proper surveillance and the informed collection of field performance data. Data can never be collected after the fact. At the same time, such surveillance and data collection activities must be undertaken without creating an unnecessary burden on the operators nor in interfering with the orderly development of the field.

3. With respect to the State's evaluation of ways and means for maximizing their interests in the wealth of Prudhoe Bay on behalf of their citizens.

The operators have presented the conclusions of their studies which show that the sales of gas and eventual implementation of water flooding will not interfere with realizing a high recovery of crude oil from the Sadlerochit reservoir. The State has not studied the possibility that there are other alternate and more beneficial uses of the gas for their account which will not interfere with the interests of the operators, and simultaneously maximize the total recovery of fuels, particularly liquid fuels for the nation.

There is serious doubt in our minds that the gas can be marketed profitably in a free market or that such sales of gas to the lower forty eight states is in the best overall interests of the State and the Nation.

Estimates of the cost of the proposed gas line abound. We are impressed by recent estimates which suggest that a cost of twenty five billion dollars or more would not be surprising. A gas rate limited to two billion cubic feet a day would require a transportation cost of $5 per thousand cubic feet in order to return an investment of twenty five billion dollars at a 15% discounted cash flow. This cost is in the absence of any operating costs, taxes, and purchase price of the gas at the well head. Gas, burdened with such a transportation cost would probably not be competitive. Other sources of gas could well become available at such costs. Further, the two billion cubic feet a day constitutes less than 5% of our nation's consumption at this time; a marginal source by itself.

It appears necessary therefore if the State is to wisely make use of its resources that it set about to ascertain the realistic, anticipated costs of pipeline construction and the possibility that such a transportation system for the gas would be built. There are alternate and possibly more beneficial uses for the gas.

In the absence of future discoveries of crude oil which can be transported by the present crude oil line from the North Slope to Valdez, throughput will begin to decrease precipitously within eight years and within fifteen will be less than 500,000 barrels a day. It may be possible at that time to use the crude oil line for two phase flow of oil and gas. Ultimately, some of the gas could be liquefied and transported to West Coast destinations by tankers.

In addition, the gas could be converted in part to liquid fuels (alcohol) capable of being transported through the crude oil line. In addition, the gas could be converted to petrochemicals. There is little question about the range of possibilities for using the valuable resource of gas in many ways, any one of which and all together would probably represent far greater utilization of the state's resources for the ultimate long range benefits to the citizens of the State and the Nation.

The state would be remiss in not embarking upon a full fledged study of the potential of alternate utilization of the gas in lieu of permitting it to be shipped at great cost to the lower forty-eight for mere burning at this time.

4. With respect to research and development programs to increase the recovery efficiency beyond that attainable by conventional technology.

Some twelve billion barrels of crude oil are likely to remain in the reservoir following the time when the field reaches its economic limit sometime after the turn of the century by the application of only conventional technology. It has not been sufficiently impressed on the citizens of the United States that Prudhoe Bay will have spent its maximum potential for producing crude oil within eight years, and thereafter begins a precipitous decline, reaching a value of less than 500,000 barrels a day within fifteen years. Further, that conventional technology will leave amount of crude oil then will be extracted. This oil will remain in the reservoir because of the nature of the fractional flow curve (see Appendix). An increasingly large and uneconomic quantity of water or gas would be required to recover this residual oil.

A great effort is underway in the United States, in part sponsored by the United States Energy Research and Development Administration (ERDA), seeking processes for recovering crude oil left behind by conventional technology. Success to date has been limited except in the use of steam injection techniques in California's heavy oil reservoirs.

Because of the reported high vertical permeability (the parameter that recommends gravity drainage as the production mode), there is an enhanced recovery process, carbon dioxide injection, that possibly may succeed in Prudhoe Bay. Carbon dioxide injection is being actively studied for the recovery of residual oil by many large oil producers, ERDA, and universities.

Carbon dioxide under high pressure is miscible with many crude oils. The density of this liquid, a function of pressure and temperature, is of the same order of magnitude as crude oils. If such miscibility of carbon dioxide with Prudhoe Bay crude can be demonstrated, then significant recovery of the residual oil from Prudhoe Bay field is conceivable. The thick sand interval and high permeability would recommend consideration of a gravity stabilized process in which the carbon dioxide is injected at the gas-oil contact to sweep the residual oil downwards. Mixing with the methane gas cap would be restricted because of the far greater density of carbon dioxide. Such a stabilized process is probably the most effective way for implementing the carbon dioxide recovery process.

We do not know of the existence of any large, naturally occurring quantities of carbon dioxide on the North Slope. The gas in Prudhoe Bay does contain some 12% of carbon dioxide which is not sufficient nor can it be made available in a sufficiently timely fashion to be used in such a recovery scheme. A search for naturally occurring carbon dioxide could well be undertaken.

Produced crude oil could be burned to produce carbon dioxide. We would roughly estimate that combustion of one third of the additionally produced crude oil would provide the required carbon dioxide for such a scheme. Already, in tertiary recovery operations in California, Venezuela and other places in the world one third of the addi-

tionally produced crude oil is used to generate steam for profitably producing viscous crudes.

The ultimate value of a delivered barrel of Prudhoe Bay crude may be so much greater than its on-site value (it already is so), that the cost of burning two billion barrels of the six that might be produced by such a scheme would be more than offset by the four billion barrels of saleable crude.

Values of the process could be further enhanced by concomitant use of the energy liberated by combustion. For example, a 700 mile power transmission line to Southern Alaska is not out of the question. Some of the carbon dioxide could be supplied by gas reforming with the "by-product" hydrogen being used in the production of petrochemicals. Additionally, a combination of carbon dioxide, power and hydrogen could be manufactured by partial gasification of the crude oil or of the heavy ends of the crude.

Again, we would summarize our views by stating that there is conceptual technology for increasing the recovery of crude oil from Prudhoe Bay, and that such methods could be compatible with other technology for enhancing the long range utilization of the resources of the State for the benefit of the State of Alaska and the Nation. We believe the State should pursue the definition, development and implementation of those programs which will achieve the most favorable results while still promoting the orderly and prudent development of the Prudhoe Bay field.

APPENDIX: THE MECHANICS OF OIL PRODUCTION

The sedimentary rocks that constitute the Prudhoe Bay reservoir are comprised of sandstones, conglomerates and shales that were washed down from mountains to the north and deposited by a southward flowing river system in deltas and rivers. The reservoir is comprised of several zones, each having been laid down under relatively constant geological conditions. They vary from relatively clean sands deposited in a main river channel to the finer clays, since compacted to shales, deposited in quieter bays. Thicknesses of conglomerates consisting of coarse sands, even pebbles, interbedded with shales are also found.

It is obvious that the Prudhoe Bay reservoir is not a uniform entity. This nonuniformity is a hallmark of practically all crude oil reservoirs. As a result there is not any singular and unique value for any one reservoir parameter. The values of porosity (fraction of the rock comprised of pores which can be filled with oil, gas and water) will change foot by foot and probably inch by inch. Only a most likely or average value derived by statistical analysis, can be assigned to any of the pertinent parameters that govern fluid flow and recovery efficiency. To each assigned value must be appended a designation of its likely variation.

The values of the most important parameters, moreover, cannot be directly measured in the reservoir; rather, the values must be calculated or inferred from some other measurement. For example, the porosity of the reservoir (the fraction of a rock layer's volume which can be filled with oil, gas and water) is a most important parameter for the estimation of the original oil in place in the reservoir. Although there are down-hole tools which can investigate this parameter, these tools must be calibrated against a piece of rock, a core, cut from the formation by special coring tools driven by the drill string. (In the case of Prudhoe Bay, the use of the preferred down-hole tool for reliable porosity estimation was found to be inapplicable because the reservoir rock contains unusually dense materials.) Cores used for reference calibration are taken to the laboratory, "cleaned up", and their porosity measured under conditions which attempt to restore the subsurface environment of the reservoir. It is obvious that such measurements can only approach the true in-situ values. The calibration is effected by comparing the down-hole tool's response in the section from which the core was taken to the laboratory-determined value.

Another parameter, even more important in affecting recovery efficiency and production rates, is the permeability of the rock to oil, gas and water when the rock contains (is saturated with) varying amounts of oil, gas and water. Permeability is a measure of the ease with which fluids will flow through the reservoir under a given pressure gradient (pressure drop per foot of reservoir) after allowing for differences in the viscosity of the fluids (viscosity is a measure of the thickness of the fluids; molasses has a high viscosity, water has a low viscosity). Again, values of permeability are usually measured on "cleaned up" cores, which have been resaturated with oil, water and gas in various proportions by any one of several procedures. Measurement of fluid flow rate through the core and the corresponding pressure drop across the core provides the data from which permeability is calculated.

The permeability of a core in the laboratory shows intuitively unanticipated behavior. If the rock is filled with only water, the permeability to water is found to be essentially the same as that to oil. However, when the core is filled with the two immiscible fluids (oil and water do not mix, they are immiscible), it is found that for a given pressure drop the total rate of flow through the core is significantly less than the rate of flow when only one fluid is present. The loss in permeability is a function of the saturation.

In addition to the total flow being less than that for either fluid by itself, the fraction of water and of oil in the stream flowing through the core changes systematically with the saturations of oil and water in the rock.

An examination shows that at maximum saturation of water, corresponding to a minimum saturation of oil, oil will no longer flow in the rock. Thus, if water invasion was the dominant mechanism for displacing oil in the reservoir there is some level of oil saturation which cannot be reduced. Obviously, this level sets a theoretical limit to the amount of oil that can be recovered by water displacement. Further, the amount of water required to reach this irreducible minimum value for the oil saturation is governed by the curvature of the fractional flow curve as the water saturation approaches its maximum value. If the curve reaches its maximum value abruptly, it will take a relatively small amount of water throughput to reach the irreducible oil content. On the other hand if the end point is reached gradually (asymptotically) large volumes of water will be required to reach the irreducible minimum oil saturation.

A similar relationship holds for the simultaneous flow of oil and gas. Now, however, the porosity available to the oil and gas is less than the total porosity of the rock. Some of the porosity will be filled with an irreducible amount of water. The presence of this water results from the fact that most minerals are wetted by water in preference to oil, and is a reminder of the fact that most sedimentary rocks that contain oil were laid down in a marine environment. At a later time when the oil migrated from the source beds into the rocks, some 10% to 30% of the water in the pore space remained behind primarily in the form of films of water around the rock grains.

The saturation at which gas flow is initiated is known as the critical gas saturation, and is usualy only 1 to 5% of the porosity. The fractional flow of gas not only is initiated at low gas saturations, but also rises very rapidly with further small increases in gas saturation. As a result, the final approach to the maximum gas saturation (minimum oil saturation) is more gradual than in the case of water displacing oil. Indeed, there is much question as to whether there is any true residual oil saturation when gas displaces oil in the presence of water-wetted rocks. However, because of the asymptotic approach of the curve to its maximum value, very large volumes of gas must be put through the core to reach the minimum (zero ?) value of residual oil. From a practical point of view, therefore, there is a real residual oil saturation to a gas drive since infinite volumes of gas cannot be put through the core.

Another property of reservoir fluids that must be kept in mind is their compressibility. It is well-known that the volume of a given amount of gas will be decreased if the pressure on the gas is increased (a parallel is what happens when one sits on an air cushion). It is not always realized that liquids such as oil and water are also compressible. Of course, the change in volume of a liquid for a given change in pressure is much smaller than in the case of a gas. Although the compressibility, or inversely, the expandability of oil and water under a reduction in pressure is small, if the pressure is decreased on a very large volume of water the absolute expansion will be very large indeed. Water expands only three one hundredths of one percent when the pressure is reduced by 100 pounds, but if the initial volume of water is a trillion barrels the absolute expansion is 300 million barrels. If the pressure is reduced by a thousand pounds, the absolute expansion is three billion barrels.

Crude oil contains dissolved gas (associated natural gas), and the amount of gas dissolved is a function of pressure. The volume of a given weight of "pure oil" will increase as the gas is dissolved in it, and will, of course, decrease as the gas is liberated.

In a reservoir such as Prudhoe Bay where a gas cap exists the crude oil has dissolved all the gas it can at the reservoir pressure. Were it not so saturated, the free gas would be continuing to dissolve in it until equilibrium was reached. Therefore, any reduction in the pressure on the Prudhoe Bay reservoir will lead to the liberation of gas. This decrease in pressure will of course happen when fluids are withdrawn (produced) from the reservoir. Some of this gas is liberated within the reservoir, dispersed in the oil. The fractional flow of oil in the produced fluids will therefore begin to decrease according to the fractional flow concepts presented above. The decrease in oil flow will be proportionately far greater than the increase in gas saturation. Since the volume of oil shrinks as gas is liberated, the oil saturation in the reservoir decreases even more rapidly as gas is liberated. The fractional flow of oil further suffers, and gas production begins to increase rapidly.

It is obvious that other factors being equal, it is best to produce a reservoir at as high a pressure as possible to secure the most favorable flow of oil into the reservoir.

It is of course impossible to avoid some pressure reduction in the reservoir. It is this very drop in pressure which provides the energy for the oil to flow into the bore hole of a well. Production can be seen to be a self-defeating process. The withdrawal of oil from the reservoir lowers the pressure, a reduction in pressure decreases the available energy for additional flow, the reduction in pressure liberates gas and shrinks the oil which further lowers the flow rate of oil into the well, and when shrunken oil is left behind in the reservoir, the reservoir oil contains a higher content of "pure oil." A crude oil reservoir can never produce oil today better than it did yesterday.

A thick, vertical slice of a reservoir similar to that of Prudhoe Bay, but without the shale layers is depicted. There is a column of gas on the top, a column of water on the bottom, and in between is the gut of the reservoir, the oil column. There is some water in the oil column, most of it at an irreducible minimum saturation at which it will not flow. Following drilling, and casing the well, the liner (casing across the oil saturated interval) is perforated with explosive jets or bullets. The perforating fluid in the hole is then circulated out; the pressure at the bottom of the hole is allowed to fall below that of the reservoir. The resulting difference in pressure results in a flow of oil out of the reservoir into the bore hole. As the oil reaches the lower pressure of the bore hole, gas comes out of solution. The gas continues to expand upwards towards the lower pressure of the wellhead. Because the tubing in the well through which fluids are conducted to the surface has a smaller diameter than the casing, the oil entering the well is entrained by expanding slugs of gas and carried to the surface. The well is said to flow naturally.

Gradually the pressure begins to drop throughout the reservoir and the oil-gas interface begins to fall. The space formerly occupied by oil is replaced by the gas, which expands as reservoir pressure drops. How much oil is left behind at this descending interface between the oil and gas? If the descent was infinitely slow, the oil left behind might well be close to zero; recovery would be nearly 100%. Under practical conditions, the rate will never be infinitely low and the residual oil saturation will be determined by the curvature, or asymptotic approach to the ultimate residual saturation and the rate chosen for withdrawal of oil.

As a result of the pressure drop within the reservoir, some gas will be liberated from the oil as the oil flows to the perforations. This gas will tend to rise because of its low density towards the gas cap. This is known as gravity segregation and will occur all the more rapidly if the vertical permeability of the rock is high. This is good because even less gas will be produced than if segregation did not occur, and the gas cap is fortified.

If the pressure drop between the oil column and the perforations is high, due to a high production rate, the gas cap will be sucked down into the perforations. This is known as gas coning; it is to be avoided, in general, because it results in a loss of energy available to displace additional oil into the well.

Gas coning may be reduced by lowering the velocity of the oil towards a well bore. Thus, coning can be restricted by decreasing production rate. If some given rate of production must be maintained from a reservoir, then coning can still be restricted by drilling more wells. This operation is known as infill drilling. An intermediate solution would be to seal off the existing perforations and create new ones lower down in the oil column so that the gas cap will not be sucked into them until a later time.

The perforations are not put at the bottom at the beginning of production at Prudhoe Bay to avoid sucking the water up into them (water coning). Of course, the water column itself will be exanding as the reservoir pressure is reduced. A large water leg would result in significant expansion leading to a rise in the oil-water interface; displacement of oil by water (a natural water drive). In many reservoirs a natural water drive originating from a water column, much bigger in size than the oil column, results in oil displacement at but a tiny drop in reservoir pressure. Historically, such natural water drive reservoirs in the United States have given the greatest recovery efficiencies the industry has encountered. Some reservoirs, in East Texas and Louisiana, had recoveries as high as 70% .

For a reservoir slice as depicted with a large and strong aquifer contiguous with the oil column, there would be no choice in the mode of operating the reservoir. The gas cap pressure would have to be maintained to prevent oil from being pushed up into it.

If the aquifer is limited and weak, a choice must be made: to allow the gas cap to expand or institute a water drive by injecting water. The decision must be made based on the following parameters:

Firstly, the residual saturation of oil left behind an expanding gas cap vs. the residual saturation left behind by encroaching water.

Secondly, the comparative costs of injecting water and the need for and costs of reinjecting gas.

It has been concluded by the Operators that the natural water drive at Prudhoe Bay is insufficient to invade the oil column at rates comparable to the desired rate of oil production. Therefore, a choice had to be made on the comparative advantages of gas cap expansion vs. waterflooding.

Should the sands not be continuous, but interbedded with impermeable shales, then gas cap expansion will be stopped by such discontinuities and the gas cap can be considered virtually a separate reservoir. Under these conditions the oil between the shales would have to be produced by the relatively inefficient solution-gas depletion process, supplemented by very early (horizontal) water displacement. Of course, the separation by shale cannot be as absolute as suggested. The very existence of one gas cap and a somewhat common water level in the Prudhoe Bay reservoir suggests that vertical communication is at least high enough for gravity segregation to have occurred over geological time. It is obvious that the exact definition of the extent of vertical communication is required to choose a proper operating plan.

EXHIBIT 2

MEMORANDUM

To Members, Committee on Energy and Natural Resources.

From Henry M. Jackson, Chairman.

Re October 25 hearing on the President's recommendation to designate the Alcan pipeline project for approval.

On October 12 the Committee received testimony from Dr. Todd Doscher of the University of Southern California that production of natural gas from the Prudhoe Bay field could have a significant adverse effect upon the amount of oil that would be ultimately recovered.

In response to Dr. Doscher's testimony, the Committee has requested the State of Alaska and the three largest Prudhoe Bay producers to testify on his findings at tomorrow's hearing. Dr. Doscher will also testify.

Prior to the hearing I requested the staff to conduct a review of the studies available to the public on the Prudhoe Bay production potential. Four studies of the field were reviewed.

The first, which was done for Arctic Gas, was by DeGolyer-McNaughton. It estimated oil and gas production potential but showed no basis for those estimates.

The second, which was done for the Interior Department was by Gruy Associates. It was a discounted cash flow analysis predicting the amount of production that would result from various oil and gas prices.

The third, which was done for the State of Alaska, was by Van Poollen and Associates. It used a computer to simulate the field's behavior to predict detailed reservoir behavior.

The fourth, which was done for Northwest Pipeline, Inc. (Alcan), was by Core Laboratories. It was also a computer simulation of the field's behavior.

The staff was assisted in its review by two members of the staff of the General Accounting Office. The GAO staff members who assisted the project are Dr. Tom Woods, a physicist with expertise in petroleum production forecasting, and Mr. Bob Finney, a petroleum engineer from the GAO's Houston, Texas, field office. Their findings are enclosed for your use.

Questions concerning the hearing should be directed to George Dowd (ext. 4-2564) or to Betsy Moler (ext. 4-0611) of the Committee staff.

FINDINGS

1. We cannot evaluate Operators and D & M due to a paucity of information contained in the reports.

2. While we cannot describe the Operators and the D & M field simulations, we would conclude that of those we could, Gruy, Core and VanPoollen essentially simulate the operations of different fields although all 3 claim to utilize VanPoollen data. We find these anomalies in the following areas.

a. The water drives in all three simulations are significantly different with the VanPoollen simulation having the weakest aquifer and Gruy the strongest.

b. Both Gruy and Core only describe the Sadlerochit field and exclude considerations of hydrocarbons located elsewhere. VanPoollen posits a link between the gas cap in the Shublik formation.

c. Core indicates that for the same field parameters, the existance of an aquifer increases oil recoverability. VanPoollen indicates the opposite, although the effect is small.

d. The production profiles on a yearly basis with and without aquifers are significantly different for Van Poollen and Core.

e. Similarly oil production profiles with gas sales show that the Sadlerochit field as simulated by VanPoollen does not agree with that as simulated by Core.

f. We have found the estimates of oil-in-place and gas-in-place to be inconsistent among the studies and in the case of the operator study, internally inconsistent.

g. We find no consistency, however, between the studies and the published API reserve figures as of 31 December 1976.

3. Despite these differences all 5 studies indicate either a maximum oil recovery of about 8.4 million barrels or 42.8 percent recovery of oil-in-place.

4. Production of gas from Sadlerochit requires gas cap production early on the productive life. At 2.4 bcf a day, the capacity of the Alcan pipeline, this would require production of oil significantly above the current 1.2 million barrel a day capacity of the TAPS to avoid excessive gas cap production.

5. All studies agree without gas re-injection, and some type of water re-pressuring, there would be significant deterioration in the recovery of oil and gas.

6. We find that none of the studies addressed natural gas liquids which at 1.45 gal/Mcf of gas and 2.4 bcf per day pipeline throughout results in almost 100,000 barrels a day of n.g.l.

7. We find that the production profiles in the VanPoollen and Core studies are markedly different. (Note: The attached graph shows the amount that oil production is likely to increase or decrease in a given year with 2.0 billion cubic feet of gas sales per day for Van Poollen and 2.4 bcf/d for Core.)

CONCLUSION

At this point we cannot ascertain the overall effect of gas production and sales on the ultimate recovery of oil from the Sadlerichit reservoir.

EXHIBIT 3

MEXICO'S GAS PIPELINE SEEN AS U.S.'S UNSUNG SAVIOR DURING WINTER SHORTAGES

MEXICO CITY.—While attention was focused on a $10-billion pipeline to carry natural gas

from Alaska, Mexico has been making plans to supply the United States with what many officials believe will be a more significant long-term solution to winter gas shortages.

Until last winter's shortages, Mexico had largely ignored its natural gas potential, concentrating instead on plans to double oil production and refining capacity. The winter crisis, however, spurred Mexico to re-count its blessings in natural gas. President Jose Lopez Portillo immediately ordered a pipeline built to the American border.

Mexico is believed to have vast gas reserves. Although no estimates of total reserves are available, the director general of the state oil monopoly, Jorge Diaz Serrano, said earlier this month that output in 1982 would be much higher than the 4 billion cubic feet a day he had forecast just a few months ago. Mexico's gas reserves are believed to be far greater than Alaska's.

Even before Mexico starts construction of its new pipeline, there is concern that the line will prove too small to carry the amounts of gas that will be available for export by 1982.

Diaz Serrano said at a recent meeting of engineers in Monterrey that a planned pipeline of 48 inches in diameter has been thought by some to be too large. "We now think that before 1982 it could prove to be too small and we'll have to consider ways of increasing our gas transportation capacity," he said.

The trans-Canada pipeline, which should be completed by 1982 or 1983, will have capacity of about 2.2 billion cubic feet per day, commensurate with steady exploitation of the 26 trillion cubic feet of natural gas believed available in the Alaska North Slope oilfields.

In contrast, the $1.5 billion Mexican pipeline, carrying gas 821 miles from the southeastern oil states of Chiapas and Tabasco to the Texas border at McAllen, will have a capacity of 2.5 billion cubic feet per day and, with construction starting in November, should be ready by late 1979.

Adding further to Mexico's euphoria have been, in the words of Diaz Serrano, "highly encouraging and promising" gas finds in northern states on the Texas border and on the Baja California peninsula.

But Mexico's natural gas wealth is evident in the southeastern oil 36 fields alone. These fields, discovered in May 1972, now account for 63 percent of the country's 1.1 million barrels a day oil output.

Compared with the trans-Canada pipeline, Mexico's line should be relatively easy to build, not only would it be much shorter but it would also cover less rugged territory. Some 126 miles of the pipeline will be concrete-covered and sunk in swamps and flood areas, but most will be across the rolling agricultural lands on the Gulf of Mexico, traversing 17 rivers and 86 roads or railroads.

UNITED STATES-SOVIET RELATIONS

Mr. KENNEDY. Mr. President, on October 26, Marshall Shulman, Special Adviser to Secretary Vance, made an impressive statement on United States-Soviet relations before the House Subcommittee on Europe and the Middle East. I have felt for some time that the country needed a comprehensive and up-to-date assessment of this key bilateral relationship. Dr. Shulman has offered us not only that, but an eminently sensible analysis of the balance we must strike between cooperative and competitive factors, their political, economic, military and human rights dimensions, and the impact of both internal developments and the Sino-Soviet dispute. I hope that this will be the first in a series of administration statements on the encouraging progress underway in U.S. relations with the U.S.S.R. I request unanimous consent that Dr. Shulman's statement be printed in the RECORD.

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

OVERVIEW OF U.S.-SOVIET RELATIONS

Thank you for the opportunity to appear before you today. I believe that your Subcommittee is performing an important service to the Congress and the American public by its series of hearings on how Soviet domestic developments affect our relations with the Soviet Union, and by making available the testimony of many distinguished specialists on this question.

In adding my contribution to this discussion, it is my purpose to deal with this issue within the larger context of the current and longer-term outlook for U.S.-Soviet relations.

Public opinion in the United States has tended to fluctuate widely in its moods about the Soviet Union, based as it has been upon simplified and polarized stereotypes about the nature and purposes of the Soviet system. With the help of the kind of information developed in your hearing, I believe we have both the opportunity and the obligation to build a sounder and steadier base in public opinion for a realistic and consistent approach to our relations with the Soviet Union, without any illusions about the seriousness of the problems involved in this relationship, and without undue expectations about the time and effort that will be required to move step by step toward a less dangerous and more constructive relationship. To develop this kind of public support, we need a more widespread understanding of both the changes and the continuities in Soviet political life, as well as a clear perception of our own interests in the way we would like to see our relationship with the Soviet Union develop over the coming years.

Rather than occupying ourselves with an effort to clarify the ambiguities of the word "detente," it would be more productive, I believe, to make it clear that we start from a frank recognition that the Soviet-American relationship at this period in history is a competitive one, based upon quite different views of the world and conflicting long-term aims; at the same time, it is also true that these two countries, as inhabitants of the same planet, have many overlapping interests. Common sense dictates that we should, while advancing our own interests and purposes energetically, seek to regulate the competitive aspects of the relationship to reduce the danger of war and at the same time to enlarge the area of cooperation where our interests are not in conflict. Over the coming decades, to the extent that future generations of Soviet leaders may see their self-interest in a more constructive relationship, we should make it clear that we would be receptive and responsive to a movement in this direction.

Although Soviet-American relations are but one element of our foreign policy, there is scarcely an aspect of international life that is not affected by this relationship, and that would not be made more difficult and more dangerous by a high level of Soviet-American tension and unregulated competition.

While these considerations suggest that we should welcome and seek to strengthen the prospect of an improvement in Soviet-American relations, they also suggest that substantial progress over the long run will be better served by specific actions on concrete problems based upon mutual self-interest than by symbolic gestures or abstract declarations about detente. Further, they suggest that, although the balance between competitive and cooperative interest may—and we hope will—shift increasingly in favor of the latter, both elements are an integral part of the relationship and there is nothing inconsistent in dealing with both competitive and cooperative aspects of the relationship at the same time.

Although it lacks the headline appeal of simplistic slogans, this measured, balanced and realistic approach can help to avoid the swings of public sentiment between too high expectations and disillusioned hostility. With public support and understanding of this approach, we can sustain a steadier and more consistent policy toward the Soviet Union through the inevitable ups and downs caused by changes in the Soviet Union, in the United States, and in the international scene.

Against the background of these general comments, I turn now to a brief discussion of some specific aspects of the present state of Soviet-American relations: SALT and other arms control issues; areas of political competition; economic relations; exchanges and scientific cooperation, and the issue of human rights. Following this discussion, I will conclude with a review of some developments within the Soviet Union and in the external world environment that may have a bearing on the future course of Soviet-American relations.

DISCUSSION OF CURRENT ISSUES

1. SALT. The most urgent foreign policy issue arising out of the Soviet-American relationship stems from the fact that, as a result of modern military technology, each country has the ability to destroy the other as a functioning society. How we should react to this awesome fact has been the subject of a continuing debate in this country, and is not yet clearly resolved in the public mind. Our fundamental premise is that we must provide adequately for the security of our country and of our allies, and for the preservation of the values of our society. Some argue that we can best protect the security of our country by striving for as much military superiority as possible over the Soviet Union and other possible adversaries. The consequence of this course, however, is to encourage the other side to do the same, with the net effect of a continuing movement toward larger, more complex, and less stable weapons systems on both sides, a steady decrease in our security, and a mounting strain upon our society.

Between this approach and the other extreme of inadequate concern for the importance of a military equilibrium, there is a third course, which has been the declared policy of this government in recent years, whose purpose has been to seek to stabilize the strategic military competition at moderate levels by negotiations with the Soviet Union in the Strategic Arms Limitation Talks (SALT).

We are committed to the proposition that this country must be strong, so that no adversary could ever be in a position to believe that it could attack either this country or its allies without disastrous consequences for itself. Although the United States can, if necessary, keep pace with whatever level of military competition is required, it clearly is in our security interest that the military competition be as stable and reduced to as low a level as can be achieved through negotiations. This is what we have been trying to do in SALT since it began in November, 1969. The Treaty limiting anti-ballistic missiles and the Interim Agreement of 1972 have clearly been useful, but both sides have nevertheless continued to build up their strategic weapons arsenals, qualitatively and quantitatively, in ways that were not limited by the Treaty or the Interim Agreement.

One reason why SALT has not been more effective so far is that the differences in the weapons systems and the geographical situa-

tions of the United States and the Soviet Union have made it difficult to measure with any precision what strategic equality means. Each side is stronger in some aspects of the military competition, and each side has been driven by concern that the advantages of the other might be, or might appear to be, more effective than its own. We have also been experiencing a period of extraordinary technological innovation in weapons, which has made the calculations involved in SALT negotiations incredibly complex.

And yet, despite the complexity of the technical aspects of SALT, the basic policy questions involved come down to a matter of common sense and judgment, on which the President, the Congress, and an informed public can base their decisions.

In the present negotiations with the Soviet Union, an effort is being made to stabilize the military competition, to begin a downward turn to more sensible levels, and to slow down the introduction of new and less stable military technologies. If these negotiations succeed, both countries will be more secure, and the world will be safer.

Within the past month, during the visit of the Soviet Foreign Minister, Mr. Gromyko, to Washington, considerable progress was made in breaking through issues that had been deadlocked for a long time.

Although the Interim Agreement has formally expired, each side has stated that it will not take any actions which would be inconsistent with that agreement while the present negotiations are proceeding. In these negotiations, the basic agreed elements would be incorporated in a new Treaty which would run until 1985. Other elements which are of concern to one side or the other but on which full agreement has not yet been reached, would be held in place by a protocol to the Treaty, whose function would be to give us three years in which to continue efforts to find mutually satisfactory solutions to these problems. At the same time, it is anticipated that agreement will be reached on the principles to govern the next round of negotiations, the main thrust of which will be to work for more substantial reductions than are immediately possible, while preserving the strategic equilibrium between the two countries.

Since there have been continuing and extensive consultations with the Congress on the details of these negotiations under appropriate circumstances, I shall not discuss these details here, but it would be relevant to our subject today to observe that progress in SALT would represent not only a significant improvement in the most important single aspect of Soviet-American relations, but an advance in the most fundamental issue affecting international peace and security.

Although SALT must stand on its own, based upon the enlightened self-interest of the United States and the Soviet Union, it can enhance the prospects for other arms control problems, and for an improvement in other aspects of Soviet American relations.

2. Other Arms Limitation Aspects of Soviet-American Relations. It may be useful to summarize briefly the present status of a number of other arms limitation negotiations in process, since they are more extensive than may be generally appreciated.

A. Indian Ocean—The second round of bilateral US-Soviet talks on this subject, held in Washington in late September, was encouraging. We are seeking Soviet agreement to stabilize the military situation in that region as a first step, and to prevent an arms competition from developing between the two countries. We will be meeting again in the near future for a third round of talks.

B. Comprehensive Test Ban—In these negotiations, which also include the United Kingdom, there has been some progress in moving from the present partial test ban toward one that would include all underground nuclear explosions. Although an agreement seems to be emerging that a ban on nuclear weapons tests would be desirable now, whether or not other nuclear nations are prepared to join in the agreement, differences remain on several questions, including whether peaceful nuclear explosions should be banned. We feel that such a total ban is necessary, and are continuing to negotiate on this question at Geneva.

C. Mutual and Balanced Force Reduction in Central Europe—At Vienna, arduous negotiations involving the United States, the Soviet Union and some of their respective allies, have been seeking an equitable solution to this source of danger and tension. There has not yet emerged any common ground between the Western insistence that reductions should move toward equal levels, and the Soviet insistence that the present balance of forces should be preserved by equal percentage reductions. We are continuing these negotiations, in the conviction that a solution to this problem could contribute substantially to European security and a climate of justified confidence.

D. Chemical Weapons—These negotiations are moving forward reasonably well. The Soviet and American delegations are working on technical details and problems of definition, in the hope that it may be possible by spring to make a joint submission of guidelines to the Committee of the Conference on Disarmament in Geneva.

E. Anti-Satellite Arms Control—Since both the United States and the Soviet Union rely heavily upon satellite reconnaissance to monitor compliance with SALT and other agreements, as well as for early-warning systems, it is obviously a matter of concern that agreement should be reached to prevent either side from developing the capability of destroying satellites. There have been reports that the Soviet Union has been experimenting with such capabilities and, if these were to continue, the United States would clearly draw on its strong technological base to develop capabilities at least as strong as those of the Soviet Union. We are continuing our own research and development work in this area, should it be necessary swiftly to develop such capabilities; at the same time, we are preparing proposals which we hope will head off this potentially destabilizing development.

F. Radiological Weapons—Negotiations are proceeding on this subject at Geneva, with some prospect of reaching agreement in a few months.

G. Advance Notification of Missile Launches—This subject has been included in the strategic arms limitation negotiations, and is now under negotiation at Geneva. The Soviet position has been that necessary safeguards are already provided in two previous agreements—one on Incidents at Sea and the other on Measures to Reduce the Risk of Outbreak of Nuclear War—which oblige either side to notify the other if a test or accidental launch might be subject to misinterpretation. We believe that a more far-reaching obligation on both parties is required if a genuine contribution to mutual confidence is to be achieved.

H. Limitations on Conventional Arms Transfers—Only a beginning has been made in dealing with this dangerous problem, which is made more difficult because it involves conflicting political interests in specific areas and touches on important interests of our allies. Since the United States is the principal source of conventional arms sales and transfers, it has felt the obligation to initiate proposals on this subject, but substantial negotiations have not yet resulted.

I. Non-Proliferation of Nuclear Weapons—This is a subject on which the United States and the Soviet Union should have, and do have, strong parallel interests, and on which a fair degree of cooperation has been achieved. In June, the two sides agreed to subsume their joint efforts on non-proliferation under the aegis of the London Suppliers Group, since the cooperation of other nuclear suppliers is obviously essential.

The key to any effort to halt proliferation is to increase our knowledge of the relationship between the fuel cycle in peaceful applications and the production of nuclear materials from which weapons can be produced. We must not only know this subject well, we must ensure that other nations are also aware of these risks and benefits of nuclear energy. The International Atomic Energy Agency, in which the U.S. and the Soviet Union have generally worked well together, has played a valuable role in this effort. Constructive participation by the Soviet Union in the International Nuclear Fuel Cycle Evaluation Organizing Conference, held recently in Washington, has been a further indication of the high level of cooperation between our two governments on non-proliferation.

J. Theater Nuclear Weapons—Soviet weapons which are targeted on Europe are at present largely unconstrained by any international agreement, and Soviet development of increasingly modern systems such as the SS-20—a mobile, MIRVed, intermediate range ballistic missile—and the Backfire bomber, are causing our Allies increasing concern. We are at this point unsure whether negotiations on these systems, which fall into the "gray areas" between SALT and MBFR, are feasible. The problem is an increasingly important one, however, and one to which we will be giving much thought.

A summary judgment of these varied arms limitation efforts would suggest that a wide number of significant problems are being addressed, some with reasonable prospects of effective results, some less so. In our judgment, these efforts are more likely to be useful to the extent that they seek specific and concrete steps, rather than general declarations. In our view, propagandistic declarations of intent, although they may have a specious public appeal, do not contribute substantially to the solution of concrete problems in reducing the danger of either conventional or nuclear war.

3. Areas of Political Competition. Since the Quadripartite Agreement of 1971 on Berlin, the most crucial area of potential confrontation between the United States and the Soviet Union—Central Europe—has been relatively stable. By comparison with earliest periods, it is an important step forward that Europe is now in the category of geographical areas where the risk of confrontation has been substantially reduced. Although Europe—East and West—continues to be a vital area of political competition because of its significant industrial resources, the conduct of that competition can be made less dangerous to the peace of the world if more substantial progress is achieved in the negotiations at Vienna on the reduction of military forces in the area.

By contrast, the Middle East still poses a substantial risk of hostilities which could involve the Soviet Union and the United States. For thirty years, through four Arab-Israeli conflicts, Soviet and American interests have intersected in the Middle East. While Soviet influence in the area has had its ups and downs, it is obvious that the area is of considerable importance to the Soviet Union, and that a constructive rather than an obstructive role by the Soviet Union would be an important element in any effort to reduce the danger of another Middle Eastern war.

In the current situation, we have been able to work both with Israel and the Arab parties in starting the process toward a settlement, but to achieve a comprehensive and durable solution requires direct negotiations between the parties. This can best be achieved, we believe, under the auspices of a Geneva Conference, with the cooperation

and support of its two co-chairmen, the United States and the Soviet Union.

It should be made clear beyond any doubt that it was this objective that was the sole motivation in our joining with the Soviets in the recent Soviet-American statement on the Middle East during the visit of Foreign Minister Gromyko to the United States. It would be an error to believe that the statement was inspired by any desire to use the Middle East as a vehicle for improving United States-Soviet relations.

In Africa, it must be said that Soviet actions over the past two years have shown a lack of restraint. In Angola and also in the war between Ethiopia and Somalia, we feel that Soviet policies—especially arms supply—contributed to local conflicts in a way that seriously destabilized the region. In other African areas of potential conflict—Rhodesia and Namibia—there have been set in motion initiatives which could lead to a settlement enjoying wide African support. It has been our purpose to encourage the Soviet Union to adopt a constructive attitude toward these initiatives, and to avoid any further East-West polarization of Africa. We hope and expect that the Soviet Union will support the essential role of the United Nations in working toward settlement in these areas.

In a summary assessment of this brief review of the global aspect of Soviet-American relations, it can be said that although realism compels us to accept the political competition between the Soviet Union and the United States in various areas of the world as a fact of international life, there has been some modest progress in moving toward a codification of the restraint that can be expected in greater or lesser degree in the different areas. This is motivated not by altruism but by self-interest on both sides, since it is painfully evident that an unregulated competition can dangerously exacerbate the many local sources of conflict which have arisen and will arise, and the possibility of local conflicts spiralling out of control is always present.

4. Economic Relations. The development of economic relations is clearly an important component of the total relationship between the United States and the Soviet Union. In recent years, the Soviet Union has indicated an active interest in expanding its importation of agricultural products, consumer goods, manufactured goods, and advanced technology. It would also like to expand its export of manufactured goods as well as raw materials to Western markets. The development of this trade with the United States and other advanced industrial nations can be a stabilizing factor in Soviet policy toward the world.

There are also areas in which Soviet and U.S. economic policies are affected by and have a critical impact on the rest of the world. Foremost among these are international grain trade and energy problems. The cooperation of the Soviet Union in the orderly allocation and handling of food reserves as well as the supply and availability of oil will be increasingly important.

Questions have been raised about the balance of political risks and benefits to the United States that need to be weighed in determining a national policy on the expansion of economic relations with the Soviet Union. Clearly, a period of national discussion and consultations with the Congress lie before us as we seek to clarify such issues as the extension of Most Favored Nations status to the Soviet Union, what criteria should govern the extension of credits through the Export-Import Bank, what criteria should govern the transfer of technology, to what extent we should participate in energy and other resource development projects, etc. We shall also have to address the question of how the necessary degree of coordination can be achieved between the government and the private sector, and between the United States and its allies.

It has been the declared policy of this government that it looks toward an improvement in economic relations between the Soviet Union and the United States as conditions make this possible, and in my view it would be desirable to move in this direction by prompt and measured steps. The concrete measures by which this policy can be implemented will be determined on the basis of consultations with the Congress.

5. Scentific, Academic and Cultural Exchanges. Between 1972 and 1974, the United States and the Soviet Union signed a series of eleven bilateral agreements to foster cooperation in a variety of technical fields: health, environmental protection, artifical heart research, energy, atomic energy, agriculture, housing, transportation, oceanography, space, and science and technology. Prior to 1972, our cooperative relations with the Soviet Union in these fields had been largely restricted to one-time exchanges. The bilateral agreements added an element of continuity to our cooperative ventures and have stressed joint research efforts.

We have pursued a variety of objectives in implementing the agreements: achievement of scientific or technical benefit, promotion of commercial relations, broadening and deepening our overall relations with the Soviet Union, and expanding our access to their closed society. Participating U.S. agencies report satisfactory or betore progress toward these goals. As evidence of our determination that continued participation remains in our interest, during 1977 we have agreed to the extension of five agreements—artificial heart research, health, environmental protection, space, and science and technology—for a further five years. In 1976 under these agreements, 876 Soviet participants travelled to the United States and 973 U.S. participants travelled to the Soviet Union.

Other programs, notably that of the National Academy of Sciences, bring Soviet and American scientists together, in some cases for collaborative research of up to a year's duration. Knowledge and understanding of one another has grown as a result of a 20-year-old official exchanges agreement, under which approximately 350 scholars, students and lecturers now travel annually between the two countries.

Under the same agreement, six Soviet performing arts groups have visited the U.S. this year and two American groups have gone to the Soviet Union. Soviet and American traveling exhibitions are to tour nine cities in each country in the next three years. Last year a Soviet exhibit on science toured the U.S. and a U.S. exhibit on photography has just completed a Soviet tour. In addition, we had a Bicentennial exhibition in Moscow and the Soviets in turn will hold a 60th Anniversary exhibition in Los Angeles next month.

In addition to the scientific and scholarly advances that flow from these exchange arrangements, we attach importance to the opportunities for personal contacts and increased insight into each other's society. While there are asymmetries between the two societies that complicate the problem of managing these exchanges so that their benefits are equally distributed, every effort is being made to ensure that this is the case, and significant improvements have been registered since the exchanges began.

6. Human Rights. Although the human rights issue has been a source of contention in U.S.-Soviet relations, it is our hope that over the longer run, it will be seen to have had constructive effects.

At the philosophical level, we believe that there can be a useful dialogue between societies that start from the needs of the society and emphasize the fulfillment of material needs, and those which start from the dignity and worth of the individual and emphasize the fulfillment of political rights.

It is obvious, however, that the human rights issue also raises political and bureaucratic problems—that it touches on fundamental questions of political control, and therefore often stimulates neuralgic responses. We have sought to make it clear in our bilateral discussion on human rights issues, and at the Belgrade conference on the Helsinki Agreement, that the commitment of this Administration to the advancement of human rights is an integral element of our foreign policy generally, and is not directed against the Soviet Union in particular. There has not been and there will not be any slackening in this commitment. We have sought the most effective means by which to realize our purpose, which is to seek constructive results in improving the lot of individuals concerned and to encourage long-term trends in the world toward a wider respect for the dignity and worth of human beings.

We do not see this objective as inconsistent with the desire to work toward reduced international tension and improved Soviet-American relations; on the contrary, we believe that in the long run the reduction of international tension can contribute to an easing of the internal pressures which restrict the fullest realization of the creative potential of men and women everywhere.

EFFECT OF INTERNAL DEVELOPMENTS IN THE SOVIET UNION

Against the context of this brief overview of US-Soviet relations, I turn now to some remarks on the subject of internal developments within the Soviet Union, which have been the central theme of this series of hearings. Our thinking about the relations between these two countries clearly rests upon the assumptions we make about domestic trends within each of the two countries, although in practice these assumptions often remain unagreed or unarticulated in our discussions of the subject.

Some students of the Soviet Union tend to emphasize the historical continuities in the Russian experience; others, the changes in the complex responses of Soviet society to advancing industrialization. There are obviously important truths in both perspectives, and both have to be taken into account in our thinking. The Soviet system reflects the centuries of centralization, autocracy, bureaucratism, and isolation from the Western traditions which has marked the Russian experience and been carried over into the Soviet period. At the same time, it is also true that the Soviet Union is constantly in a process of change in significant respects, reflecting the tugs and hauls of competing pressures and interests characteristic of developing societies elsewhere.

Notwithstanding the extreme centralization which marks Soviet institutions, the central drama of Soviet political life is between tendencies toward orthodoxy and toward modernization, contending in every aspect of domestic and foreign policy, sometimes perhaps within the minds of individual Soviet leaders.

Although in the limited public impressions we have of the Soviet Union through Westtern press accounts, the main divisions appear to be between the dissidents and the Soviet Establishment, the fact is that even within these groups there are significant differences as well as the many other gradations of opinion that need to be taken into account in Soviet society and Soviet political life. Although the population as a whole appears to be extremely resistant to change and largely apolitical, there can be observed at both ends of the political spectrum—among the dissidents as well as among the Party elite—the modern equivalent of the dual strains in Russian history of the Slavophiis and the Westerners. Nationalism is reflected

in the Soviet Union not only among the various minority nationality groups, but also among the Great Russians; similarly, the impulse toward modernizing the country along Western lines also cuts across other divisions in the political spectrum.

These divisions have their effects on two of the most interesting questions affecting the present and future development of the Soviet Union.

The first of these stems from the fact that the Soviet Union is on the threshold of a wholesale generational turnover at the upper levels of its power structure. Not necessarily in the next succession, but within the foreseeable future, it is clear that an ascendant generation will be holding the levers of power, and one of the most intriguing questions before us concerns the character of that generation, men now in their forties and early fifties. We know that by and large they tend to be better educated than the present ruling group, and more familiar with the outside world, but beyond that, they do not appear to be a homogenous group. Whether they will tend to move toward nationalism and orthodoxy, or toward Western-style modernization, we cannot now predict. All that we can say, perhaps, is that to the extent they see their interest in a responsible involvement of their country in the world economy and the world community, they should not feel from what we do or say that this option is closed to them.

This is related to the second question: how the Soviet leadership will deal with some fundamental structural problems in the Soviet economy. Behind the problems of low productivity and lags in the advanced technological sector are organizational problems that inevitably involve anomalies in the highly centralized political control system. Conflicting approaches to the solution of these problems reflect the divisions between the impulses toward orthodoxy versus modernization mentioned earlier, and also appear to have some correlation with the differences between the generations. While we should not underestimate the capability of the Soviet system to manage its problems on a day-to-day basis without any clear-cut solutions to these choices, it may have some relevance for our own policy choices that the development of economic relations with the advanced industrial societies of the West is bound to have some influence on the directions that will emerge.

EXTERNAL FACTORS

At least brief mention should be made of a few of the most important of the factors external to the Soviet Union likely to influence the course of Soviet-American relations.

The Sino-Soviet relationship obviously deeply influences the Soviet outlook, involving both rational calculations and visceral fears. Some of the effects of this Soviet preoccupation may be salutory, and some may be disadvantageous to our interests. As a general principle, our efforts to move toward normalization of our relations with the Peoples Republic of China rest upon the desirability for our own interests and those of the international community of that outcome. It should not be interpreted as an effort to manipulate the geopolitical triangle in order to achieve short-term benefits. The stabilization of the strategic military competition cannot be fully realized without the participation of the Peoples Republic of China and until that is possible, there will remain significant limits on how far the Soviet Union and the United States can go on a purely bilateral basis.

Among other external factors, perhaps the most important for its influence on the Soviet-American relationship is the capability of the international community to absorb the thrust of the Soviet Union toward expanding its political influence and establishing itself as a global power. It is a characteristic mark of this period in history that the rise of the Soviet Union as a world power coincides with many other profound transformations in the international order. The Soviet Union seems not to have fully perceived how much the revolutionary transformations of this age have moved from the patterns of traditional Marxist-Leninist thought, and it is not clear how Soviet aspirations will adjust to the new patterns.

In this connection, a significant practical aspect of the question is the capability of the international community to deal with the tensions and potential conflicts between the developing nations and the industrialized nations. The inter-section of the East-West and the North-South divisions in international politics requires a broadening of our perspectives over those to which we have been accustomed in the past. Here the balance between competitive and cooperative elements in the Soviet-American relationship has to be tested and assessed freshly in each particular circumstance. And here the balance between our national rivalry and our common stake in the solution of such global problems as resources, food, energy and the environment require a constant interplay between short-term advantages and longer-term imperatives. We can only claim to have approached the threshold of this problem, but events move with such rapidity that we may not be granted the luxury of a leisurely adjustment in our habitual modes of thought. To the codification of the restraints we seek in the Soviet-American competition as it bears on local conflict situations, we seek to add the more positive dimension of active cooperation between the Soviet Union and the United States in supporting international institutions that are emerging to deal with these global problems.

Those, Mr. Chairman, are some of the perspectives I would wish to emphasize in response to the questions before your Subcommittee.

ARMS CONTROL IMPLICATIONS OF CRUISE AND MOBILE MISSILES

Mr. KENNEDY. Mr. President, on October 7, 1977 I joined Senators MATHIAS and MCINTYRE in a colloquy on cruise and mobile missiles, which I found helpful in clarifying the arms control implications of their further development and deployment. At that time, a number of colleagues joined us in expressing the most serious concerns about moving ahead with the M-X mobile missile, not only for SALT but for the future security of our country. These concerns are set forth eloquently in an October 10, 1977, editorial of the New York Times, which I believe all of us would do well to carefully consider prior to the next military appropriations cycle. I ask unanimous consent that the editorial be printed at this point in the RECORD.

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

MXING UP SALT

While President Carter has been working toward a new agreement with Moscow to limit strategic missiles, the Air Force has been burrowing away in the Pentagon with plans for a new giant and mobile missile. If it should ever see daylight, it will profoundly change American strategic policy and increase the risk that a diplomatic crisis might escalate to nuclear war.

The subterranean image is appropriate. Each huge "MX" (meaning "missile, experimental") and its launching crew would travel through a concrete tunnel a dozen miles or so in length. It would, when launched, burst through the surface at some surprise spot along the tunnel.

MX is a response to two possible threats and an alleged need. One threat is to our present force of land-based missiles (ICBM's). In some rather implausible scenarios, which assume a perfectly executed massive Soviet attack, they might all be destroyed in their underground silos. The second threat is to Air Force's job— and jobs. One way to respond to the increasing vulnerability of our present ICBM force would be to place a larger proportion of missiles on virtually invulnerable Navy submarines. But given President Carter's decision not to build the B-1 bomber, de-emphasizing the land-based missile force would leave the Air Force with no new major strategic weapons system—a real threat to any military bureaucracy.

The alleged need as defined by the Air Force is for a very large missile capable of destroying Soviet land-based missiles in their fortified silos. Since the Russians rely more heavily on large land-based missiles—they represent some 70 percent of Soviet strategic power compared with only 25 percent for the United States—MX would amount to a first-strike weapon: A force of 300 MX's could destroy the entire Soviet land-based force in half an hour.

Imagine a moment of escalating tension: Moscow would face the dilemma of either firing first or risking the destruction of its missiles in the ground. The Air Force contends it needs such threatening missiles to match those the Soviet Union is now deploying. But so long as the bulk of American weapons is invulnerable to a first-strike, no rational Soviet leader would attempt it. So there is no reasonable case for a new family of heavy American missiles like the proposed MX. That leaves the question of whether to deploy smaller missiles in mobile form, at much less cost.

The political puzzle is how the hugely expensive MX, each costing about $100 million, has got so far. Last year the Senate Armed Services Committee—a body hardly unsympathetic to military requests—asked the Secretary of Defense for a full study of the future of the land-missile force and its role in American strategic policy. The committee stipulated that the conclusions "should represent Presidential policy." The study has not been made.

It is clear, however, that it is not President Carter's policy—as it was not his predecessors'—to pose a first-strike threat to Soviet nuclear forces. Moreover, the President hopes that arms control agreements will ban all mobile missiles, for once deployed they could not easily be counted and limited.

Last week it became known that Secretary of Defense Harold Brown had tentatively recommended "full-scale" development funds for MX. His spokesman denied that the recommendation was merely a "bargaining chip" to be traded away in the present SALT negotiations. Even if it is, the President should reject the idea. Today's bargaining chips have a disturbing tendency to become tomorrow's arms control problems. The last "chip" was the cruise missile, now causing serious difficulties for arms control. Once again, technology seems to be driving policy—and driving it in the wrong direction.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

B. Mahlon Brown III, of Nevada, to be U.S. attorney for the district of Nevada for the term of 4 years vice Lawrence J. Semenza.

Gerald D. Fines, of Illinois, to be U.S. attorney for the southern district of Illinois for the term of 4 years vice Donald B. Mackay, resigned.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee in writing on or before Friday, November 4, 1977, any representations or objections they may wish to present concerning the above nominations with a further statement whether it is their intention to appear at any hearing which may be scheduled.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will come in at 10 o'clock tomorrow morning. There are no special orders. After the two leaders or their designees have been recognized under the standing order, the Senate will resume consideration of the unfinished business. No amendment is presently pending, but Senators will be on hand, I am sure, to call up their amendments. Rollcall votes will come at any time on tomorrow.

I hope that we will have a good day with considerable progress made.

Mr. RANDOLPH. Mr. President, will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. RANDOLPH. I realize, Mr. President, that perhaps this is a question for which there might not be an answer, but does the leadership feel there might be a disposition of this measure tomorrow evening?

Mr. ROBERT C. BYRD. Mr. President, may I say to my friend, the distinguished senior Senator from West Virginia, that I had hoped the matter would be disposed of tomorrow. But from the count that was taken earlier this evening, I suppose there remain about 18 or 19 amendments to be disposed of.

There are some amendments which may go rather quickly. I have no way of knowing. This morning, for example, I believe there were 10, 12, or 15 amendments which were called up, debated briefly, and accepted by the committee. That could happen tomorrow, but I doubt it.

I would imagine that most of the amendments that are going to be accepted have been offered already.

The manager of the bill indicated to me just a little while ago that he would not like to go beyond 5 p.m. tomorrow afternoon.

As I said earlier, I lean on the manager of the bill and the ranking members to carry the load. That being the case, I doubt that we will dispose of this bill tomorrow.

Mr. RANDOLPH. Mr. President, I certainly am in agreement with the majority leader when earlier in colloquy he indicated the tremendous importance of the work in the hands of the manager of the bill. I think that is very important.

Mr. ROBERT C. BYRD. Always. The managers of bills—Mr. RANDOLPH, Mr. STENNIS, whomever it might be, be it the chairman of a committee or whomever—that man must carry the burden. I long ago gave up trying to whip people. I found out I could not do very well at that. All I can do is depend upon the managers and the ranking members. They do their best. They conduct the hearings and give their time to the consideration of the bill. One simply has to lean upon them to carry the burden.

Mr. RANDOLPH. I have this final comment, Mr. President: I believe the leadership on both sides of the aisle, Senator BYRD and Senator BAKER, are to be commended. I believe they have demonstrated a positiveness that has been expressed time and time again—to have adequate debate and yet move the Senate, hopefully, toward an adjournment. I sense that constantly and Senators generally approve of it.

I personally hope that tomorrow we might conclude, though it is understandable we might not.

This is important legislation. The country has varying views on it, as Members of the Senate have expressed and voted. But they do believe that there should come from this Congress, before we go home—whatever date that may be—a program to at least partially solve the energy problems of this country. I know that both of our able and effective leaders here are dedicated to that resolve.

Mr. BAKER. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. I once again rise to express my deep appreciation to the distinguished senior Senator from West Virginia. I have served with him and under him as a member of the Committee on Public Works, now the Committee on Environment and Public Works. I know much of what I know about the Senate through his tutelage. For that reason, I am also grateful to him for his generous remarks tonight.

Mr. ROBERT C. BYRD. Mr. President, I cannot recess without saying Senator RANDOLPH is one of the most cooperative, courteous, and understanding chairmen we have in the Senate. He is a very able chairman. The leadership appreciates it when Members cooperate and work together.

We have a very difficult matter before the Senate now. The Senator from West Virginia (Mr. RANDOLPH) has said that we expect the American people to sacrifice in an effort to solve the problem, and the Senate is going to have to show that it is willing to find a way to work out compromises. We are all going to have to compromise some, if we reach a solution to this problem.

So, as he has said, the Senate is expected to deliberate, but it is also expected to reach a decision at some point. I feel that it will, in due time.

RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 10 o'clock tomorrow morning.

The motion was agreed to and, at 10:39 p.m., the Senate recessed until, Saturday, October 29, 1977, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 28, 1977:

NATIONAL SCIENCE FOUNDATION

James Arthur Krumhansl, of New York, to be an Assistant Director of the National Science Foundation, vice Edward C. Creutz, resigned.

U.S. METRIC BOARD

The following-named persons to the positions indicated:

Louis Polk, of Ohio, to be chairman of the U.S. Metric Board for a term of 6 years (new position).

To be members of the U.S. Metric Board for the terms indicated (new positions):

For a term of 2 years:
Carl A. Beck, of Pennsylvania.
Francis R. Dugan, of Ohio.
Edward L. Ginzton, of California.
Henry Kroeze, of Wisconsin.
For a term of 4 years:
Paul Block, Jr., of Ohio.
Thomas A. Hannigan, of Maryland.
Frank Hartman, of Michigan.
Sandra R. Kenney, of Maryland.
Roger Ellis Travis, of Massachusetts.
For a term of 6 years:
Sydney D. Andrews, of Florida.
Joyce D. Miller, of New York.
Glenn Nishimura, of Arkansas.
Satenig S. St. Marie, of Connecticut.
Adrian G. Weaver, of Connecticut.

EXTENSIONS OF REMARKS

NATIONAL WARRANTY UPDATE CONFERENCE

HON. JOHN E. MOSS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 28, 1977

Mr. MOSS. Mr. Speaker, on November 3 and 4, 1977, the Consumer Federation of America, the U.S. Chamber of Commerce, and the HEW Office of Consumer Affairs will conduct a conference on the Magnuson-Moss Warranty-FTC Improvement Act. The purpose of the conference is to examine whether the Warranty Act and its implementing regulations have fulfilled the expectations of consumers and business.

As cosponsor of the act, I salute the efforts of these three groups to evaluate the effects of the legislation. Congress passed the Warranty Act more than 2½ years ago after numerous studies had documented the need for the legislation. Extensive hearings by the Subcommittee on Commerce and Finance further established the need for legislation which would: One, require that the terms and conditions of written warranties on consumer products be clearly and conspicuously stated in simple language; two, prohibit the proliferation of