SENATE—*Wednesday, October 1, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

I will lift up mine eyes unto the hills, from which cometh my help. My help cometh from the Lord, which made heaven and earth.—Psalm 121:1-2.

*Thus saith the Lord God, the Holy One of Israel * * * "in quietness and in confidence shall be your strength."*—Isaiah 30:15.

But they that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; and they shall walk, and not faint.—Isaiah 40:31.

Loving Lord, in the busy, pragmatic world of politics, it is easy to trust human wisdom and strength exclusively—and capitulate to exhaustion. It is easy to ignore God and spiritual issues as unreal and impractical—and deprive ourselves of the unlimited resources You promise to supply. Thus we weaken ourselves physically, emotionally, and mentally and diminish our decisiveness. In this pressure cooker of last-minute legislation—give us ears to hear Your voice—and wisdom to respond to Your gentle invitation—"come unto me all you who labor and are heavy laden, and I will give you rest." Matthew 11:28. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, is recognized.

Mr. DOLE. I thank the distinguished Presiding Officer, the President pro tempore, the Senator from South Carolina [Mr. THURMOND].

SCHEDULE

Mr. DOLE. Under the standing order, the leaders have 10 minutes each. I reserve the time of the distinguished minority leader.

Then there will be special orders not to exceed 5 minutes each in favor of Senators HAWKINS, PROXMIRE, CHAFEE, LAUTENBERG, BENTSEN, GORTON, and BAUCUS.

VITIATION OF ORDER FOR SENATOR WILSON

Mr. DOLE. I ask unanimous consent that the special order for Senator WILSON be vitiated.

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

Mr. DOLE. We will conclude morning business at 10:30 following special orders. Up to that time, Senators may be permitted to speak for not more than 5 minutes each. At 10:30, we resume consideration of House Joint Resolution 738, the continuing resolution, if we can get some agreement when we are going to vote on South Africa; otherwise, that will be the pending business. We could be on that throughout the day and until the cloture vote tomorrow.

We are hoping we can obtain an agreement of 6 hours of debate starting tomorrow and vote at 4 o'clock. We almost have it. We still have two Senators who are not yet agreed.

If we are on the continuing resolution today, I am advised by the chairman—just a few moments ago—that it is going to be a long, long day and evening. There are still 182 amendments pending. I hope many of my colleagues will decide not to press their amendments. The chairman hopes to complete action on this bill before morning—that is tomorrow morning.

FAILURE TO PASS IMMIGRATION BILL

Mr. DOLE. Mr. President, last week, the House of Representatives rejected out of hand the opportunity to debate and vote on a much-needed overhaul of the Nation's immigration laws.

This unfortunate decision on the part of the House makes it the third time that the Senate has approved immigration reform only to see it die in the House. That the Senate was able to successfully deal with this very complex and controversial bill is largely due to the leadership and perseverance of the assistant majority leader, Senator ALAN SIMPSON.

As chairman of the Immigration and Refugee Policy Subcommittee, Senator SIMPSON has guided this bill through the rough waters of subcommittee, committee, floor, and into conference action. His dedication to seeing to it that Congress grapples with this issue—an issue that affects the lives of literally millions of people—is well known. And his frustration at the refusal of the House to even debate the issue is more than understandable.

Although the time is short, I hope the House will reconsider its action. Administration officials have indicated that if this Congress does not adopt immigration legislation, it is highly unlikely it will push for passage of immigration reform in the next Congress.

Mr. President, it would be shameful for Congress to turn its back on a problem that cries out for a remedy. Like so many knotty issues Congress copes with, there is no perfect solution. But the bill approved by the Senate addresses the major problems associated with illegal immigration. It attempts to curb the flow of illegal aliens into the United States by penalizing employers who knowingly hire these individuals. The Senate measure also establishes a program to grant legal status to millions of aliens already in the United States who meet certain requirements.

There has been some indication that the House may yet find a way to act on immigration before we adjourn. It is my sincere hope that this happens. The myriad problems that flow from uncontrolled illegal immigration into the United States will not disappear. And it is Congress' responsibility to find the best possible way to cope with this reality.

Mr. President, I ask unanimous consent that an editorial from the Chicago Tribune of September 30, 1986, entitled "To Rescue the Immigration Bill" be printed in the RECORD.

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

TO RESCUE THE IMMIGRATION BILL

The U.S. House resorted to parliamentary maneuvers to deliver a near-fatal blow to the immigration reform bill late last week. It is still theoretically possible to revive the long-needed bill through other legislative strategies before time runs out on this congressional session, but the prognosis for the measure is grim.

Immigration reform bills have been kicking around Congress for six years. Even though the Senate approved a sensible compromise measure almost a year ago, the House has been bickering for months over specific provisions—especially a disastrous amendment proposed by Rep. Charles Schumer (D., N.Y.). Squabbling over the Schumer amendment led the House to send the bill back to committee, where it probably will die.

Where the House and Senate bills differ most is how far to yield to demands by growers for cheap farm labor. The Senate measure provides for 350,000 "guest workers" to come into the country to work on farms for up to nine months. Rep. Schu-

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

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mer's amendment to the House bill would grant permanent resident status—with a full range of public benefits—to illegals who did farm work for a minimum of 60 days during the year that ended in May, 1986. Those who left the farm jobs could be replaced, creating an enormous, open-ended amnesty program to lure illegals into the country.

The immigration bill also aims to reduce the lure of jobs in the United States by levying sizable fines against employers who hire undocumented workers. It calls for pilot programs to test call-in identification services (similar to those used to check credit cards) to help employers verify identifications.

To help illegal aliens already in the United States, the legislation would grant temporary resident status to those who have lived here since 1980 (Senate version) or 1982 (House measure). This would open the way for them to become permanent resident aliens in two years and full citizens in five more.

So concerned has the Reagan administration been that Congress would lose its nerve and once more stall on immigration reform that it has been trying to piggyback the issue onto the nation's rising concern about illegal drugs. Both Atty. Gen. Edwin Meese and Immigration and Naturalization Commissioner Alan Nelson have warned that it is almost impossible to halt the flow of drugs into the United States as long as millions of people illegally cross the Mexican border each year.

But drug smuggling by illegal immigrants plays only a very small role in either the drug or the immigration problems that trouble this nation. Fewer than one percent of illegal aliens who are apprehended at the border are carrying illegal drugs. The U.S. Border Patrol estimates it has seized about $150 million worth of drugs in 1,227 incidents in the year just ending—hardly a big haul as drug smuggling goes.

The case for passing the immigration reform bill doesn't need a drug connection to bolster it. The United States has lost control of its borders. Illegal immigration is increasing rapidly; this year, the INS expects to turn back 1.8 million people attempting to enter the country illegally—twice the number in 1980. At least that many more will be successful and join the 3 million to 12 million illegals now living here in legal limbo, vulnerable to economic exploitation and adding to the ranks of the nation's poor.

The long U.S.-Mexican border is impossible to patrol adequately. Economic and population pressures in Mexico and civil upheaval in Central America are swelling the numbers of people willing to risk apprehension to seek work in the United States. That's why an immigration reform bill that reduces the availability of jobs is urgently essential.

A small number of growers—most of them in California—should not be able to set U.S. immigration policy. Nor should Hispanic minorities whose reaction some members of Congress fear. The House is shirking its responsibilities to the nation if it lets six years of work on immigration reform expire for lack of political courage.

It will take extraordinary legislative effort to save the immigration reform bill now. But Congress should pass it—without the Schumer amendment—before this session ends. The bill won't keep all illegals from crossing the borders. But it should reduce their numbers and that should give the INS some better odds of apprehending those who still try.

RECOGNITION OF MINORITY LEADER

The PRESIDING OFFICER (Mr. LAXALT). Under the previous order, the Democratic leader is recognized.

RESERVATION OF MINORITY LEADER'S TIME

Mr. BYRD. Mr. President, I ask unanimous consent that I may be able to reserve the remainder of my time under the order.

I do this first to thank the distinguished majority leader for his courtesy in reserving my time; second, to explain that I have been with the distinguished Senator from Connecticut [Mr. WEICKER] in an appropriations conference with the House conferees, since he was there probably before 8 o'clock and I was there at 10 minutes after. For that reason, I could not be on the floor at the opening. I thank the distinguished majority leader.

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

RESERVATION OF MAJORITY LEADER'S TIME

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. I reserve the remainder of my time.

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from the great State of Florida is recognized for not to exceed 5 minutes.

Mrs. HAWKINS. I thank the distinguished Presiding Officer.

DRUGS AND OUR SCHOOLS

Mrs. HAWKINS. Mr. President, nowhere is the drug threat more menacing to our society than in our schools. A 17-year-old South Dakota girl discloses that over half of the students in her high school smoke pot. "People always have it," she says. "You have the right connections, and you get it."

Speaking of the right connections, a child is sitting in his classroom in Washington, DC, when his electronic pager goes off. I came along in a simpler time when kids didn't carry beepers to school. The kid either asks to go to the bathroom, or waits until his next break, to answer the beep. This child and his beeper are part of an elaborate communications scheme to keep drug users in touch with drug suppliers. Students are involved in this network as both buyers and sellers.

Then there are the "12 dollars and a half clubs." Kids pool their pocket money in order to finance a drug buy.

In Texas, a 9-year-old boy died as a result of a severe reaction to cocaine. It was not the first time he had used the drug. To those who pooh-pooh the idea of drug testing in our schools, I say: "If that child had been given a drug test, and corrective steps taken, he might be alive today." Ask that child's parents how they feel about drug testing.

In Chicago, an 8-year-old named Victor smoked his first pot. By the time he was 10 he was hooked. He got in trouble at school—he threw a chair at a teacher. Earlier that day he had smoked a couple of joints of marijuana. By the time he was 13, Victor had tried cocaine, heroin, LSD, and PCP. He was a veteran drug user. He paid for the habit by stealing cars and stereos. He and his friends would strip the cars and sell the parts. His luck ran out when he tried to run a police juvenile officer off the road in a stolen car.

However, in a way that was when his luck turned. He was given the choice of serving 3 to 6 years in jail or entering a drug rehabilitation program. He did that and won a new lease on life. Victor is now 16 and is back in school, a special alternative school for older students. And he has new hope for a longer, healthier, more purposeful life.

I shall never forget a hearing conducted by my Subcommittee on Investigations and Oversight on January 27, 1982. One of the witnesses, Terry from Virginia, testified that she first smoked marijuana in the sixth grade. By the time she was 16, Terry was a full-fledged junkie, supporting her habit by stealing. David from Maryland told how he started getting high in the sixth grade, graduating to acid and LSD a year later and ultimately to quaaludes. Penny, a pretty blond girl from Miami, started on drugs at age 12. She got them at school.

By the time she was 18, she had a record of 18 felony charges, including robbery and stabbing people. All of these youngsters have now been rehabilitated, but what a price they, and society, paid so drug dealers could make a few extra bucks.

Every school has its special area where drugs are used. It may be the rest rooms, the boiler rooms, an isolated section of the gym. It could be the parking lot, a nearby park, or behind a hill on the school grounds out of sight of school authorities. That is the place kids go to smoke pot, do a line of coke, or a hit of acid. That is the place where some of the deals are made among student buyers and sellers. All the kids know where the action is—the word gets around.

Mr. President, this is the grim picture at our Nation's schools. Illegal

drugs, like other ills of society, have spilled over into our schools. School officials need our sympathy, our understanding and our help to deal with the drug crisis in our Nation's schools.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from Wisconsin [Mr. PROXMIRE] is now recognized for a period not to exceed 5 minutes.

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

VERIFICATION—DOES IT WORK? OR IS IT A FRAUD?

Mr. PROXMIRE. Mr. President, opponents of arms control have zeroed in now on one crucial aspect of all arms control agreements with the Soviet Union. It is verification. We live in a world in which the nuclear weapons arms race is madness. We know that an arms race will be immensely expensive to both sides. We know it will increase the danger and devastating capacity of nuclear weapons. We know it accelerates the risk of an accident that could spark a nuclear holocaust. We know neither side can win if either massive arsenal should ever be used. We know both sides would not just lose. We know both sides would be utterly destroyed. We know the people of our country yearn for arms control.

In spite of all this, there is one inviting and easy target for critics of arms control to shoot at. They argue arms control agreements with the Soviet Union are a snare and a delusion. For the nearly 70 years of their iron control of the Russian Government, the Soviet Communist Party has given new meaning to that most morally destructive of all philosophies—that the end justifies the means—any means, however false or deceptive it may be. What does that mean? That means to advance the interest of the Soviet Union the Russians will lie and cheat at every opportunity. So how do we negotiate an agreement to limit any aspect of the arms race with such a country? How do we know such an agreement will not turn out to be the equivalent of unilateral disarmament? We keep the agreement as an honorable nation. They violate it. We limit or reduce our nuclear arsenal. They build theirs up. We do not trust them. They do not trust us. So how do we negotiate an agreement between two adversaries in an atmosphere of no trust? Especially how do we work out such an international agreement where there is no super enforcement authority? If either party violates the agreement, where is the court that can enforce the contract? There isn't any.

Does this mean we throw in the sponge on arms control? Should we forget it? Should we accept as a fact of life the certainty of Soviet violation of any agreement? Should we rely on the arms race as our only salvation? Mr. President, on September 19, in an editorial headlined "The Verification Fraud," the Wall Street Journal concludes that the Soviets do not even want token verification. "They are only interested in appearances. Thus, prospect for a verifiable nuclear weapons pact are as remote as ever." The Journal claims that none of the arms records signed by the Kremlin during the 1970's contained effective compliance provisions and "the Soviets violated every one of them."

What is the answer? Yes, indeed, there have certainly been violations of the arms control treaties by the Soviets. To what effect? In every case where allegations of Soviet cheating have been made, there has been no significant military advantage for the Soviets. In each case the Soviets have denied that they have cheated. We insist they have. Certainly the location of the Krasnoyarsk radar hundreds of miles inside the Soviet border is a prima facie violation of the ABM Treaty that permits such radars on the perimeter of each superpower. Does that radar have any military significance? Not without the deployment of Soviet interceptors. Have the Soviets deployed such interceptors? No. Is that Krasnoyarsk radar our principle violation charge against the U.S.S.R. with respect to the ABM Treaty? It is, indeed.

How about SALT II? What allegations have we made of Soviet violation of the SALT II Treaty? We have charged that the Soviets have encrypted, that is, encoded their telemetry—that is the signals from their missile tests. And we charge that they have built a new missile—the SS-25. We say both violated SALT II. SALT II permits the encryption of telemetry, unless the encryption prevents verification of compliance with SALT II. The Soviets say their encryption does not prevent verification. We charge that it does. They ask us to tell what specific encryption prevents our verification. We refuse to say because such a revelation would tell them more about our intelligence than we want to tell. So what should we do? We should serve notice on the Soviets that we want to reopen SALT II and ban encryption of telemetry period. Of course, the President has announced that SALT II which was never ratified and expired on December 31, 1985, is now dead. But if we revive it, a clear prohibition of all encryption could and should be one of our conditions for renewing it. Meanwhile—once again there has never been any evidence offered by critics of arms control that the encryption has had serious military significance. Our charge that the SS-25 is a new missile and therefore also violates SALT II has been denied by the Soviets. They claim it meets the SALT II Treaty definition of a modification of an old missile—the SS-13. Critics say the Soviets are wrong about this. So do I. Again we should go to the mat with them. Meanwhile what military significant advantage does the SS-25 give the U.S.S.R.? The CIA and the Joint Chiefs of Staff have told us that as a result of SALT II the Soviets have stopped production or killed a series of nuclear weapons, and that SALT II has not significantly limited the United States nuclear arsenal plans at all. The net military effect of SALT II as an arms control treaty has been highly favorable to the United States.

So does the threat of Soviet cheating make arms control a dangerous delusion? Not on the record. First, by and large the Soviets have complied with arms control treaties. Any objective analysis of the arms control treaties to date shows that arms control agreements with the Soviet Union have not only saved this country a bundle in nuclear buildup foregone, but they have significantly slowed the dangerous arms race. This is not because Gorbachev is Mahatma Ghandi or Mother Theresa. It is because it is to the conspicuous self-interest of the Soviet Union as it is to the clear self-interest of the United States to comply with arms control agreements. Compliance saves enormous resources. It also saves each superpower from the total destruction of nuclear war.

MYTH OF THE DAY: REPEAL OF THE 22D AMENDMENT IS A GOOD IDEA

Mr. PROXMIRE. Mr. President, the myth of the day is that repeal of the 22d amendment to the U.S. Constitution—providing for a two-term limitation on the President of the United States—is a good idea.

Here are 10 good reasons why repealing the 22d amendment is not in our Nation's best interests.

First. Prohibiting a President to serve a third term allows him to be a more vigorous and forceful leader. Eliminating the third term also increases the President's political independence by freeing him from political considerations attendant on securing his party's renomination. It increases the nonpartisan character and businesslike efficiency of the Executive Office.

Second. A President should not have the extra burden of running a sustained political campaign and governing the Nation at the same time. The 22d amendment frees the President from pressure of yet again being a candidate and seeking reelection. The possibility of reelection tends to build up a dangerous political machine that

interferes with the efficiency of the President as Chief Executive.

Third. Permitting an individual to stay too long in the Presidency stifles the growth of alternative leadership.

Fourth. A third term would endanger democracy and tend to establish a dictatorship by perpetuating one man in office and feeding his ambition for power.

Eight years as President is a sufficient time to effectuate the policy aims which an individual may represent. An additional term would tend to encourage a sense of proprietorship and personal privilege. Personal power rather than public policy would become paramount.

Fifth. A third term violates the tradition and precedent established by such great Presidents as George Washington and Thomas Jefferson.

Sixth. A third term, served by an individual with an exceedingly strong personality, might result in such dependence on his leadership that the people would follow him not with their intellects but with their emotions.

Seventh. No man is indispensable. The American people can be relied upon to produce more than one great leader at a time.

Eighth. The constant infusion of new leadership is the essence of democracy. The doctrine of rotation in office is one of the principal bulwarks of freedom. Proper administration of a democratic government demands that new personnel and fresh viewpoints be injected frequently into the executive branch to prevent the growth of a stagnant bureaucracy.

Ninth. Presidential control of patronage accrues from a long tenure. An excessive length encourages the bureaucratic entrenchment of individuals who are solely dependent upon the President for their position, and who are maintained through adherence to his point of view. Similar abuses might also apply to the judiciary where the President's staunchest supporters, and those of his particular political, social, and economic outlook are rewarded with lifetime judgeships that place them beyond the reach of the electorate.

Tenth. A long Presidential tenure threatens our separation of powers and checks and balances system. A President serving more than two terms could secure a firm control over the enormous and powerful machinery of Federal administration, including the so-called independent agencies, through the political appointments process.

Without the 22d amendment, a President could make the legislature a subservient instrument of his will. Even the independence of the judiciary could be influenced indirectly by the appointment of judges whose attitudes are essentially those of the President. The danger of overconcentration of power in the hands of the President for a long period is much more serious now than in the early years of the Nation because of the increased centralization of powers in the Federal Government.

Mr. President, based on the reasons I have cited, I think I can safely say that the notion that repealing the 22d amendment is a good idea is truly a myth.

REFORM OF THE FEDERAL FINANCIAL MANAGEMENT SYSTEM

Mr. PROXMIRE. Mr. President, the Federal Government's financial management system is proving inadequate to serve the needs of those responsible for Government accounting, auditing, planning, and budgeting. The fact is that the entire U.S. financial management structure is antiquated and out of step with the modern financial management accounting principles followed by virtually every corporation or business firm of any size and by many States and cities.

INADEQUACIES OF THE FEDERAL SYSTEM

The present Federal system does not provide timely, complete, and accurate information about Federal operations. It is difficult, if not impossible, to know, under the present system, the true cost of the programs funded by Congress, Federal assets or liabilities, or the long-term financial consequences of decisions made in Congress.

The principal reason for these inadequacies is that the current Federal financial management system focuses on the amount of cash available for the fiscal year rather than accrued costs. Under the cash system presently followed, we may know how much money has been appropriated for a given program, how much may have been spent, and how much of the appropriation remains. But we do not know, under the present system, the costs of the program or the value of the goods and equipment that may have been purchased from prior appropriations. This means that we normally do not have a complete financial picture of the costs of Government programs and how much needs to be spent for their completion.

We do not really know the true cost of Government programs, except in those few cases where a Government audit has been ordered. For example, when the Defense Department requests funds for a weapon program, it basis its request on the estimated cost of the program. But after Congress appropriates funds for that program, we lose track of the true costs. We only know what has been appropriated in the past, what has been spent, and the amount of any new budget request. In a particular year, 50 percent of funds appropriated for a weapon program may have been spent on only 25 percent of the full cost of that program. Congress would have no way of knowing that. It would only know that 50 percent of funds were spent. Only when it becomes necessary for the Defense Department to request additional appropriations, after it is clear that the program will cost more than the amount that had been originally requested, is it evident that there has been a "cost overrun."

The reason that Federal program costs have gotten out of hand is largely because the financial management system virtually ignores costs. We operate under a cash-based and not a cost-based accounting system. As a result, there has been a lack of attention to cost control. Government program managers and Members of Congress armed with reliable, timely, and consistent cost information would be able to make better decisions than is now possible. Unfortunately, we do not have reliable, timely, and consistent cost information because the financial management system we use does not provide this information.

Another shortcoming of the present system is that it creates confusion about the size of the Federal deficit. There is disagreement among academics and other experts about the real size of the deficit. These disagreements occur partly because of the poor quality of financial information about the Federal Government and the questions raised about basic aspects of Federal Government operations.

VIEWS OF THE COMPTROLLER GENERAL

Earlier this year, I addressed my concerns about the quality of financial management in the Federal Government to the Comptroller General. I asked for an evaluation of the Federal Government's annual deficits, an assessment of the most critical financial management problems facing the Nation, and suggestions for the type of legislation needed to correct our financial management problems. The Comptroller General, Charles A. Bowsher, responded with a very thoughtful, lengthy letter, which I understand has been widely circulated among interested State and local officials who face similar problems. Indeed, many State and local governments have taken steps to correct the problems identified by the Comptroller General.

In his letter, Comptroller General Bowsher recommends comprehensive reform of the Federal financial management structure. As a first step, he urges creation of an independent chief financial officer in the executive branch of Government to coordinate Government-wide improvements to financial management.

The Comptroller General's analysis and suggestions for change should be given the most careful consideration. I believe that our attempts to control

costs and reduce deficits are being hampered by the inadequacies in financial management. In fact, efforts in Congress and in the executive branch to deal with these problems probably will never succeed so long as the present financial management system is followed.

I request unanimous consent that my letter to the Comptroller General, dated February 20, 1986, and the Comptroller General's reply, dated July 17, 1986, be inserted in the RECORD.

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

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, DC, February 20, 1986.

Hon. CHARLES A. BOWSHER,
Comptroller General, U.S. General Accounting Office, Washington, DC.

DEAR MR. BOWSHER: I have read with considerable interest comments attributed to you, staff of the General Accounting Office, and others that appeared on the front page of the February 3, 1986, issue of the Wall Street Journal, concerning criticism of the Federal Government's accounting and budgeting systems and the way budget deficits are estimated.

An article in the October 9, 1985, Christian Science Monitor says that three Stanford University economists and a fourth from the University of California have concluded from a study they made that the Federal Government has assets that substantially exceed its liabilities and has a cumulative surplus rather than a deficit. The deficit as of the end of 1985 exceeded $2 trillion, according to the Administration's accountants. Still other articles refer to billions in hidden deficits because of off-budget borrowing, e.g., the Federal Financing Bank has borrowing in the billions that are not included in the annual or cumulative deficits.

Perhaps the most critical statement I have seen about the Federal Government's accounting and budgeting was made by David Stockman, former Director of OMB. In an address to the Board of the New York Stock Exchange, he said: ". . . as the fiscal crisis has worsened and the political conflict intensified, we have increasingly resorted to squaring the circle with accounting gimmicks, evasions, half-truths, and downright dishonesty in our budget numbers, debate, and advocacy. Indeed, if the SEC had jurisdiction over the Executive and Legislative branches, many of us would be in jail. So it is incumbent on both sides to come clean with the numbers, and thereby the true choices."

Several recent reports issued by the General Accounting Office highlight many of the accounting, budgeting, and internal control problems that exist in the government's financial management. Recent congressional enactment of the Gramm-Rudman legislation emphasizes the government's dilemma in trying to cope with annual and cumulative deficits which, in the view of many, may be substantially higher, lower, or nonexistent.

As you know, I recently made a statement on the Floor of the Senate applauding New York City's near miraculous recovery from its fiscal crisis of the 1970's. I suggested that the New York City experience serve as a model for the Federal Government. The success of the city resulted from substantial "belt-tightening," which I understood was made possible in large measure by improved financial systems producing data on which sound management decisions could be made to substantially reduce costs. The situation that existed in New York City appears to me analogous to what we now have in the Federal Government, except that the dollar figures are greater by a factor of about 2,000, i.e., deficits of $1.5 to $2 billion versus in excess of $2 trillion.

You are the leading accountant in the Federal Government. Accordingly, I would like you to provide me with the following:

1. An evaluation of the annual deficits for the past three fiscal years and a projection for the next three years, based on available financial data, compared with the deficit figures published by the Administrator.

2. A brief assessment of the most critical financial management problems facing the Nation.

3. Suggestions for the type of legislation needed to correct the financial management problems of the Federal Government, including those highlighted by the recent passage of the Gramm-Rudman Deficit Reduction Act.

I would like your views on the above-mentioned matters as promptly as possible. Your assistance will be greatly appreciated.

Sincerely,

WILLIAM PROXMIRE,
Vice Chairman, Subcommittee on Economic Resources, Competitiveness, and Security Economics.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington DC, July 17, 1986.

B-221498.47

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, DC.

DEAR SENATOR PROXMIRE: You wrote to me expressing your concern about the quality of government financial systems and the way budget deficits are estimated. I share your concern about the serious financial management problems facing the U.S. Government. These problems will continue and may well intensify unless we improve our financial structure, and systems and the quality of financial data. Improvements must be made to provide federal managers and the Congress with more reliable, timely, and consistent data for sound decision-making and better management, which, I believe, can reduce the cost of government.

In your letter, you refer to the New York City recovery from its fiscal crisis and suggest that it might serve as a model for the federal government. I was directly involved in that recovery process and would agree that many of the actions taken, including improved financial management systems, could well help us at the federal level. In fact, partly as a reflection on that New York City experience, I initiated a project in 1983 to identify the major financial management problems facing the federal government, to develop possible solutions, and to propose a strategy for improvement. Our report, entitled "Managing the Cost of Government: Building an Effective Financial Management Structure (GAO/AFMD-85-35 and 35A), is the result of the project. The report was designed to be a catalyst to prompt debate and ultimately agreement on the government's financial management problems and potential solutions.

I believe that the debate on the issues raised in our report has begun to achieve agreement among congressional leaders, the administration, and federal managers that a restructuring and rebuilding of our financial processes and systems is essential, although the specific program for resolution is not yet fully agreed upon. I believe that the new federal financial management structure should encompass.

Strengthened federal accounting, auditing, and reporting;

Improved planning and programming;

A streamlined budget process;

Comprehensive use of cost based reporting;

Systematic measurement of performance; and,

Improved and strengthened internal controls.

Such a structure would not only improve program planning but also help control costs by providing both the Congress and agency management with reliable, timely, consistent financial data to judge how well program decisions are implemented and identify emerging problems so that corrective actions can be taken as necessary.

An improved financial management structure should also expand upon the use of measures of financial performance in the federal government. Currently, attention is focused solely on the obligation and cash information needed to control appropriations and calculate the deficit. This approach serves valid cash management and fiscal needs, but it leaves out important information about the long-term cost of government. Accrual based information would provide the information needed to control costs and manage program and agency performance and would put us in a better position to determine the government's overall financial condition.

Turning to your specific questions, your letter asked for:

(1) An evaluation of the government's annual deficits;

(2) An assessment of the most critical financial management problems facing the Nation; and

(3) Suggestions for the type of legislation needed to correct the financial management problems.

A discussion of each of these points follows.

EVALUATION OF ANNUAL DEFICITS

On the surface, it would seem that answering a question about the amount of the federal deficit would be a relatively simple matter. However, as you point out, numerous differences exist in financial reports concerning the amount of the deficit—whether it is larger than reported, whether it is growing, or whether in fact it exists at all.

Accounting basis influences deficit calculations

Several different measures of federal financial activity are meaningful and interrelated: cash, accrual, obligational, and inflation adjusted information. I will discuss some of these different measures and their interrelationships.

The official deficit for fiscal 1984, as shown in the Department of the Treasury's "Statement of Receipts and Outlays of the United States Government," was $185 billion. This amount was determined using primarily the cash basis of accounting and thus generally represents the excess of cash outlays over cash receipts. However, using the accrual basis of accounting, the deficit

was reported by three other sources [1] as being $200 billion, $215 billion, and $333 billion. For the most part, the differences among the three accrual figures stem from assumptions about the treatment of the Social Security trust funds and, less importantly, the valuation of gold reserves.

Your letter requested an evaluation of the deficits for the last 3 and next 3 years. The following table presents both cash basis and accrual basis deficit information for fiscal years 1983 through 1985. We are unable to provide comparable information for fiscal years 1986 through 1988 because there is no currently reliable basis for making projections of accrual based information for those years.

FEDERAL DEFICIT

[Dollars in billions]

	Cash basis [1]	Accrual basis [2]
Fiscal year:		
1983	$208	$232
1984	185	215
1985	212	199

[1] Figures in the cash column were reported in the fiscal year 1987 "Historical Tables, Budget of the United States Government." These figures are the basis for deficit reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985.

[2] The fiscal year 1983 and 1984 accrual figures were reported in the Department of the Treasury "Prototype Consolidated Financial Statements of the United States Government," adjusted to revalue gold to market value. The fiscal year 1985 accrual figure was taken from a draft of the 1985 Prototype Statements, also adjusted for the market value of gold.

Briefly stated, the difference between the cash basis of accounting and the accrual basis of accounting centers on when transactions are recognized in the accounting systems and the resulting reports. The cash basis recognizes transactions only when cash changes hands (budget receipts or outlays). This information is critical for effective cash and debt management. This "checkbook" type of accounting for the deficit does not reflect information about assets, liabilities or future commitments, nor does it disclose actual costs, current and deferred.

As we found in the New York City crisis, not only couldn't we reconcile the cash available in the accounts, we also had no accounting for the significant liabilities which the city had incurred, such as pensions, which were tremendous costs facing the city at that time.

This reliance on cash basis accounting provides users only a single official indicator of government operations—the cash basis deficit—to address their differing needs and questions. Users of federal financial information must make the reported cash deficit figure able to serve their purposes. Unfortunately, users do not have a set of rules or consistent understanding regarding the meaning of various terms, what adjustments to the financial report are appropriate, or how the various indictors interrelate.

The accrual basis of accounting recognizes the financial impact of government transactions, decisions, and activities as they happen—when revenues are earned, when resources are used, and when liabilities and costs are incurred—regardless of when obligations are incurred or when the actual cash is collected or paid. Accrual accounting also provides important information on the financial position of the federal government which is not available under the cash basis of accounting. Unfortunately, accrual information is not readily available in the federal government even though it has been required by law for more than 30 years.

The federal government is a huge enterprise with vast financial resources and enormous assets and future commitments. For example, government accounts and loans receivables total more than $350 billion, but not one dollar of that amount shows up in the cash basis accounts. Over the years, GAO has consistently identified major problems in accounting for, controlling, and collecting these assets; government management of them is tantamount to a national scandal. Taxpayers who paid hard earned dollars to provide funds to make these loans have legitimate complaints over how poorly the government manages these assets or how blithely it ignores its accountability for these funds. The government also has hundreds of billions of dollars invested in inventories. Based on our reviews, I would say that the record of accountability and control in the inventory area is no better than for loans and other receivables.

How have we gotten into this situation? I believe that the government's accounting system, which focuses on cash and obligations and effectively ignores assets and costs, is a fundamental cause of such poor accountability and control. Requiring an accounting, on an annual basis, for these funds and assets entrusted to federal managers and diclosure of the costs incurred would result in better management and control of our assets.

Capital spending is another area where significant differences exist between cash basis and accrual basis accounting. The federal government spends well in excess of $100 billion a year on capital assets and physical infrastructure that will provide benefits for many years. Yet, the current government accounting practice treats those capital outlays as a current cost of operations and includes the entire amount in determining the deficit. Applying that logic to our personal lives would argue that we write off the full cost of building a house in the year you build it. That type of thinking has been recognized as a fallacy for 40 years, but we cling to it as an inviolate concept, even up to today.

While the capital spending issue may appear to be merely an arcane accounting argument, it is, in fact, a significant governmental policy issue. Over the past several years, numerous states have instituted balanced budget requirements in a drive toward better fiscal responsibility and financial management. In almost every instance, the states have recognized the inherent differences between capital and operating expenditures and have used a capital budget to ensure that borrowing is generally restricted to financing long-term assets and that operating budgets are balanced. Balanced budget approaches at the federal level do not distinguish between capital and operating expenditures. Consequently, deficit reduction actions may unrealistically require eliminating all borrowing, including funds for capital assets and infrastructure.

Liability recognition is a third area where enormous differences exist between the current cash basis deficit measure and other measures. Cash basis measures do not include contractual commitments for purchases and programs where future expenditures will be required. In the defense area alone, hundreds of billions of dollars are committed for military hardware under firm contracts which will require future outlays. However, those amounts are not disclosed in our current cash basis deficit reporting.

Technical matters to be resolved

Several significant technical issues must be resolved in constructing an accrual based financial report that includes deficit estimates:

How should Social Security commitments be reported? Is the Social Security program a long-term liability similar to a pension program or more like a pay as you go social safety net?

How should fixed assets be defined and depreciated?

How should we account for inflation?

Should the Federal Reserve operations be included?

Should trust funds and other dedicated monies by excluded from deficit calculations since such monies are not available for use by other government activities?

Effects of inflation and capital spending on deficit calculations

In addition to the variances in the deficit figures that result from the accounting basis used, variances also can result from the manner or the extent to which the effects of inflation are reported. Just as inflation lessens the value of money, it also lessens the value and cost of debt, which can significantly alter the conventional measures of the deficit.

Some economists point out that adjusting data to reflect capital spending and inflation for a year with high and rising inflation, such as 1978, would produce significant changes in the deficit calculation. For example, it is estimated that applying capital basis deficit for 1978 would result in a $33 billion surplus—a $62 billion change.

Some have said that, unless federal accounting methods are changed to show the effects of capital spending and inflation, federal budget calculations may become so misleading that budget-balancing efforts and policy decisions to eliminate the official, nominal (cash) deficit will actually create a substantial surplus while at the same time decimating our infrastructure investments and the ability to effectively manage our government. Such a surplus could, in turn, precipitate serious consequences in the form of a severe economic downturn.

Overall Federal financial reporting—a user's perspective

During a recent joint study by the Office of the Auditor General of Canada and our office, we asked users of federal financial information what definition of "deficit" would be most relevant to their needs. The resulting report, entitled "Federal Government Reporting Study," categorized users as legislators, government planners and managers, citizens, corporations, media, and analysts (such as social policy, economic, and financial market analysts). Depending on their analytical purpose, almost all groups reported a need for more than one measure of the results of government operations. Also, users wanted the various measures distinguished from each other by different terms with explanations and/or reconciliations showing how the measures are related.

I believe that no single measure of the results of the federal government's operations tells the full story or meets all user needs

[1] The different deficit measures were reported as follows: $200 billion, Department of the Treasury, "Consolidated Financial Statements of the United States Government, Fiscal Year 1984 Prototype;" $215 billion, U.S. General Accounting Office, "Federal Government Reporting Study," March 1986; and $333 billion, Arthur Andersen & Co., "Sound Financial Reporting in the U.S. Government," February 1986.

and analytical purposes. Various, types of financial information are important and have a place in the federal management. We must ensure however, that information is consistently defined, reported, and related to other indicators when appropriate. We must also ensure that the federal financial management structure and systems are capable of providing the appropriate information in a such a way that each indicator can be readily reported and related or reconciled with the others and that the data is accurate and reliable.

ASSESSMENT OF FINANCIAL MANAGEMENT PROBLEMS

Let me proceed from the issue of appropriate financial reporting to your second issue—the most critical financial management problems facing the Nation.

Our work over the years has consistently revealed numerous, serious problems with financial management systems, information, controls, and accountability in the federal government. These problems are confirmed by the agencies' own reports under the Federal Managers' Financial Integrity Act, filed with the Congress over the past few years. These reports cite a litany of serious, often long-standing problems with internal control, accounting, and financial management systems. For example, 17 of the 18 departments and major agencies we reviewed for compliance with the Federal Managers' Financial Integrity Act reported financial management as a material weakness in their annual reports filed under the act. The financial management problems have resulted in wasteful spending, sloppy management, and losses involving billions of dollars.

As stated earlier, our report, "Managing the Cost of Government", summarizes the financial management problems, explains their significance, and suggests a strategy for overcoming them. The major problem areas, all of which have been documented numerous times in reports by GAO and others, are:

The lack of cost information;

The lack of reliable cash and accrual information on weapon systems;

Inadequate disclosure of costs and liabilities;

Unstructured planning for capital investment;

Antiquated financial management systems; and

Weak internal controls.

These problems point out the need for improvements in the way the federal financial management process works. As I have said on numerous occasions, our financial management operations are outdated and inadequate to manage the government and to insure accountability to our citizens; the time has come for a major reform. It will be difficult, but it can be done. Over the past several years, state and local governments, often in the face of budgetary constraints, have made enormous strides in this direction. As you well recall, during the early 1970's many state and local governments faced significant financial problems which were compounded by inadequate information and financial management systems. The New York City crisis was, in this regard, a watershed event which precipitated a move by many state and local governments to significantly upgrade their financial operations through—

Development of an overall conceptual framework for reform which was agreed to by all parties;

Use of accrual based financial statements to provide a more comprehensive picture of the government's financial condition;

Use of annual financial audits to ensure data accuracy and to improve internal controls;

Substantial upgrading and modernizing of financial systems with a focus on providing better management and cost information; and

Moves to make budget decisions on more than just outlay information.

Many were doubtful that these moves would succeed, but the record of success has been significant. Such a program is sorely needed at the federal level. Let us hope that a financial crisis at the federal level of a magnitude comparable to New York City will not become the catalyst for federal financial management reform.

FINANCIAL MANAGEMENT LEGISLATIVE PROPOSALS

Finally, you asked for suggestions about the type of legislation needed to facilitate correction of the financial management problems. I agree that legislation is a way to bring about the type of financial management reform we need. The current fragmentation of financial management policy setting authority among a number of central management agencies has resulted in redundant, overlapping, and conflicting responsibilities. Consequently, policies and pronouncements sometimes impose conflicting or redundant requirements on agency managers. Furthermore, without a single authoritative source for federal financial management policy, a vacuum exists for identifying and resolving issues.

An independent chief financial officer (CFO) would provide the needed focus. I believe this new office should not be within the Office of Management and Budget, but, rather within the Executive Office of the President or in a separate office either alone or as a component of the Treasury. Such an office should have the following attributes:

A defined set of responsibilities including the development of a conceptual framework for improving financial management and the preparation of a specific long-range plan for systems improvements;

Adequate funding; and

An appropriate degree of independence and authority to ensure that the CFO's program will be carried out by the operating agencies across successive administrations.

Also, I believe that certain important agency responsibilities, such as the preparation and audit of annual financial statements and the development of a long-range systems improvement plan, must be clearly spelled out in the law.

The chief financial officer should be responsible for designing, developing, implementing, and monitoring the rebuilding of the federal financial management structure. To carry out this responsibility, the CFO should be charged with developing a conceptual design of a system that—

Is consistent with the principles, standards, and requirements prescribed pursuant to law by the Comptroller General;

Identifies and addresses major accounting, financial management information, and performance measurement needs of the government;

Identifies and addresses agency and governmentwide reporting needs and provides for complete disclosure of the financial condition of the government, its departments, and major agencies in conformance with the principles and standards prescribed by the Comptroller General;

Describes and reflects the relationship between planning, budgeting, and accounting;

Provides for integration of government financial management systems to eliminate duplication and encourage agencies to use systems jointly, thereby reducing the number of systems; and

Describes an information system structure comprised of compatible systems that will support a governmentwide financial management system and foster parity and consistency.

The CFO should also develop an implementation plan for the conceptual design.

The Chief Financial Officer should report annually on the financial operations of the government and disclose the overall financial position of the departments and agencies and the government as a whole. This annual report should be based on reports, information, and financial statements prepared by each agency. Agency financial statements should be audited annually to foster discipline in the agency financial management activities and ensure reliability of the data.

Finally, a controller's office should be established within each department and major independent agency. The controllers should be charged with conducting, supervising, and coordinating all financial management activities and operations of the agency and be responsible for preparing the annual agency financial statements.

Several bills have recently been introduced in the Congress which include many of the necessary features: Senator Roth introduced S. 2230, the Federal Management Reorganization and Cost Control Act of 1986; Representative DioGuardi introduced H.R. 4495, the Federal Financial Management Improvement Act; and Representative Shaw introduced H.R. 5092, the Federal Accounting Practices Review Commission Act of 1986.

Prior efforts to improve federal financial management generally have had limited success because the emphasis has been on individual problems and situations rather than on comprehensive reform. I believe that, for reform to be most successful, an integrated approach must be taken for developing a compressive financial management structure. The changes should be governmentwide, serving the needs of both the Congress and the executive branch, and ensuring that consistent financial data are available across agency and department lines. Putting this new structure into place and making it work will require new systems that implement consistent financial management concepts and that take advantage of the latest technology. It will also require able, dedicated, well-trained people and continuity of leadership from skilled executives.

The budget crisis we now face cannot be solved solely by improving the federal financial management structure. However, the government currently makes billion dollar decisions based upon financial data of dubious quality. By applying sound management principles and procedures, proved over time in the private, state, and local sectors, agency managers and the Congress will have timely, reliable data needed to make more effective decisions than are possible with current data.

The federal government has required this type of financial responsibility from the private sector for years and, through the re-

cently enacted single audit legislation, of state and local governments. It is high time that the federal government put its fiscal house in order by imposing the same degree of discipline upon itself.

I would be pleased to work with you on this much needed reform effort.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General of the United States.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. KASSEBAUM). Without objection, it is so ordered.

RECOGNITION OF SENATOR BENTSEN

The PRESIDING OFFICER. Under the previous order, the Senator from Texas [Mr. BENTSEN] is recognized for not to exceed 5 minutes.

HIGH LEVEL WASTE PROGRAM

Mr. BENTSEN. Madam President, I am pleased that the continuing resolution includes very limited funding for the Department of Energy's high-level waste program. The bill before us includes $380 million in appropriations for fiscal year 1987 approved earlier this year by the Appropriations Committee.

This figure is dramatically less than the President's request and is less than that provided by the House. There are compelling reasons for this reduction.

First, the DOE has demonstrated it is incapable of moving forward with the high-level waste program in a manner that builds confidence. States affected by the high-level waste program have been ignored, rebuffed, and left to guess what it is DOE is doing. In Texas, DOE has been developing a small, but increasing presence in the area near the Deaf Smith County site under consideration. Yet DOE continues to deny they are planning on undertaking any specific actions. Questions to the Agency are deflected with vague statements.

In preparation of the environmental impact statement, DOE could not even accurately count the number of drinking water wells in place on the site, clearly demonstrating that DOE has not even bothered to physically inspect the land it was interested in condemning. DOE stated that it would stack football fields of salt on top of the ground, but neglected to note that the windy conditions of the panhandle could spread that salt all over the prime agricultural land of the region, thus ruining crops.

Mistakes such as these do not engender confidence. Instead, they promote suspicion and fear. I have repeatedly exhorted DOE to take the State's and citizens' concerns seriously and to be more forthcoming about their activities. But DOE prefers the bulldozer to the negotiating table.

The Nuclear Waste Policy Act, however, anticipated that there would be hard feelings about developing a high-level nuclear waste repository. For these reasons, Congress required DOE to negotiate with States to develop a mutually agreeable approach to the issue. Funds were to be provided to assist States in developing their own program to monitor DOE activities. In short, Congress required DOE to use the negotiating table, but DOE has repeatedly turned its back on those affected by the Agency's actions.

Rather than discuss issues with affected States, DOE is engaged in litigation about such basic issues as siting guidelines. What is this litigation about?

The siting guidelines are DOE guidelines establishing the basis on which sites will be selected for a repository. Despite the fact that the legitimacy of these basic guidelines is in question, DOE forges ahead with its program, possibly moving to select sites that are not suited for a high-level waste repository.

The latest flouting of the Nuclear Waste Policy Act was the Agency's May 28, 1986, decision to suspend its search for the second high-level waste repository.

The act is indisputably clear that DOE must provide the President with three possible sites for a second repository by 1989. DOE is equally clear that it intends to violate this requirement of the act.

Concerned about DOE's actions, I asked the Comptroller General for an opinion as to the legality of the May 28 decision. GAO's opinion is as clear as the statute itself: DOE's decision to abandon the search for the second site is illegal.

What actions can Congress take with an agency so entranced with its own power that it defied such a clear congressional mandate: One of the actions we can take is the one included in the continuing resolution. We are dramatically reducing DOE's funds for the high-level waste program so that DOE will be unable to conduct any site-specific work on either the first or the second round or the monitored retrievable storage facility.

This means that no matter what DOE does or does not tell us about their work in Deaf Smith County, there will be insufficient funds to conduct any site-specific work in Texas. This is clearly the intent of the Appropriations Committee, as stated in their report:

The committee believes that the surest course for the Department lies in the careful implementation of the Nuclear Waste Policy Act in close consultation with the affected parties, in particular, the affected States. It seems obvious that a restoration of consensus is required before significant progress can be made. The important task is the resolution of the numerous controversies in which the program is now embroiled and the restoration of confidence in the program.

Only if such a restoration is forthcoming will the committee consider any request to make additional resources available for elements of the program.

Such an unambiguous statement from the Appropriations Committee leaves no doubt that this is not simply a matter of parochial interest, but that we are facing a serious problem with an agency that cannot control itself.

Both the funding level and this report language make it unequivocally clear that no site characterization activity can be undertaken in Texas during the next fiscal year. The ban on site characterization activities that is affected by the reduction in funding is a logical result from DOE's previous activities and its May 28 decision. Clearly, if DOE refuses to continue its search for a second site, the Agency must be barred from continuing its search for the first site. Any other course would constitute tacit approval by Congress of DOE's arbitrary refusal to comply with the act.

It is equally clear that more than one high-level waste repository is necessary, based on DOE's own estimates. To move forward with only one site under the Nuclear Water Policy Act is to abandon all pretense of developing adequate storage capacity under the act.

We are faced with the situation where, on the one hand, the DOE forges ahead without regard to those affected by its actions, and, on the other, the Agency's inability to meet any of the statutory deadlines and its refusal to seek amendments to those deadlines. Earlier this year, I introduced legislation, S. 2201, extending the deadlines in the Nuclear Waste Policy Act by 10 years. DOE has not sought these changes nor does it endorse them. Instead, the Agency simply refuses to comply with the law.

Mr. President, I have been a Member of this body for many years and on many occasions agencies have had trouble complying with our laws. But the actions of the Department of Energy go beyond simple inability to comply with the law and approach an unwillingness to attempt to comply.

For these reasons, I strongly endorse the actions taken by the Appropriations Committee, and I applaud the dramatically reduced funding level for the high-level waste program at the Department of Energy that will prevent the Agency from undertaking or continuing any site-specific work.

I yield back the balance of my time.

Madam President, I suggest the absence of a quorum.

□ 1010

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Madam President, do I have any time remaining under the leader's time?

The PRESIDING OFFICER. Yes; the majority leader has 4 minutes remaining.

ENCOURAGING NEWS ON TRADE

Mr. DOLE. Madam President, after months of steadily widening trade deficits, a flickering light at the end of the tunnel may at last have come into sight.

The decline in the value of the dollar, engineered in part by the Plaza accord of industrialized nations exactly 1 year ago, appears to have taken some effect.

Our trade deficit contracted, not widened, in August—and it did so by a remarkable $4.7 billion, the largest monthly reduction on record.

And agriculture returned to a surplus position.

I do not mean to overstate the accomplishment here: We are still in a difficult situation, with far greater progress still necessary. And Congress still has an important role.

But our problem in Congress sometimes is that we demand instant results, and overnight solutions.

Yet realities, for their part, are often much more complex.

This has been nowhere more true than with the situation of our trade deficit.

Many in the Congress, impatient to see progress in our battle with worsening trade statistics, have jumped on the bandwagon of demanding draconian trade law reforms.

They have berated the administration for an allegedly do-nothing trade policy.

They have threatened to make trade the great campaign issue of November 1986.

Always the economists tried to bring perspective: wait a bit, they said. There are fundamental adjustments in exchange rates, and rates of relative economic growth among nations, which need time to take place.

But it is sometimes easier to issue quick denunciations than to take the time to understand sophisticated economic explanations.

Now some of this economic wisdom has been borne out.

Our concern about the July deficit, which many in Congress expressed last month, may have been premature.

The news today is a further lesson in rushing to judgment about important national problems. Politicians would be well advised to show a little more willingness to hold their breath—and quell their campaign rhetoric—and see whether the arguments of economists don't actually have some basis, before we administer cures that turn out to be worse than the disease itself.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1020

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

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

RECOGNITION OF SENATOR GORTON

The PRESIDING OFFICER. Under the previous order, the Senator from Washington [Mr. GORTON], is recognized for not to exceed 5 minutes.

HOMELESS AMENDMENT TO THE CONTINUING RESOLUTION BILL

Mr. GORTON. Madam President, later today the Senate will resume consideration of the continuing resolution. This mammoth bill contains funding for thousands of programs and spends billions of dollars. For the moment, I would like to direct by colleagues attention to a small but important provision of this bill which will provide help to a group of Americans who need it most.

Madam President, over the last several years, most Americans have enjoyed a rising standard of living. We are in our 46th month of economic growth. Inflation has been reduced to a 1.6-percent annual rate. Unemployment continues to trend downward.

There is, however, a growing class of Americans that is in danger of being left behind. The pride created by the thriving prosperity of cities like Seattle in my State is chilled by the sight of people in the streets—Americans huddled over grates and air vents for warmth. When we drive to work in the morning over highway bridges, we too often drive over someone's home. When we throw spoiled food into a dumpster, there are desperate people on the streets who eat it. This state of affairs is a crisis and a shame.

And the situation is getting worse. Emergency shelters in Puget Sound communities report that in King, Snohomish, and Pierce Counties 4,461 homeless people were turned away in 1985, because existing shelters were filled to capacity. Shelter providers in the Seattle area report that their shelters held record numbers of homeless Americans this past summer—a clear indication that there will be an overwhelming demand for shelter space this winter. States and local governments are working tirelessly to address these needs, but it is not enough. The Federal Government must do more to help stem this growing tragedy in our streets.

I am happy, therefore, to have helped to develop legislation to address this pressing issue. The Senate Appropriations Committee adopted an amendment that is modeled after legislation I introduced earlier this Congress and will provide a three-part program for helping homeless Americans. First, it helps the homeless meet their emergency needs by continuing and improving the existing Federal Food and Shelter Program. Second, it provides capital assistance to nonprofit agencies and local governments rehabilitating or converting buildings into shelters. Finally, it establishes a demonstration program for helping homeless Americans get back into traditional housing.

Since 1983, the Federal Emergency Food and Shelter Program has provided assistance to homeless Americans. This program provides grants to local homeless programs to assist in meeting the needs of the homeless in our communities. The program has been an unqualified success, providing needed assistance with a minimum of overhead. Last year, the Emergency Food and Shelter Program provided an estimated 68 million meals at an average cost of 75 cents, and 6.2 million nights of shelter at an average cost of $2.25. The program provided assistance to 6,223 agencies in 1,360 counties and cities.

The Emergency Food and Shelter Program is unique in that it is administered by a collection of national private charities in conjunction with the Federal Government. This National Board of Charities has utilized its expertise to assist service providers in a timely and cost effective manner. The amendment adopted by the Appropriations Committee provides a 1987 appropriation to continue the existing program with some administrative refinements.

The Emergency Food and Shelter Program, however, is designed only to meet short-term, basic care needs. The amendment adopted by the committee

supplements the existing program in two important ways. First, there is a need for more shelters. Public and private agencies in my State report they turn away as many people as they can help. This amendment addresses this need by establishing sources of capital for creating new shelters. It provides an Emergency Shelter Grants Program to help meet this desperate need. States, local governments, and local nonprofit charitable organizations would be awarded Federal assistance to rehabilitate or convert existing structures into emergency shelters. This is not a new construction program, and grantees would have to provide matching funds to be eligible for a grant award.

Second, the Emergency Food and Shelter Program is not designed to help homeless Americans return to traditional housing and independent living. The Secretary of Housing and Urban Development needs to explore innovative ways of assisting in this transition process.

The amendment provides for a Transitional Housing Demonstration Program that will give homeless persons capable of making successful transitions a temporary place to stay. This will give homeless individuals an address for purposes of finding work, an environment where they can keep themselves clean, and an opportunity to save money for a deposit on traditional housing. The program is not designed to institutionalize the homeless, but to help the Secretary develop models for assisting the homeless with the transition back to independent living.

Madam President, this country was built on the promise that if you work hard, you can build a better life for yourself and your family. This amendment is faithful to that promise. The amendment reaches out to our friends and neighbors who are down on their luck and helps them back on their feet. It is a disgrace that in such an abundant society we have entire families sleeping in station wagons, or foraging through refuse for a meal. This amendment solidifies programs now in place, and provides for the development of long-term solutions for the problem of homelessness.

I urge my colleagues to support this amendment when the Senate resumes consideration of the continuing resolution.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECOGNITION OF SENATOR BAUCUS

The PRESIDING OFFICER. Under the previous order, the Senator from Montana [Mr. BAUCUS] is recognized for not to exceed 5 minutes.

THE PROPOSED IMPORT SURCHARGE

Mr. BAUCUS. Madam President, the House Ways and Means Committee has slipped us a time bomb and hardly anybody noticed.

A few days ago, the Ways and Means Committee approved a 0.5-percent surcharge on imports.

Granted, they are not calling it an import surcharge, and neither is the administration. They are calling it a "user fee" because the administration likes user fees and hates import surcharges.

But the fact is that the Emperor lost his clothes. We have been presented with an import surcharge pure and simple.

And just as simply, I am opposed.

Current projections indicate that this "user fee" will generate $1.8 billion in revenue during its first year on top of the $200 million generated by the passenger user fee.

This is about twice as much as the Customs Service spends in a year. So the "fee" is obviously not tied to the services Customs provides.

What is more, an editorial in last week's Washington Post points out the real danger of going along with this ploy.

In short, it points out that what the Ways and Means Committee has approved is an across-the-board tariff hike on all imports. And it is GATT-illegal.

Article VIII of the GATT says clearly:

> All fees and charges of whatever character, other than import or export duties, imposed by contracting parties on or in connexion with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

Madam President, the House Ways and Means Committee has done precisely what the GATT says is illegal.

This new tariff will affect products which are supposed to receive duty-free treatment under the Generalized System of Preferences for LDC's.

It will affect products on which we negotiate tariff reductions during earlier rounds of multilateral trade negotiations. Our trading partners will be able to request compensation from us in return because we will have violated those earlier agreements.

More important, it will torpedo the new round of multilateral trade negotiations launched just 10 days ago in Punta del Este and guarantee that the United States-Canada free trade agreement will never see the light of day.

It is a perfect example of this administration's inconsistent trade policy.

It is a bad idea, and I urge the conferees on the reconciliation bill to eliminate it or at the very least limit it to cover no more than the cost of Customs services.

Madam President, I ask unanimous consent that a reprint of the Washington Post editorial be printed in the RECORD.

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

[From the Washington Post, Sept. 25, 1986]

AND NOW A MINI-TARIFF?

How about just a small tariff—not more than a billion or two dollars a year? You'd hardly notice it. Taxing imports always seems like such a pleasant way to raise revenue for the government. The new tax could be called a Customs Service user fee. Do you think anyone would really object?

Yes, they'd object—and they'd be right. The House Ways and Means Committee has done many decent and useful things this year, but its mini-tariff is not one of them. Rummaging around anxiously for ways to diminish the budget deficit, the committee has voted for a tax on all imports, to be set at 0.5 percent of value for the 10 months beginning in December and dropping to 0.2 percent after that. The administration shares the blame for this idea. President Reagan proposed it last winter in his budget, at a lower rate. But the precise rate is not crucial. It's wrong in principle and would make trouble all out of proportion to any benefits.

As the committee has written the provision, the revenue would be earmarked for the Customs Service. Earmarking is bad practice in taxation, and once this small tax is established there would be constant temptation to expand it. The charge would be assessed on all goods coming into this country, including those supposed to be duty-free—the goods arriving under the free-trade agreement with Israel, for example, and under the exemptions provided by the Caribbean Basin Initiative. All the countries that have negotiated zero-tariff agreements for various kinds of goods would suddenly find that the tariff was not zero but 0.5 percent. The Americans would assure them, with great sincerity, that the Customs user fee was not intended to protect the American market. But foreign shippers, as they paid the fee, might find that hard to believe.

The United States is now leading a worldwide process of persuasion and negotiation to expand trade. That's what the meetings at Punta del Este, Uruguay, were about—and they went well. As the most powerful of the trading nations, the United States, by its actions, sets the atmosphere in which these trade talks will proceed. If it now puts a new tax on its imports, it will dramatically undercut its campaign against protectionism elsewhere. This country has an immense stake in international trade, and to jeopardize it with the mini-tariff would be wanton.

Mr. BAUCUS. Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE PRESIDENT'S POSITION ON SOUTH AFRICA

Mr. PRESSLER. Madam President, it is my strongest view that the President's position on South Africa should be sustained in the Senate, and it is my strongest feeling that if economic sanctions are imposed it will slow the ending of apartheid because the strongest force against apartheid in South Africa is the business community. If free enterprise and the business community are destroyed, the strongest force for ending apartheid in that country will be destroyed.

It is my deepest conviction that the Senate-passed bill and the House-passed bill are a very serious mistake. I think the President is on the right track.

Unfortunately, this is viewed as a civil rights vote in the United States and I think we are making foreign policy based on a domestic criterion. That is dangerous because the circumstances between the civil rights movement of the 1950's and 1960's in the United States and what is happening in South Africa are not analogous.

Be that as it may, we are currently in a cloture situation in the Senate. It is not this Senator's intention to take any time from the continuing resolution or from other business that is occurring during this last week or 2 weeks of the session. I understand we will be doing the Judge Claiborne matter next week.

But during this last 2 weeks, the leader has been accommodating in that the vote will probably occur Thursday evening, as I understand it, under a proposed unanimous-consent agreement which I have not yet agreed to, and time will be divided. There will be approximately 6 hours of debate on this subject.

If we would have filibustered, we would have had the vote at about the same time. As I understand it, all of the Senate business would have been delayed until that time. We have chosen to allow the time to run against the cloture motion at the same time the continuing resolution is being completed, which will give the President time to contact Senators and give the Senate time to prepare to work its will on this matter.

I would say that I think within the next hour a unanimous-consent request will be propounded and I would expect it will amount to about 6 hours of debate, with a possible rollcall on South Africa about 9 o'clock Thursday night, as I understand it. That has not been proposed formally.

I wanted to say that it is not this Senator's intention to hold up any other matters so long as the time is carried out. It would be this Senator's view that it would be unnecessary for the Senate to have a cloture vote and that we could go directly to a vote. Other Senators may feel differently.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1040

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

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

ORDER OF BUSINESS

Mr. DOLE. Madam President, let me indicate to my colleagues that it is now 10 minutes to 11 on Wednesday. We have been on the continuing resolution for 2 days. The managers are here and would like to start the continuing resolution again. There are a number of amendments. I am going to propound a unanimous-consent request on South Africa. I hope that those who have had plenty of time to be around here would show up if they intend to object or to reserve the right to object, because we are not going to complete our work by wasting time.

□ 1050

If we cannot get the agreement, then we will be on South Africa today and tomorrow. If we can reach an agreement, we will vote by unanimous consent about 4 o'clock tomorrow afternoon. But in fairness to the managers of the bill, who have been here for the last 25 or 30 minutes, I would hope that those who wish to object would indicate as much within 5 minutes or I intend to propound the consent agreement.

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

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

ORDER OF PROCEDURE

Mr. BYRD. Madam President, do I have some time reserved to me throughout the day remaining from my leader time under the order?

The PRESIDING OFFICER. The Democratic leader has his full 10 minutes remaining.

Mr. BYRD. Madam President, I will exercise my rights under that order at this time. I yield 5 minutes thereof to Mr. KENNEDY.

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

Mr. KENNEDY. I thank the minority leader.

THE VETO OF SOUTH AFRICA SANCTIONS

Mr. KENNEDY. Madam President, President Reagan's decision to veto the South Africa sanctions legislation is an affront to American ideals and to the cause of freedom and justice throughout the world.

This veto is an unfortunate signal to the world that America, which has been a beacon of liberty for two centuries, now has a double standard. When it comes to freedom for those who live under the shadow of communism, America cares—but when it comes to freedom for those who live under the shadow of racism and apartheid, America could care less.

To be true to its high principles, America must stand today for freedom in South Africa. Throughout our history, our citizens have worked and sacrificed to advance America's ideals and to make the dream of liberty a reality. Millions have given their lives—in the American Revolution; in the most tragic war in our history, the Civil War; in two world wars; in Korea; in Vietnam. And in our own society, the ongoing peaceful revolution of civil rights is keeping that faith for millions of citizens seeking justice in their own communities.

The ideals established in this country two centuries ago are not restricted to white Americans or any other race or people. They are universal. They inspire the 26 million citizens of South Africa today as surely as they inspired the American colonists who struggled for their own freedom in 1776. And with or without the support of the United States, their cause will prevail.

It is sad that the President persists in locking himself into a failed and lonely policy that has put America on the side of racism in South Africa. Now, it is up to Congress to override the veto and convince the world that America stands where it belongs—against apartheid and in the forefront of the struggle for a free South Africa.

Apartheid is institutionalized racism. As Congressman BILL GRAY has eloquently put it, sanctions may hurt, but apartheid kills. It deserved no aid or comfort from any nation on Earth, let alone the United States. Apartheid is rooted in the evil theory of the master race. It brings discrimination, and often death, for anyone in South Africa who is not white. It brings arbitrary arrest by government, detention

by government, torture by government, and murder by government. It is the most extreme example on Earth of man's inhumanity to man.

America is stooping low today, not standing tall, in our policy on South Africa. The flawed policy of constructive engagement is appeasement of apartheid, and no amount of rhetoric against racism can counteract the reality of the result of this veto.

Yesterday, the Secretary of State urged the Senate to sustain the veto, so that we would not be sending the President to Iceland with a foreign policy defeat. But if the veto is sustained, the real victory will not be President Reagan's, but President Botha's. And America itself will suffer an even more serious defeat, for our ideals will be tarnished with the stain of racism.

The time has come for Congress to change a policy that has failed, that has brought humiliation and disrepute for the United States in our own country and throughout the continent of Africa, and that is false to America's best ideals. There is no middle ground on this issue—we stand for freedom, or we stand for apartheid. I urge the Congress to override this veto.

I yield back to reminder of the time to the minority leader.

Mr. BYRD. Madam President, do I under the previous order still retain the remaining portion of my time that was reserved by the distinguished majority leader?

The PRESIDING OFFICER. Yes, the remaining time is reserved.

Mr. BYRD. I thank the Chair. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1120

Mr. SYMMS. 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. SYMMS. Mr. President, I ask unanimous consent to proceed as if in morning business.

Mr. BYRD. Mr. President, reserving the right to object—I do not think I will object—what is the distinguished Senator seeking to do in morning business?

Mr. SYMMS. I seek to insert an article in the RECORD about the late Senator East, and to introduce legislation.

Mr. BYRD. The Senator also wishes to speak briefly in morning business?

Mr. SYMMS. Yes. I ask unanimous consent to speak briefly as if in morning business.

Mr. BYRD. For what length of time?

Mr. SYMMS. Five minutes.

Mr. BYRD. Mr. President, I have no objection.

Mr. SYMMS. I thank the distinguished minority leader.

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

SENATOR JOHN EAST: SEMPER FIDELIS

Mr. SYMMS. Mr. President, the Nation recently mourned the passing of a great American, a true patriot, a loyal friend and a powerful inspiration to all of his colleagues in the U.S. Senate: Senator John East.

While in the service of his country as a marine, Senator East contracted the polio that eventually confined him to a wheelchair. In spite of his afflictions and personal struggles with health related problems, Senator East exemplified the full meaning of the motto he served under as a marine: Semper Fidelis—always faithful.

Mr. President, I gave a personal tribute to Senator East some time ago, but today I wish to enter into the RECORD an outstanding article that very well sums up the feelings of his closest friends. The article is appropriately entitled, "Senator John East: Semper Fidelis."

I ask unanimous consent that the article be printed in the RECORD.

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

[From the Conservative Digest, September 1986]

SENATOR JOHN EAST

SEMPER FIDELIS

(By Patrick B. McGuigan)

John East grew up in what the media now call "a traditional family." Born in Springfield, Illinois, he was the son of a state employee and was always interested in politics. He attended Earlham College, one of the best of our country's small schools, and played left tackle and was captain on the Quaker college's football team. This led to his first encounters with Priscilla Sherk, later his wife, who was an Earlham cheerleader. A serious scholar even as an undergraduate, East's determination to enforce study hours earned him the affectionate nickname at Earlham: "Iron Chancellor of Bundy Hall."

John East was graduated from Earlham in 1953, and shortly thereafter John and Priscilla, known to her friends as Sis, were married. American men had been dying in Korea, and the patriotic John East met his obligations by joining the U.S. Marine Corps where he served for two years.

Only a few weeks after his discharge from the Marines, John contracted polio. Doctors said the disease originated in the Camp Lejeune swimming pool, where John had worked out regularly. For a time, East was critically ill. A year of therapy—including time at the Warm Springs, Georgia, facility where Franklin Delano Roosevelt had been treated—left him with residual paralysis in both legs and some permanent weakness in his right shoulder. Sis recalled that John was philosophical when he learned that he would never walk again. She told *People* magazine, "He put his arm on my shoulder and said, 'Things will be all right, Sis.' And I knew that they would."

John East, succeeding despite his confinement to a wheelchair, inevitably became a model and a symbol of what it means to deal courageously with adversity. He told Betty Cuniberti of the Los Angeles Times: "I don't play up the [handicap]. I spend 99.9 percent of my time with able-bodied people, and I think that's a contribution. . . . [I]f you get out and perform and work and create and do and succeed, you will do more. Those people do more for the cause than all the screamers and the yellers and the hollerers. When you're around somebody who's constantly playing up their disabilities and their ailments and their hurts and their pains, they're a darn bore." John was never boring.

Almost always reluctant to discuss his physical problems in political terms, East broke that rule only once as he fought to protect the right to life. He told Cuniberti, "It's a little presumptuous, downright egotistical, to say 'I am viable, I go it alone.' The devil you do! You think you do, but you're very dependent on other people in this life and you are from the time of being an unborn child until you die." He now spoke from his own experience: You're "at the peak of your physical capacity, struck down like that (he snapped his finders), totally dependent on little nurses coming in that weigh half as much or a third as much as you do. All of a sudden, you're no longer viable. Now, if viability is the test of livability, of the right to live, should I have been just left to die?"

Soon after turning the corner in his battle with polio, John East enrolled in law school at the University of Illinois, earning his LL.B. in 1959. After trying his hand at private practice, East decided he was more inclined to the life of the mind than that of the storefront lawyer. He studied political science at the University of Florida, earning his M.A. in 1962 and his Ph.D. in 1964.

John East now started on the course that would ultimately place him in the national spotlight. He accepted a position in the department of political science at East Carolina University (E.C.U.) in Greenville, North Carolina. As in most institutions of higher education, the faculty was dominated by liberals. But John was so persuasive and formidable in his arguments that he earned the respect of even his most liberal colleagues over the sixteen years which follwed. Dr. Larry Hough of the East Carolina political-science faculty told the Greenville Daily Reflector: "John and I were both political-philosophy specialists and our views differed, but I found in him a man who could discuss and argue his views very articulately and without malice. He was very popular with the students back in the radical days of the '60s and '70s. He always had full classrooms. And last year, I had him come talk to a legislative class and the room was overflowing, both with political-science students and many others. He was a wonderful lecturer."

Among the close friends he earned in those years was John M. Howell, Chancellor of East Carolina University. Howell described Professor East as a "fascinating lecturer" with a pointed sense of humor. A moderate Democrat, Howell nevertheless made a campaign contribution to East when he ran for political office in the 1960s. John East wrote him a thank-you note, saying: "With enemies like you, who needs friends?"

The skies were cloudy and overcast when the little commuter airplane on which I was a passenger touched down in Greenville,

North Carolina. The flag at the airport was at halfstaff in honor of the town's most prominent citizen, John East, the greatly loved former political science professor at East Carolina University who had gone to Washington to fight for the things most folks in Greenville believe in as a matter of course.

The woman at the airport car rental knew why I was there, and she couldn't help talking about it. "When I was a little girl, he ran for Congress and didn't make it. My family always liked him. He worked so hard for so long. Then, he won the Senate thing. I just can't believe it."

Invariably, I did what I always do when I have a little spare time in a strange town. I went to the news room of the town newspaper, the Greenville Daily Reflector. *I passed some time there with Stuart Savage, a longtime political reporter. Stuart had kown East for many years, and shared my opinion of the scholarly statesman: "We loved him. I'm gonna miss him."*

John East had also made a lasting impact on several generations of East Carolina University students. One of them, David Harrington, described Professor East as "the most intellectually stimulating professor I ever had." Harrington, who had studied under East as both an undergraduate and a graduate student, told the *Daily Reflector*: "There were mornings when I would get up not wanting to do what I had to do for the day. Then I'd remember that I could count on Dr. East to be in class in his wheelchair, totally enthusiastic and impeccably prepared for that day . . . as if it were a major lecture he was delivering, not just a routine class to teach . . . [*East would*] do this day after day and make . . . philosophers like Plato and Burke and Locke come alive so I never forgot them and what they believed. The way he conducted his classes . . . was so inspiring, not just for me, I know, but for hundreds of students, whether they agreed with his political views or not. He wasn't a pal to his students, but he always knew every one of them by name, even years after they'd been in his class, and was always interested in what they were doing."

David Harrington continued: "I remember just a few years ago, I invited him to make a commencement talk at a school where I was then teaching in Washington, North Carolina. He agreed, invited me to ride with him in his car, made a superb talk, and even refused the honorarium the school offered him, suggesting we use it for what would most benefit the students. He always emphasized the value of the individual human life and spoke against fascism as much as against communism, because he saw in both the danger of putting the value of the state over the value of the individual."

John East's reputation grew, not only as a classroom teacher, but as a distinguished scholar with a deep understanding of the moral and philosophical roots of Western political institutions. The author of a major scholarly book on city government, East eventually produced a wide range of articles published in general-interest magazines and academic journals. He served on the editorial boards of Modern Age and the Political Science Reviewer, remaining active in the American Political Science Association, the Southern Political Science Association, and Phi Beta Kappa. He was until his death a Contributing Editor of Conservative Digest. His thought-provoking essays included such titles as "Conservatism And College Teaching," "The Political Relevance Of St. Augustine," "The American Conservative Movement Of The 1980s." and "The Professor And His Identity Crisis." His work was published in Modern Age, Universitas, Political Science Reviewer, the Wall Street Journal, and elsewhere. He won two "Excellence In Teaching" awards at East Carolina University. And every paragraph of John East's writing and teaching was permeated with his understanding of the transcendent importance of the Judeo-Christian tradition to American institutions.

Amid this flurry of teaching and scholarly research, John and Sis East raised two daughters, Kathryn and Martha. It says something special about this family that both eventually pursued careers as physical therapists for the physically handicapped.

The funeral was held at Jarvis Memorial United Methodist Church, a beautiful church in the city's small downtown area. Suffering the loss of my friend, I went two hours early to sit and to pray.

*The funeral attracted leaders from both political parties and from throughout the conservative movement. Barbara Bush represented her husband, the Vice President. Senate Majority Leader Bob Dole and his wife, Transportation Secretary Elizabeth Dole, led a Washington delegation which included Republican Senators Strom Thurmond, Richard Lugar, Dan Quayle, and Alan Simpson, along with Democrat Senator Howell Heflin. They were joined by T. Kenneth Cribb, representing the Attorney General, and John Bolton, the Assistant Attorney General in the Office of Legislative Affairs. The wives of a number of other Members of the Senate also attended, along with North Carolina Congressmen James Broyhill, Alex McMillan, Billy Hendon, and Howard Coble. Governor James Martin was there, and scattered throughout the church packed with some 800 people were friends from the leadership of the conservative movement. These included Jerry Falwell (Liberty Federation), Richard Viguerie, Ron Godwin (*Insight *magazine), Howard Phillips (Conservative Caucus), and Mildred Webber (Heritage Foundation).*

Pastor Malloy Owen conducted a short and dignified memorial service, beginning with Psalm 121: "I lift up my eyes toward the mountains; whence shall help come to me? My help is from the Lord, who made heaven and earth . . . ." The congregation joined in recital of the Apostle's Creed and singing of "Onward Christian Soldiers." Pastor Owen closed his short eulogy with a powerful rendering of the Prayer of St. Francis of Assisi, asking us: "Who will take up the torch of this brave man?"

It was John East's power as a debater and thinker which had inevitably drawn him to direct political involvement. A Republican in an era when no one but Democrats secured elections in North Carolina, East tried for the U.S. House of Representatives in 1966. Suffering defeat, he ran unsuccessfully for Secretary of State in 1968. But he emerged as a leader in the resurgent Republican Party of North Carolina. John served as a national committeeman in the late 1960's, and as a delegate in 1968 and 1976 to the National Conventions of the Republican Party. At the 1976 Convention he helped craft the conservative G.O.P. platform on which underdog President Gerald Ford nearly recovered from the Watergate scandal before losing narrowly to Georgia Governor Jimmy Carter.

East had by now become a key ally of conservative Senator Jesse Helms, who asked him in 1980 to challenge the moderately liberal Democrat incumbent Senator Robert Morgan. After securing the nomination, Dr. East insisted on an issues-oriented campaign against Morgan, criticizing the incumbent's support for the surrender of the American Canal at Panama, aid to Marxist insurgents in Nicaragua and the federal bailout of New York City. John East also attacked Morgan's opposition to a strong national defense, including the Democrat's leadership in killing the B-1 bomber. In one of the most dramatic results of the pivotal 1980 election, East defeated Morgan by just 7,004 votes. Gracious in victory, he called Morgan "a great friend" of East Carolina University, and "a great public servant."

In the Nation's capital, John East was suddenly part of the Republican majority, unexpectedly in control of the United States Senate. Senator Strom Thurmond (R.-South Carolina), the new Chairman of the Judiciary Committee, asked East to serve as Chairman of the Subcommittee on Separation of Powers, which he did for the next four years, moving on to serve as Chairman of the Subcommittee on Courts.

Lost now in the mists of cliché is the name of the journalistic wag who acidly designated East a "Helms on Wheels" in an effort to dismiss the junior Senator's personal contributions to the conservative renaissance occurring in the nation's capital. Jesse Helms responded to the nickname by saying, "I think that's an insult to him. He's smarter than I am. I appreciate the compliment." John East, whom Paul Weyrich once called the only authentic conservative intellectual in the U.S. Senate, only laughed.

Eventually, East earned what Betty Cuniberti of the Los Angeles Times called "the unofficial title of philosopher of the . . . New Right, a spokesman increasingly called upon for the conservative point of view . . . ." Cuniberti described East in action: "With the self-bestowed carte blanche to rally long-dead philosophers to his side, East can be intimidating if somewhat esoteric. It's often not a fair game. He's sent too many players on the field. He knows that few Senators or witnesses at hearings dare to match wits with him."

East quickly made his mark in the Senate. To the dismay of the Liberal Establishment in the nation's capital, he sponsored the Human Life bill of 1981-1982. The hearings on that legislation were outstanding for the clear trust of the evidence East presented: That unborn children are human beings from the moment of conception.

In the Judiciary Committee, Senator East was a defender of the conservative "strict constructionist" judicial nominees of the Reagan Administration. When liberals on the Committee succeeded in scuttling the nomination of Assistant Attorney General William Bradford Reynolds to move up to the Number Three position in the Department of Justice, East aptly condemned what he called "cannibalism Washington style."

John East continued his scholarly activity while in the Senate. In 1981, he produced "The Case For Withdrawal Of Jurisdiction," an examination of the meaning of Article III, Section 2, of the Constitution which was published in "A Blueprint For Judicial Reform," the book which sparked the modern judicial-reform movement. A few months later, East appeared at the 1982 Conference on Judicial Reform sponsored by the Free Congress Foundation.

Committed to a strong national defense, Senator East was also a supporter of American strength in this hemisphere, frequently criticizing House Democrats for stalling on military assistance to the Freedom Fighters

in Nicaragua. One of his most courageous moments in the Senate came in 1982, when he joined Senator Helms in a week-long filibuster against a 25-year extension of the Voting Rights Act, an extension which actually heightened coercive federal powers over the electoral process. He also opposed efforts to increase gasoline and some excise taxes. John East was a conservative's conservative, aggressively defending the vision that the Founding Fathers of the American Republic had held—a vision sometimes betrayed even in a Senate controlled by his fellow Republicans

As just one example, in 1985-1986, Senator East opposed the Inter-Circuit Panel supported by Chief Justice Warren Burger and a majority of the Judiciary Committee's Republicans. The original legislation would have created a new federal court with unlimited jurisdiction. Members of the Panel would have been picked by the present membership of the Supreme Court, assuring a liberal orientation to what would have been, in essence, a national court of appeals. Senator East prevailed on a key amendment designed to limit the new court's jurisdiction solely to conflicts between circuits rather than give it the unlimited jurisdiction envisioned by the Chief Justice and his supporters. Then Senator Dennis DeConcini (D.-Arizona) pushed through an East-influenced amendment removing selection of the Inter-Circuit Panel from the Supreme Court and giving it, instead, directly to the membership of the various circuit courts. Passage of these two amendments lessened the Chief Justice's enthusiasm for the constitutionally suspect proposal. John East's actions on this legislation were the crucial step in forestalling passage of an unwise expansion of judicial power.

Despite this success, 1985 was not a good year for John East. In February he underwent surgery to remove a benign obstruction of his urinary tract. As he was recovering from this setback, he complained of insomnia and fatigue. Tests at Bethesda Naval Hospital in April 1985 revealed East had hypothyroidism, a potentially debilitating illness in which the thyroid is disrupted, affecting the body's metabolism and energy levels. After struggling all summer to overcome the disabilities associated with this, John announced in mid-September that he would not seek reelection in 1986. A month later, he was back in the hospital for tests resulting from discovery of a dangerously low white blood cell count.

Senator East would not reveal publicly his plans beyond November 1986. However, he had been asked by Chancellor John Howell to resume his post on the political-science faculty at East Carolina University. In the meantime, as his strength returned in the spring of 1986, he worked feverishly to complete the editing of a book of his essays on conservative political thought. And John East returned to his Senate duties, pressing for confirmation of the Reagan Administration's increasingly embattled judicial nominees.

Several of the Senator's admirers pushed for his elevation to the U.S. Court of Appeals for the District of Columbia Circuit, either to replace retiring liberal Judge Skelly Wright or, after mid-June, to replace Supreme Court nominee Antonin Scalia. But in a development his friends did not recognize at the time as ominous, in late June, Senator East asked that his name be removed from consideration for the post. Deeply depressed, he did not now feel himself worthy of the federal bench.

Hypothyroidism can cause a hormone deficiency leading to anemia, fatigue, insomnia, intellectual impairment, weight loss . . . and depression. "The Textbook Of Medicine" also indicates it has been known to cause "hallucinations, disorientation, paranoia and attempted suicide." However, John East had regulary received medication designed to counter the problems of this illness.

On Friday, June 27th, John East completed work on the book galleys of his collected essays. He met with Supreme Court nominee Antonin Scalia. Then, commitments met, Senator East drove to Greenville with his aide, John Petree, arriving home about noon on Saturday. Sis was on vacation with her mother for the weekend, but Petree stayed with East until daughter Kathryn arrived for a visit. Kathryn left her father "in good spirits" about midnight that night. Petree returned to East's house on Sunday morning, June 29th. He found the front door ajar. The Senator was dead in his garage, an apparent suicide, a victim of carbon-monoxide poisoning.

The death of John East was a terrible shock to millions of us. President Ronald Reagan declared him a "true patriot" who was "never flamboyant or interested in personal acclaim. . . . He was a quiet and effective legislator, who never wavered in his determination to keep our country strong. He cared about the people of North Carolina in a special way and was immensely proud of being chosen to represent them in Washington. Even in the face of adversity, John East put his duty and his constituents ahead of his colleagues on both sides of the aisle."

Jesse Helms, who had the sad duty of carrying the tragic news to Sis East, was all but desolate. He said, "The Senate has lost a brilliant and effective voice for freedom, and those of us who were privileged to know him and serve with him have lost a dear friend and a constant source of inspiration." Senator Jeremiah Denton (R.-Alabama), who is an authentic expert on the subject, said: "No man I know of lived with more years of courage and achievement against great odds."

Senator East's term in office was marked by many enduring contributions to the nation and to the conservative movement. He steadfastly promoted the right to life for unborn children, and was an articulate defender of the Constitution's central concepts of federalism and separation of powers. John East's gifts as a scholar and orator and warm human being made him one of a rare breed of statesman reminiscent of the Founding Fathers. The courage, fortitude, and sincerity that this great man brought to public life will be missed in the Senate, and always remembered by those of us he inspired.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1130

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

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

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I am about to propound a unanimous-consent request on the veto message.

Mr. President, to accommodate those who are handling the continuing resolution, we will permit them to go to about 7 o'clock tonight and then we will have some debate on South Africa. We will come back tomorrow at 2:15 and conclude the debate on South Africa at 4 o'clock. This would permit, I am advised by the chairman of the Appropriations Committee, the Senate to do a lot of work today and to start very early in the morning, being on the CR at 8:30 until 2:15.

After the vote on South Africa, it would be the intention to complete action on the CR tomorrow evening.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now resume consideration of the continuing resolution, and at the hour of 7 p.m. this evening, the Senate lay aside the continuing resolution in order to consider the veto message to accompany the South Africa bill, and the time be divided in the following fashion: 1 hour under the control of the minority leader, or his designee; 1 hour and 15 minutes under the control of the majority leader, or his designee; 1 hour and 45 minutes under the control of Senator PRESSLER.

I further ask unanimous consent that the Senate resume the veto message at 2:15 p.m. on Thrusday, October 2, and the time be divided in the following fashion: 45 minutes under the control of the minority leader, or his designee; 45 minutes under the control of the majority leader, or his designee; 15 minutes under the control of Senator PRESSLER.

□ 1140

I also ask unanimous consent that at 4 p.m., the Senate vote without any intervening action, motion, or debate on the question "Shall the bill pass, the objection of the President to the contrary notwithstanding."

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, and I am sure I will not object, would the distinguished majority leader consider doing two things in order that the time that is being allotted to Senators for debate as it is clearly set forth in the request—that is for debate only and that no motions or other action on the South Africa veto message may be taken; and second, that at the end of the first 4 hours which are allotted for debate, it is made clear that the Senate goes back to the continuing resolution. That is tonight. Otherwise,

at the end of those 4 hours, a Senator could get the floor and debate well into the night and talk into the night on this subject.

I respectfully suggest that the majority leader then provide that at the close of the 4 hours this evening or the yielding back of the time, there be no further debate on this subject matter today. Then, on tomorrow, as I indicated earlier, that in both instances during those times that are allotted to Senators for debate, it be made clear that the debate be debate only. Otherwise, it seems a Senator could use quite a bit of time to make a motion.

Mr. DOLE. Mr. President, I think those are good suggestions. I incorporate them into my request.

Mr. BYRD. Mr. President, I withdraw my reservation.

The PRESIDING OFFICER. Without objection, the unanimous-consent agreement is agreed to.

VOTE ON CLOTURE MOTION VITIATED

Mr. DOLE. Mr. President, I ask unanimous consent that the cloture vote scheduled for tomorrow on the veto message be vitiated.

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

Mr. DOLE. Mr. President, I thank my colleagues. I believe this will accommodate the Appropriations Committee chairman and the ranking member [Mr. STENNIS], Senator BURDICK, and others who have to grapple with this matter for the rest of the day.

Mr. KENNEDY. Mr. President, I express support for the agreement.

I wonder if the majority leader would just ask out of order that the yeas and nays be ordered.

Mr. DOLE. They are automatic.

The PRESIDING OFFICER. The yeas and nays are automatic under the Constitution.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business, with statements therein limited to 5 minutes.

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

Mr. MATHIAS. Mr. President, at this time I submit the report of the committee appointed by the Senate under rule XI for the purposes of taking evidence in the matter of the impeachment of Harry Claiborne, and I herewith submit this report to the Senate. While I am waiting for the page to take it, I might advise all Members the report is here and in their idle hours in the next few days it will provide them with plenty of reading material.

The PRESIDING OFFICER. The report will be received.

Mr. MATHIAS. Mr. President, pursuant to Senate Resolution 481, adopted by the Senate on August 14, 1986, a committee was established to receive evidence and take testimony relating to the Articles of Impeachment against Judge Harry E. Claiborne, which the House of Representatives exhibited to the Senate on August 6, 1986. I was honored to be appointed to this committee by the Vice President, on the recommendation of the distinguished majority leader, and to be elected chairman by my colleagues on the committee. I also was pleased when my fellow Marylander, Senator PAUL SARBANES, was elected vice chairman. It was a privilege to serve with Senator SARBANES and 10 other of my distinguished colleagues in this historic proceeding: Senators HATCH, WARNER, RUDMAN, PRESSLER, MCCONNELL, HEFLIN, DECONCINI, PRYOR, GORE, and BINGAMAN.

The cooperation and diligent contributions of all its members allowed the committee to adhere to a strict schedule of meetings and hearings over 9 long days. The voluminous record produced by the committee reflects the extraordinary amount of work of its members, their designated staff representatives, and the committee staff.

Mr. President, the committee sailed in uncharted waters, and the active participation in this arduous work on the part of every committee member made it possible for us to fulfill our responsibility in an orderly and timely way. The work of this committee has a special value that will be recognized in the years ahead.

Now, Mr. President, in accordance with rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, we "report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee."

Mr. President, I will conclude with three brief matters. The first pertains to the briefs that the House managers and the counsel for Judge Claiborne were directed to file at the conclusion of the committee's evidentiary hearings. Subsequent to that committee order, the Chairman of the House managers, Representative PETER W. RODINO, Jr., objected to the committee's order, by letter of September 26, 1986, to the Vice President. As a result, the Senate leadership responded to Chairman RODINO by letter of September 27, 1986, modifying the committee's briefing order to permit the parties to limit their briefs to the legal issues which are presented by the Articles of Impeachment. These briefs are to be filed no later than Wednesday, October 1, 1986. The consequence of this modification is reflected in the committee's report, which I have just filed. I have also received a telegram from Judge Claiborne's counsel, Oscar Goodman, expressing Mr. Goodman's objection to both Chairman RODINO's letter and the response of the Senate leadership. I ask unanimous consent that these two letters and the telegram be printed at this point in today's RECORD. In response to the suggestion of Judge Claiborne's counsel, I had a conference call yesterday with counsel for both parties. It is my hope that both sides will be filing briefs today which explore all issues that are germane to our deliberations next week.

I ask further that House Resolution 461, which contains the Articles of Impeachment against Harry E. Claiborne, together with Judge Claiborne's answers to the articles, and the reply of the House managers to Judge Claiborne's answers, be printed for the use of the Senate.

Finally, I would congratulate the success of the enormous efforts of the staff of the Government Printing Office in producing over the past weekend the printed report of the Senate Impeachment Trial Committee's evidentiary hearings for use by the Senate in the continuation of these proceedings.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, September 26, 1986.

Re: Impeachment of Harry E. Claiborne.

Hon. GEORGE BUSH,
President of the Senate,
U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: The Senate Impeachment Trial Committee has requested that the parties file with the Senate a post-trial brief arguing the law and summarizing the evidentiary record developed before the Committee. The parties have been asked to file this brief by Tuesday, September 30, 1986.

It is my understanding that the Senate may be considering seriously the receipt of additional evidence before the full Senate. At the outset, the House of Representatives respectfully submits that the Senate should not re-examine witnesses who already have testified before the Senate Impeachment Trial Committee. The spontaneity of testimony on cross-examination can not be recreated. Witnesses will anticipate the examination and more effectively temper their responses. If the Senate wishes to observe the demeanor of the witnesses, it may do so most realistically by examining the videotape of the proceedings. The House of Representatives notes that demeanor is but one element of credibility; the credibility of witnesses also must be judged by the logic and the consistency of their testimony and by the relationship of that testimony to the documentary evidence.

The potential acceptance of further testimony and evidence presents an additional problem. On behalf of the managers of the House of Representatives, I submit that it is not appropriate to file a post-trial brief until the record in fact is closed. To provide Judge Claiborne with the post-trial brief filed by the House of Representatives,

which will provide a detailed analysis of the significance of the evidence presented, and then to permit Judge Claiborne or other witnesses to take the stand again would be fundamentally unfair. It is not simply the rights of Judge Claiborne that must be considered in this proceeding. Accordingly, the House of Representatives submits that it must postpone the filing of its post-trial brief until there is some indication from the Senate of its intentions with respect to the rehearing of testimony offered before the Committee or the taking of additional evidence.

The managers of the House of Representatives stand ready to file a post-trial brief as soon as this issue is clarified.

Sincerely,

PETER W. RODINO, Jr.

U.S. SENATE,
Washington, DC, September 27, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We have received and considered your letter of September 26, 1986, to the President of the Senate in which you state that the House wishes to postpone the filing of its post-trial brief with respect to the Articles of Impeachment it has exhibited against Judge Harry E. Claiborne. We will modify the briefing order to permit the parties to limit their briefs to the legal issues which are presented by the Articles of Impeachment. The parties are directed to file these briefs no later than Wednesday, October 1.

Sincerely,

STROM THURMOND,
President pro tempore,
ROBERT DOLE,
Majority Leader,
ROBERT C. BYRD,
Minority Leader.

[Telegram]

Re: Impeachment of Harry E. Claiborne.

Hon. CHARLES McC. MATHIAS, Jr.,
U.S. Senate,
Washington, DC.

DEAR MR. PRESIDENT: On behalf of the honorable Harry E. Claiborne I respectfully request that I be permitted an immediate opportunity to be heard by the Senate committee chaired by Senator Mathias, since it has full plenary power of the Senate within the narrow confines of Rule XI, in response to the demand of the Honorable Peter Rodino.

It is respectfully submitted that we have acted in good faith on Judge Claiborne's behalf in an attempt to comply with Chairman Mathias's order of September 24, 1986 and have exhausted our energies to satisfy his directives. To modify the same at this time would be disruptive and fundamentally unfair. We recognize the sense of expediency, but we pray that the matter be given careful attention in order to assure a fair presentation of the judge's case. I am available for conference call at your immediate convenience.

Respectively,

OSCAR B. GOODMAN,
Attorney for Judge Claiborne.

DRUG ABUSE

Mr. EAGLETON. Mr. President, I would like to draw my colleagues' attention to a recent opinion article written by the distinguished senior Senator from North Dakota, regarding the current urgency in Congress and across the Nation for action against drug abuse.

Senator BURDICK raises some thoughtful questions about balancing our need to address the drug problem with our duty to protect the personal freedoms and privacy of our people. Senator BURDICK sounds a note of caution well worth heeding. All of us involved in the fight against drug abuse, and all of us who cherish our civil liberties would do well to read his views.

Mr. President, I ask unanimous consent that Senator BURDICK's article be printed in the CONGRESSIONAL RECORD.

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

[From the Grand Forks Herald, Sept. 23, 1986]

CIVIL RIGHTS AT RISK IN DRUG WAR

(By Quentin N. Burdick)

Congress and the country have been gripped in recent weeks with a renewed zeal in the war against drug abuse. It's a worthy cause. The nation's drug habit is slow poison, gradually crippling the lives of the estimated 20 million Americans who use drugs.

I agree that swift and aggressive action is needed. But in rushing to win this war, we must take care not to trample the personal freedoms of our people. As new proposals to stem the tide of drug use have multiplied, some serious threats to our most cherished civil liberties have crept in.

President Reagan recently announced a drug abuse initiative. Some of his ideas are good—improving international efforts against drug trafficking, and stepping up efforts to decrease the demand here at home. Some of his ideas are not so good—drug testing, for instance.

Drug testing is a clear invasion of privacy. Most alarmingly, the test are not reliable. The failure rate for common urinalysis is about 20 percent. Eating a poppy seed roll can result in positive test for opium, a perfectly legitimate drugstore painkiller can test out as marijuana.

Yet the President suggests that a million federal workers submit themselves to such tests. With that failure rate, his proposal would place some 20,000 federal employees in danger of being falsely accused. Even if an employee is later cleared by more detailed testing, the stigma of the accusation will linger. Lives, reputations and careers must not be allowed to rest on such flimsy ground.

The U.S. House has just approved new anti-drug legislation. Among its many provisions, this bill unfortunately would allow limited use of illegally seized evidence. It would permit law enforcement officers operating in "good faith" to enter a private home without a search warrant.

We all know the frustration of seeing a crook get away because of a loophole in the evidence laws. We don't want our police officers' hands tied. Yet the function of these laws is to protect the sanctity of our homes against unreasonable search and seizure. We must not set them aside lightly, even in a pursuit of the greater good.

No matter how urgent our desire to stop the use of illegal drugs, our first responsibility is to protect the innocent. Catching the criminals who use and abuse drugs while ruining the lives of innocent people is unacceptable.

Testing is not the answer to the drug problem; seizing evidence illegally is not the answer. Instead, we must cut off the supply at the source, and decrease the demand for drugs on the streets.

We must work with Bolivia, Columbia and other drug producing countries to wipe out drugs at the source. We must make drug trafficking more risky and less profitable. We must take dealers off the streets and playgrounds and put them into a stronger prison system. We must teach our children that drug-free is better than drug-dependent.

The legislation I've co-sponsored in the Senate allocates serious resources to these goals. Instead of spending millions of dollars on inaccurate, invasive drug tests, the Senate bill directs the funding to the root of the problem. It would strengthen five critical areas: interdiction to plug up the drug supply; enforcement to take criminals off the street; penalties to discourage drug-related crime; rehabilitation for those who want to stop using drugs; and education to teach everyone about the dangers of drugs.

The legislation attacks the drug problems without violating personal freedoms. We don't need to invade the privacy of a million federal workers or ransack homes looking for evidence. The drug problems can be conquered if we concentrate our efforts where they belong; interdiction, enforcement, and education.

S. 2900—PROVIDING A TEMPORARY EXTENSION OF THE INTERSTATE TRANSFER DEADLINE FOR THE H-3 HIGHWAY

Mr. INOUYE. Mr. President, my colleague, Mr. MATSUNAGA, and I have introduced a measure which extends the time for withdrawal of a route from the Federal Highway Act. I ask unanimous consent that the bill be left at the desk pending further disposition.

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

GREAT BASIN NATIONAL PARK ACT—S. 2506

Mr. HATCH. As the distinguished Senator from Idaho knows, I have been very concerned with aspects of this legislation pertaining to grazing within the proposed national park.

It is my understanding that the bill allows for continued grazing within the park boundaries of the Great Basin National Park. Is this understanding correct?

Mr. McCLURE. Yes, the distinguished Senator from Utah is correct in his understanding.

Mr. HATCH. I thank the distinguished Senator from Idaho. Might I inquire as to whether grazing is to be left to the discretion of the Park Service, or of the Secretary of the Interior?

Mr. McCLURE. Certainly. In order to answer the distinguished Senator from Utah's question, perhaps I

should relate the committee report language approved with this bill which indicated it is the committees intent that the Secretary of the Interior shall permit grazing on lands within the park and does not expect that any action restricting a grazing will occur unless it is in the furtherance of sound rangeland management.

Mr. HATCH. I thank the distinguished Senator from Idaho for his explanation.

I raise this point, simply because as a Senator from a state with five national parks, I have become well acquainted with conflicts which can sometimes occur between Federal land managers and ranchers, and believe it is important that the committees intent be clearly recognized.

I have been particularly concerned with the impact that any digression for the Senate language would have on several ranchers with grazing permits located in the parks proposed boundaries, and particularly the impact it may be on the ranching operation of Mr. Owen Gondor from Garrison, UT.

Mr. Gondor is a fifth generation rancher in this area. His great grandfather was one of the first four settlers to settle this valley and homesteaded his ranch in the 1880's. Though Garrison has been settled for sometime, it is a remote area which only received telephone service this summer. If the Senate language is not adopted, Mr. Gondor's operation will become inoperable, as he will lose the ability to grace his cattle on summer range, and as the Forest Service and BLM have indicated, there are no replacement lands available.

I point this out to my colleague not because he is unfamiliar with this situation, but to state the situation in such a way that it will be clearly recognized and understood by conferees on the bill. Any move to curtail grazing in this park will in fact put at least one individual out of the livestock business his family founded over 100 years ago.

Mr. McCLURE. I appreciate and share the concern that the Senator from Utah has related and assure you that it is the intent of the bills sponsors and of the Senate Energy Committee that grazing be allowed to continue in the park under the direction of the Park Service. Grazing will however, be administered in a manner consistent with Forest Service regulations, because of that agency's expertise in grazing management. That intent was clearly expressed in the committee report.

Mr. HATCH. I again thank the distinguished Senator from Idaho, as well as the bill's sponsors, Senators HECHT and LAXALT. I appreciate your interest, as well as theirs in preserving the ability of these ranchers to peacefully coexist with this park and thank you for your attention to this matter.

TAX REFORM ACT OF 1986

Mr. PACKWOOD. Mr. President, on the day the tax bill was passed, Septemer 27, 1986, I entered into the RECORD a number of colloquies clarifying various provisions of the bill. In one instance, Senator CHAFEE and I discussed the tax treatment of Blue Cross and Blue Shield. Unfortunately, there is a typographical error contained in the official RECORD which might lead to confusion over the intent of the legislation. To set the record straight, I ask unanimous consent that a corrected version of the colloquy between Senator CHAFEE and me be entered into the RECORD at the conclusion of my remarks. Specifically, the change involves correcting the word "consent" to "constant" in one of my responses to Senator CHAFEE. The sentence should read: "The committee is fully aware of the dynamic nature of the health benefits industry and recognizes that constant changes in products and benefits are the order of the day."

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

BLUE CROSS AND BLUE SHIELD

Mr. CHAFEE. I understand that Blue Cross and Blue Shield organizations no longer will be tax exempt as social welfare organizations after December 31, 1986.

Mr. PACKWOOD. That is correct, but those organizations will be allowed a special deduction in recognition of their community service activities. The deduction is equal to the excess of 25 percent of the organization's claims and administrative expense for the taxable year over the organization's prior year's surplus.

Mr. CHAFEE. I would appreciate the chairman's clarifying some aspects of that important provision. The bill limits the use of the deduction to existing Blue Cross and Blue Shield organizations which do not materially change their operations after the date of the conference agreement. Does this mean that any change in the organization's operations after that date will cause it to lose the deduction?

Mr. PACKWOOD. Certainly not. The purpose of the limitation is to deny the deduction to the organization only if it makes a change in its operations which is so material that the change has the effect of eliminating coverage for a high risk segment of its business. An example of such a material change would be elimination of coverage for individuals.

Mr. CHAFEE. Would offering a new product, such as a special plan for nonsmoking individuals, or changes in benefits offered to high risk segments of business, constitute a material change?

Mr. PACKWOOD. Not at all. The committee is fully aware of the dynamic nature of the health benefits industry and recognizes that constant changes in products and benefits are the order of the day. We cannot expect the Blue Cross and Blue Shield organizations to freeze their operations and not adapt to their changing environment.

Mr. CHAFEE. Would an increase in the organization's existing premium rate structure to cover anticipated costs of coverage of individual or small group subscribers be a material change in operations?

Mr. PACKWOOD. Not at all. The organizations are not required to lose money on their high risk business.

Mr. CHAFEE. I also have a technical question concerning the calculation of the surplus for purposes of determining the amount of the special deduction. I notice there is a provision concerning weakening of loss reserves after the date of the conferees' action. How does that work?

Mr. PACKWOOD. The conferees wanted to make clear that the organizations' 1986 loss reserves would not be changed artificially to reduce taxable income in 1987. We intend that the incurred-but-not-paid claims reserve at the end of 1986 will be the claims incurred in 1986 and actually paid in 1987. That amount will be used for purposes of both determining both the surplus at December 31, 1986, and the opening loss revenue at January 1, 1987. Use of actual experience to determine those amounts will eliminate potential controversy over the proper amount of the surpluses and reserves for 1987 tax purposes.

Mr. CHAFEE. Thank you, Mr. Chairman. Your clarifications will make it much easier for the Blue Cross and Blue Shield organizations to determine their Federal income tax liability in 1987. We will be monitoring the organizations' experience with the new provisions to determine if revisions are necessary.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

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

The legislative clerk read as follows:

A joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes.

The Senate resumed consideration of the joint resolution.

Mr. HATFIELD. Mr. President, I want again to state the proposition that the committee hopes to press

through to completion of the CR by the hour of 7 o'clock tonight. Should we fail in that particular objective, let me assure the Senate that when we reconvene tomorrow morning, on Thursday, we shall begin the CR at an early hour and then continue to work on the CR throughout the day until the unanimous-consent agreement takes place on the veto message on South African sanctions.

Following that vote, if we have not completed the CR by that time, we will press on throughout the remaining period necessary to complete the CR. If that means late at night or if it means all night and all the next day, whatever time is required, we are going to complete the CR. I assure my colleagues, before we are interdicted again with worthy and important issues. It has been very difficult to sustain any effort on the CR when we have had to set it aside for Philippine aid, for drugs, for veto messages, for all the other issues. I do feel that it is important for people to be on notice that we are going to complete this CR, hopefully in the daylight hours.

Mr. President, again let me say that we will resist amendments to the CR. The Senator from Oklahoma is the first out of the box here today on an independent amendment. He already has been alerted to the fact that—not addressing the merits of his amendment but addressing the basic policy of the committee to keep a clean CR—at an appropriate time, we shall probably move to table his very meritorious amendment. But I do want him to understand that this is on the basis of the position of the committee and not derived out of judgment of his amendment or the assessment of his amendment.

Mr. President, I also urge other Members of the Senate to be on deck to have their amendments expeditiously considered before we attempt to dispose of them in one fashion or another. I believe the Senator from Illinois is ready to move on an amendment—in fact, I think he has two amendments—following the disposition of the amendment to be offered by the Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank the distinguished leader.

AMENDMENT NO. 3100

(Purpose: to provide payments to certain cattle producers, interest rate relief on agricultural loans, and drought assistance to farmers and ranchers in the U.S., and for other purposes)

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

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. BOREN] for himself and Mr. BUMPERS, Mr. LEVIN, Mr. PRYOR, and Mr. HEFLIN, proposes an amendment numbered 3100.

Mr. BOREN. 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 text of the amendment is printed later in today's RECORD under Amendments Submitted.)

Mr. BOREN. 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.

AMENDMENT NO. 3101

(Purpose: to provide payments to certain cattle producers, interest rate relief on agricultural loans, and drought assistance to farmers and ranchers in the United States and for other purposes)

Mr. BOREN. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. BOREN] for himself and Mr. BUMPERS, Mr. LEVIN, Mr. PRYOR, and Mr. HEFLIN, proposes an amendment numbered 3101 to amendment numbered 3100.

Mr. BOREN. I ask unanimous consent that further reading be dispensed with.

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

(The text of the amendment is printed later in today's RECORD under Amendments Submitted.)

Mr. BOREN. Mr. President, I have sent this amendment to the desk on behalf of myself, Senator BUMPERS, Senator LEVIN, Senator PRYOR, and Senator HEFLIN.

This amendment is a combination of several bills and amendments on which many of us in this Chamber have been diligently working. For some time, now, we have been attempting to gain the adoption of legislation which would improve the situation presently confronting our farmers.

Mr. President, it has been a long time since we discussed the farm crisis on the floor of the U.S. Senate. Some may be under the impression that the crisis has lessened and the situation is now improving. The reality, regretfully, is just the opposite if one looks at all the indicators.

Between 1981 and February 1, 1986, Oklahoma farmland values declined by 31 percent. For the same period, U.S. farmland values declined 29 percent. The national average value of farmland fell from $823 to $679 per acre between April 1, 1982, and April 1, 1985. By 1986, the average value had dropped to $596. This represents a 27.6-percent overall decline since 1982 and a 12.2 percent decline between 1985 and 1986—that 1-year period.

The value of farmland in Oklahoma fell from $566 per acre to $481 per acre between April 1, 1985 and February 1, 1986, representing a 15-percent decline. By the end of 1986, cumulative farm sector equity losses since 1981 are expected to exceed $250 billion, more than a fourth of peak values.

In 1985, farm income fell approximately 20 percent from the record $34.5 billion in 1984 and is expected to fall further in 1986. Net farm income is expected to decline by about 8 percent in 1986, following on those disasterous declines of the prior years, bringing the 1981-86 decline, in inflation-adjusted dollars, to about 33 percent—a 33-percent decline in actual net farm incomes from levels that were already depressed. After adjusting for inflation, net farm income in 1985 was in the $11 billion to $13 billion range. Farmers' gross farm income fell by 4.5 percent in 1985 to $166.6 billion.

While production expenses fell by 4 percent in 1985, the prices farmers received for products declined by approximately 10 percent. And so, Mr. President, the condition of farmers continues to get worse.

U.S. exports in fiscal year 1985 declined in value by 18 percent. Export volume for the same year had fallen by 12 percent and was at its lowest level since fiscal year 1977.

Wheat exports dropped 33 percent in value in fiscal year 1985 and 32 percent in volume. The value of soybean exports dropped 32 percent in fiscal year 1985 and volume dropped 14 percent. The volume of cotton and linters exports was down 13 percent in fiscal year 1985 and the value was off 18 percent. Livestock and livestock product exports dropped 4 percent in value in fiscal year 1985.

The U.S. agricultural trade balance was $11.42 billion in fiscal year 1985, down 40 percent from 1984's $19.12 billion. The 18-percent decrease in exports, coupled with a 4-percent increase in imports, slashed the agricultural trade surplus to its lowest level since fiscal year 1977.

The export situation remains bleak for fiscal year 1986 as well. Exports are forecast to decline by 12 percent in value from the fiscal year 1985 level. The estimate for this year would result in a drop of 37 percent from fiscal year 1981. Export volume for fiscal year 1986 is estimated at 115.5 million tons, 8 percent below fiscal year 1985 and 29 percent below fiscal year 1981.

U.S. agricultural imports for fiscal year 1986 are estimated at $20 billion, 29 percent higher than in fiscal year 1982. And so, Mr. President, the agricultural trade situation is deteriorating very, very rapidly.

U.S. agricultural trade surplus for fiscal year 1986 is estimated at $7.5 bil-

lion, 72 percent lower than in fiscal year 1981. This is the lowest agricultural trade surplus in the past 13 years.

At $3.6 billion, the fiscal year 1986 forecast for U.S. wheat and flour exports remains $800 million below fiscal year 1985. Fiscal year 1986 U.S. coarse grain exports are currently forecast at $4.6 billion and 42.2 million tons, the lowest level of coarse grain export volume and value since fiscal year 1975. Fiscal year 1986 cotton exports are estimated at $700 million and 500,000 tons in volume, down $1.3 billion and 800,000 tons from fiscal year 1985.

This has all had a tremendous impact on the financial condition of farmers and ranchers. In fact, in 1985, there were 118,000 fewer farms than in 1984.

Mr. President, we are not talking about statistics on a page, as I cite these figures—18,000 farms that are no longer there. We are talking about a tremendous tragedy and the disruption of lives, of people who have worked hard from sunup to sunset every day, who have worked along side other family members, many of them second, third, and fourth generation of the same family who own these farms who have now lost them, many of them in middle-age or older, not having other skills and training and background, not knowing how in the world they are going to put back together their shattered lives. And so while we are talking about statistics, we are talking also about human tragedy and we must not lose sight of what is going on.

In 1985, 66.4 percent of farm debt was held by operators with debt-to-asset ratios over 40 percent; 16.1 percent was held by operators with debt-to-asset ratios over 100—obviously insolvent. Most 1985 farm debt was held by commercial farms, those having $40,000 or more in sales. Commercial farms accounted for 84.5 percent of the total farm debt. Commercial, family farming operations having sales between $40,000 and $499,999 held 65.9 percent of total farm debt in 1985.

Excluding the Farmers Home Administration, the total nonperforming and/or delinquent loans held by the three non-Federal lenders was $15.1 billion, or 13.9 percent of their outstanding debt, an 8.6-percent increase from 1984. In 1985, nonperforming and/or delinquent farm debt held by the Farm Credit System increased by 59 percent over 1984. According to the Federal Reserve Board, during 1985, the Farm Credit System and commercial banks had net chargeoffs of over $2.2 billion in farm loans as uncollectible, an increase of 75.5 percent over 1984.

Mr. President, I am sorry to say that the alarming predictions made on the floor of this Senate beginning 2 years ago are now, in fact, coming true. I think all of us hoped that we were exaggerating the nature of the crisis, that perhaps something would steer us away from what is happening all across the Farm Belt of this country, but it is occurring. We have not been steered aside. The ship has run aground, and it is rapidly taking on water.

As of December 1, 1985, the Farm Credit System and commercial banks had nonaccrual loans totaling almost $7.1 billion, a 111-percent increase over 1984. Federal land banks, alone, had a 261-percent increase in nonaccrual loans.

In 1985, farm loans foreclosed by life insurance companies increased by 110.5 percent. There were 1,000 foreclosures in 1985, compared to 475 in 1984. Additionally, there were 1,195 loans in the process of foreclosure in 1984 and 1,743 in the process of foreclosure in 1985.

According to testimony heard recently in the Senate Agriculture Committee, the Farm Credit System has 10,000 loans in the process of foreclosure right now.

Just a few days ago, I visited the Oklahoma State Fair and I visited the livestock area of that fair. I talked to farmer after farmer, to wives and children of these families. People have tremendous pride in what they are doing and what they are producing, the excellence of their products, and I would guess that a fourth of all of these with whom I shook hands told me that they were either awaiting a foreclosure notice or had received one or that some legal process was underway.

In 1985, the Farm Credit System had a $2.7 billion net loss in 1985. Property acquired by the Federal land banks and production credit associations during 1985 increased about 125 percent from $532 million in 1984 to $1,196 million in 1985.

Overall, as of the end of 1985, almost 70 percent of the outstanding balance on Farmers Home Administration farmer program loans were delinquent. Of the amount outstanding, almost 67 percent was at least 3 years past due and 85.4 percent of that is more than a year overdue.

According to the FDIC, agricultural banks comprised 25.9 percent of all commercial banks in 1985, but they accounted for 52.5 percent of all bank failures. In 1985, there were 437 agricultural banks on the FDIC problem bank list.

Fifty-two of the sixty-two agricultural banks that failed in 1985 were located in a six-State area including Nebraska, Iowa, Kansas, Oklahoma, Minnesota, and Missouri. In 1982 there were only 7 agricultural banks that failed; in 1983 there were only 7; and in 1984, there were only 25.

Net loan losses have nearly tripled at agricultural banks since 1983; 24 percent of farm banks showed unusually high loan losses, in excess of 2 percent of loans in 1985.

□ 1200

Under a low-to-medium loss scenario, about 70 agricultural bank failures could be expected in 1986 and 60 in 1987. Under a high loan loss scenario, it is estimated that about 150 farm banks would fail in each of the next 2 years.

Not only have agricultural banks been affected by the condition of the agricultural economy, agricultural businesses have also been hit hard. Since 1979, U.S. farm tractor sales have fallen more than 50 percent. Between 1981 and 1985, 2,287 farm equipment dealers went out of business. Over the past 5 years, there has been a 45.1-percent decrease in employment in farm machinery and equipment. This amounts to a loss of 66,500 jobs. In 1980, employment totaled 147,400; in 1985, employment totaled 80,900.

In 1985, 35.6 percent more agricultural businesses failed than in 1984. According to Dun & Bradstreet, over 2,600 agricultural businesses failed in 1985. The total value of liabilities held by the businesses that failed in 1985 was over $1 billion—a 21-percent increase over the value of liabilities held by 1984 failed agricultural businesses—$843.3 million. For all businesses, it was reported that business failures in 1985 increased 9.6 percent over 1984 failures. Of this total, agricultural business failures accounted for 4.7 percent in 1985; an increase from the 3.8 percent of all business failures in 1984.

The crisis in the agricultural economy has not subsided as these statistics certainly indicate. It is for this reason that I believe it imperative that we consider legislation which would provide some relief to our Nation's ranchers and farmers and related businesses before it is too late, before we inflict untold harm on the rest of our economy. By doing this, we can help the entire agricultural economy, and we can accomplish this while we are saving money.

Mr. President, I want to go into more detail now about the amendment I am offering to address this agricultural problem, and explain that it will not only address the agricultural problem but also will have a net saving to the budget of this country and will help reduce the overall budget deficit as well.

For some time, we have been attempting to gain adoption of legislation which would improve the situation. We have been unable to adopt many of the provisions because of budgetary constraints. The amendment pending at the desk will allow us to adopt meaningful farm legislation

and at the same time reduce expenditures by the Federal Government and reduce budget deficits.

According to preliminary estimates by CBO, this amendment will reduce outlays in fiscal year 1987 by almost $4.7 billion. We can save the Federal Government money and at the same time provide for much needed relief to American farmers.

There is no question, Mr. President, that this is a broad amendment. However, all the major provisions in this amendment have been considered by most parties involved in agricultural legislation. There is nothing very new in this amendment.

First, Mr. President, this amendment includes the provisions of S. 2884, the Cattle Restitution Act of 1986 introduced earlier by Senators MELCHER, BAUCUS, HEFLIN, ABDNOR, PRYOR, and myself. This provision will require the Secretary of Agriculture to pay restitution to certain cattle producers for losses incurred in connection with the sale of cattle during the period in which excessive dairy cattle were slaughtered under the Dairy Termination Program, the so-called Whole Herd Buy Out Program. While it is true that the Senate Agriculture Committee has not held hearings on this legislation, the House Agriculture Committee recently did hold hearings.

The Food Security Act of 1985 authorized a program whereby milk producers would discontinue their dairy operations in exchange for payments.

When this proposal was first considered, there was concern about the possible impact the whole herd buy out could have on the cattle market. At the time the program was included in the farm bill, we adopted provisions designed to assure that any adverse effect on the cattle industry would be negligible. First, the act required the Secretary to provide for the orderly and timely flow of cattle which were marketed as a result of the dairy program. Further, the act required the Secretary to purchase 400 million pounds of red meat in addition to those quantities normally purchased and distributed by the Department.

Properly administered, the dairy program could have reduced the production of milk without affecting red meat market prices at the same time.

However, the USDA required two-thirds of the scheduled dairy slaughterings to occur in the first period of the program, instead of spacing them out over the entire life of the program. In fact, in my home State of Oklahoma, 74 percent of the scheduled dairy slaughterings were to occur during the first buy out period.

Not only did the Department of Agriculture fail to carry out the intent of the orderly marketing provisions by front loading cattle, they also failed to implement the red meat purchase plan on a timely basis. Even though, by the Department's own estimates, over 44,000 dairy cattle had been exported and 96,000 slaughtered prior to the program announcement, they did not begin red meat purchases until the week of April 15. At that time, the Department only purchased 5.8 million pounds of red meat, which was approximately equal to less than 6 percent of the dairy cattle slaughtered as of that date.

The effect on beef markets was immediate and disastrous. Market prices dropped by as much as $10 per hundredweight.

For States like Oklahoma which have a substantial cattle feeding industry and a spring wheat cattle marketing program, the decline in prices could not have come at a worse time. The market price fell at exactly the same time that Oklahoma beef producers normally market their cattle. For many producers in Oklahoma and other States with similar marketing patterns, the lower prices represented a reduction in their gross sales of 20 to 25 percent. Here are farmers and ranchers struggling to stay afloat, and our own Government, through the mismanagement of a program, cut revenues to hard-strapped ranchers by 25 percent.

Mr. President, cattle market prices have begun to stabilize following the Department of Agriculture's gross mismanagement of the Whole Herd Buy Out Program this spring, but unfortunately, the damage has already been done to the Nation's farmers and ranchers.

The Nation's cattle producers had to face huge losses due to the gross mismanagement which could easily have been avoided if the Department had followed the intent of Congress. Simply put, Government negligence imposed great hardships on our Nation's ranchers.

Because the Department of Agriculture truly ignored the intent of Congress and completely mismanaged the whole heard buy out, I believe we have an obligation to provide compensation to the cattle producers for the damage directly inflicted upon them by their own Government.

Mr. President, this provision will provide restitution to cattle producers who suffered losses due to the Department's mishandling of the dairy program. It will provide cattle producers who marketed cattle between March 28 and June 30 with a direct payment. The payment would be $6 per hundredweight, based on the live weight of the cattle at the time of the sale. The Secretary would have the discretion of making this payment in cash or with commodities held by the Commodity Credit Corporation.

Regretfully, this provision will not be enacted in time for many Oklahoma cattlemen who suffered severe losses as a result of this program and were forced out of business this year. Perhaps, though, some producers will be able to remain in business if Congress adopts this proposal.

Earlier this year, we appropriated money to provide for the indemnification of dairy producers who were affected by the contamination of milk supplies with heptachlor in Oklahoma, Arkansas, and Missouri. As many will recall, the problem was discovered in mid-March and dairymen as well as livestock producers were caught in a devastating situation through no fault of their own. We have taken care of the dairymen affected by the heptachlor incident, but we have failed to indemnify cattle producers who were affected. Consequently, I have included in this amendment a provision which would require the Secretary of Agriculture to provide indemnity payments to cattle producers affected by this situation. The payments could be made in cash or with commodities held by the Commodity Credit Corporation. The amount of payments would be established at an equitable rate determined by the Secretary.

□ 1210

This amendment also includes the so-called wheat deficiency payment amendment which was included in the debt limit bill by the Senate. This provision modifies the basis for determination of a portion of wheat deficiency payments for the 1986 wheat crop.

This provision will not cost the taxpayers 1 cent. According to CBO estimates received yesterday afternoon, there is no cost associated with the provision.

The Food Security Act of 1985 included a provision which requires a portion of the deficiency payment to be determined on the basis of the reduced loan rate or the average price received by farmers during the marketing year. In the past, the entire deficiency was based on the loan rate or the average price during the first 5 months of the marketing year. Under previous law, producers could get their entire deficiency payment 5 months after the beginning of the marketing year. For wheat, that meant producers received their deficiency payments in November. Under the farm bill enacted in December, producers can get a portion of their deficiency payments in November but must wait until June or July of the next year to receive the balance.

I think this was an unintended effect, for the 1985 farm bill provides for two deficiency payments, in essence. The regular deficiency payment is based on the difference between the target price and the statutory loan rate or the average market price during the first 5 months of the marketing year, whichever is higher. The Secretary has the authority under the

law to reduce the loan rate by up to 20 percent. If the Secretary uses this authority, which he has for the 1986 wheat crop, the producer is then entitled to another deficiency payment. This payment is based on the difference between the statutory loan rate and the new loan rate or the average market price during the entire marketing year.

The 1986 program for wheat provides for a target price of $4.38 per bushel. The statutory loan rate is $3, providing for a maximum deficiency payment of $1.38. The Secretary did use his authority to drop the loan rate to $2.40 thereby providing for a second deficiency payment with a maximum rate of 60 cents. It is this deficiency payment which is determined by using the market price for the entire marketing year. As the law stands now, farmers must wait until June or July of 1987 to receive this second payment on a crop that is harvested, in Oklahoma, for example, in May 1986. And let me mention for wheat harvested in May of 1986, a farmer will not be able to get the second part of the deficiency payment until June or July of 1987, and this is the situation for farmers who are already so hard pressed for cash and for cash-flow. For wheat, the marketing year ends in May the year after the crop is harvested. When this provision was included, obviously little thought was given as to the effect this would have on producer's income and their ability to pay their operating loans or their ability to cash-flow.

As I mentioned, Mr. President, this proposal has already been adopted on the floor of the Senate when we took up the debt limit provision earlier.

American farmers are having a very difficult time generating enough cash to meet their current expenses right now. If they cannot get all of their deficiency payment until the summer of 1987, many will be unable to raise enough cash to put in the 1987 crop due to the fact that they will not be able to produce a financial statement which cash-flows this year. Farmers need to receive their payments in a prompt manner; they cannot afford to wait an entire year to be paid for their crop. Creditors will be hesitant to provide a farmer money for the 1987 crop if the farmer cannot pay off his loan for the 1986 crop.

Mr. President, this problem is very serious. There could be many producers forced out of business simply because of the provision contained in the 1985 act.

It is true, we adopted the same provision in the farm bill for corn. However, corn producers are not faced with the problem encountered by wheat producers. A corn farmer's balance sheet and his ability to cash-flow will not be changed if he receives the balance of his deficiency payments 12 months after the marketing year begins or 5 months after. This is because the marketing year for corn begins on September 1 and ends on August 31. If the payment is based on the first 5 months of the marketing year, they get their payment in February. If the payment is based on the full 12 months of the marketing year, they get the payment 7 months later, in October of the same year. The corn farmer's cash-flow statement remains the same for that calendar year.

Wheat producers, on the other hand, are affected because the wheat marketing year, as I explained, begins on June 1 and ends on May 31. This means that if the payment is based on a 5-month average, the producer gets the money in November of this year. If the payment is based on a 12-month average, on the other hand, the producer will not get the payment until July of the next year. For wheat producers, unlike corn producers, there is a cash-flow problem.

This provision will correct this problem by requiring that all deficiency payments be determined on the basis of the average market price received during the first 5 months of the marketing year instead of the entire marketing year. This modification would only affect the 1986 wheat crop. The amendment does not modify the farm bill with respect to future crops.

This amendment also incorporates S. 2836, a bill introduced by Senators BUMPERS, PRYOR, FORD, and DIXON. This legislation would set the soybean loan rate at not less than $5.02 per bushel for the 1986 crop and would require the Secretary of Agriculture to implement either a marketing loan or loan deficiency payments for the 1986 soybean crop. This would allow soybeans to remain at a competitive price in the export market as well as prevent soybeans from being forfeited to the Government. In addition, by keeping the loan rate at the 1985 $5.02 level, we are able to keep income equal to 1985 for soybean farmers. Because the soybean program does not have a target price, soybean producers will realize a 25-cent drop in their price due to the drop in the loan rate announced by the Secretary of Agriculture.

As many of my colleagues know, there is a direct relationship between the price of soybeans and other oilseed crops, particularly sunflower seeds. If the soybean price falls, the price for these other crops declines. There is no price support for these crops; consequently, when the Government implements a program for soybeans, it has an impact on the price of these other crops. Under the soybean provision in this amendment, the Secretary would be required to take into consideration the impact a marketing loan would have on cottonseed and other oilseeds. I have discussed the possibility of providing a loan program for cottonseed, but at the present time, there appears to be no consensus as to what kind of loan program should be implemented.

However, the sunflower industry does seem united on the need to program for a nonrecourse, marketing loan for that particular commodity. Consequently, I have included a provision which establishes a nonrecourse loan program for sunflowers for the 1986 crop. The loan would be set in accordance with the historical oil content of sunflowers and soybeans and not result in excessive stocks of sunflowers. In no case, could the loan be less than 9 cents per pound. Sunflower producers would be permitted to repay the loans at the lesser of the loan amount or the world market price, whichever is less. The Secretary would prescribe the marketing year for sunflowers.

Of course, this is necessary because of the interrelationships of commodity prices of soybeans and how they affect other oilseed products, including sunflowers. The Secretary would be prohibited from requiring participation in any production adjustment program for sunflowers or any other commodity as a condition of eligibility for the sunflower loan program.

I have also included the House-passed disaster assistance bill so that we can provide much needed assistance to farmers and ranchers who have been affected by the drought in the Southeastern part of the United States. As many of you know, the Senate has already adopted similar legislation. In order to expedite the enactment of this provision, I chose to include the House-passed bill.

The savings generated in this amendment which pays for the various programs is the inclusion of a provision which will allow rural electric co-ops and systems to pay off their loans with the REA without any prepayment penalties. We should reward those rural co-ops and systems that have chosen to seek private financing for their programs. Congress recently passed similar legislation and directed the Secretary of Treasury to write the necessary regulations. Unfortunately, the Secretary followed the "letter" of the law but most certainly not the "spirit" of our intent.

The guidelines as written by Treasury are unduly restrictive, arbitrary, and written in such a manner that few, if any, rural electric co-ops and systems will be able to prepay their Federal financing bank debt. As an example of the unreasonable nature of these guidelines we need to look only at Treasury's requirement that a rural electric co-op or system must be able to reduce their consumer rates by 25 percent if they choose to refinance. Therefore, my constituent, Western Farmers Electric Co-op, would have to save over $45 million to qualify to refinance. Mr. President, Western Farm-

ers does not have $45 million to save! Without this restriction, they could, however, refinance part of their debt and save over $8.5 million, all of which will be passed on to their customers.

That makes absolutely no sense to say that you have to have gigantic savings by dollar volume in order to qualify.

Why in the world are we not allowing these systems to do what they can to save money and, of course, that will indirectly benefit the farmer and rancher customers who will be able to benefit from lower rates.

□ 1220

The system could lower rates by 5 or 10 percent. They should be able to take this step. We have already gone on record, Mr. President, in this body of approving this basic concept.

Recognizing part of the problems with the Treasury regulations, Senator STEVENS and I offered an amendment to the budget reconciliation bill last week which would take care of part of the problem. However, only four or five co-ops will be able to take advantage of refinancing even with the adoption of our amendment.

This amendment will allow all those co-ops and systems facing substantial interest payments to refinance at the much lower current rates without having to deal with the unreasonable Treasury guidelines.

This will of course result in large savings, and large net reductions in budgetary outlays over the next 3-year period. As I mentioned, it has a net reduction even after the provisions of this program which I have discussed which have been added back in—a net saving according to the CBO estimate to the Treasury of well over $4 billion this year.

I have also included a provision the distinguished ranking member of the Senate Agriculture Committee, Senator ZORINSKY, has suggested concerning an external combustion engine. This provision would require the Commodity Credit Corporation to establish the research and development program on external combustion engines that was authorized by the Food Security Improvements Act of 1986. Under the provision, not less than $10 million worth of surplus agricultural commodities, owned by the Commodity Credit Corporation, would be used during fiscal year 1987 in establishing and carrying out the program. This would finance research and development of external combustion engines using fuel other than that derived from petroleum products. The development of external combustion engines holds great promise for dramatically reducing the costs of power to American farmers. A prototype engine has been designed by a Nebraska company to deliver economical, reliable power to pump irrigation water. Two other companies have expressed interest in this program.

This amendment also includes the provisions of S. 2332, the Farm Credit Assistance Act of 1986, introduced earlier this year by Senator BOSCHWITZ and myself. Since its introduction, several other Members have cosponsored this legislation, including Senators NICKLES, ABDNOR, GRASSLEY, LONG, JOHNSTON, HARKIN, DURENBERGER, and KASTEN.

This legislation establishes an interest rate buy-down program that will help many American farmers by reducing their interest cost. Interest payments, alone, make up approximately 20 percent of farmers' total production cost. The Agricultural Loan Interest Subsidy Program [AGLIS] will reduce the interest rate on agricultural loans by 3 to 5 percent. Two percentage points will be paid by the Federal Government; an optional 1 to 2 percentage points may be paid by the States; and 1 percentage point by the lender. The lender can write off 15 percent of the principal of the loan in lieu of paying 1 percent of the interest.

In addition to establishing an interest rate buy-down program, the Farm Credit Assistance Act requires the Farm Credit System and the Farmers Home Administration to restructure loans instead of foreclosing on them in instances where it is actually cheaper to restructure than to foreclose. I want to point out that this will not mean that everyone who has a Farm Credit System [FCS] or FmHA loan will be able to avoid foreclosure. Restructuring is required only when it is actually cheaper for the FCS or the FmHA. In this way, losses for the FCS and the FmHA will be minimized. For the FCS, this should result in lower interest cost for all borrowers of the system. It should be noted, Mr. President, that the Farm Credit System states that it is presently abiding by this type of policy. This legislation, therefore, merely places this policy into law.

Our legislation also encourages the Farm Credit System to allow borrowers who will be foreclosed on to retain possession and occupancy of the principal residence of the borrower. Presently, the FCS has not been very willing at all to allow a borrower to continue to reside, even on a temporary basis, in the borrower's residence.

At the present time, there are no regulations for the disposition of property acquired by the Farm Credit System. The FCS, in essence, can do about anything with the land. In fact, a current policy of the Wichita farm credit district is to not allow a previous owner of the land to purchase his homestead. Earlier this year, a farmer in Oklahoma was foreclosed on by the Farm Credit System. The Farm Credit System held an auction of the farmer's land. The farmer was able to raise enough money from his friends and neighbors to make a bid to purchase his homestead. While the bid was higher than the actual market value of the land and was the only bid, the Farm Credit System would not permit the farmer to pay cash for the land. I inquired of the officials at the Wichita farm credit banks about this matter. I was informed that the bank had a policy of not permitting a previous owner to purchase the land.

I think it comes as a shock for any Member of the Senate to learn that our own Government agencies charged by the Government are following this kind of policy, this kind of inhumane policy in these stressful times. I was shocked. The legislation we are introducing today will change this policy and will require the Farm Credit System to give special consideration to previous owners in the selling or leasing of land acquired by the system.

Another problem we have encountered in the past couple of years is the Farm Credit System's refusal to provide borrowers copies of the appraisals of the assets of the borrowers. In one case, a farmer was told that the system had cut the value of his assets in half but would not provide him with a copy of the appraisals. It is certainly hard to argue that the appraisals were too low or inaccurate if one does not have a copy of the appraisal. Our legislation requires the Farm Credit System to provide copies of the appraisals to the borrowers.

This legislation also prevents the Farm Credit System from requiring additional collateral or foreclosing on a borrower for failure to provide additional collateral if the borrower is current in the payment of interest or principal. Right now, the Farm Credit System is foreclosing on borrowers who are completely current on their payments. Though it seems ridiculous, the FCS is doing this. Earlier this year, the FCS called an Oklahoma farmer and told him he would have to provide additional collateral for his loan or else the system would initiate foreclosure proceedings. As with many farmers, this particular farmer did not have any additional collateral to give the FCS. Consequently, even though he was completely current on his payments, the FCS foreclosed on him a couple of weeks ago.

This amendment will also prohibit the Farm Credit System from increasing the interest rate on a loan that has been classified. An anomaly of current FCS policy is to increase the interest rate for a borrower the more he has difficulty meeting his payments. A couple of weeks ago, a farmer called my office to report what had happened to him in this regard. First, he was 10 days late in making his payment to the Federal Land Bank. He

made his payment, in full, but because he was 10 days late the Federal Land Bank raised his interest rate by 2 percentage points. When the system raised his interest rate, it resulted in a substantial increase in his payment, to the point that the farmer would barely be able to make his next payment. Because he would now be using a larger percentage of his cash-flow for his payment, the system classified his loan as a problem loan and raised his interest rate an additional 2 percent. With the additional 2-percent increase in interest costs, the borrower is completely unable to make full payment and is now being threatened with foreclosure by the system. It does seem illogical and in the extreme, Mr. President, but this is the way the FCS is operating.

This amendment also clarifies a provision enacted as part of the Farm Credit Act Amendments of 1985. Last year, Senators DOMENICI, BINGAMAN, NICKLES, BAUCUS, MCCLURE, and I offered an amendment which would prohibit district banks from charging associations whose stockholders voted against merging with other associations a higher rate of interest or assessment than that charged other like associations. We thought at that time that it was perfectly clear that so-called disapproving associations would not be charged a higher rate; yet, the Farm Credit Administration now proposes to implement a regulation which would allow farm credit banks to charge different rates of interest, prices for services and financial assistance to disapproving associations as long as they could back it up with "financial considerations."

Mr. President, we have always had a system that was run and operated by the stockholders at the grassroots level. I thought we believed in this country in allowing these people to run their own affairs. Now any system that dares to stand up and remain an independent entity is subject to being penalized in terms of charges levied against them while at this same time lip service is being given to the concept of grassroots control of the system.

This regulation would be totally contrary to the intent the sponsors of the amendment had. In this amendment, Mr. President, we clarify the statute so that there can be no question what our intent is. Under this amendment, there will be no opportunity to charge higher rates to disapproving associations. With the adoption of this provision, there will be no circumstance under which the district banks can charge a higher rate to disapproving associations.

Mr. President, to allow local associations to go through an election process, which we had in many farm States this past year, to decide whether or not the associations ought to remain independent and then to tell them, "We are going to charge you such high rates, we will put you out of business if you dare vote for it," makes a mockery of the election process itself.

Many of my colleagues will want to know if we have had hearings on this credit legislation. The answer is no. We have had two hearings in the Agriculture Committee this year. On January 30, the committee held a hearing to consider the Farmers Home Administration loan servicing regulations and a GAO report on the Farmers Home Administration loan portfolio. On September 17, the committee held a hearing to discuss the current financial condition of the Farm Credit System.

We have not had hearings on the credit situation confronting our Nation's farmers and ranchers. I have, on several occassions, requested hearings to discuss this topic. On March 11, I sent a letter to the chairman of the Subcommittee on Agricultural Credit and Rural Electrification, requesting a hearing on the status of farm credit problems. I stated at that time that legislative action might be needed and that a hearing could provide us with the direction we need to take in any legislative proposal.

□ 1230

Finally, Mr. President, the amendment that I am offering includes the conference report on H.R. 7, reauthorizing the child nutrition programs. The distinguished Senator from Iowa, Mr. HARKIN, is to be commended for his tireless efforts in the conference. Without his assistance, the conference report on child nutrition would never have been reported.

The programs included in H.R. 7 are very important programs that especially help those children who would not otherwise have enough to eat. They include the School Lunch Program, the Commodity Distribution Program, WIC, and the Nutrition Education and Training Program.

The conference report contains a provision to raise the maximum tuition level that a private school may charge and be eligible to participate in federally assisted child nutrition programs. I have included this in my amendment only because I realize that it has been discussed and worked out on both sides, and I do not want to undo any of the advancements that have already been made to accommodate everyone that we can with this issue. I do not personally, however, think that this provision is advisable, and I have heard from many parents and others in my State who believe that to raise the maximum level from $1,500 to $2,000 is not in the best interest of children with the greatest need.

Mr. President, I have not struck that provision because I remain faithful to the agreements worked out in the conference committee. There have been many safeguards put in to make sure there is no abuse of this program, safeguards put in place to make sure that only those children with great need for the School Lunch Program will be protected.

Mr. President, unfortunately, the child nutrition budget cut in 1981 was 12 times greater than its share of the Federal budget. The administration's 1987 budget proposals also included unfair burdens to be shouldered by these programs. I was pleased that the Senate Budget Committee did not adopt this package offered by the administration, and that the budget resolution passed by the Senate on May 2 did not include these cuts. I want to continue in this direction by further improving these programs that simply demand our attention.

This amendment also makes several other necessary adjustments to the Special Milk Program and to the Breakfast Program offered in schools, child care and day care homes. All of these provisions will be beneficial to these individual children who we must remember are both the victims and the recipients of our work here in Congress.

Mr. President, since 1983, the House has passed child nutrition legislation four times. In the past 10 months, the Senate has passed child nutrition legislation twice. It is time for us to reauthorize the child nutrition programs and provide for needed improvements to the School Lunch, WIC, and other Child Nutrition Programs.

I am committed to ensuring that children in a country as fortunate as ours are not neglected. While we may debate about the merits of many programs, surely making certain that children get enough to eat should be beyond any controversy.

Mr. President, this amendment is not a major rewrite of the 1985 farm bill. Even the credit provisions, which may seem broad will not change, to any great degree, the claimed policies of the Farm Credit System. When we first introduced the bill, I talked with Frank Naylor, the Chairman of the Farm Credit Administration Board, about the various provisions. As many of you know, until recently, Mr. Naylor was with the Department of Agriculture. He told me that the modifications relating to the Farmers Home Administration were already the policy of the Farmers Home Administration. Further, he stated that he supported the provisions concerning the Farm Credit System, but, like any administrator, he wanted to have the authority to implement the policies without statutory language. Officials from the Farm Credit System tell me they are doing everything now that my amendment will require. No

one, consequently, should have any objections to this legislation, unless the reality is that the Farm Credit System is not actually doing what officials claim they are doing.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

The Section-by-Section describes the amendment in the order in which the amendment was offered.

SECTION-BY-SECTION ANALYSIS OF AMENDMENT

TITLE —PAYMENTS TO CATTLE PRODUCERS

SEC. . RESTITUTION PAYMENT TO CATTLE PRODUCERS. Requires the Secretary of Agriculture to make restitution payments to cattle producers who sold cattle beginning March 28, 1986, and ending June 30, 1986. The payment would be equal to the live weight of the cattle at the time of sale multiplied by $6.00 per hundredweight.

SEC. . PAYMENT OF INDEMNITY FOR CERTAIN LOSSES. Requires the Secretary of Agriculture to make indemnity payments, in cash or with commodities, to cattle producers who suffered economic losses as a result of (1) a quarantine imposed by the Department of Agriculture or (2) slaughter of cattle that were contaminated by heptachlor in the period beginning on January 1, 1986, and ending on March 31, 1986, in the State of Oklahoma, the State of Arkansas, or the State of Missouri.

TITLE —AMENDMENTS TO PRICE SUPPORT PROGRAMS FOR CERTAIN CROPS

SEC. . COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM. Requires that all the deficiency payments for the 1986 wheat crop be determined on the basis of the average market price received during the first five months of the marketing year.

SEC. . LOANS AND PURCHASES FOR THE 1986 CROP OF SUNFLOWERS. Establishes a non-recourse loan program for sunflowers for the 1986 crop. The loan rate would be set by the Secretary but in no case at less than 9 cents per pound. Requires the Secretary of Agriculture to permit producers to repay the loan at the lesser of the loan amount or the world market price, whichever is less.

SEC. . SUPPORT PRICE AND MARKETING LOANS FOR 1986 CROP OF SOYBEANS. Establishes the soybean loan rate for the 1986 crop at no less than $5.02 per bushel. Requires the Secretary of Agriculture to implement a marketing loan for the 1986 crop of soybeans or provide for loan deficiency payments for the 1986 crop of soybeans.

TITLE —NATURAL DISASTERS EMERGENCY ASSISTANCE FOR FARMERS AND RANCHERS

SEC. . EMERGENCY DISASTER ASSISTANCE. Requires the President and the Secretary of Agriculture to make emergency disaster assistance available to farmers and ranchers in natural disaster areas.

SEC. . DEFINITIONS. Defines "natural disaster area" as any area in the United States in which farming and ranching operations have been adversely affected by a drought or excessively hot weather disaster, or a flood disaster, occurring in calendar year 1986, as determined by the Secretary of Agriculture. Defines "livestock" as all classes of beef and dairy cattle, sheep, goats, and swine.

SEC. . EMERGENCY FEED DONATIONS. Requires the Secretary of Agriculture, in emergency cases where there is a critical shortage of feed or forage needed to keep livestock or poultry alive, to donate free supplies from government-owned stocks until the temporary local shortage is relieved.

SEC. . EMERGENCY LIVESTOCK FEED ASSISTANCE. Requires the Department of Agriculture to make payments to eligible livestock and poultry producers to cover part of the cost of emergency purchases of feed. To be eligible, a producer must have suffered a substantial loss of farm-produced feed. Payments, which cannot exceed 50 percent of the cost of emergency purchases, would be made from surplus government commodity stocks. Payments could exceed 50 percent of cost, however, if needed to make sure that drought-stricken producers did not have to pay more for their grain than foreign buyers. Provides that where other assistance programs cannot fully meet a producer's needs for livestock feed, the Secretary of Agriculture would pay 80 percent of the cost of transporting hay supplies from surplus-producing areas into the drought region.

SEC. . DISASTER PAYMENT PROGRAM. Requires the Secretary of Agriculture to make disaster payments, at the request of the producers located in natural disaster areas, on the 1986 crops of wheat, feed grains, upland cotton, rice, soybeans, sugar beets and peanuts. Disaster payments would be made in kind and could not exceed $100,000 in value. The Secretary, in making disaster payments, would not be permitted to take into account whether a farmer is covered by crop insurance and would not be permitted to reduce disaster payments to a farmer who insured himself, provided that the combined value of the disaster payment and crop insurance indemnity did not exceed 100 percent of the producer's normal yield.

SEC. . MILK PROGRAM PRODUCER ASSESSMENTS. Authorizes a delay in payments of dairy program assessments by milk producers located in natural disaster areas. At the option of any producer in a disaster area, the producer would be exempt from assessments to suspend payments for that period would pay an increased rate later to make up for the temporary relief.

SEC. . ASSISTANCE FOR QUOTA AND ALLOTMENT HOLDERS. Requires the Secretary to waive the requirement, with respect to any 1986 peanut farm poundage quota, that a lease of the quota may be entered into during the fall or after the normal planting season only if the quota has been planted on the farm from which the quota is leased if the local A.S.C. committee determines that the owner or operator made a good faith effort to plant and produce the 1986 quota on the farm.

SEC. . COST-SHARING FOR SOIL CONSERVATION MEASURES AND TIMBER STAND RESEEDING EXPENSES. Provides cost-sharing payments, made with government surplus commodities or certificates, to cover at least 50 percent of the cost of conservation measures under the existing Agricultural Conservation Program to prevent expected soil erosion due to loss of vegetative cover or to replant pine trees lost to the drought under the existing Forestry Incentives Program.

SEC. . PAYMENTS. In making in-kind payments under the fourth, fifth, or eighth section in this title, or transportation cost payments as provided in this section, the Secretary of Agriculture would have the authority to acquire and use commodities that have been pledged as security for price support loans and use other commodities owned by the Commodity Credit Corporation. The Secretary would be authorized to make in-kind payments by delivery of the commodity to the producer or the transfer of negotiable warehouse receipts, the issuance of negotiable commodity certificates redeemable by the Commodity Credit Corporation for a commodity, or such other methods as the Secretary determines appropriate. Authorizes the Secretary to make transportation cost payments with surplus stocks of commodities held by the Commodity Credit Corporation or in cash.

SEC. . CREDIT FORBEARANCE. States the sense of Congress that the Secretary of Agriculture use authority in existing law to defer repayments on Farmers Home Administration loans and forego foreclosure on distressed Farmers Home Administration borrowers located in natural disaster areas. Further encourages the Farm Credit System and commercial lenders to adopt lenient policies in disaster areas and to join with government agencies in assistance to distressed borrowers.

SEC. . COORDINATION OF ASSISTANCE EFFORTS. Urges the Secretary of Agriculture to set up an overall coordinating mechanism for federal help and to consult with state officials in natural disaster areas.

TITLE —RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS LOANS

SEC. . PREPAYMENT OF FEDERAL FINANCING BANK LOANS. Allows rural electric cooperatives and systems to repay their Federal Financial Bank notes with the Rural Electrification Administration without a pre-payment penalty and not withstanding any Department of Treasury guidelines.

TITLE —RESEARCH ON EXTERNAL COMBUSTION ENGINES

SEC. . RESEARCH AND DEVELOPMENT OF EXTERNAL COMBUSTION ENGINES. Requires the Commodity Credit Corporation to establish the research and development program on external combustion engines that was authorized by the Food Security Improvements Act of 1986. Under the provision, not more than $10 million worth of surplus agricultural commodities owned by the Commodity Credit Corporation would be used during fiscal year 1987 in establishing and carrying out the program which would provide for the financing of research and development of external combustion engines using fuel other than that derived from petroleum products.

TITLE —AGRICULTURAL LOAN INTEREST SUBSIDY PROGRAM

SEC. . DEFINITIONS. Defines the terms "borrower" and "lender".

SEC. . ESTABLISHMENT OF PROGRAM. Requires the Secretary of Agriculture to establish a Federal-State-Lender cooperative agricultural loan interest subsidy program under which, at the request of a State, borrowers and lenders within the State may participate in an interest subsidy program.

SEC. . ELIGIBILITY FOR ASSISTANCE. Defines eligible borrowers as those who: (1) have an outstanding loan on April 1, 1986; (2)(a) are delinquent in the payment of principal or interest or both, or (b) demonstrate that the borrower will be unable to make payments of principal or interest; (3) had gross agricultural sales in excess of $30,000 for three of the past five years; (4) have derived at least 50 percent of their gross annual income from agriculture in at least 3 of the past 5 taxable years; (5) have debt-to-asset ratios in excess of 40 percent; (6) have repayment ability; and (7) do not produce an agricultural commodity on

highly erodible land or converted wetlands in violation of the sodbuster and swampbuster provisions of the Food Security Act of 1985.

SEC. . INTEREST SUBSIDIES. For eligible borrowers, the interest rate (or principal as the case may be) would be written down for 3 years as follows: (1) 2 percentage points would be paid by the Secretary of Agriculture; (2) 1 to 2 percentage points would be paid by the State if the State elected to make payments; and (3) 1 percentage point or interest or at least 15 percent of the principal by the lender. Assistance under this program would be limited to an aggregate amount of principal of not more than $400,000 in the case of an individual, and $600,000 in the case of a family corporation or family partnership.

SEC. . PAYMENTS TO STATES. Requires the Secretary to pay to each State for fiscal years 1987 through 1990, the amount necessary to finance the share of payments provided to borrowers required to be paid by the Secretary of Agriculture and 100 percent of the administrative expenses incurred by the State in carrying out this program. The maximum amount of payments the Secretary would pay to the States for any fiscal year could not exceed $600 million.

SEC. . STATE PLANS. Requires the State electing to participate in the program to submit a plan of the operation of the program to the Secretary of Agriculture and receive the approval of the Secretary. Authorizes the Secretary to deny or withhold payments to States under certain conditions.

SEC. . REVIEW BY SECRETARY AND STATE AGENCIES. Requires the Secretary of Agriculture to review the manner in which the program is carried out in the State and authorizes the Secretary to provide technical assistance to States. Authorizes the state agency operating the program to monitor the compliance of a lender with the program.

SEC. . NOTICE AND DETERMINATION OF ASSISTANCE. Prohibits a lender in a State participating in the program from taking any action as a result of a borrower defaulting on an outstanding loan made by such lender unless the lender has provided the borrower with the notice of the availability of the program and, in the case of a borrower who has applied for the program, determined that the borrower is ineligible for the benefits of the program.

SEC. . ASSISTANCE OF FEDERAL AND STATE AGENCIES. The Secretary is required to use the funds, personnel, and facilities of the Department of Agriculture as the Secretary determines necessary for the implementation of the program. Further requires the Secretary to request other Federal or State agencies to provide such funds, personnel, and facilities as the Secretary considers necessary for the implementation of the program. Any agency that provides such assistance shall be fully reimbursed for such assistance as soon as is practicable from subsequent appropriations.

SEC. . PROGRAM INELIGIBILITY FOR PRODUCTION ON HIGHLY ERODIBLE LAND OR CONVERTED WETLAND. Borrowers who produce on highly erodible land or converted wetlands, in violation of the sodbuster or swampbuster provisions of the Food Security Act of 1985, would be ineligible for benefits under this program.

TITLE — FARM CREDIT SYSTEM INSTITUTION BORROWERS

SUBTITLE A—FARM CREDIT SYSTEM LOAN RESTRUCTURING PROGRAM

SEC. . DEFINITIONS. Provides definitions for the terms "borrower", "Capital Corporation", "Chairman", "committee", "cost of foreclosure" and "loan" as used in this title.

SEC. . ELIGIBILITY FOR ASSISTANCE. Eligible borrowers are those who: (1) are delinquent in payments of principal or interest during the period beginning on the date of enactment and ending 3 years after such date; (2) demonstrate that the delinquency is beyond the control of the borrower; (3) derived not less than 50 percent of their gross annual income for three of the past five years from agriculture; and (4) had gross agricultural sales in excess of $30,000 for 3 of the past 5 years.

SEC. . LOAN DETERMINATIONS. Before foreclosing on a loan, a Farm Credit institution must determine the cost of foreclosure and the cost of restructuring the loan.

SEC. . LOAN FORECLOSURE AND RESTRUCTURING. If the costs associated with foreclosure equal or exceed the cost of restructuring a loan in an amount which will enable the borrower to make payments, a Farm Credit System institution will be required to restructure the loan in lieu of foreclosing a loan for eligible borrowers.

SEC. . ADDITIONAL COLLATERAL. Prohibits a Farm Credit System institution from requiring additional collateral on a loan if the borrower is current in the payment of principal or interest on the loan. Prohibits a Farm Credit System institution from foreclosing on any loan as a result of the failure of a borrower to provide additional collateral if the borrower was current in the payment of principal or interest at the time the additional collateral was required.

SEC. . APPEALS. Establishes a procedure whereby a borrower, who is determined to be an ineligible borrower or whose loan is determined to be ineligible for restructuring can appeal the determination. Further establishes a procedure to notify a borrower of his eligibility for loan restructuring.

SEC. . REIMBURSEMENT FOR PRINCIPAL REDUCTION. Requires the Capital Corporation to reimburse an institution for the amount of principal due on loans that is reduced by the institution if the Chairman of the Farm Credit Administration determines that such action is necessary to avoid the liquidation or insolvency of the institution.

SEC. . REPORT. Requires the Chairman of the Farm Credit Administration to submit a report to Congress on the operation of the restructuring program.

SUBTITLE B—FARM CREDIT SYSTEM REFORM

SEC. . ACCESS TO APPRAISALS. Requires the Farm Credit System to provide a borrower with copies of the appraisals of the assets of the borrower.

SEC. . HOMESTEAD PROTECTION. Encourages the Farm Credit System to allow borrowers, whose loans will be foreclosed, to retain possession and occupancy of any principal residence of the borrower and a reasonable amount of adjoining land.

SEC. INTEREST RATES ON CLASSIFIED LOANS. Prohibits the Farm Credit System from raising the interest rate on a loan that has been classified.

SEC. . CERTIFICATION OF NEED FOR FINANCIAL ASSISTANCE. Requires the Farm Credit Administration, within 60 days from the date of enactment and every 90 days thereafter, to determine whether the Farm Credit System is in need of financial assistance.

SEC. . OPERATING EXPENSES OF INSTITUTIONS. Limits operating expenses of Farm Credit System institutions to 1 percent above the average cost of bonds issued by the System from the date of enactment until the later of September 30, 1990, or such time as the Secretary of the Treasury no longer holds any obligations issued by the Capital Corporation.

SEC. . DISPOSITION AND LEASING OF FARMLAND. Requires the Farm Credit Administration to issue regulations identifying the proper handling of acquired farmland. Requires the Farm Credit System, to the extent practicable, to sell or lease farmland in the following order of priority—(1) sale to operators of not larger than family-size farms, and (2) lease to operators of not larger that family-size farms. Prohibits the selling of farmland if it will have a detrimental effect on the value of farmland in the area. Requires that special consideration in the sale or lease of farmland be given to previous owners if such owner has financial resources, farm management skills and experience sufficient to assure a reasonable prospect of success. Leasing would be based on a competitive bid basis.

SEC. . STOCK PURCHASE REQUIREMENT. Before providing a new loan to a borrower or entering into an installment contract for the purchase of farmland acquired by the Farm Credit System, the borrower would be required to purchase stock in the Farm Credit System.

TITLE —FARMERS HOME ADMINISTRATION BORROWERS

SEC. . DEFINITIONS. Defines the terms "borrower", "committee", "cost of foreclosure" and "loan".

SEC. . ELIGIBILITY FOR ASSISTANCE. Defines eligible borrowers as those who: (1) are delinquent in payments of principal or interest during the period beginning on the date of enactment and ending 3 years after such date; (2) demonstrate that the delinquency is beyond the control of the borrower; (3) derived not less than 50 percent of their gross annual income for three of the past five years from agriculture; and (4) had gross agricultural sales in excess of $30,000 for 3 of the past 5 years.

SEC. . LOAN DETERMINATIONS. Before foreclosing on a loan, the Secretary of Agriculture must determine the cost of foreclosure and the cost of restructuring the loan.

SEC. . LOAN FORECLOSURE AND RESTRUCTURING. If the costs associated with foreclosure equal or exceed the cost of restructuring a loan in an amount which will enable the borrower to make payments, the Secretary would be required to restructure the loan in lieu of foreclosing a loan for eligible borrowers.

SEC. . ADDITIONAL COLLATERAL. Prohibits the Secretary from requiring additional collateral on a loan if the borrower is current in the payment of principal or interest on the loan. Prohibits the Secretary from foreclosing on any loan as a result of the failure of a borrower to provide additional collateral if the borrower was current in the payment of principal or interest at the time the additional collateral was required.

SEC. . APPEALS. Establishes a procedure whereby a borrower, who is determined to be an ineligible borrower or whose loan is determined to be ineligible for restructuring can appeal the determination. Further establishes a procedure to notify a borrower of his eligibility for loan restructuring.

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SEC. . REPORT. Requires the Secretary to submit a report to Congress on the operation of the restructuring program.

SEC. . ALTERNATIVE CROP LOAN PROGRAM. Authorizes the Farmers Home Administration to make loans to farmers and ranchers for the purpose of producing alternative crops. Alternative crops would be defined as those not traditionally produced in the area.

TITLE —MISCELLANEOUS PROVISIONS

SEC. . INTER-AGENCY AGRICULTURAL TASK FORCE. Establishes an Inter-Agency Agricultural Task Force to assist commercial agricultural banks and the borrowers of the banks to resolve present economic problems and to facilitate commercial bank lending to agriculture in the future.

SEC. . REGULATIONS. Requires regulations necessary for Titles XI through XIV to be issued by the Secretary of Agriculture and the Farm Credit Administration no later than 90 days after the date of enactment.

SEC. . GENERAL DEFINITIONS. Defines terms used in Titles XI through XIV of this Act.

SEC. . AUTHORIZATION FOR APPROPRIATIONS. Authorizes appropriations as necessary for Titles XI through XIV.

SEC. . TERMINATION DATE. Provides that the authority granted by Titles XI through XIV expires 3 years after the date of enactment, except as otherwise provided in this Act.

SEC. . SHORT TITLE. Titles XI through XIV of this Act would be cited as the "Farm Credit Assistance Act of 1986".

TITLE —FARM CREDIT SYSTEM

SEC. . TREATMENT OF CERTAIN FARM CREDIT ASSOCIATIONS. Provides clarification for the treatment of an association whose stockholders did not approve a merger with one or more other associations and continues as an independent association. Specifically, the disapproving association would not be: (1) charged any assessment at a higher rate than that charged other like associations; (2) charged a higher rate than other like associations for the provision of any financial service and assistance (including, but not limited to, access to credit and rates of interest on loans and discounts) by a district Farm Credit bank to the associaton and its member-borrowers, and (C) deprived of any such assistance provided to other like associations.

TITLE —SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS OF 1986

(SUMMARY OF PROVISIONS)

Authorization of Appropriations Under the National School Lunch Act.

(1) Extends the authorization of appropriations for the summer food service program through fiscal year 1989.

(2) Extends the authority for the commodity distribution program through fiscal year 1989.

Authorization of Appropriations Under the Child Nutrition Act of 1966.

(1) Extends the authorization of appropriations for the State administrative expenses (SAE) provision through fiscal year 1989.

(2) Extends the authorization of appropriations for the Special supplemental food program for women, infants, and children (WIC) through fiscal year 1989 at a level of $1.57 billion for fiscal year 1986, such sums as may be necessary for fiscal years 1987 and 1988, and $1.782 billion for fiscal year 1989.

(3) Extends the authorization for the nutrition education and training (NET) program (at $5 million annually) through fiscal year 1989.

Basis for Commodity Assistance.

Changes the dates specified in current law by which the Secretary is to make an estimate of the value of agricultural commodities to be delivered to schools and by which he must provide cash payments for any difference between the estimates of available commodities and the amount of commodity support mandated by law.

Specifically, requires that the Secretary make estimates of the amount of commodity support available by June 1, instead of May 15; and requires the Secretary to make cash payments for the difference between these estimates and the mandated commodity level by July 1, instead of June 14, of each school year.

Inclusion of Whole Milk as a School Lunch Beverage.

Requires that schools participating in the school lunch program offer whole milk as a beverage, along with such other forms of milk as the Secretary might require to meet the nutritional requirements of the program.

Automatic Eligibility for Certain Programs.

Requires that a child who is a member of a household receiving food stamps, or who is a member of an AFDC assistance unit in a State where the income standard of eligibility does not exceed 130 percent of poverty, be served a free lunch and breakfast without further application or eligibility determinations.

A parent or guardian is still required to complete an application, the local school authorities are still required to determine the applicant's eligibility, and the Secretary, States, and local school for authorities may continue to verify the data contained in the application. However, it is the intent that the application procedure under section 109(b)(2)(B) and the eligibility determination and verification procedures under section 109(b)(2)(C) be simplified by substantially reducing the number of type of inquiries made by the applicable agency.

More specifically, indication on the application of receipt of food stamps or AFDC would be sufficient to satisfy the eligibility requirement and proof of receipt of food stamps or AFDC would be sufficient to satisfy the verification requirement.

Limitation of Meal Contracting

Prohibits a school or school food authority participating in the school lunch program from contracting with a food service company to provide a la carte meal service unless such company offers free, reduced-price, and full-price reimbursable meals to all eligible children.

Change in Tuition Limitation for Private Schools

Raises from $1500 to $2000 the maximum tuition that a private school may charge and be eligible to participate in federally-assisted child nutrition programs—effective October 1, 1986. Indexes this limit to inflation by requiring an annual adjustment each July 1, beginning July 1, 1988, to reflect changes in the Consumer Price Index for All Urban Consumers for the most recent 12-month period for which data is available.

Use of School Lunch Facilities for Elderly Programs

Provides for local education agencies to use school lunch program facilities, equipment, and personnel to support a nonprofit nutrition program for the elderly.

Administration of Child Nutrition Programs by Contract or Direct Disbursement

Revises the current requirement for the Secretary of Agriculture to administer directly child nutrition programs in certain schools, institutions, and service institutions by allowing the Secretary to meet this requirement by contracting with an organization to administer such programs in not more than three States on a pilot project basis to test the concept of contracting with private, nonprofit and profit organizations to administer the child nutrition programs currently administered by the Secretary. The direct administration of such programs by either the Secretary, or through a contract between the Secretary and an organization, is applicable to cases where such programs have been directly administered by the Secretary continuously since October 1, 1980, or where a State educational agency is prohibited by law from doing so. Maintains current law authority for States to assume direct administration of programs. Expands current law provisions regarding the appropriate withholding, disbursal and use of program and administrative funds in cases where the Secretary directly administers programs to include situations where the program is administered by a contracting organization.

The Comptroller General should monitor the making and implementation of contracts under the pilot projects and make a report to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Education and Labor concerning the pilot projects.

Department of Defense Overseas Dependents' Schools

Deletes the authorization of appropriations for the higher Federal payment required for free and reduced-price meals served in such schools when the cost of such meals is higher than the amount provided by the regular free and and reduced-price meal reimbursement rates.

Restoration of Certain Kindergartens to Special Milk Program

Extends the eligibility for the special milk program to kindergarten children who do not have access to either the school breakfast or school lunch program.

The provision intends that children attending partial day kindergartens (so-called "split sessions") and not having access to either the school breakfast or school lunch programs currently operating in schools they attend be permitted to participate in the special milk program. Full day kindergartens and other programs where children receive either breakfast or lunch would continue to be ineligible to participate in the special milk program.

Additional Funding to Improve School Breakfast Program Meal Pattern

(1) Provides an additional 3 cents in cash in each reimbursement for each breakfast served in schools or in the child care food program. Additionally, Provides that, subject to availability, the Secretary shall make available at least 3 cents per breakfast in commodities acquired by the Secretary or the Commodity Credit Corporation. These provisions are effective October 1, 1986. The commodities to be made available under this provision are to include only those that the Secretary has acquired for price support and surplus removal reasons, and that are not necessary for other domestic and for-

eign support programs or activities. This provision does not require the Secretary to make purchases for the specific purposes of meeting the needs of breakfast programs. The Secretary is expected to ensure a maintenance of effort by State and local sources so that the additional Federal reimbursements are not used to displace existing levels of support.

The provision would not require eligible institutions to accept any or all of the full value of commodities. In order to minimize reporting and record-keeping burdens, the Department would not require a separate accounting of commodities order for use in breakfasts.

(2) Requires the Secretary of Agriculture to review and revise the nutritional requirements for breakfasts to improve their nutritional quality and to promulgate regulations implementing such revisions within 180 days after enactment of the bill. In reviewing the program requirements, the Secretary is to take into consideration the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local school food authorities.

Extension of Offer Versus Serve Provision to the School Breakfast Program

Permits local school food authorities to allow students to refuse up to one item in each school breakfast. Any such refusal may not affect the charge to students, or the amount of Federal reimbursement for the breakfast.

State Administrative Expense Staffing Standards

Deletes the requirement that the Secretary of Agriculture develop State staffing standards for the administration of the school lunch, school breakfast, child care food, and special milk programs.

Special Supplemental Food Program for Women, Infants, and Children (WIC)

(1) Costs for nutrition services and administration: Maintains the current definition of the types of costs for which WIC administrative funds are to be used, but changes the term "administrative costs" to "costs for nutrition services and administration" in this definition. Deletes the costs of warehouse facilities from the list of items defining the types of costs for which WIC administrative funds are to be used.

(2) State eligibility for WIC funds: Makes a State ineligible to participate in the WIC program if State or local sales taxes are collected on food purchased under the WIC program. Makes the State sales tax provision applicable to a State beginning with the fiscal year beginning after the end of the first regular session of the State legislature after enactment of the bill.

(3) Participation Report: Requires the Secretary of Agriculture to report biennially to Congress on the income and nutritional risk characteristics of participants; migrant participation in the program; and such other matters relating to participation in the program as the Secretary deems appropriate. Authorizes the Secretary to use WIC evaluation funds to pay for the costs of preparing this report.

(4) Plan of Operation and Administration: Deletes from the current list of State plan requirements the following: (a) a description of how administrative funds are distributed and budgeted; (b) a description of methods for determining nutritional risk; (c) staffing patterns; (d) nutritional education goals; (e) plans for informing persons of eligibility; (f) a copy of the State procedure manual; (g) a list of all areas and special populations in need; and (h) plans to initiate or expand operations in areas most in need. Also adds new requirements that the State plan include a plan to provide program benefits to under-served areas if sufficient funds are available, to provide program benefits to those most in need, and to enroll eligible women in the early months of pregnancy.

Adds a requirement that a State plan describe how both the AFDC and maternal and child health care programs are coordinated with WIC program operations. The amendment also authorizes the Secretary to permit States to submit only those portions of their State plans which differ from previous years.

(5) Public Comment: Deletes specific State requirements for public hearings on the State plan one month prior to submission to the Governor, and replaces this with a general requirement that State agencies establish procedures to assure that the public has an opportunity to comment on the development of the State plan.

(6) Availability of program benefits: Adds a requirement that State and local agencies distribute information in a manner designed to provide such information to potentially eligibile persons most in need of benefits.

(7) Repayment of benefits by recipients: Requires a State agency to recover from a person making an intentional misrepresentation the amount that the State agency determines in equal to the value of the overissued food benefits, unless the state agency determines that the recovery of the benefits would not be cost effective. It is intended that this provision impose no new requirement on the States, and that State agencies would be expected to provide a hearing where necessary, and to provide procedural protections, including proper notice and opportunity to be heard.

(8) Priority funds for the WIC Migrant Program: Requires that not less than nine-tenths of 1 percent of the funds appropriated for the WIC program be first made available for services to eligible migrant populations and that migrant services be provided in a manner consistent with a State's priority system for participation. Provides that to the extent possible, accountability for migrant services be conducted under regulations in effect on the date of enactment of the bill.

(9) Improving State Agency Administrative Systems: Adds the provision of technical assistance to improve State agency administrative systems to the types of activities the Secretary of Agriculture may conduct with WIC evaluation funds.

(10) Paper work reduction: Requires the Secretary of Agriculture to keep to a minimum the documentation that States provide to be exempted from the requirement that no less than one-sixth of their WIC administrative funds be used for nutrition education activities.

(11) Allocation standards: Deletes the requirement that a State agency satisfy allocation guidelines established by the Secretary of Agriculture when distributing administrative funds to local agencies under allocation standards developed by the State agency in cooperation with local agencies. Deletes the requirement that the State allocation standards be included in the required State plan of operation and administration.

(12) Advance payments: Allows, instead of requires, State agencies to forward advance administrative funds to local agencies initiating WIC program operations.

(13) Expenditure of Funds for the Special Supplemental Food Program: allows a State to use up to 1 percent of the amount of funds allocated to the State for supplemental foods in a fiscal year to cover expenses incurred for supplemental foods in the preceding fiscal year, and specifies that this provision is not to apply to appropriations made before enactment of the bill. Further allows a State agency to keep up to 1 percent of the amount of funds allocated to the agency in a fiscal year for use during the subsequent fiscal year, and specifies that use of such funds in a subsequent year may not affect the amount of funds allocated to the State agency for that year. It is not the intent of the provision that States overspend or underspend their allocation year after year. Further, it is the intent of the provision that States should use the provision as a tool to enable the States to spend as close to 100 percent of their respective allocation as possible. Funds available for carryover to the next fiscal year are available for food and administrative expenses, while funds used to cover expenses for previous year costs are only applicable for food costs.

Child Care Food Program

Permits a hearing at the Federal level in cases where the State does not provide such a hearing, and eliminates the requirement that States provide such a hearing.

Nutrition Education and Training Program

Lowers from $75,000 to $50,000 the minimum grant provided to States for the nutrition education and training programs.

Extension of Alternative Means of Assistance

(1) Pilot Projects: References section 1581 of Public Law 99-198 with respect to the ability of school districts that participated in the pilot project on cash or commodity letters of credit in lieu of commodities to continue to receive entitlement commodity support in this alternative form through the school year ending June 30, 1987. (Note.—Section 1581 also provides that such school districts can receive bonus commodities to the same extent as other school districts, but only in the form of commodities (no cash or letter of credit).

(2) Compensation to pilot projects: Requires the Secretary of Agriculture to provide cash compensation, subject to availability of funds, and not to exceed $50,000, to school lunch pilot project school districts for losses they incurred as a result of a change in the methodology used to conduct the study on cash or commodity letters of credit in lieu of commodities during the school year ending June 30, 1983. The Comptroller General is to be consulted with respect to the accounting procedures used to determine such losses, and such sums as may be necesary to carry out this provision are authorized to be appropriated. (Note.—The change in methodology was related to a change in the form of bonus commodity assistance offered to the schools participating in the pilot project during the 1982-83 school year.)

National Commodity Processing System

(1) Extension: References section 1114(a)(2) of the Agriculture and Food Act of 1981, as amended by Public Law 99-198, with respect to processing agreements. (Note.—Section 1114(a)(2) provides that for the period July 1, 1985 through June 30, 1987, whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary must encourage consumption of the commodity

through agreements with private companies under which the commodity is reprocessed into end food products for use by eligible recipient agencies. The expense of the reprocessing would be paid by the eligible agencies.)

(2) Annual settlement of Accounts: References section 1114(a)(2) of the Agriculture and Food Act of 1981, as amended by Public Law 99-198, with respect to annual settlement of accounts. (Note.—Section 1114(a)(2) requires private companies participating in processing agreements to annually settle all accounts with the Secretary and apropriate State agencies regarding commodities processed under such agreements in order to enter into and continue agreements with the Secretary.)

Technical and Conforming Amendments

Makes various technical amendments to the Child Nutrition Act of 1966 and the National School Lunch Act and repeals various obsolete provisions and references.

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

Mr. BOREN. I am happy to yield.

Mr. BURDICK. I want to commend the Senator for offering this amendment. The Senator will recall that we endeavored to make a correction on the way loans are handled by permitting prepayment, with considerable savings.

Mr. BOREN. Yes, that is correct.

Mr. BURDICK. We passed an amendment in the Senate and later we were given assurance by the administration that this would be worked out administratively so the amendment ultimately lost. Can the Senator say why we need this amendment?

Mr. BOREN. I would say to my friend and colleague that he has pointed out in his introductory remarks the problem we have been having. The Senate has already gone on record for allowing these electric cooperatives to refinance their debt. It makes great sense. It makes great sense to them. It is just like refinancing your house. If you can refinance at a lower rate, it is prudent to do so.

It is certainly prudent for these hard-pressed electric cooperatives to do that at this point in time, and they will also be able to pass on those savings to their members in the form of lower utility bills.

All of us understand the tremendous financial pressures that are on all of the farmers and ranchers in this country right now. Of course, it makes great sense for the electric cooperatives to be able to do that. It makes sense for them, for their own economic security. It makes great sense as far as their customers are concerned, easing the utility rates.

And it makes great sense for the Government. This administration has time and time again advocated making changes in the loan portfolios to get early payment into the Government. Here is a situation where several billions of dollars will come into the Treasury now as these loans are paid off early.

That is why earlier I know my colleague participated in this, and Senator STEVENS from Alaska participated in this, raising this issue on the floor. The Budget Committee has made this recommendation. But the regulations imposed by the administration completely frustrated our ability to do what it was that we were intending to do.

They said you could not make this change unless you could prove that you could reduce your utility bills by at least 25 percent. If you can reduce them by 10 or 15 percent, surely that is still worth doing. If you can save a dollar, it is worth it to save a dollar.

If the Government can get the payments earlier, we should do it. We will save an immense amount of money according to CBO, several billions of dollars, so that in the first year we can implement all these programs I have discussed—the indemnification in the cattle situation, the soybean program, the interest rate buydown that we have worked on, drought relief for the farmers in the Southeastern part of the United States, and many other provisions.

A minute ago I neglected to talk about the provision included in the amendment that will help take care of the sugar beet producers who have recently been the victims of floods in the State of Michigan.

It makes great sense. It is time for us to do it. It is the way to save the Government billions of dollars now and still be able to take care of these pressing needs in agriculture.

Mr. BURDICK. After we passed the amendment, the Senator will recall that we were given assurance that this matter would be handled administratively. Does the Senator remember that?

Mr. BOREN. Yes.

Mr. BURDICK. Has it been done?

Mr. BOREN. No.

Mr. BURDICK. I commend the Senator for not only this amendment but his entire endeavor.

Mr. BOREN. I thank my colleague very much. I am proud to have his support. I hope others will join with us in taking what is a very commonsense step to help American agriculture at a time when it is indeed in crisis. It will also have a very positive impact on reducing the budget deficit.

As he has pointed out, provisions, for example, dealing with the early payback, the refinancing of the REA loans, are provisions which have been widely discussed on the Senate floor. They have had positive treatment from the body and its committees in the past.

Nearly every other provision included in this particular amendment has been approved either on the House or Senate side, or has been subject to a wide discussion with a full understanding by the Members of this body. But for one reason or another, we have been frustrated in our ability to get final action and get these provisions actually into law or actually implemented by the administration.

I see my good friend from Michigan on the floor.

I mentioned a minute ago they have an emergency situation in his State caused by floods affecting their sugar beet industry. I yield the floor at this time so that the Senator can go into detail in regard to the provisions of this legislation as they affect his State and the disaster which occurred there.

Mr. LEVIN. Mr. President, first, let me commend my friend from Oklahoma for the continuing leadership and sensitivity which he has shown in a critical area, the agricultural sector of this country. The amendment which he authored, which I am proud to cosponsor, addresses some very pressing needs in this country as a result particularly of historic droughts and now historic floods.

□ 1240

We have a flood in Michigan and a number of other States in the Midwest, but in Michigan in particular, which is unlike any flood in the history of our State. There are no records of any flood that comes close to the flood that we have seen in the last 20 days. Over 20 inches of rain have hit our State. They have wiped out a significant portion of our agriculture, including soybeans and potatoes and a number of other crops.

The Senate responded to the drought in a number of ways. We were right to do so and in the amendment that Senator ABDNOR offered on the debt ceiling, we linked drought relief and flood relief. That was right. So there is precedent for what Senator BOREN is doing here today. His amendment covers floods as well as droughts and it is right that we respond to natural disasters of this scope because their impact is similar. They are devastating on farm families and on the farm economy.

We recently met, Senator RIEGLE and I and a number of other members of the Michigan delegation, to work with the Secretary of Agriculture. I might say to Senator BURDICK, who raised this question, and to Senator BOREN that I am afraid we were disappointed. It is clear that the Secretary of Agriculture is not going to use the authority which he has under law to make disaster payments for crops which are wiped out in nautral disasters. Let it be clear that Congress has given the Secretary of Agriculture this authority. The authority is there. But the decision has been made that the authority is not going to be used to provide these disaster payments to farmers who have been wiped out in these devastaing droughts and floods.

So Congress has to make its will known, make its will felt, make its intention clear that we want the existing authority to make these disaster payments utilized. We have to mandate it now because the existing discretion has not been used. That is one of the purposes of the Boren amendment.

Mr. President, the Boren amendment, as I indicated, covers floods as well as droughts, as it should. It also has added suger beets which is a program commodity, as it should, so that that is covered as well as the other program crops. We have a situation where the same disasters have wiped out a number of nonprogram crops, including potatoes, soybeans—which are some of the major crops of the State of Michigan. Senator RIEGLE and I shall be offering language later which we believe may be acceptable to Senator BOREN—at least we hope it will be—to add a modification to his amendment to provide that nonprogram commodities which have been destroyed or damaged in the same disasters which are covered by this bill can also be the subject of the action by the Secretary of Agriculture to make these disaster payments.

Let me conclude by thanking Senator BOREN and all the other cosponsors again. This is a bipartisan effort. This is not a partisan or a political effort. This is a human effort to respond in the greatest of American traditions to disasters which have affected areas of this country across the geographical span of this country.

Whether it is in the Southeast, devastated by drought, or now in the Northwest, which has had excessive rains, or in the Midwest, which has had unusual flooding, whether it is Mount St. Helens or a disaster in the West or whether it is a tornado, this country responds to disaster. These are disasters unlike any that have ever hit our State.

Let me simply repeat for all of our colleagues, because we are all sensitive to the needs of all of our States, regardless of what States we represent, there has never been flooding like this in the history of our region or of our State. I believe the Senate will respond in the greatest traditions of the Senate. I commend Senator BOREN and the bipartisan leadership on this amendment for proceeding with it. I am proud to be a cosponsor of it.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I am informed by the Budget Committee that this amendment will increase the budget authority for the Agriculture Subcommittee of our Appropriations Committee by $2.9 billion. Under the circumstances, Mr. President, I raise a point of order under section 302(f) of the Budget Act as amended that the amendment provides budget authority in excess of the subcommittee's 302(b) allocation under the fiscal year 1987 concurrent resolution on the budget, and therefore is not in order

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. I move to waive section 302 of the Budget Act for the consideration of the amendment in light of the fact that for the CBO estimates in toto, it is a net advantage to the Treasury and will be beneficial in reducing the total deficit. I make that motion.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, will my distinguished colleague from Oklahoma yield for a question?

Mr. BOREN I am happy to yield.

Mr. DIXON. On the basis of what I have seen at the desk, my understanding is that not only will this amendment not adversely affect the budget, but with the $7 billion he shows as anticipated revenue from repayment of loans to the Rural Electrification Administration from around the country, in fact, this has a beneficial impact on the budget of $4 billion. Will the Senator from Oklahoma respond to that, since I feel his amendment in general, particularly what it does for disaster areas such as my State of Illinois, which is suffering a flooding disaster right now, and with respect to what it does for soybeans in connection with the loan program and the marketing loan program, is a very, very good amendment. I hope he can clarify the budget question, because I think many of us would like very much to support the amendment.

Mr. BOREN. Mr. President, I am happy to respond to my friend and colleague from Illinois, who has been one of the authors of some of these provisions, including the soybean provision.

According to CBO preliminary estimates, the REA provision, which will allow early refinancing and early payback of loans that are due to the Government in fiscal year 1987, will save the Government a total of $7,280,000,000. $7,280,000,000.

As we go down through the other elements of this program, we find the child nutrition proposal, H.R. 7, would have a net cost of $34 million; disaster assistance program for the Southeast, $230 million for disaster assistance in drought areas. On the sugar beet proposal, there is a very negligible cost involved. We do not have an exact estimate, but I think it is in the neighborhood—I yield to my colleague from Michigan [Mr. RIEGLE]—of $27 million.

Mr. RIEGLE. It is in that range.

Mr. BOREN. Mr. President, the Soybean Marketing Loan Program, because of the devastation that it caused in the soybean industry which dropped their loan rate—in fact, there is no target price established—$1.4 million. Sunflower loan payments from $85 million; cattle restitution, $750 million; heptachlor contamination and cattle indemnity a very negligible cost, somewhere in the neighborhood of $10 million; wheat deficiency, no cost. Credit provisions is $332,130,000; external combustion engine proposal of Senator ZORINSKY, $10 million.

If we total all those up and the other credit provisions provided for, the nonforeclosure provisions, provisions on the classification loan and all the other provisions have no fiscal impact. So the net savings after we take the REA provisions, refinancing provision, and then examine the cost of all of these other programs, which will be of substantial benefit to agriculture, the net savings to the budget in fiscal 1987 is $4.6 billion.

The actual figure is $4,681,000,000. If we project that out over fiscal 1988 and fiscal 1989 as well as fiscal 1987, according to the CBO, the net savings, which are highest initially, in the first year because of the early prepayment, the 3-year net savings compared to the cost of the programs involved is $2,672,000,000. So I respond to my colleague from Illinois that while we may have problems with certain subtotals within the total budget, certain categories under the technicalities of the Budget Act, overall, we do have total savings.

Mr. STEVENS. Will the Senator yield for a moment?

Just to make clear, the point of order I have raised is a point of order under the Budget Act to the basic amendment, that it is in violation of the Budget Act.

I do not want the Senator to misunderstand my point of order.

Mr. BOREN. Mr. President, I thank my colleague.

My point, of course, in countering that point of order with my motion to waive section 302 of the Budget Act for consideration of the amendment, my motion applies to the point of order as it has been raised by the Senator from Alaska.

□ 1250

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. I add my voice to others in commending the Senator from Oklahoma for moving on a host of important issues related to agriculture and to add to the words of my colleague from Michigan with respect to the tremendous problem we are now facing in our State with disastrous flood conditions. We are experiencing flooding now that is the product of rain that has extended almost without interruption for a 20-day period, the highest flooding condition in the State. Our geologists and the weather experts, going back through history,

say it has been 435 years since the State of Michigan has experienced flood waters of the kind we are experiencing in mid-Michigan at the present time. We are estimating about $230 million to $240 million worth of agricultural crop losses alone. Those are different kinds of agricultural produce that are in the fields that are being destroyed by these rain waters.

For one item that is covered in this legislation, sugar beets, we are now estimating a $33 million loss in that crop alone, but to that have to be added enormous losses in terms of potatoes, carrots, celery, and other vegetable items of that kind. We also are now having the apple harvest over on the other side of the State affected. We are having enormous losses in dried bean production. We are one of the leading States in the country in bean production. So that we are experiencing a level of devastation in our State that is beyond anything that we have ever experienced in modern history.

So I say to the Senator we are grateful that sugar beets would be included, but we may at a later point have to take up the matter of other crop items that would not be covered.

I commend the Senator and I hope we move forward on this amendment.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. Mr. President, in support of this amendment by my distinguished colleague from Oklahoma, may I say that I share the concerns of my colleagues from Michigan regarding the disaster areas in our States.

We have a similar disaster problem in northern Illinois due to very heavy rains, the substantial flooding of the Des Plaines River and other problems, particularly in Lake County and McHenry County. To the extent this legislation offered by my colleague from Oklahoma attends to those problems, I think it is significantly important to many, northern Midwestern States at this time.

I would also observe that there is a very significant provision in this amendment regarding soybeans. This amendment maintains the soybean loan rate at $5.02, which the administration desires to reduce to $4.77. It also institutes a marketing loan program for beans. I wish my colleague had added a similar provision for corn. The Midwest faces the year's harvest with an enormous surplus of grain, especially corn, and I hope that we will address this problem.

I should observe to my colleagues, who do not serve on the Agriculture Committee or who are not otherwise involved in this issue, that the marketing loan strategy was part of the 1985 farm bill for cotton and rice. It has worked exceedingly well, particularly with rice, and my colleagues from Arkansas may be coming to the floor to direct our attention to that. The producers, the processors, and others have enjoyed a very prosperous year—unique, I think, in American agriculture this year—as a consequence of what has been done with respect to the marketing loan for cotton and rice.

And then finally may I say, in connection with the objection of my friend from Alaska concerning the Budget Committee, if my friend from Oklahoma correctly represents the facts—and I believe that he does—there is a positive revenue provision in this amendment amounting to over $7 billion, so that there will not be a $2-billion loss as suggested by my colleague from Alaska. If the Senator from Oklahoma correctly represents what the amendment does, I take it there is more than a $4 billion savings—on the positive side from a budgetary standpoint—in connection with the adoption of this amendment. I just want to say in closing—I believe this is factual; my friend from Oklahoma may want to represent otherwise if it is not—I am told the administration supports the concept that my colleague from Oklahoma suggests with respect to the REA and the $7 billion savings from this provision would in fact be a positive revenue source.

If that is the fact, we have a situation in which the administration supports the positive revenue side of this amendment, and we also have something significant for every soybean State. I say again to my colleague from Oklahoma I wish we would do the same for corn. But if we are doing it for beans, that is a step in the right direction. We are addressing a serious disaster problem for northern Midwestern States that have too much water. It is similar to what my friend from Tennessee had done earlier for the drought in the Southeast.

This amendment on balance is a very significant one, and I hope people on both sides, who are concerned about rural America and our agricultural problems and the disaster that faces us in the Northern part of our country, would support this amendment by my distinguished colleague from Oklahoma. I thank him for the introduction of the amendment.

Mr. STEVENS. Mr. President, there have been comments here that somehow or other this bill saves money. This bill increases the budget authority for the Agricultural Subcommittee for 1987 contrary to the budget resolution.

Now, had our subcommittee attempted to do in committee what this amendment suggests the Senate do on the floor, the Agriculture Committee would have eaten us alive. I just cannot understand why this bill suddenly has to become a vehicle for every single change in terms of authorizing legislation that we have passed during this whole session. This is a substantial change to the agricultural program that has already been put into effect. The REA provision that the Senator mentions is in the reconciliation bill. As a matter of fact, I believe the Senator from Oklahoma mentioned it was my amendment and is in conference now on the reconciliation bill. It is not needed here. If there is any change that has to be made, we can make it in the conference committee on the reconciliation bill.

As far as the commodities provision, this provision will increase the budget authority by in excess of $2.6 billion. It has not been to the Agriculture Committee. As I say, the reason for the rule is a wise one. If the authorization committee wants to have this kind of a battle and wants to report out an authorization bill that is $2.6 billion in excess of the budget, it can come here and it can get a waiver to that authorization. Once that battle is over, we would have a different situation on the 302(b) allocation. But this budget resolution is designed to protect the appropriations process, and the Senator's amendment is going to frustrate that process.

□ 1300

On behalf of the Budget Committee and on behalf of the chairman of the Appropriations Committee, I have raised the point of order, and I hope the Senators will permit us to vote on that point of order. We ought to be considering amendments that address our bill, not address any imagined or real defects in the authorization process, because the authorization committees are still here. This bill can be taken to the authorization committee and fought out where it should be fought out, not here on the floor as an authorization on an appropriations bill.

I serve notice on the Senate that if this motion fails, I shall raise a point of order under rule XVI(4) on germaneness. If that fails, I shall raise the point of order that it is legislation on an appropriations bill.

We are going to vote several times on this, because this is not the right procedure.

As members of the Appropriations Committee, we should not be constantly attacked by members of the authorization committees that we are rewriting their authorization bills on the appropriations bill, and then come here to the floor and find that the very same people who are involved in those authorization committees want to add to this bill changes in their authorization bills that have previously been acted upon by Congress.

I say to my good friend—and he is my good friend, and he is trying, I am sure, to pursue his objectives in any way he can—that this is not the right way. This bill ought to be sent to the

conference. It has 13 separate appropriations bills in it now. It should not be piggy-backed, like the shuttle on the 747, on the appropriations bill, with agricultural legislation we have already passed. On top of that, we will have the defense bill, and on top of that we already have the drug bill. How many committees can we carry into conference at one time with the appropriations bill when we have all 13 appropriations bills included in this now?

I plead with the Senate not to do this. We will have to have another extension and come back after the session if we have any more of this authorization language in this bill.

I believe the point of order is well taken. We will have a certification from the Budget Committee.

The amendment of the Senator violates the Budget Act, in that it will increase budget authority for the appropriations process for agriculture by $2.9 billion. I think it is a good point of order.

Mr. President, is it time now for the Chair to rule on my point of order?

The PRESIDING OFFICER (Mr. DENTON). The majority leader is seeking recognition.

Mr. DOLE. Mr. President, I hope we are not going to spend the whole day on this one amendment. I am being pressured by Members on both sides to finish the work this week.

We have been on the continuing resolution 3 days and have had one vote each day. We have not had a vote today, and it is 1 o'clock. We are engaging in the annual "farm fest." That is what this is all about.

I have a bill, too. I think I could pay for it, and I may offer it.

We are not kidding anybody. This is a little political ploy here. Whether somebody wins or loses, we are holding out some false hope to the American farmer.

I share the views expressed by the distinguished Senator from Alaska. We have 181 amendments pending, and about 150 of them do not belong on this bill. We have to complete action on this bill this week. If not, we are going to go into next week, and at this rate, we will be on the continuing resolution until Christmas.

I hope that after everybody has made their political speeches, we can get a vote. There are some things that ought to be addressed in the farm bill. There are a number of things that ought to be addressed in the farm bill. Some of us from the wheat States think we should have a marketing loan. Some from the corn States think we should have a marketing loan. The same with soybeans. There are problems in the South and in Michigan that perhaps we can address. But we cannot do it without paying for it.

I believe that the American farmer is willing to pay for it. If we have to increase the acreage reduction, which is not in this amendment, then we should increase the acreage reduction. If we are going to try to help the farmer, we have to find a way to provide for it. We are spending $56 billion this year for programs; that has more than quadrupled over the last 4½ years.

I hope we can get a time agreement on this amendment. We have to go off the continuing resolution at 7 o'clock. We do not go back to the continuing resolution again until Thursday morning at 8:30. We will be out of here at sundown on Friday because of the religious holiday.

It was our hope to wrap up the legislative session this week, all the legislative action, and have the impeachment trial next week, so that Members, running or not running, would be free to at least have 3½ or 4 weeks to do whatever they wish to do.

I do not quarrel with those who offer the amendment. I may have a better farm bill to offer before it is over, one which does not violate the Budget Act and that has real savings in it.

I hope we can have a vote on this. Can we get an agreement to vote in 30 minutes?

Mr. EXON. Mr. President, reserving the right to object——

Mr. BOREN. Mr. President, I am not offering this amendment for the purpose of being dilatory. This is a serious effort.

Mr. DOLE. There are 180 serious efforts

Mr. BOREN. Several of my colleagues on the floor want an opportunity to speak. I would like to give them an opportunity to speak. I have not had the chance to talk to them about how long they want to speak. I am sure that if we hear from two or three briefly, we will be able to reach a time agreement.

There is no desire on the part of this Senator or those supporting this amendment to use an extended period of time.

So I would like to wait for just a moment to let some of the others speak, and I will be happy to work with the majority leader in a few minutes. But then, it may naturally come to a close. If it does not, I will be happy to have a discussion with them about a time agreement on this matter.

Mr. DOLE. I say to the Senator from Oklahoma that before the continuing resolution ends, we might be able to put together an agreement.

Mr. BOREN. I thank the majority leader.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, while Senators are waiting to speak, I want to take a brief moment before yielding the floor to them.

I find it ironic that several Senators are suddenly concerned about allowing prepayment of REA loans. It is argued that my amendment will cost the Government billions of dollars in the long-term. It is argued that we should not be selling the assets of the Government. This seems very ironic to me, Mr. President, considering the Senate's action just last week on budget reconciliation.

I remind my colleagues, the Domenici-Dole package increased the amount of REA loans to be prepaid by $500 million. My amendment merely expands on this proposal by the distinguished chairman of the Budget Committee and the distinguished majority leader. Their proposal stimulated my thinking on the issue. I have taken the precedent they set in terms of prepaying these REA loans. The Senator from Alaska has been involved in making this proposal.

Not only did the Domenici-Dole package allow for repayment of REA loans, the package also provided for additional sales of rural development insurance fund loans-water and sewer loans—and additional sales of Eximbank loans.

The Domenici-Dole package, the vote on that package, and the subsequent vote on final passage of reconciliation set the precedent for the amendment we are now considering.

□ 1310

And the Domenici-Dole package raised almost $2 billion in fiscal year 1987 with these provisions. The Senate voted to adopt the package by a vote of 79 to 15.

The Senate adopted the reconciliation bill by a vote of 88 to 7. The reconciliation bill, S. 2706, as passed by the Senate included REA prepayments and loans sales for fiscal year 1987 which reduced outlays by approximately $3.5 billion.

The Senator from Alaska has mentioned that the problem is that that proposal did not go far enough because it put a cap of slightly under $2 billion on the total amount of REA loans that could be affected.

So, Mr. President, with such overwhelming votes in support of reconciliation—and I might have mentioned that had some of them wanted to raise the very same point of order under section 302 to the reconciliation package to the Domenici-Dole package the very same point of order could have been raised. It is exactly the same kind of provision but because it saves money overall, people refrain from offering or from making that point of order at that time.

So the very same issue is a serious matter.

Let me say I think that when we look at what we ought to be spending our time upon and I know there is a press for time, but when we think about what we should be spending our time on, we are going to end this year without doing enough for the budget deficit, without doing enough with the trade deficit, without dealing with the serious crisis in agriculture. What should our priorities be?

We have passed a tax bill that may or may not help the economy of this country. But we have not dealth adequately with the twin deficits that we know are destroying and sapping the vitality of the people. We have not dealt with the agricultural crisis we know is threatening the economic health of this country and causing untold human tragedy. What are our priorities? What should our priorities be?

Mr. President, I do not know of anything that is more important than this right now. I do not know that the rush to get on with other amendments or to get on to some sort of self-imposed deadline is more important than doing something about solving the farm problems of this country. This Senator has requested hearings. This Senator requested hearings of the subcommittee beginning January of this year.

It is not the fault of this Senator that the authorizing committee only held two major hearings this year and did not report out any major legislation that would change the mistakes that were made in the 1985 farm bill. So we should have an opportunity to act on these proposals.

It is not a matter of politics. It is a matter of what ought to be done in a bipartisan way to solve a very critical problem. We ought to deal with the drought victims in the Southeast. We ought to deal with those who suffered in Michigan. We ought to deal with what has been done with the cattle producers in this country who through no fault of their own had their own Government come in with a mismanaged program and depressed the prices, and do something about the suffering of soybean producers that unduly impacted again by the discretionary decision of the Secretary of Agriculture. We ought to do something about farm credit along the lines the distinguished Senator from Minnesota, who arrived on the floor. Mr. BOSCHWITZ and I have been proposing for some time a very workable provision. I think this is a matter we should be taking up. We should be taking it up now.

The reason I am offering it now is I have not had an opportunity to offer it anywhere else. The authorizing committee has not reported out any major legislation. The CFTC bill that was an agricultural authorizing bill on which I wanted to offer this amendment was pulled down. The Federal insecticide bill which again was an agricultural authorizing bill on which I could have offered this amendment has not again been called up on the floor.

I would have offered it on either one of those two bills instead of on the continuing resolution. This Senator has had no opportunity to do that. This Senator feels compelled as he goes home and I know there are many others in this same situation in talks to farmers and ranchers in desperate situation. This Senator feels compelled to do whatever he can to try to give this Senate an opportunity to deal with this crisis.

It is more important than technicalities. It is more important than questions of committee jurisdiction.

Farmers who are being foreclosed upon are not concerned about the technicalities of Senate rules. They are fighting for their economic survival and we should do something to help them.

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

Mr. BOREN. I am happy to yield.

Mr. STEVENS. Mr. President, I have farmers in my State. I hope that the farmers in the Senator's State from Oklahoma are as responsible as mine. My farmers are concerned about money.

And I think they would believe me if I hope that the Senator from Oklahoma would believe me, Mr. President, when I state the Reconciliation Act already took into account the savings that are in the Senator's amendment.

You cannot save the same money twice. This proposal of the Senator from Oklahoma will increase the cost of the farm program without any savings that we can find.

The Senator from Kansas says he has got another way to try it maybe later today, and I hope he does. I would be happy to support something that would reshuffle the money that is already available for the farm area and make it more effective but that is not this amendment.

This amendment, and I say to my friend I am sure my friend realizes that it is not with any great feeling of pride or anything else that any Senator raises a point of order against another Senator's amendment under this Budget Act. It is our duty to do it. I have been requested by the chairman of the Budget Committee, by the chairman of the Appropriations Committee, to do it, and I think the Senator has misunderstood me. If I hear him correctly, Mr. President, the statement of the Senator from Oklahoma indicates that somehow or other that we should have raised this point of order in the Reconciliation Act. This point of order would not apply to the Reconciliation Act because the Reconciliation Act took into account the savings the Senator wants to use again. You cannot use them twice.

Mr. BOREN. Will the Senator yield a minute on that point for a question?

Mr. STEVENS. I yield.

The PRESIDING OFFICER. The Chair will note that the Senator from Oklahoma has the floor. It is not appropriate to yield to another Senator. The Senator from Tennessee has been seeking recognition and I would say that in deference to him.

The Senator from Oklahoma.

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

The PRESIDING OFFICER. The Senator from Tennessee.

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

Mr. President, I rise in strong support of the amendment offered by the distinguished Senator from Oklahoma. I am pleased to see that my able friend from Oklahoma is addressing several very pressing agricultural problems.

In particular, I am grateful that we are focusing on the continued need for Federal drought assistance for our farmers in the Southeastern United States. The drought has not gone away in the Southeast. Yes, some rain has come, but it has not been enough to alleviate a rainfall deficit 3 years in the making. Nor has it been in time to resuscitate parched hay and corn crops all across the Southeast.

As of yesterday, 691 counties across the Southeastern United States had been declared eligible for emergency drought relief by the Department of Agriculture. Eighty five of those counties are in my native State of Tennessee. That is 90 percent of the counties in Tennessee. Ninety percent of Tennessee has felt the terrible repercussions of the worst growing season of this century.

As my colleagues will recall, we attached a comprehensive drought relief package to the debt limit bill when that measure was on the floor in August. That package had broad bipartisan support. Since then, the House has passed drought assistance legislation nearly identical to the Sasser-Gore amendment that we adopted in August. The House vote, too, was overwhelmingly bipartisan—418 to 0 in favor of a drought package.

I am pleased that this amendment offered by my distinguished friend from Oklahoma includes the drought relief package I offered to the debt limit bill.

Passage of this amendment will ensure prompt, comprehensive relief to our Southeastern farmers.

I might say, Mr. President, that following the adoption of my drought amendment, just prior to adjournment for the August recess, it became clear that the amendment was not going to be acted on fully and enacted into law.

I asked my colleagues at that time what we would tell the farmers in the Southeast who are seeking some measure of drought assistance and drought relief. Would we tell them that we adjourned for the August recess and that they would just have to wait until we get back in session?

Now, the question I ask is: What do we tell them if we do nothing else? If we tell them "You will just have to wait until we get back in session in January. You know we had to adjourn early for the elections coming up in November."

I do not think many of my colleagues want to take that message to the farmers suffering from drought in the Southeast, or farmers needing assistance in other areas of this country.

The amendment of my friend from Oklahoma mandates the use of disaster payments—payments this administration has not indicated its intention to use. And it requires the Secretary of Agriculture to make those payments using surplus commodities—thereby reducing both payment costs and what have been escalating commodity storage costs. It suggests forbearance by the Farmers Home Administration for those farmers unable to make payments due to the drought. It allows a delay in assessments for dairy farmers. And it requires the Secretary to continue the emergency feed program through the winter. I say this sadly, Mr. President. Given this administration's cavalier attitude toward disaster assistance, I am reticent to allow USDA the discretion to terminate this important program before the long winter months are over.

This amendment will augment other initiatives being taken by concerned citizens throughout the Southeastern United States, citizens who know just how critical this situation remains and who are trying by volunteer efforts and banding together to deal with the worst drought of this century.

For example, citizens in Greene County, TN, have been working with the Army Reserve to use Army Reserve vehicles from Kingsport to haul hay all the way from Iowa to Tennessee, hay that Tennessee farmers are able to buy now that the Emergency Feed Program has been implemented.

A recent letter from the Greene County Executive reads, in part, "The need for hay in Greene County is critical. The applications we are now receiving from our farmers are showing that they have no more than 2 weeks supply of hay left at this point." In response, I wrote the commander of the U.S. Army Reserve in Nashville urging his cooperation in this impressive endeavor.

I ask unanimous consent that the letters be printed in the RECORD.

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

OFFICE OF THE COUNTY EXECUTIVE,
Greeneville, TN, September 26, 1986.

Attention: AFDK-ACT-OP-Maj. Ralph Stewart.
125th Hdqtrs.,
Army Reserve Command, 443 Donelson Pike, Nashville, TN.

DEAR MAJOR STEWART: In the first letter mailed to you asking for your help in getting hay moved from Iowa to Greene County, I enclosed a list of names, addresses, phone numbers and the amounts of hay from each donor. There was an error made in the computation of the weight and cubic feet column.

Therefore, please find a new list with the correct computations for weight and cubic feet of hay from each donor.

Again, I stress the fact that the need for this hay in Greene County is critical and weather conditions in Iowa will soon make it difficult or impossible to move this hay. The applications we are now receiving from our farmers are showing that they have no more than two (2) weeks supply of hay left at this point.

Thank you for your help so far, and for anything you can help us with in getting this donated hay moved from Iowa to Greene County.

Very truly yours,

JOHN G. HANKINS,
County Executive.

U.S. SENATE,
Washington, DC, September 1, 1986.

Major-General DENNIS R. JONES,
Commander, 125th U.S. Army Reserve Command, Nashville, TN.

DEAR GENERAL JONES: It has recently been brought to my attention that there is considerable interest within the Army Reserve in East Tennessee to assist drought-stricken farmers in transporting hay for their livestock.

As you may know, dairy and livestock farmers in Middle and East Tennessee—faced with parched pastures and decimated hay crops—are being forced to buy hay from any available source. Unfortunately, these farmers are having to look to states as far away as Ohio to find available hay for purchase. However, suitable transportation for such large quantities of hay is either extremely expensive or simply unavailable.

It is my understanding that the Army Reserve in Tennessee has a number of tractor-trailers at its Kingsport and Chattanooga Centers, and that interest has been expressed from both within the Army Reserve and by the agricultural community in East Tennessee in using those tractor-trailers to help with hay transport.

This spirit of volunteerism is to be commended. I would urge you to put into motion the processes necessary for allowing the Tennessee Army Reserve to make its equipment available for this mission of mercy.

I look forward to hearing from you on this matter.

Sincerely,

JIM SASSER,
U.S. Senator.

Mr. SASSER. Mr. President, providing this much-needed assistance will require cooperation from State officials. I have urged swift action on this front. It is my hope that State officials will not turn their back on Tennessee farmers in this time of need.

Swift action is needed on all fronts—at the State government level, at the Federal Government level, and on the volunteer level as well. This has been a year of unprecedented and unrelenting natural disaster. It should also be a year of compassion for those farmers who desperately need help.

I hope we can find this for our beleaguered farmers across the country. And I commend the distinguished Senator from Oklahoma for taking the initiative here today to offer this amendment that I think is so desperately needed.

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I want to thank my colleague from Tennessee and also thank him for his patience in waiting as we discussed other matters to make his remarks.

I want to compliment also his colleague from Tennessee, Senator GORE, for the outstanding work which they did earlier in shepherding through this body legislation to provide assistance to those who suffered so desperately from the drought in the Southeastern part of the United States. Without his efforts and without his insistence on action we would not have had the earlier action on the floor of the Senate. I think it is imperative that we now move ahead to make sure that the momentum of that action will not be lost, and that the help will actually get to those who need that help.

I want to mention briefly in response to the comments made by my good friend from Alaska earlier that I think there is some misunderstanding that developed with regard to the savings which we are generating with the early payment of REA loans which not only pays for the other provisions of my amendment, but also allows for further reduction of the budget deficit because we come up with a net savings of some $4.6 billion in fiscal 1987.

My good friend from Alaska—and he is my good friend; I have great respect for him—I understand in good conscience is raising this point of order, and I certainly do not criticize him or his motivation. Also he has a lot of genuine concern for those that are suffering in the agricultural sector.

So I certainly appreciate his efforts. We have joined together on many, many things in the past. I understand that he is in conscience doing what he thinks is right in terms of the precedent that we are setting.

Mr. STEVENS. Will the Senator yield?

Mr. BOREN. In just 1 minute. I want to raise this point and perhaps the Senator from Alaska will want to respond to it.

We asked the Congressional Budget Office to make an estimate of the savings of this particular amendment. We

asked them to make an estimate of the net savings already made in the reconciliation package. The Senator from Alaska is quite correct. There were some savings generated in the reconciliation package from the early payment of REA loans by allowing a certain portion of REA loans to be refinanced at lower rates of interest through the private sector, and then have the government paid early. There were some savings generated already in the reconciliation bill.

But the savings I set forth in my description are savings, that are net additional savings over and above the savings already scored in the reconciliation bill according to CBO. The reason why there are additional savings over and above the savings already generated in the reconciliation is that a cap of $1.9 billion was set on the total amount that could be paid in, in terms of early payment under the refinancing of the REA loans under the terms of the Reconciliation Act.

Had there been no cap, had we allowed the REA's, the electric cooperatives to refinance as much of their debt as they were able to refinance in the private sector and make early payment, then the savings would have been much larger in the reconciliation bill. Indeed, the full $7.2 billion plus the amount already scored in the reconciliation bill would have been saved.

But in addition to the savings we have already made in the reconciliation bill, which placed a cap on the amount of loans that the electric cooperatives would pay early, and because of that cap being removed in this amendment, allowing the REA's to refinance as much of their debt as it makes sense for them to refinance and make early payment, we have an additional net savings.

When this Senator said a while ago that the same kind of point of order could have been raised for exceeding the section 32 limitations under the Budget Act, under the reconciliation bill, I think this Senator was correct; that is, why, when the time agreement was reached on the reconciliation bill, we specifically waived the right to raise the point of order to that package?

So the analogy is exact. The savings were not distributed exactly the same way. But the principle is exactly the same. Savings were made in the reconciliation bill by allowing prepayment of some REA loans with an overall cap.

What I have done is simply take the idea that was included in the Domenici-Dole package—and I was also a coauthor of the earlier amendment offered by the Senator from Alaska on this same subject—we have simply removed the cap, have taken what I believe was a good idea, and allowed it to become even a better idea so that we can get additional moneys in with early payment.

We have covered the costs of these very badly needed agricultural programs with still a generation of net savings in the first year of $4.6 billion, and a net of between $2 billion and $3 billion over the 3-year period as we look ahead.

Of course, at some point in time, you begin as you go into the outyears to look at the question reversing itself. But still I believe in the long run for us to take these savings generated in the first 3 years—that is exactly the same principle as has been supported by the administration in other cases—and use those savings to help shore up the agricultural sector, I think, in the long run, is going to be sound economics in terms of what it is going to do to the total economy of this country.

So I offer that explanation. This Senator has stated his understanding of the economic impact and the scoring of the amendment by the CBO to the best of his own honest knowledge on this subject.

Mr. STEVENS. Mr. President, will the Senator yield for a question?

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

Mr. STEVENS. Mr. President, we do have a disagreement on the question of savings. I would say to my friend from Oklahoma in the Reconciliation Act we did increase the amount from the supplemental appropriations bill from $1.2 billion to about $1.8 billion. This is somewhere around, as I understand it, $7.5 billion in outlays. That is in outlay reductions.

□ 1330

My point of order is on the budget authority, contrary to either the supplemental or the Reconciliation Act. The amendment of the Senator from Oklahoma would increase the budget authority for agriculture by $2.9 billion. My point of order is made on that basis.

Beyond that, I would say this to my friend: During the adjustments made on the Reconciliation Act, this Senator got a rather deep lessen in finance and what it means to put on the market all of these refinancings for the REA's at the same time we are trying to refinance through the Treasury Department the existing Government debt structure.

Should the amendment of the Senator be adopted, it would mean that all of the refinancing goes out from the REA's at the same time we are refinancing the debt structure, and it is going to result in increasing cost to the Treasury to borrow money. That has not been quantified.

That was the reason that this Senator was willing to compromise at the amount we compromised on in connection with the Reconciliation Act. I would urge the Senator to consider that. I am told that if the Senator's amendment is adopted, the cost to the Government will net about $25 billion in terms of the refinancing cost because of the reduction in the interest revenue that will come to the Federal Government from the existing loans.

At the same time as the Government has that reduced income, it faces increased outlay on borrowing for the Government's Treasury issues because of the competition in the marketplace brought about by the complete refinancing of all existing REA loans.

I am very much a proponent of the refinancing program, but I think we have to accept the discipline involved in both the reconciliation bill and the appropriations bill of putting a limit on the outlay reductions we are taking credit for because the outyear costs must also be taken into account. I thank the Senator from Oklahoma.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I have listened with great interest to the debate on this matter. I hope before we vote on the pending motion of the Senator from Alaska we have a clear understanding about what we are doing fiscally on this matter. From the assurance I have received from my friend from Oklahoma and from what I have heard from my friend from Alaska, there seems to be a significant difference of opinion.

As a member of the Budget Committee, I am concerned about budget authority and about where the money is going to come from to do the things that the Boren amendment proposes to do.

Aside from that, I would like to get into the merits or lack thereof of the amendment offered by my colleague from Oklahoma. I think my colleague from Oklahoma, Senator BOREN, and I have stood on this floor together more often probably than many other Members of this body with regard to farm legislation. I am trying desperately to bring myself to the position where I can support him in this effort. I know full well he is trying desperately to do the right thing, to help the sectors of our country and economy that today are in desperate straits, particularly agriculture and the rural areas of America.

The Drought Disaster Program he has advanced seems to me to be in order if we can find the money to finance it. We do not have a drought in Nebraska this year, but we could have next year. I think my record basically indicates when other people are in trouble, I try to recognize there should be some action on the floor of the Senate under whatever means is necessary to accomplish that.

I tried to seek the floor when the majority leader was here. Unfortunately, he has left now.

I note the majority leader branded this amendment as somewhere along the lines that this is our annual help-the-farmer bill. If it is, maybe we should have more like that because we have not been doing very much realistically to help the farmer, other than to spending up to $30 billion a year on a farm program that is not working.

Having said that, if I can I want to ask questions of my friend from Oklahoma so at least this farm State Senator understands what is being done and what is not.

While the majority leader criticized the effort by my friend and colleague from Oklahoma, at the same time he indicated he had a goody-type farm amendment. I suppose his will be the Republican farm amendment to get the farm vote and maybe he thinks that the amendment offered by the Senator from Oklahoma is a Democratic-sponsored amendment to get the farm vote.

They may both be wrong and they may both be right. I simply say this is not the time to bring partisanship into this discussion because there is a depression in agricultural America today and in rural America. We have to do something about it now or address it head-on when we come back here in January, if we ever get out of this session.

Specifically I would like to make some comments about what I understand is in the amendment of my friend from Oklahoma.

Aside from the question still up in the air, is the money there or is it not there, is the amendment offered by the Senator from Oklahoma using the same funds over again in whole or in part set forth in the reconciliation bill?

I will set that aside for the moment because that is a different situation.

As I take it, there are several billion dollars that the Senator from Oklahoma feels can be used to finance a program that he is suggesting here by the speeded up sale of REA loans over and above what is now being contemplated in the Reconciliation Act.

I ask my friend from Oklahoma that question. I yield to him for the purpose of answering that question.

Mr. BOREN. I thank my colleague. Mr. President, that is correct.

The Senator from Nebraska, of course, is intimately familiar with the action of the Budget Committee earlier this year. In the overall package, the supplemental bill and the reconciliation bill, this same type of proposal was made, to allow some repayment of some REA loans based upon refinancing those loans. It is just like refinancing a house, an electric cooperative can refinance at lower rates of interest in the private sector and make an early payment in bulk to the Government of a front-loaded payment. That brings in additional revenues to the Government that would not otherwise come in. It follows the exact same procedure.

When the earlier reconciliation package passed, a limitation was put on. The overall cap was $1.8 billion in terms of the amount that could be prepaid.

I asked CBO, in addition, if we take the cap off and let the electric cooperatives refinance everything that made sense to them to finance, how much additional savings would be generated to the Government?

They used the assumption, they tell me, that they assumed a 9 percent threshold, that if they had loans out there, they were going to refinance the loans and make early payment. On that basis, they estimated that an additional approximately $7 billion over and above the $1.9 billion already scored would come in.

So we have $7 billion of additional savings generated by this amendment.

This Senator, with several provisions—

Mr. EXON. Let me go into those later.

Mr. BOREN. When we finish with that, the net savings for fiscal 1987 to the Treasury would be approximately $4.6 billion.

Mr. EXON. I thank my friend.

Let me ask another question. Maybe we can move this along a little bit.

Let me ask a question with regard to drought disaster loans.

Is there any limit on the amount that would go to individual claimants on that, or would the regular provisons prevail as in existing law?

Mr. BOREN. Those under existing law would prevail. The disaster provision is exactly the disaster provision we passed on the floor. This amendment simply restates the drought disaster assistance we passed earlier.

Mr. EXON. And funds it, is that correct?

Mr. BOREN. That is correct. It is the same provision we passed earlier.

Mr. EXON. If I understand correctly, there is also a payment which is in order, I think, at least to some extent, regarding the mismanagement of the sellout of the dairy cattle herds that had a tremendously adverse effect, at least for a period of time, on the beef cattle market. I understand that incorporated in the amendment is a provision that compensates in some fashion or from those people who were so injured during that time when the market was down. Is that correct?

□ 1340

Mr. BOREN. The Senator is absolutely correct. That is a very major portion of this proposal. It is one of the larger items in this proposal.

Mr. EXON. What is the estimate of how many millions or billions?

Mr. BOREN. The cost involved is about $600 million.

Let me say to the Senator from Nebraska, because I appreciate his frugality and want to make sure that no money is wasted. We know exactly what happened in the cattle market during that period of time. Through Government mismanagement, cattle prices plunged in some places as much as $10 per hundredweight. What we apply we think is a fair reimbursement. It will not fully make them whole but it will help. It is $6 per hundredweight. They will actually have to show their sales receipts on what they sold during this period of time, approximately 60 days, in which the prices were so terribly depressed.

We know what happened in the market, that it had a $6 minimum, really much more in some cases, $6 per hundredweight decrease. So the payment back to make up for the damage inflicted by the Government will be based upon $6 per hundredweight, with the actual documentation required.

Mr. EXON. Mr. President, the question I am asking my friend from Oklahoma, based on my retaining my right to the floor—I have several other things I want to get clear—is, is there any cap as to what any individual cattle producer that suffered a loss during that time would receive? Let me cite an example.

Supposing I sold a few head of cattle at that time and I may have lost $1,000, let us say. My neighbor across the way sold 1,000 head of cattle during that time. Would he be compensated unlimited amounts with regard to the number of cattle he sold?

Mr. BOREN. I say to my good friend that there is not a cap provision in this proposal. The reason for that is that the feeling was that since the Government inflicted the damage directly—it would be just the same as if the Government went out and destroyed a herd. Our feeling was that if the Government went out and destroyed 10 head of cattle, that rancher should be compensated for 10 head.

If he had 100 head of cattle and the Government went out and, for some reason, destroyed 100 head, he should be compensated on that basis.

In our part of the country, it hit at a time when virtually all of our family farmer ranchers who graze out their wheat were in their market pattern so they had no choice but to go ahead and go to market at that point.

I would agree with the Senator from Nebraska that while we should have some caps on normal income proposals, here we are dealing with something that I think is more akin to a disaster-type situation, where the Gov-

ernment itself, through the mismanagement of the program, directly inflicted the damage. So I think it would be fair under this situation that the rancher become compensated based upon actually how much he sold at that time.

Most of the sales were distress sales. They would have waited until the market recovered if many of them had had any way to wait, but they had to go ahead with that marketing pattern.

Mr. EXON. I would want to look at that a little bit further.

I say to my friend from Oklahoma he makes a very good point, except those of us who foster and promote agricultural programs sooner or later, and perhaps the time is now, are going to have to recognize that we are going to have to put some kind of cap on these programs, however, worthy they are, that we enact on behalf of our farmers and our ranchers.

Let me go to another question. As I understand it, the Senator's proposal includes marketing loans for soybeans.

Mr. BOREN. That is correct.

Mr. EXON. We raise soybeans in Nebraska. We also raise a great deal of a commodity called corn and a great deal of a commodity called wheat. One of the great travesties in the last farm bill—which I voted against, by the way—was that in order to get the votes to pass this, the administration came forth with what was known as marketing loans. But they only distributed that in the South, where they raise some cotton. We do not raise much cotton in Nebraska. It is a Southern crop. We raise practically no rice in Nebraska; that is a Southern crop.

To buy out the votes to get the farm bill passed—in my opinion; that is an editorial comment, likely to be denied on the floor of the U.S. Senate—I think it picked up some Southern votes for that farm bill that should never have been passed in the first instance. Another thing that was done in that regard with some other sweeteners was marketing loans for cotton and marketing loans for rice. Now we are adding, I guess, marketing loans only for soybeans and no marketing loans for two other basic commodities, which we do happen to raise in Nebraska, namely, corn and wheat.

Why? If marketing loans are good, and I shall comment on that in a moment—I am not sure they are. But if marketing loans are good and marketing loans now have become the politicians' way of trying to save the family farmer 30 days before election. If they are good for soybeans and if they are good for cotton and they are good for rice, why are they not good for corn and wheat?

Mr. BOREN. Let me say to my good friend that first of all, this Southern or Southwestern Senator, however I would be described, is not one of those who voted for the 1985 farm bill. I joined the Senator from Nebraska in voting against it.

We do have provisions that will be beneficial, I think, to wheat producers in this package. We have tried to have some balance. As the Senator knows, the early payment of the deficiency payment is provided for in this bill for wheat. We have a situation where we have, given the wheat marketing year, the 60-cent additional deficiency payment caused by the drop in the loan rate will not be paid until the following calendar year.

Mr. EXON. Was that not corrected with an Exon amendment?

Mr. BOREN. It was passed on the floor and put in the debt limit provision and conference has never occurred on that.

Mr. EXON. So the Senator has reintroduced it?

Mr. BOREN. We put that back in the package.

Mr. EXON. It is a good provision.

Mr. BOREN. The soybean situation is this: We had something in the marketing loan section for soybeans but it had an unintended effect. Soybeans do not have a marketing price like other commodities. The concept of a marketing loan is that when the Secretary uses his discretion to drop the price, there is income protection. Just as when we had a 60-cent drop in the loan rate on wheat there is income protection because of the target price.

There is no target price for soybeans, so what happened was when the Secretary went ahead this year and used his discretion to drop the loan rate and therefore the price for soybeans, there was no income protection. So it has caused a very, very severe problem.

I say to my good friend that I wish I could say we have addressed every single problem for every sector in this proposal. We have not. For example, we did not change the prepayment to the deficiency payment on corn as we did on wheat because the marketing area is different.

Mr. EXON. Let me say to my good friend, did not the soybean people during the debate last year, at least the national representatives, tell us they did not want a marketing price?

Mr. BOREN. I think the Senator is correct.

Mr. EXON. Now they have changed their minds.

Mr. BOREN. I think the Senator is correct. I think the situation has developed in a way they did not anticipate. I think the Senator from Nebraska knows that I am very sympathetic to the feelings he has expressed about one sector being played off against another. That happened in the passage of the 1985 farm bill. The bill was a tremendous mistake and should not have been passed. I am in great sympathy with the frustration he is expressing.

But I do feel in terms of trying to deal with the national agriculture problem now, it is appropriate for us to take notice of the fact that we now have these farmers, even if perhaps some of their own advisers led them into a wrong situation, they are now in desperate trouble and many of these people working hard all day long producing soybeans were not the policymakers, so they are suffering. I urge my colleague from Nebraska to take that into account, even though I agree with him and have the same frustrations he has about the way the 1985 bill was passed.

Mr. EXON. Is there any limit on the amount of marketing loans that an individual farmer could apply for and receive under the Senator's proposal, or is there any requirement for acreage cutbacks to try to get the price up?

Mr. BOREN. No, Mr. President, this is a 1-year provision, put in because the Secretary has already used his discretion this year. So we have not. We have made it analogous to the other commodities. There are not caps on the other commodities.

□ 1350

I agree with the Senator from Nebraska that in the future when we go into permanent legislation on this subject, that is something which probably should be considered. I will confess to him that what we have again tried to do is not totally rewrite the farm program but to take into account some of the immediate ad hoc problems, and there are further refinements that still need to be made.

Mr. EXON. Do I take it then if this amendment passes and eventually becomes law, for the 1987 soybean crop year the soybean producer could plant as many soybeans as he wants under the present procedures in effect and that the Government would therefore end up owning most of the soybeans?

Mr. BOREN. Mr. President, I do not believe that would be correct, because we are applying this to this current marketing year, not prospectively to the next marketing year. So I do not think that would be the case.

Mr. EXON. The proposal the Senator has is for the 1987 soybean crop only; is that right?

Mr. BOREN. I want to make certain that that is the case. That was the intent.

Mr. EXON. It would help me if the Senator could clarify it.

Mr. BOREN. We apply it, since the Secretary has used his discretion on the crop year already in progress, to the farmer who is not receiving the income protection. That was our intent.

Mr. EXON. Whether it is for the 1986 crop or whether for next year's crop, there is no cap placed on how much of the soybeans could qualify. I

could qualify all the soybeans I raise if it is on the 1986 crop; is that correct?

Mr. BOREN. Mr. President, that is correct. And I did double-check. We do specifically state here for the 1986 crop year. We do not refer to the future, and therefore it would not have any kind of incentive built in for the future. We are dealing with what has already been done for the 1986 crop year and providing, you might say, a retroactive protection because they have suffered in unintended ways.

Mr. EXON. I think that is true, and now that I understand that provision of it, it puts it in a little different perspective than I had thought originally. I would also say at the same time we are losing credibility, those of us who promote farm legislation over and over again. We lost an awful lot of credibility by the stories that appeared in the press, and I assume they were true, that one dairy farmer got $9 million or sold his dairy cows to the Government for $9 million to qualify in the program. I guess what I am saying is—and I think my friend from Oklahoma agrees—somewhere along the line we are going to have to put some reasonable caps on some of these programs or we are going to lose all of them. And if this bill passes, I would suggest—maybe before it passes—at least we ought to have a little discussion to see if we could not put some kind of a cap on this to make these programs beneficial to and in support of true family-sized farmers rather than large corporate soybean farmers. That is the concern I have and I think we should take a look at it. Maybe we can talk about that later.

Let us go to another important proposal that the Senator from Oklahoma has advanced that I think has an awful lot of merit. The Senator basically provides some money in his amendment for a buydown on loans for farmers in difficulty. If I understand it right—and correct me if I am wrong—this would provide, for qualifying farmers, that 2 percent would come out of these funds, 1 percent would be provided by the financing institution and the States themselves could come up with another 2 percent, if they wished, but that is not a requirement. If that would be the case in an individual State, then a farmer who is presently paying, let us say, the 13-percent interest rate a lot of them are paying, if this went into effect that would drop to around 8; is that correct?

Mr. BOREN. The Senator is correct. And of course the Senator from Nebraska has been one of the leaders in this body is trying to bring some credit relief. I would point out that one of the difficulties in the interest rate buydown program has been that currently we require, in order to get a 2-percent buydown by the Government, the financial institution must come up with 2 percent. Many of them are already undercapitalized. under extreme pressure from the regulators and not because they have not wanted to participate; they have simply not been in an economic situation where they coulid participate. So these programs have not been very successful in the past because you have just not had the ability to participate.

By changing this to a 1-percent participation along with a 2-percent buydown, it is estimated that many, many more institutions will be able to participate in those States where they have the financial capability. And of course there are a number of States right now that are so hard pressed they may not be able to participate. That is the reason we left it optional. The additional 2 percent by the State is optional—if he could participate—the Senator is right. A 5-percent change or a 3-percent change would leave a tremendous impact on the ability of a lot of farmers to survive and get through this period. It is very important, as the Senator from Nebraska argued, that we get in place something that will work, will get this interest rate reduction help out to the farmers who need it.

Mr. EXON. I thank my friend. One last question and we will move on as far as this Senator is concerned.

There again I assume is no cap then on the amount of troubled loans that could be refinanced in this manner? Example: An awful lot of family-sized farmers today have loans of $100,000 or less, maybe some up to $200,000. Other nonfamily-sized farmers and some family-sized farmers included have loans of $500,000 that would be affected. There is no cap on these loans and the buydown privileges would be the same, as I understand it, whether the individual farmer of farm corporation owed $1 million or $500,000 or $100,000, is that correct?

Mr. BOREN. No; Mr. President, in this situation there is a cap provided in the proposal, a cap of $400,000 of principal is provided. So we are really trying to target this assistance mainly to a family farm kind of operation. So there is a cap in place on this program.

Mr. EXON. So if I understand it right, it would not be fair to say it was $1 million to $500,000. I suggested $500,000. The Senator from Oklahoma said $400,000. But then it is true that a family-sized farm that has $100,000 in obligations would be treated the same as someone with $400,000 in obligation, is that correct?

Mr. BOREN. That is correct. In fact, the way the provision is written, it says $400,000 for an individual farming operation. If it is a family farm, an incorporated family farm—if it meets the definition—it could be up to $600,000 on principal maximum.

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

Mr. BOREN. I will be happy to yield. The Senator from Nebraska has the floor.

Mr. EXON. I have the floor. I retain my right to the floor.

Mr. STEVENS. Will this Senator yield to me?

Mr. EXON. I will be happy to yield for a statement.

Mr. STEVENS. For a question. I would like to address a question, Mr. President, to both Senators. We have been on this amendment now for 2 hours and 15 minutes. We have 130-odd amendments that we know of on this bill. I wonder if now we could get a time agreement to vote on this by 2:10, for example.

□ 1400

Mr. BOREN. Mr. President, I am told by the Senator from Arkansas [Mr. BUMPERS] that he wishes to speak for approximately 5 minutes. Senator HARKIN would like to speak for 5 minutes.

Mr. EXON. When my colleagues has finished his discussion, I will make a brief comment and yield the floor. I would like to do that now. So far as the time agreement is concerned, I leave that up to the Senator from Oklahoma.

Mr. BOREN. Mr. President, if we could be allowed approximately 20 minutes, maximum, on this side, that may exceed the amount of time that would be required. If we can finish more quickly, we will.

This Senator has about 2 minutes. The Senator from Arkansas and the Senator from Iowa would like to speak. That should accommodate it.

I will be happy to agree to a request that on this side we be limited to 20 minutes, from this point forward.

Mr. STEVENS. Mr. President, I ask unanimous consent that we have 20 minutes for the proponents and 5 minutes on this side, a time agreement to vote in 25 minutes, without any quorum calls or any interruptions—that the Senate will vote at 2:25.

Mr. BUMPERS. Mr. President, reserving the right to object, will the Senator restate the request?

Mr. STENNIS. Mr. President, reserving the right to object, will the Senator restate the request? The floor leader on this side is not here.

Mr. STEVENS. The time agreement would be on the Senator's motion to waive the Budget Act for the purpose of avoiding the point of order I have raised under the Budget Act, and the time agreement would be that we would vote on the Senator's motion to waive the Budget Act at 2:25, with 20 minutes under the control of the Senator from Oklahoma and 5 minutes on this side.

Mr. STENNIS. Mr. President, if the Senator will yield to me, Senator BYRD is on his way to the Chamber. Will the Senator defer until he gets here? This is the beginning of a pattern, I imagine, that the Senator has in mind.

Mr. STEVENS. We do have in mind the idea of trying to get time agreements, and I am sure the Senator will agree to that. I am happy to await the arrival of the distinguished minority leader.

The PRESIDING OFFICER (Mr. WALLOP). Is there objection?

Mr. STEVENS. Mr. President, we withdraw the request, pending the arrival of the minority leader.

Mr. EXON. Mr. President, I compliment the Senator from Oklahoma for a very innovative proposal.

I have some questions in my mind that have not been answered fully. I do not know how I will vote when and if this comes to a motion on the suggestion that has been made by the Senator from Alaska as to the financing. That is not clear in my mind. I simply say that my major concern, which all of us from the farm States had better understand is simply this: All the credit in the world, even at reduced prices, all the marketing loans that might be helpful temporarily, all the drought and disaster assistance that is vitally needed at this time—significantly, I say, as I have said many times on this floor—all the credit in the world, even at cheaper interest rates than are now prevailing, will not solve the problem. If there is a serious situation today that I am extremely upset about it is the fact that right now the administration and the Federal Reserve Board are negotiating loans to help Mexico because Mexico cannot afford to pay the interest rate on the national debt, and through the various funding agencies, the IMF and others. We are quick to help out foreign countries that need help, but we are not willing to help farmers. That is a good part of the amendment offered by the Senator from Oklahoma.

Once again, I say to my friend from Oklahoma, my friend from Kansas, and others, that we are not going to loan our farmers out of the difficulties they are in now, regardless of what the interest rate is. I am afraid that marketing loans and all these things we are doing to try to patch this over before the upcoming election are probably going to make the problem worse; because unless we get to addressing the matter of price, getting the price up to some reasonable comparison with parity, we are not going to solve the farm problem.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I renew the unanimous-consent request.

The PRESIDING OFFICER. Is there objection?

Mr. BOREN. Mr. President, reserving the right to object—and I will not object—I have been informed that the minority leader has been informed of this request.

Would it be that we would have 20 minutes on this side and 5 minutes on the other side, from this time forward, which would take us to about 2:30 for the vote? Is that correct?

Mr. DOLE. That is correct.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BOREN. I yield to the Senator from Arkansas.

The PRESIDING OFFICER. Will the Senator from Oklahoma specify how much time he yields to the Senator from Arkansas?

Mr. BOREN. I yield 7 minutes to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, first, I want to applaud the efforts of my distinguished colleague from Oklahoma for putting together what I think is not only a comprehensive package but also a very sensible package.

Before my colleagues vote on this, I hope they will ask themselves a very simple question: Where are we going in agriculture in this country? I can tell you that if this does not pass or something comparable does not pass, we are going to be effectively practicing agricultural genocide against the farmers of this country.

Today, rice sells for $1.60 a bushel in the international market. You cannot raise rice in this country for less than $3 to $4 a bushel. Nobody can raise it for less than that. You can buy a bushel of rice in Arkansas for less than you can buy a bushel of dirt at Hechinger's.

When it comes to soybeans, which is my most immediate concern in this bill, very few people can raise soybeans for less than the $5.02 loan price that existed in 1985. Just recently, despite the fact that this body accepted a resolution of mine stating that the Secretary of Agriculture should not lower the loan price below $5.02, he thumbed his nose at this body and reduced it to $4.77. Just as certain as the Sun came up this morning, he intends to reduce it to $4.50 for the 1987 crop.

So, what is the effect? It is supposedly to put the farmers in the free marketplace. It will force our farmers not to compete against farmers in other countries but against other governments.

The biggest single item in the Common Market budget is agricultural subsidies.

I am up for reelection this year, and I dare say that every Member of this body, all 34 who are running this year, have heard a lot about family values in their campaigns. You tell me what is more traditional and what is more valuable than the American family farm. Do not talk to me about family values and then show your utter contempt for the family farm.

Some of the most cherished family values in America come from the family farm.

Mr. President, as to these sophisticated arguments about the budget being violated, No. 1, I do not believe that. I think the Senator has come up with a unique method of financing that actually reduces the deficit in 1987 by $4.7 billion.

Yes, we are allowing these people to prepay loans. I want any Member of this body to distinguish for me the difference between what the Senator from Oklahoma is doing and what we did in the budget when we sold the Elk Hills Petroleum Reserve, what we did in the budget and the reconciliation which is about to come before this body—that is, requiring the Small Business Administration to sell their loans at a loss of between $200 million and $300 million, because we are going to be selling them without recourse.

□ 1410

What is the difference? Those items are in the budget.

The Senator from Oklahoma is simply saying that Rural Electrification Administration borrowers may prepay their loans to finance something we all agree is meritorious.

No one says this is a bad amendment. No one says that the farmers and the people of Michigan who experienced so much trauma from the rains of last week should not have help. The Senators from Mississippi, both of them, who occupy the managers' chairs at this very moment, come from that part of the country, Tennessee, Alabama, Georgia, ravaged as never before by drought this summer. No one here suggests that we do not have an obligation to try to help those people.

No one suggests that the Secretary of Agriculture did not bungle the so-called whole herd dairy buyout, causing a precipitous drop in beef prices in this country. No one suggest that farmers can raise soybeans for a dime less than $5 a bushel.

So what happens? Senators who come from nonagricultural States say, "We have this little problem. It violates the budget."

It does not violate the budget. If this violates the budget, our whole budget ought to be torpedoed because there are numerous items in the budget exactly like it.

There are points of order, germaneness, all these legalistic arguments, but not one word has been said here today suggesting for an instant that there is one single nonmeritorious item in this bill.

You can postpone. You can say, well, maybe we can put together a little better package. Maybe that is true.

But I have the feeling that the Senator from Oklahoma and I and the other cosponsors are not going to prevail here. You are going to get the opportunity, those of you who come from farm States, to go home and tell your people, "We are really sorry about the population on the farm dropping from 5.9 million people last year to 5.4 million, dropping another half-million this year; we are really sorry that you are going to be foreclosed on.

I heard someone say last night some farmer told him, "If you will vote a certain way, things will pick up." He said, "They did. They picked up my car, my house, my combine, and now they are going to pick up my land."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BOREN. Mr. President, I yield 1 additional minute.

The PRESIDING OFFICER. The Senator has 1 additional minute.

Mr. BUMPERS. My colleagues, we are these United States. We call ourselves the United States because we are a Union of 50 States. It was intended when we set up this Republic to be concerned about each other.

I voted for the New York City bailout. It did not endear me with my people. I can tell you that. But they were in deep trouble.

I voted for other Senators to help with problems in their States.

When one segment of this country is in trouble we are all in trouble. When one State is in trouble we are all in trouble.

Do you think we would let Mexico invade Texas and stand idly by? Of course not.

When one segment of our economy is in trouble, we have an obligation. You know what is going to happen and I know what is going to happen. The family farm is heading into a precipitous, disastrous condition. There will be no family farms at the rate we are going within 5 years. And who do you think will own the land and who do you think will call the shots on prices?

The PRESIDING OFFICER. The Senator's time expired.

Mr. BUMPERS. I thank the Senator for yielding to me.

Mr. BOREN. Mr. President, I yield myself as much time as I require, and I want to thank my colleague from Arkansas for the very eloquent comments which he has just made.

Indeed during this debate, we have heard technical arguments raised about the budgetary impact. We have not heard criticism of this amendment in terms of its substance and in terms of its merits. We have not heard why it is wrong for the Government of the United States to help indemnify those ranchers who are the victims of governmental mismanagement itself. We have not heard why it is wrong to indemnify people who were hurt because of the actions of their own Government. We have not been told why it is wrong to make it possible for family farmers who are productive, hard-working citizens to be able to borrow money at reasonable rates of interest so that they can stay in business.

We have not been told why it is wrong to place in the statute rules and regulations that will make it impossible for the Federal credit agencies to foreclose upon farmers who are not behind in making payments on their land. We have not heard why it is wrong to write into the law a requirement that if a farmer is dispossessed from a farm that may have been in his family for several generations if he can raise the money to buy back that homestead through other means that he should not be allowed to bid on buying back his own farm or his own homestead. We have not heard any reasons why we should be opposed to this provision.

We have also not heard why it is wrong to not only deal with the agricultural problem but also reduce the Federal budget deficit this year by an additional $4.6 billion.

The point of order that has been raised is a point of order that applies to budget authority under subcategories. It does not apply to actual outlays, the amount of money that the Government will actually spend.

Because of early payment of these loans—through the savings that will be generated to the electric co-ops, they will have an incentive to refinance and prepay early—we are going to have a net savings of some $7 billion into the Federal Treasury.

We have used a portion of those proceeds to take some very badly needed action to help the agricultural sector and we will still have, after all that is done, a net reduction of over $4 billion in the Federal deficit for fiscal year 1987, and according to CBO estimates, a net 3-year savings in fiscal years 1987 through 1989 of $2.672 billion.

Mr. President, I want to make it perfectly clear what we are about to vote upon. First of all, when we vote for the adoption of this amendment, we are voting to save the Federal Government $4.68 billion in fiscal year 1987. We are voting in support of the cattlemen of this country who suffered severe economic hardship as a result of the Department of Agriculture's administration of the whole herd buyout program.

We are voting in support of the farmers and ranchers in the Southeastern part of the United States whose livelihood has been jeopardized as a result of the drought this year. We are voting in support of lower interest rates for farmers and ranchers who have loans with commercial banks or the Farm Credit System. We are voting in favor of requiring the Farm Credit System and the Farmers Home Administration to restructure farmer and rancher loans if restructuring would actually be cheaper than foreclosure.

We are voting in favor of providing all the deficiencies payments to wheat producers so they can increase their cash flow this calendar year without any cost to the Government.

We are voting in favor of supporting a soybean program to allow soybean producers to become competitive in the world market without substantially reducing their income in the short term and emergency situation that exists this year.

We are voting in favor of supporting the reauthorization and providing for much-needed modification in child nutrition programs, such as the School Lunch Program and the School Breakfast Program, in a country where it should be beyond debate that we provide for the nutritional needs of hungry children in the midst of plenty in a country as great as this.

This is a provision of this package, Mr. President; that is what this vote is all about.

If my colleagues vote against this amendment, vote in favor of knocking it down at this point on a technicality as opposed to the actual dollars it will save in the budget, actual dollars of outlays, actual money saved, they are saying they are not for these provisions; they are saying they do not want to decrease budget outlays even if that will in fact help many of the farmers and ranchers of this country; they are saying they are insensitive I believe to the hard times confronting our Nation's farmers and ranchers.

I state all this, Mr. President, because I believe it is critical that the people of this country be made aware of exactly the issue before us as we move to this vote in just a few moments.

I urge all of my colleagues to support those of us who have offered this amendment in this effort. I do not know if we will have any alternatives that will really help do something about farmer income while dealing with the budget deficit at the same time.

I am fearful that other provisions instead of providing lower utility rates for the farmers will instead provide lower total income by reducing what farmers can produce.

So I urge my colleagues, let us not miss this opportunity with an amendment that pays for itself—not only pays for itself but makes a contribution back to reducing the Federal deficit. Let us not wait until next year. Every month that we wait there are more farmers and ranchers who will not be here if and when help ever does arrive.

How can we turn our backs on the ranchers for example who were the victims of our own Government mismanagement? I know many, many ranchers who may well not be able to be in business next year because not of anything they did but because of the mismanagement of the whole herd buyout program by our own Department of Agriculture. In this case it was not something some other country did to us. It was not something done by unfair competition of some group. It was our own Government that did it to ranchers who already are hard pressed.

I hope we will be able to provide. I hope my motion prevails. I know the Senator from Georgia, Senator MATTINGLY, and others have modifications they may want to offer. I think some are very worthy modifications in regard to the disaster program for the Southeast and others.

I urge my colleagues to vote with us on this motion so we might have an opportunity to proceed to refine this proposal further. There are some modifications that this Senator would undoubtedly be willing to accept. Let us not miss this opportunity of proceeding ahead at this point in time by knocking this amendment out of consideration on a technical motion.

Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. MATTINGLY. Will the Senator from Oklahoma yield to me?

Mr. BOREN. How much time remains to this Senator?

The PRESIDING OFFICER. The Senator has 4 minutes left.

Mr. BOREN. I am happy to yield 2 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 2 minutes.

Mr. MATTINGLY. Mr. President I support the Boren amendment and urge my colleagues to vote in favor of the amendment. This amendment contains several provisions that have already been adopted by the Senate. Included among those is relief for the drought-stricken farmers of the Southeast. Let me tell my colleagues, that we in the Southeast need this aid in order to save tens of thousands of farm operations throughout our region. There is also language in this amendment to help those farmers in the Midwest who have been devastated by floods this year. I support that provision as well. We should not turn our back on these people who through no fault of their own must have assistance in order to survive.

While I support the Senator for including these provisions, it is my intention after the vote on the budget waiver to offer several modifications to the Boren amendment that I believe will improve the drought aid provisions. I will be glad to discuss these more fully at the proper time with the Senator from Oklahoma. The modifications would include offsets that would clearly make the drought aid provisions budget neutral.

I know there is a debate about the costs of this amendment. I understand the Congressional Budget Office figures indicate this amendment will result in a net savings to the Government. Not a cost but a savings. I will support the Senator from Oklahoma on the upcoming procedural votes. I stand ready to work with him or anyone else here on the floor and in conference to resolve any costs problems.

Whatever needs to be done, I pledge my full effort to see that it will be done.

This is not or should not be a partisan matter. I have introduced drought aid provisions, drafted with the cooperation and advice of Democrats as well as Republicans. That was back in July. I have supported provisions introduced by Democrats and passed by this body in August. Here we are nearly to October and drought aid has yet to be signed into law.

Aid to farmers struck down by natural disasters is too important to let partisanship or pride of authorship get in the way of passage. The farmers just need the help that this amendment provides. They cannot wait until next year. That will be too late for them.

There is much else in this amendment that deserves our support including the provisions dealing with the REA's and with the soybean marketing loan. I support those provisions and congratulate the Senator from Oklahoma on including them.

Therefore, I urge my colleagues not to kill this amendment. It deserves our support.

I urge my colleagues to support the amendment.

Mr. President, one thing we find in this amendment is that from the standpoint of cost it saves money. It is not a cost. It is a savings to the Government. So I think not only from that standpoint we should support the Senator from Oklahoma on this upcoming procedural vote. I stand ready to work with him or anybody else here on the floor, and in conference to resolve any of these cost problems.

This is not a partisan matter. As the Senator from Oklahoma mentioned, we had already brought up drought assistance and aid provisions prior to this, drafted with the cooperation of both Democrats and Republicans on both sides. That was back in July. I have supported the provisions proposed by both sides of the aisle back in August. But here we are in October and drought aid is yet to be signed into law.

So as this amendment progresses, I would hope that I would see partisanship dropped by the wayside, Mr. President. The farmers need help now, not next year. Next year is too late.

I hope this amendment prevails, and the Senator will at that time allow me to make a modification to his amendment to, I think, create an amendment that is probably better. I think he also already agrees with that. I may either want to accept the modification now or later.

Mr. BOREN. addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. I thank my colleague for his comments.

Mr. HEFLIN. Mr. President, I am pleased to cosponsor this amendment offered by Senator BOREN. It addresses many issues that should have been acted upon by Congress before now. The most favorable consideration of this amendment is the fact that it saves $4.681 billion.

This amendment first allows rural electric coops to prepay their outstanding loans to the Federal Government with money these borrowers obtain from private lenders. This particular issue was supposedly taken care of on the supplemental appropriation that was passed in June of this year. However, the administration's Treasury Department is hampering the repayment efforts of our coops.

A marketing loan for soybeans is also included in this amendment. Last year, I offered an amendment to the farm bill that gave the Secretary of Agriculture the authority to implement a $5.02 per bushel marketing loan and it was accepted. The USDA decided not to exercise this authority, but rather decided to announce a reduced $4.77 per bushel loan rate. This amendment will mandate a $5.02 marketing loan.

The cattle restitution program, that has been the subject of hearings in the House Ag Committee, is also included in this amendment. Our cattle producers have been devastated by the implementation of the whole-herd dairy buy-out program, through no fault of their own. This legislation requires USDA to make payments, of $6 per hundredweight, to cattle producers who sold cattle from March 28, 1986 to June 30, 1986.

A credit provision, introduced earlier this year, will establish a Federal-State-lender cooperative agriculture loan interest "buy-down" program that will be extremely beneficial to our farmers facing a severe credit crunch.

Mr. President, I would also like to bring to the attention of the Senate the urgent need to proceed to final action on the emergency drought assistance legislation that was passed by

this body on August 1, and passed by the House of Representatives on August 6. The drought stricken farmers in Alabama don't understand why this legislation, that has passed both Houses of Congress, has not been sent to the President for his signature.

Secretary of Agriculture is going to provide the necessary assistance after the USDA gathers the damage assessment reports. Mr. President, my patience has worn thin. I first contacted the Secretary in May, requesting that he declare Alabama a disaster area and make Federal assistance available. I waited through the month of May but nothing happened. I contacted the Secretary again to ask for some compassion and assistance for the family farmers. I waited through the month of June, but no assistance was provided. I waited through the month of July and by this time anyone could read in any newspaper in Alabama, that the drought damage to the farmers alone exceeded $750 million.

Finally, on August 1, the Secretary announced programs that was supposed to aid our Southeast farmers. The USDA said that $1 billion in assistance was being made available through additional advanced deficiency payments. While this may help some farmers with a summer cash flow problem, this announcement was not disaster assistance. These payments were going to be made to the farmers in February. In addition, Mr. President, only 4 percent of these payments are going to the farmers in the South. Not 50 percent, not 20 percent, not 10 percent, not even 5 percent, Mr. President, of these payments are to be made to farmers suffering from the drought.

Mr. President, the Secretary of Agriculture needs only to look at the crop report released by the Department Tuesday to see that the drought is a reality. Projections for yields in Alabama are down significantly. Livestock reports will show that thousands of cattle have been sold prematurely, to avoid a total loss from starvation. Our poultry producers have already lost thousands and thousands of birds due to the drought. We need assistance now.

Mr. President, this amendment includes the drought package passed by the House of Representatives. Action on this legislation is long past due.

Mr. President, this amendment addresses many issues that have already been before this body. Some of these provisions have already been passed by both Chambers of Congress. I urge my colleagues to support this much needed amendment.

Mr. NICKLES. Mr. President, today, I join with Senator BOREN and many of my farm State colleagues in support of a number of improvements which can benefit farmers, ranchers, and other rural residents.

The package before us covers a number of important issues, including agriculture credit, disaster assistance, Rural Electric Cooperative refinancing, soybean marketing loans, wheat deficiency payments, child nutrition, and restitution for losses suffered by livestock producers due to the mishandling of a Federal program.

Mr. President, as Senator BOREN stated, the provisions of the package have been discussed before.

The credit provisions are a combinations of S. 1906, the Farm Credit Partnership Act introduced by Senator BOSCHWITZ December 5 of last year, and S. 2144, the Landowner Protection Act which I introduced May 5 of this year. These measures were combined and introduced as the Farm Credit Assistance Act on April 17.

The Landowner Protection Act provisions are designed to, one, offer debt restructuring for many farm and ranch borrowers who would otherwise be forced off their land due to circumstances beyond their control; two, stop the rising tide of farm foreclosures; three, ease downward pressure on already depressed land values; four, reassert local control of the Farm Credit System; and five, minimize borrower and lender losses. The Farm Credit System has adopted a new restructuring plan based on the minimum loss concept behind the Landowner Protection Act.

Of importance to Oklahoma wheat producers, the package includes a provision Senator BOREN and I passed through the Senate August 1 which permits wheat producers to receive the remaining 60 cents of their 1986 crop wheat deficiency payments rather than having to wait until July of 1987 as currently scheduled.

Of importance to Oklahoma soybean producers, the package would reinstate the $5.02 loan rate and implement a market loan. The Senate has previously passed a similar resolution. On August 4, I was joined by a number of my colleagues in urging the Secretary of Agriculture to adopt such action.

Of importance to Oklahoma cattlemen, the package provides a method to compensate producers for losses they suffered as a result of the mishandled Dairy Termination Program.

Of importance to Oklahoma rural electric cooperatives and their member-patrons, the package clarifies congressional intent regarding the loan refinancing issue. On June 6, the Senate passed a provision designed to save Oklahoma rural electric cooperative members $7 million. On July 17, I requested a status report on the regulations to implement the refinancing provision which became law July 2. On August 27, I wrote Treasury Secretary James Baker, stating my opposition to the issuance of unduly restrictive regulations. The provision in this package should leave no room for skirting the intent of the original Senate effort.

These issues, along with the disaster assistance and child nutrition provisions, have a history that demonstrates a wide level of support. With this in mind, I urge my colleagues to join with us in support of this package.

Mr. BOREN. We are running out of time now. There are some other modifications that the Senator from Colorado and others will be making that will be acceptable to this Senator. We will hopefully have an opportunity to offer those right after the vote.

I yield the remaining time of this Senator to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Thank you, Mr. President. I thank my friend from Oklahoma, the distinguished Senator from Oklahoma, for yielding this time.

I want to compliment him for really putting together an excellent package. This is something that has to be done. The Senator from Oklahoma has put together, as I said, a series of provisions that are needed, and needed as soon as we can get this legislation passed, in the rural parts of this country. But I might also add that there is another section of this bill that the distinguished Senator has incorporated. That is the provision of H.R. 7, child nutrition.

I ask my colleagues who are here who are interested in child nutrition, we have had this long battle going on. We have not passed a child nutrition authorization for 5 years. The House has passed it every year. The Senate has not passed it. We tried to get on different legislation this year. It has always gotten tied up in one thing or another. Here is our opportunity to get the child nutrition authorization bill through, and enacted into law. I really want to thank my distinguished colleague from Oklahoma for incorporating the provisions of H.R. 7, and for his kind words on my behalf.

I have been fighting on this for over 1 year now. I hope the Senators will understand the importance of getting this child nutrition bill through.

I also want to say the provision that saves the Government $7.2 billion in the advanced prepayment of the REA loans is more important. It is not costing the Government anything. It is really going to save us some money plus it is going to mean a great deal in terms of lower utility bills for the people who live on farms and in small communities.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. I want to thank the Senator from Oklahoma for putting this together.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, may I inquire about how much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes. The other side has used its time.

Mr. COCHRAN. Mr. President, I hope Senators will notice that we are being asked to vote in favor of a motion to waive the Budget Act.

The reason that we are having to vote on that is that this amendment would add over $4 billion in spending authority at a time when we are trying to agree in conference on a reconciliation bill to save almost $10 billion to try to keep within the resolutions that have been passed already by the Congress; trying to do something effective to reduce the deficit.

I am in favor of a lot of things that are provided in this amendment. As a matter of fact, some of the things that are included are taken from legislation that has been crafted by some of us on this side of the aisle, working together with those on the other side of the aisle to do something about farm credit problems, to do something about agriculture problems, and nutrition assistance. But the fact of the matter is we have all agreed on a budget resolution. We have to have some degree of restraint in the budget process or we are going to pile up another $1 trillion in debt in a very short period of time. We know what that has done to the appropriations process. We are having to appropriate hundreds of billions of dollars to finance the debt which we already have.

So I hope Senators will look very carefully at the fact that we are voting on whether or not to stay with the budget resolution that we have already agreed to. That is the issue before us, not whether we want to do something for farmers or do something for those who are unable to provide fully for their own nutrition needs or some of the other worthy goals that are identified in this amendment.

Mr. President, I yield to the distinguished majority leader such time as we have remaining.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, let me use most of my time—there is not much left—to indicate we have been on this amendment now about 3 hours. There are 132 amendments pending.

I must say, as I wait for something to happen in this Chamber, it occurred to me it is like the first of the session. Nobody is in a hurry, take all the time you want, we have only 130 amendments left, take 3 hours on this little preelection farm fest, do not worry about the cost, and everybody makes their speech.

I would just suggest if we are going to complete the continuing resolution, and nobody seems very interested in that, but if we are, we have to move quickly. We are only going to be on it until 7 o'clock. Then we start the debate on South Africa. We are back on the continuing resolution tomorrow at about 8:30 in the morning until 2 o'clock. Then we are back on South Africa, then we are back on the continuing resolution after 4:15 or 4:30.

But I hope maybe after disposition of this amendment we could at least have some time agreement on amendments. We understood this was going to take an hour. It has taken 3 hours—a lot of debate, a lot of discussion, and farmers have a problem. It is about the time of year everybody wants to save the farmer. If we can really pay for some of the things we are doing, then I would say all right. We have been trying for a month to find out how we could pay to make some changes in the farm bill. It is not just a one-shot sale of assets in effect, but really making some savings by requiring more acreage to be set aside. There is nothing in this farm bill that I know of for wheat producers or corn producers that I can find out.

□ 1430

It just seems to me that we ought to sustain the point of order.

I yield back the remainder of my time.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. All time has been yielded back. The question is, Shall the Budget Act be waived for consideration of the Boren amendment?

Mr. COCHRAN. 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 yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Georgia [Mr. NUNN] is necessarily absent.

I further announce that, if present and voting, the Senator from Georgia [Mr. NUNN] would vote "yea."

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

The result was announced—yeas 45, nays 53, as follows:

[Rollcall Vote No. 304 Leg.]

YEAS—45

Abdnor	Boren	Danforth
Andrews	Bumpers	Denton
Baucus	Burdick	Dixon
Bentsen	Byrd	Durenberger
Biden	Cranston	Eagleton
Exon	Johnston	Nickles
Ford	Kasten	Pressler
Glenn	Kennedy	Pryor
Gore	Leahy	Riegle
Grassley	Levin	Rockefeller
Harkin	Long	Sarbanes
Hart	Matsunaga	Sasser
Heflin	Mattingly	Simon
Hollings	Melcher	Specter
Inouye	Moynihan	Zorinsky

NAYS—53

Armstrong	Hatch	Packwood
Bingaman	Hatfield	Pell
Boschwitz	Hawkins	Proxmire
Bradley	Hecht	Quayle
Broyhill	Heinz	Roth
Chafee	Helms	Rudman
Chiles	Humphrey	Simpson
Cochran	Kassebaum	Stafford
Cohen	Kerry	Stennis
D'Amato	Lautenberg	Stevens
DeConcini	Laxalt	Symms
Dodd	Lugar	Thurmond
Dole	Mathias	Trible
Domenici	McClure	Wallop
Evans	McConnell	Warner
Goldwater	Metzenbaum	Weicker
Gorton	Mitchell	Wilson
Gramm	Murkowski	

NOT VOTING—2

Garn	Nunn

So the motion to waive section 302(f) of the Budget Act was rejected.

□ 1450

The PRESIDING OFFICER. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the waiver motion is not agreed to.

Mr. DOLE. I move to reconsider the vote by which the motion was not agreed to.

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

The motion to lay on the table was agreed to.

Mr. HEINZ and Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I want to thank the Members for helping us to at least hold the dam at this point.

The PRESIDING OFFICER. The Chair does have to rule at this point that the amendment would provide new budget authority in excess of the appropriate allocation reported under section 302(b) in connection with the budget resolution for fiscal year 1987. Therefore, the amendment violates section 302(f) of the Budget Act. The point of order is sustained.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would like to indicate that we are trying to accommodate the Members to take up some of the major controversial amendments early. There will be a moment or two now that different Members would like to have the floor to introduce a bill or to ask for unanimous agreement that may not be related to this particular CONGRESSIONAL

RECORD. Then Senator GOLDWATER would like to offer an amendment, and Senator DANFORTH. Now, we cannot determine who is going to seek recognition, but I just wanted to say that if the membership could kind of cooperate at this point to let us get some of these major amendments out of the way, then we could handle some of the less controversial ones.

Mr. HEINZ. Will the Senator yield?

Mr. President, I just want to assure the Senator that I have an amendment. It is budget neutral. It is not subject to a point of order but it is an important amendment.

Mr. HATFIELD. I understand, and there are probably 85 others that would be in that category that do not violate the Budget Act and are relevant and are germane, and we want to expedite it as quickly as possible. Senator GOLDWATER has been, since about 11:30 this morning, on the floor seeking recognition and we would like to try to accommodate him.

AMENDMENT NO. 3102

The PRESIDING OFFICER. The Senator from Arizona.

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. GOLDWATER] proposes an amendment numbered 3102.

Mr. GOLDWATER. I ask unanimous consent that it not be read.

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

The amendment is as follows:

At the appropriate place, insert the following: None of the funds appropriated for fiscal year 1987 for the Department of Defense may be obligated or expended for the procurement, modification or research, development, test, and evaluation of T-46 trainer aircraft.

Mr. GOLDWATER. Mr. President, I intend to withdraw this amendment. I merely wanted to make a comment on it because in the report of this committee I find language that accomplishes just what my amendment intends to do.

Mr. President, I rise to offer an amendment that would prohibit any expenditures for the procurement or research and development of the Air Force T-46 trainer aircraft.

Mr. President, the T-46 is an aircraft which was not requested by the administration. Funds to procure the T-46 were added by the House of Representatives but I am happy to report, that in our joint authorization conference agreement, no funds shall be authorized for the procurement of the T-46.

That is, however, not the end of the problem. If for any reason we should not complete the authorization conference, then I wish to ensure that the Senate position on the T-46 is maintained in the conference on the continuing resolution for appropriations.

Mr. President, I will not take up the Senate's time with a lengthy explanation of the background of the T-46 Program and why the Air Force has chosen to terminate it. Let me simply say that this is an aircraft which three Air Force Secretaries and two Chiefs of Staff have said they do not want. Despite this clear statement from the administration, the House has—for purely political reasons—added funds to procure the T-46.

Now, Mr. President, I am struck by the irony of this situation. The same individuals in the House of Representatives who are so quick to criticize the Secretary of Defense for not prioritizing among all the programs in the defense budget, and for not being tougher on defense contractors who do not perform their contract obligations, and for not being able to terminate any defense programs, these very same individuals are screaming the loudest about the termination of the T-46. In my opinion, Mr. President, this is one of the most flagrant examples of attempted pork barrel in the defense budget that I have ever seen—and I am determined to prevent it.

Mr. President, I said at the outset, I am going to withdraw this amendment because I find the same language contained in the report of the bill that I would have amended by my amendment. The Senate voted on the same proposition in an urgent supplemental earlier this year, and it was taken by a vote of 79 to 14.

I withdraw my amendment.

I ask unanimous consent to have printed in the RECORD and excerpt from the RECORD of May 15, 1986.

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

The PRESIDING OFFICER. There being no further debate, the question is on agreeing to the amendment of the Senator from Arizona [Mr. Goldwater]. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. Durenberger], the Senator from Florida [Mrs. Hawkins], the Senator from Maryland [Mr. Mathias], the Senator from Oregon [Mr. Packwood] and the Senator from Wyoming [Mr. Wallop], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. Chiles] and the Senator from Mississippi [Mr. Stennis], are necessarily absent.

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

The result was announced—yeas 79, nays 14—as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—79

Abdnor, Andrews, Armstrong, Baucus, Bentsen, Biden, Bingaman, Boren, Boschwitz, Bradley, Bumpers, Burdick, Byrd, Chafee, Cohen, Cranston, Danforth, Denton, Dixon, Dodd, Dole, Domenici, Eagleton, East, Evans, Exon, Ford, Garn, Glenn, Goldwater, Gore, Gorton, Gramm, Grassley, Harkin, Hart, Hatfield, Hecht, Heinz, and Helms.

Hollings, Humphrey, Inouye, Kassebaum, Kasten, Kennedy, Kerry, Lautenberg, Leahy, Levin, Long, Lugar, Matsunaga, Mattingly, McConnell, Melcher, Metzenbaum, Mitchell, Murkowski, Nickles, Nunn, Pell, Pressler, Proxmire, Pryor, Quayle, Riegle, Rockefeller, Roth, Rudman, Simon, Simpson, Stafford, Symms, Thurmond, Trible, Warner, Wilson, and Zorinsky.

NAYS—14

Cochran, D'Amato, DeConcini, Hatch, Heflin, Johnston, Laxalt, McClure, Moynihan, Sarbanes, Sasser, Specter, Stevens, and Weicker.

NOT VOTING—7

Chiles, Durenberger, Hawkins, Mathias, Packwood, Stennis, and Wallop.

So the amendment (No. 1962) was agreed to.

AMENDMENT NO. 3103

(Purpose: To ensure the preservation of employee seniority rights in airline mergers and similar transactions)

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

The PRESIDING OFFICER. (Mr. COCHRAN). The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] on behalf of himself, Mrs. KASSEBAUM, and Mr. EAGLETON, proposes an amendment numbered 3103.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . (a) Section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) is amended by adding at the end the following new subsection:

"EMPLOYEE SENIORITY RIGHTS

"(g)(1) In any case which results in the operational integration or partial operational integration of the affected carriers, the acquiring carrier, and the designated representatives of employees of the acquiring carrier (if any) and the designated representatives of employees of any acquired carriers (if any), shall provide for the development, in a fair and equitable manner, of integrated seniority ranking lists for all affected employee groups.

"(2)(A) If any dispute or controversy arises regarding integration of seniority lists under paragraph (1) of this subsection and such dispute or controversy cannot be resolved by the parties, any party may refer such dispute or controversy to an arbitrator for consideration and determination.

"(B) If a contract which is applicable to such dispute or controversy and which has been entered into between or among any of the parties provides for referral of such dispute or controversy to an arbitrator, such referral shall be in accordance with the terms of such contract.

"(C) If referral of such dispute or controversy to an arbitrator is not provided for by such a contract, the referral of such dispute or controversy to an arbitrator, and the appointment of an arbitrator, shall be made in a manner acceptable to all parties. If the parties are unable to agree on the appointment of an arbitrator, any party which is seeking to make such referral may request assistance from the National Mediation Board. If such a request is made, the National Mediation Board shall furnish to such parties a panel of seven names of individuals with expertise in aviation labor issues. The parties shall select such arbitrator by the deletion of names from such panel in turn until one name remains, and such person shall serve as arbitrator. The arbitrator may conduct hearings regarding such dispute or controversy, but any such hearings shall be conducted in an expedited manner.

"(D) In making a determination under this subsection regarding such a dispute or controversy, the arbitrator shall consider such factors as the arbitrator considers appropriate, including the economic viability of the acquiring carrier and the promotion of any economic efficiencies sought through the transaction. The determination of such arbitrator shall be binding on all such parties.

"(E) The salary and expenses of the arbitrator shall be borne equally by the parties.".

(b) The amendment made by subsection (a) of this section shall apply with respect to any transaction approved by the Secretary of Transportation under section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) on September 12, 1986, and with respect to any transaction for which an original application is filed after the date of enactment of this Act, except that such amendment shall not apply with respect to any transaction in which the parties invoke and are able to satisfy the requirements of the failing company doctrine.

(c) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 408 is amended by adding at the end the following:

"(g) Fair treatment of employees.".

(d) The amendments made by subsections (a) and (c) of this section and the provisions of subsection (b) of this section shall cease to be in effect on January 1, 1989.

Mr. DANFORTH. Mr. President, during budget reconciliation, a similar amendment was offered. It is an airline labor protection amendment. It is cosponsored by Senator KASSEBAUM and Senator EAGLETON and fashioned after a bill that was introduced by Senator KASSEBAUM some months ago.

The issue that is addressed by this amendment concerns the merger of airlines and what happens with respect to the seniority lists of those airlines at the time of the merger. At present, the law imposes no requirements concerning seniority in merged airlines.

At the time this was offered on the reconciliation bill, there was a rollcall vote, and 43 Senators voted for the amendment. Several Senators voted against it, having stated on the floor that they agreed with the underlying principle and would have voted for it, except for the fact that it was offered on reconciliation, and the procedures under reconciliation required a vote of 60 Senators to approve the amendment. Therefore, some Senators—for example Senator METZENBAUM, as I recall, and Senator BYRD—took the position that, while they were in general agreement with the concept of the amendment, they did not want it on reconciliation. So essentially the same amendment is being offered by the same cosponsors in this bill, again dealing with the question of the merger of seniority lists.

The amendment would provide for the integration of airline employees' seniority lists where a merger occurs and the merged companies' operations are integrated. It would require representatives of the acquiring company and all affected employee groups to negotiate a fair and equitable integration of seniority lists. If the acquiring carrier and the employees cannot agree on an integrated seniority list, the dispute would then be submitted to binding arbitration. If the parties already had an agreement that provided for arbitration, then that agreed process would be used to settle the dispute.

This is the primary difference between the amendment that is now offered and the amendment that was offered a week or so ago to reconciliation. In other words, this would provide that the arbitration would be conducted pursuant to contract if there was a contractual arrangement for arbitration. The arbitrator would be directed to include in his or her deliberations the economic viability of the acquiring carrier and the promotion of economic efficiencies sought by the transaction.

The amendment would apply to mergers in which an application is filed at the Department of Transportation after the date of enactment of this legislation, so it would be prospective, with the exception of a single retroactive application, and that is with respect to the TWA-Ozark merger. The amendment would not apply to mergers in which the applicant successfully assert the failing-company doctrine, and the amendment would sunset on the same date as the transportation merger authority now sunsets, which is January 1, 1989.

I emphasize that this amendment would not apply to the People's Express-Frontier transaction. It would not be retroactive to that transaction.

Mr. President, the amendment I propose is similar to S. 2713, introduced by Senator KASSEBAUM. The amendment provides that if a merger between two carriers occurs, and if the operations of the two carriers are integrated, a fair and equitable integration of seniority ranking lists shall take place. The amendment permits representatives of all affected employee groups to have a say in the method of list integration.

If the parties cannot agree to a fair and equitable integration, this amendment provides that the dispute shall be resolved through arbitration. If any of the parties are already, through their contractual agreement, subject to arbitration on the list integration issue, that arbitration process should occur. But if no arbitration procedure is already in place, any party may refer a disputed issue to an arbitrator designated by the National Mediation Board. The arbitrator is directed to take into account the economic viability of the acquiring carrier and the promotion of economic efficiencies sought through the transaction.

The amendment would apply to merger applications filed with the Transportation Department after the date of enactment and it also would apply retroactively to the TWA-Ozark merger. It would not apply to any merger in which the applicants are able to satisfy the requirements of the failing company doctrine.

Mr. President, TWA, the TWA pilots and the Ozark pilots have all informed me that they intend to follow this type of procedure with or without this legislation. Thus, this legislation Prejudices no one, and guarantees the equitable integration of seniority lists which after all, is a matter of fundamental fairness.

Mr. EAGLETON. Mr. President, I wish to echo and underscore the thoughts of my colleague from Missouri.

This matter has been discussed and voted on previously in a somewhat different context than that in which it is presented here today.

This Danforth-Eagleton proposal is, indeed, a targeted—some might use the word "surgical"—approach and applies specifically to the TWA-Ozark situation as Senator DANFORTH has described. It has been very carefully crafted, and I recommend it vigorously to my colleagues.

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

Mr. HATFIELD. Mr. President, again, let me emphasize that I am acting as a manager of this bill, to expedite the bill, and certainly am not addressing myself at this moment to the merits of the amendment. In fact, I am very sympathetic with respect to the amendment and the content of the amendment.

However, I must make a point of order, under rule XVI, that this amendment is not germane to the joint resolution now pending before the Senate.

Mr. DANFORTH. Mr. President, I raise the question of germaneness, and I ask for the yeas and nays.

The PRESIDING OFFICER. The point of order that has been made is that the amendment is not germane. There is not defense to the point of order. Under rule XVI the question is submitted to the Senate. There is no debate.

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

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, Is the amendment germane? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Georgia [Mr. NUNN] is necessarily absent.

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

The result was announced—yeas 49, nays 49, as follows:

[Rollcall Vote No. 305 Leg.]

YEAS—49

Andrews	Eagleton	Melcher
Baucus	Exon	Metzenbaum
Biden	Ford	Mitchell
Bingaman	Gore	Moynihan
Boren	Grassley	Pell
Bradley	Harkin	Pressler
Bumpers	Hart	Proxmire
Burdick	Heflin	Pryor
Byrd	Hollings	Riegle
Chiles	Inouye	Rockefeller
Cohen	Kassebaum	Sarbanes
Cranston	Kennedy	Sasser
D'Amato	Kerry	Simon
Danforth	Lautenberg	Specter
DeConcini	Leahy	Zorinsky
Dixon	Levin	
Dodd	Matsunaga	

NAYS—49

Abdnor	Hatfield	Packwood
Armstrong	Hawkins	Quayle
Bentsen	Hecht	Roth
Boschwitz	Heinz	Rudman
Broyhill	Helms	Simpson
Chafee	Humphrey	Stafford
Cochran	Johnston	Stennis
Denton	Kasten	Stevens
Dole	Laxalt	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Trible
Evans	Mathias	Wallop
Glenn	Mattingly	Warner
Goldwater	McClure	Weicker
Gorton	McConnell	Wilson
Gramm	Murkowski	
Hatch	Nickles	

NOT VOTING—2

Garn	Nunn

□ 1530

The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 49. The judgment of the Senate is that the amendment is not germane. Therefore, the amendment falls as not germane.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was determined to be not germane.

Mr. DOLE. 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 Illinois.

Does the Senator from Illinois yield to the manager of the bill?

Mr. DIXON. I do.

Mr. HATFIELD. Mr. President, I would like to propose a unanimous-consent time agreement that the Senator from Illinois has agreed to enter into at this time on two amendments that he has to offer.

On behalf of the Senator from Illinois and the managers of the bill, I would propose that each of the amendments be limited to 10 minutes equally divided.

Mr. DIXON. Ten minutes to each side, I suggest to the Senator from Oregon, was our understanding.

Mr. HATFIELD. Mr. President, I withdraw the unanimous-consent request.

Mr. DIXON. Mr. President, I asked unanimous consent to yield 30 seconds to my distinguished friend, the Senator from Hawaii, for the purpose of introducing a bill.

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

(Mr. INOUYE's remarks are printed later in the RECORD under Statements on Introduced Bills).

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 3087

(Purpose: To permit tenant management of public housing)

Mr. DIXON. Mr. President, I have at the desk amendment No. 3087. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON], for himself and Mr. GLENN, proposes an amendment numbered 3087.

Mr. DIXON. 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:

At the end of the joint resolution, add the following:

SEC. . The United States Housing Act of 1937 is amended by adding at the end the following new section:

"PUBLIC HOUSING RESIDENT MANAGEMENT

"SEC. 20. (a) PURPOSE.—The purpose of this section is to encourage increased resident management of public housing projects, as a means of improving existing living conditions in public housing projects, by providing increased flexibility for public housing projects that are managed by residents by—

"(1) permitting the retention, and use for certain purposes, of any revenues exceeding operating and project costs; and

"(2) providing funding, from amounts otherwise available, for technical assistance to promote formation and development of resident management entities.

"(b) PROGRAM REQUIREMENTS.—

"(1) RESIDENT COUNCIL.—As a condition of entering into a resident management program, the elected resident council of a public housing project shall approve the establishment of a resident management corporation. The resident management corporation and the resident council may be the same organization, if the organization complies with the requirements applicable to both the corporation and council. If there is no elected resident council, a majority of the households of the public housing project shall approve the establishment of a resident council to determine the feasibility of establishing a resident management corporation to manage the project.

"(2) PUBLIC HOUSING MANAGEMENT SPECIALIST.—The resident council of a public housing project, in cooperation with the public housing agency, shall select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties agreed to in the daily operations of the project.

"(3) BONDING AND INSURANCE.—Before assuming any management responsibility for a public housing project, the resident management corporation shall provide fidelity bonding and insurance, or equivalent protection, in accordance with regulations and requirements of the Secretary and the public housing agency. Such bonding and insurance, or its equivalent, shall be adequate to protect the Secretary and the public housing agency against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

"(4) MANAGEMENT RESPONSIBILITIES.—A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency, shall enter into a contract with the public housing agency establishing the respective management rights and repsonsibilities of the corporation and the public housing agency. Such contract may include specific terms governing management personnel and compensation, access to public housing projects records, submission of an adherence to budgets, rent collection procedures, tenant income verification, tenant eligibility determinations, tenant eviction, the acquisition of supplies and materials, and such other matters as may be appropriate.

"(5) ANNUAL AUDIT.—The books and records of a resident management corporation operating a public housing project shall be audited annually by a certified public accountant. A written report of each audit shall be forwarded to the public housing agency and the Secretary.

"(c) COMPREHENSIVE IMPROVEMENT ASSISTANCE.—Public housing projects managed by resident management corporations may be provided with comprehensive improvement assistance under seciton 14 for purposes of renovating such projects in accordance with such section. If such renovation activities (including the planning and architectural design of the rehabilitation) are administered by a resident management corporation, the public housing agency involved may not retain, for any administrative or

other reason, any portion of the assistance provided pursuant to this subsection.

"(d) OPERATING SUBSIDY AND PROJECT INCOME.—

"(1) CALCULATION OF OPERATING SUBSIDY.—Notwithstanding any provision of section 9 or any regulation under such section, and subject to the exception provided in paragraph (3), the portion of the operating subsidy received by a public housing agency under section 9 that is allocated to a public housing project managed by a resident management corporation shall not be less than the public housing agency per unit monthly amount provided in the previous year as determined in an individual project basis.

"(2) CONTRACT REQUIREMENTS.—Any contract for management of a public housing project entered into by a public housing agency and a resident management corporation shall specify the amount of income expected to be derived from the project itself (from sources such as rents and charges) and the amount of income funds to be provided to the project from the other sources of income of the public housing agency (such as operating subsidy under section 9, interest income, administrative, fees, and rents).

"(3) CALCULATION OF TOTAL INCOME.—

"(A) Subject to subparagraph (B), the amount of funds provided by a public housing agency to a public housing project managed by a resident management corporation may not be reduced during the 3-year period beginning on the date of the enactment of the Housing Act of 1986 or on any later date on which a resident management corporation is first established for the project.

"(B) If the total income of a public housing agency (including the operating subsidy provided to the public housing agency under section 9) is reduced or increased, the income provided by the public housing agency to a public housing project managed by a resident management corporation shall be reduced or increased in proportion to the reduction or increase in the total income of the public housing agency, except that any reduction in operating subsidy that occurs as a result of fraud, waste, or mismanagement by the public housing agency shall not affect the funds provided to the resident management corporation.

"(4) RETENTION OF EXCESS REVENUES.—

"(A) Any income generated by a resident management corporation of a public housing project that exceeds the income estimated for purposes of this subsection shall be excluded in subsequent years in calculating (i) the operating subsidies provided to the public housing agency under section 9; and (ii) the funds provided by the public housing agency to the resident management corporation.

"(B) Any revenues retained by a resident management corporation under subparagraph (A) shall be used for purposes of improving the maintenance and operation of the public housing project, for establishing business enterprises that employ residents of public housing, or for acquiring additional dwelling units for lower income families.

"(e) RESIDENT MANAGEMENT TECHNICAL ASSISTANCE AND TRAINING.—

"(1) FINANCIAL ASSISTANCE.—To the extent budget authority is available for section 14, the Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development or resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

"(2) LIMITATION ON ASSISTANCE.—The financial assistance provided under this subsection with respect to any public housing project may not exceed $100,000.

"(3) FUNDING.—Of the amounts available for financial assistance under section 14 for fiscal year 1987, the Secretary may use not more than $1,500,000 to carry out this subsection.".

Mr. DIXON. Mr. President, I ask unanimous consent that Senator DANFORTH be added as a cosponsor.

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

Mr. DIXON. Mr. President, on behalf of myself, Senator GLENN, and Senator DANFORTH, I am pleased to offer an amendment to House Joint Resolution 738, the continuing appropriations resolution, which would permit tenant management of public housing.

I offered identical compromise language in the Banking, Housing, and Urban Affairs Committee during consideration of the housing authorization bill, S. 2507. It was thoroughly debated and was approved unanimously. However, S. 2507 is currently pending on the Senate Calendar and seems to be stalled. For that reason, we offer the amendment today.

The Dixon-Glenn-Danforth amendment would provide an alternative to residents of public housing to manage their own living conditions. Additionally, it would provide a valuable return on public housing investments for taxpayers.

On March 26, 1986, Senator GLENN joined with me in introducing S. 2242, the Public Housing Resident Management Act. However, the amendment we offer today contains language which I believe improves S. 2242.

A majority of tenant households in a housing project would be permitted to approve the establishment of a resident council, which would determine the feasibility of establishing a resident management corporation. Under contract with the public housing agency, the management corporation would manage the housing project.

As a protection against loss and theft, a resident management corporation would be required to provide fidelity bonding and insurance. An annual audit of the books and records of each corporation would be required.

In order to increase flexibility for tenant-managed housing projects, management corporations may be provided with comprehensive improvement assistance for project renovations. In addition, management corporations would be permitted to retain profits that are received from improved rent collections.

I believe that tenant management is a good program. It has existed on an experimental basis since the 1970's in at least one public housing project in the cities of Boston, Rochester, St. Louis, Louisville, Jersey City, New Orleans, and Washington, DC.

Additionally, a low-rise public housing development in Chicago, LeClaire Courts, is currently negotiating an agreement with the Chicago Housing Authority to become the first tenant management corporation in Illinois.

However, tenant management is still a new concept to many other public housing projects and to most taxpayers.

The mention of public housing typically generates the thought of impoverished, crime-ridden developments having tenants with few expectations for a better tomorrow.

According to the information that I have received, however, where tenant management exists, services have improved, maintenance costs have been reduced, public assistance caseloads have been reduced, and rent collections have increased. Overall, these public housing communities have become safer and more stable.

Let me stress that the Dixon-Glenn-Danforth amendment does not displace current tenants. It does not provide for tenant ownership. It does not require tenant management of public housing. It does not conflict with the Federal Government's commitment to provide housing assistance to needy families. It is not a viable alternative for every tenant organization or every housing project.

Instead, the amendment would provide flexibility to residents of public housing who meet the requirements and who choose to manage the projects where they live.

Mr. President, I believe that the time has come for the enactment of this legislation. Therefore, I urge my colleagues to join Senators GLENN and DANFORTH and me in supporting the amendment.

□ 1540

Mr. President, having detailed this legislation in my prepared text, I just want to say that this matter was discussed at length in the Banking, Housing, and Urban Affairs Committee of which I am a member. There was ultimately unanimous support for the amendment as it was offered to this year's housing bill.

People of all political philosophies in the committee like the basic ideas of tenant management. For example, my distinguished colleagueue from Colorado [Mr. ARMSTRONG] enthusiastically supports the concept of tenant management, as does this Senator. We might have little differences about provisions in the legislation itself, but I can report as a member of the Banking Committee that every member of that committee, Democrat and Republican, likes the concept. Everyone likes

the concept of letting tenants of public housing projects come together and if a majority of them vote for tenant management of their project, let them go forward in that way.

Mr. President, in the city of Chicago, which many of my colleagues have been in many times, there is a low-rise public housing project, LeClaire Courts, on the South Side of Chicago, near O'Hare Airport. Recently, Mr. President, I went there. With their leaders, I had an opportunity to go throughout the housing project and see what the tenant's have done, working together, to take care of their own living conditions.

Mr. President, you would be delighted to see the result. There were some people from Chicago media outlets following me around as I went through the housing project. We looked at one beautiful lawn with a beautiful stand of grass, shrubbery, and everything was in perfect order. Everything was nicely painted and renovated. I commented that there is that low-cost housing project on the South Side of the city of Chicago those tenants, acting in concert, with pride in their own community had fixed up that place so that their lawn looked every bit as beautiful as any fine lawn you would see in Wilmette or Winnetka, in the affluent suburbs of Cook County.

Mr. President, that is the point I want to make. With whatever poor eloquence is at my disposal, I want to say this: You hear so much criticism of how folks treat housing projects all over the country. But every public housing project I have seen where tenant management was involved, where tenants were able to work together, select their own leaders from the project, have a chance to renovate, have a chance to keep the additional rents they obtain, and run their own affairs, those housing projects are altogether different. They are wonderful to see. They have the same components that you see in ownership.

I am not arguing for ownership here; that is another question. But when tenants get together, work together, and make their own determinations about their leadership and how to manage their own project, the results are remarkable.

I appreciate the difficulty that my friend, the manager of this bill, finds himself in connection with this whole question of the continuing resolution. I earnestly solicit him to let me offer this amendment and have an up-or-down rollcall. That will have to rest in his own mind and conscience; I appreciate that fact.

I simply want to say this: I honestly believe that in the whole philosophical sweep of this Chamber, Mr. President, from left to right, anybody who has gone to these housing projects and seen what people can do when they are permitted to run their own affairs, would be proud of them, would be proud of the fact that people care when given their own self-determination in these matters. I earnestly solicit the support of my colleagues on this amendment. It was thoroughly discussed on both sides in the Banking, Housing, and Urban Affairs Committee. As I said, I believe this to be a piece of legislation whose time has come.

I say finally, Mr. President, we always come to the tail of the session and there is no vehicle left. Provisions of this amendment were approved as part of the housing bill. That bill has been on the calendar for weeks. We have never been able to call it up for a variety of reasons.

I know my colleague, the distinguished senior Senator from Oregon [Mr. HATFIELD] wants to bring a clean CONGRESSIONAL RECORD out of here. I ask him to consider whether we could not make an exception or two for really outstanding cases like this one. I truly believe that this is an amendment that would be embraced by everybody in the Chamber. I truly believe that everywhere in America, everyone, even those with a different point of view, would consider this a fine improvement over existing law. I solicit the consideration of my colleagues for this very good amendment, Mr. President.

Mr. GLENN. Mr. President, I rise today to join my distinguished colleague from Illinois, Senator DIXON, in sponsoring the Public Housing Resident Management Act amendment to the continuing resolution. This provision provides an option for tenant management of public housing projects. It has been demonstrated that involvement of tenants in maintenance, improvement and management of public housing has very positive effects on the building, environment and quality of life in such developments.

I believe that we need to provide an opportunity for public housing tenants to take responsibility for managing their own housing conditions. It must be noted that this concept will not work everywhere and in many areas of my State I would not even recommend resident management. Most housing authorities in Ohio are well maintained and managed. However, it does permit a majority of adult public housing tenants, who are committed to the goals of tenant management, to establish a resident council, which, in turn, would determine the feasibility of establishing a resident management corporation. The corporation would provide management for the housing project.

As a protection against loss and theft, the bill would require management corporations to provide fidelity bonding and insurance, or their equivalents. It would also require and annual audit of the books and records of each corporation, with a written report of the audit to go to the public housing agency and the Secretary of Housing and Urban Development.

Tenant management, while it is a relatively new approach, is by now means a cure-all for the problems that exist today in the whole area of public housing. I would like to make it perfectly clear that this legislation provides an option for tenant management. It does not divest the Federal Government of its responsibility and support for housing programs. We need more help from the Federal Government, not less.

I urge my colleagues to join Senator DIXON and myself in granting public housing tenants the flexibility of choosing tenant management.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. 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. HATFIELD. Mr. President, again, with great reluctance and with deep respect for my colleague from Illinois, I hold here six pages of the distinguished Senator's amendment. I raise a point of order that it is not germane to the appropriations bill now pending before the body.

Mr. DIXON. Mr. President, I raise the defense of germaneness.

The PRESIDING OFFICER. The point of order that has been raised by the Senator from Oregon is that the amendment is not germane. There is no defense to that point of order. The question is for the Senate to decide. The question is, Is the amendment germane?

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

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Is the amendment of the Senator from Illinois germane? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

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

The result was announced—yeas 40, nays 58, as follows:

[Rollcall Vote No. 306 Leg.]

YEAS—40

Biden	Glenn	Mitchell
Bingaman	Gore	Nunn
Bradley	Harkin	Pell
Bumpers	Hart	Proxmire
Burdick	Inouye	Pryor
Byrd	Johnston	Riegle
Cohen	Kasten	Rockefeller
Cranston	Kennedy	Sarbanes
DeConcini	Kerry	Sasser
Dixon	Lautenberg	Simon
Dodd	Levin	Specter
Eagleton	Matsunaga	Zorinsky
Exon	Melcher	
Ford	Metzenbaum	

NAYS—58

Abdnor	Grassley	Murkowski
Andrews	Hatch	Nickles
Armstrong	Hatfield	Packwood
Baucus	Hawkins	Pressler
Bentsen	Hecht	Quayle
Boren	Heflin	Roth
Boschwitz	Heinz	Rudman
Broyhill	Helms	Simpson
Chafee	Hollings	Stafford
Chiles	Humphrey	Stennis
Cochran	Kassebaum	Stevens
D'Amato	Laxalt	Symms
Danforth	Leahy	Thurmond
Denton	Long	Trible
Dole	Lugar	Wallop
Domenici	Mathias	Warner
Durenberger	Mattingly	Weicker
Evans	McClure	Wilson
Gorton	McConnell	
Gramm	Moynihan	

NOT VOTING—2

Garn	Goldwater

□ 1600

The PRESIDING OFFICER. The amendment is declared not germane.

□ 1610

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was declared not germane.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3104

Mr. DIXON. Mr. President, I send an amendent 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 Illinois [Mr. DIXON] proposes an amendment numbered 3104.

At the appropriate plce in the Joint Resolution, insert the following new section:

SEC. . For activities authorized by title II, part B of the Job Training Partnership Act, $100,000,000, in addition to amounts otherwise provided for these purposes, to be allocated to states so that each service delivery area receives, as nearly as possible, an amount equal to its program year 1985 allocation for this program, to be available for obligation for the period July 1, 1986, throught June 30, 1987.

Mr. DIXON. Mr. President, my amendment, to provide a partial restoration to the Summer Youth Employment Program for the summer of 1987, will require a waiver of the Budget Act. However, the overall total of the amendment will not increase the outlays on the overall bill. My amendment has an offset from the unassigned budget outlays in the bill which amounts to $100 million.

The Summer Youth Employment Program is title 11-B of the Job Training Partnership Act. It puts disadvantaged youth to work in the summer. The program was cut last summer from $825 million to $725 million. Next summer without a restoration, the program will be cut to $636 million. Little by little, we are cutting the number of jobs available for the poorest kids in our Nation's cities—from 803,000 jobs in 1985 to 785,000 jobs in 1986 to an estimated 635,000 jobs in 1987.

My amendment will not fully restore the program to what it needs in order to provide 785,000 jobs to our Nation's youth next summer. However, it will provide an additional 88,000 jobs, bringing the total to about 723,000. That is fewer than we have had in many years, and I regret that we can't make a full restoration. But I want to propose a fiscally responsible amendment which does not add to the outlays of the overall bill.

Without this restoration, which I have stated is not even a full restoration, every State in the country will receive a cut in summer jobs for underpriviledged kids in our Nation's cities. The biggest losers are California, which it is estimated will lose $9 million; New York, which will lose $6.7 million; my State of Illinois, which will lose about $5.6 million; Pennsylvania, which will lose $5 million; Ohio, which will lose $4.7 million; and Texas, which will lose $4.6 million.

At the completion of my remarks, I would like to include a complete State-by-State breakdown of cuts for next summer.

The distinguished chairman of the Subcommittee on Labor, Health and Human Services, and Education recognized that this shortfall in the Summer Youth Employment Program existed. We discussed it in the Senate June 6, 1986, during consideration of the supplemental appropriation. It was the chairman's intention to try to restore the program but it is my understanding that he was unable to do so because of budget constraints within his subcommittee's allocation. That is why we are here today. I didn't feel it was justified to offset this amendment with funds for cancer and AIDS research; or to take money from the handicapped or other disadvantaged groups for whom the senior Senator from Connecticut is an eloquent and effective advocate.

I would like to commend the distinguished chairman for his efforts to increase funding for the program in the summer of 1988, which is the program year that the fiscal year 1987 appropriation addresses.

I also do not want to add to the overall total of this already tremendous appropriation. Therefore, my only choice was to seek funds outside the Labor-HHS Subcommittee's jurisdiction. It is not the preferred way of taking care of this matter, but it is the only way that this Senator was able to justify.

Frankly, I considered using the economic support fund as an offset, but for the moment will reserve that option, should the Senate fail to support this amendment.

I urge my colleagues to consider this point of order carefully. Although we are requesting a waiver of the Budget Act, this amendment will not add to the overall total of this bill. Although the additional $100 million for the summer youth employment will exceed the 302(b) allocation for the Labor-HHS Subcommittee, there is still room in this bill.

CBO estimates that an additional $100 million for next summer would incur outlays of $85 million. This bill contains $100 million in nonassigned outlays. It is from that amount that I intend the additional funds to be offset.

This amendment has the support of the U.S. Conference of Mayors, the National Governors' Association, the National Alliance of Business, 70,001, National Youth Employment Coalition, National Association of Counties, and many others.

I want to tell my colleagues here that when I go home and discuss this amendment—which I have done at Chamber of Commerce functions, at meetings of business groups, National Association of Manufacturers groups in my State—every one of them said this is a worthwhile thing to do.

Mr. President, these are the teenage kids in America who are wandering the streets of our great cities in the summertime without employment. I cannot think of anything more important than giving these young people job opportunities, their first chance to learn how to seek a job, to work in a job, to be prepared for employment.

Here is a chance for a modest sum of money, and let me stress again I know that my distinguished friend, the chairman of the Appropriations Committee feels he has no alternative, and is going to suggest at the conclusion of my remarks that this violates the Budget Act. He will be technically correct that it does. But it does not violate the Budget Act in the sense it is going to cost any money. The money is already appropriated for it in an undistributed fund. The money is there.

Priorities are what the Senate ought to be deciding here.

□ 1620

On the question of priorities, I ask you what can be more important than

taking teenagers in all the metropolitan parts of America, in the hot summer, and putting them in jobs—instead of having them on the streets creating mischief—learning how to work for a living. That is an investment in America that I think is worthwhile.

I want to conclude, Mr. President—I see my warm friend from Illinois here on the floor who wishes to be recognized—by saying this. I realize there are fiscal constraints. I realize there is not enough money to go around for everything. I realize we have to use a degree of selectivity. Here is a program we have cut every year. As I said once or twice, I have been fortunate to get restorations for this program in the push. Each time I have felt strongly that this is one of the better programs, and if you are going to deal in priorities, there has been a $175 million cut. We can restore $100 million by taking it from an undistributed account and put 88,000 more kids to work in America next summer.

I would appreciate your consideration of this.

Mr. President, I ask unanimous consent to have printed in the RECORD a table showing State-by-State cuts if my amendment fails.

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

STATE BY STATE CUTS IF DIXON AMENDMENT FAILS

State	Summer 1986 ($724,549,000) [1]	Summer 1987 ($635,976,000) [2]	1987 cut [3]
Alabama	17,000,295	14,954,523	2,045,772
Alaska	1,855,105	1,631,109	223,996
Arizona	8,338,373	7,309,925	1,028,448
Arkansas	8,072,009	7,086,032	985,977
California	76,767,215	67,493,641	9,273,574
Colorado	7,162,222	6,294,837	867,385
Connecticut	8,942,688	7,848,951	1,093,737
Delaware	1,686,338	1,479,832	206,506
Florida	27,641,632	24,284,163	3,357,469
Georgia	14,638,937	12,860,745	1,778,192
Hawaii	2,539,446	2,229,585	309,861
Idaho	3,010,046	2,644,471	365,575
Illinois	45,606,062	39,969,452	5,636,610
Indiana	20,374,617	17,892,836	2,481,781
Iowa	8,086,563	7,112,016	974,547
Kansas	4,916,551	4,346,073	570,478
Kentucky	14,102,112	12,395,742	1,706,370
Louisiana	17,352,599	15,275,632	2,076,967
Maine	3,385,926	2,971,292	414,634
Maryland	12,651,336	11,102,077	1,549,259
Massachusetts	18,606,681	16,337,306	2,269,375
Michigan	37,857,491	33,258,685	4,598,806
Minnesota	10,627,451	8,929,216	1,698,235
Mississippi	10,778,034	9,488,057	1,289,977
Missouri	15,380,278	13,507,308	1,872,970
Montana	2,364,417	2,076,211	288,206
Nebraska	3,246,632	2,849,056	397,576
Nevada	2,579,065	2,270,826	308,239
New Hampshire	2,022,776	1,775,070	247,706
New Jersey	24,149,772	21,199,617	2,950,155
New Mexico	4,833,705	4,252,506	581,199
New York	55,186,992	48,432,324	6,754,668
North Carolina	16,302,743	14,306,341	1,996,402
North Dakota	1,646,188	1,449,442	196,746
Ohio	39,275,663	34,483,206	4,792,457
Oklahoma	8,292,713	7,295,351	997,362
Oregon	10,011,937	8,812,056	1,199,881
Pennsylvania	40,383,487	35,366,670	5,016,817
Rhode Island	3,260,245	2,863,543	396,702
South Carolina	9,032,984	7,926,822	1,106,162
South Dakota	1,646,188	1,449,442	196,746
Tennessee	16,351,478	14,355,652	1,995,826
Texas	38,642,057	33,944,867	4,697,190
Utah	3,613,371	3,175,938	437,433
Vermont	1,646,188	1,449,442	196,746
Virginia	14,136,881	12,437,908	1,698,973
Washington	14,297,852	12,568,488	1,729,364
West Virginia	9,038,456	7,958,217	1,080,239
Wisconsin	14,168,157	12,435,768	1,732,389
Wyoming	1,646,188	1,449,442	196,746

[1] Appropriated amount after G-R-H cut. Actual prior year 1986 allocation also included excess carryover funds.
[2] Appropriated amount. Allocations assume unemployment and other variables are the same as prior year 1986.
[3] Approximate cut in allocation for summer of 1987, assuming unemployment and other variables are the same as the summer of 1986.

Mr. DIXON. Mr. President, I am delighted to yield to my warm friend and colleague from Illinois.

Mr. SIMON. I thank my colleague.

I simply want to commend him and join in support of this.

I would point out we just voted yesterday on an antitrust bill. Show me an area of high unemployment. I will show an area where there is high drug use. We have talked on this floor about teenage pregnancies. You show me an area of high unemployment, I will show you an area where there is high teenage pregnancy rates. When we put people to work we move on a very, very basic problem in our society. We fight crime, we fight drugs, and we fight the various afflictions we have in our society. I commend him.

I hope we will do the commonsense thing and vote for the Dixon amendment.

Mr. DIXON. Mr. President, I want to thank my colleague who is a warm and dear friend of my adult lifetime, and a man with a great heart and a great mind, for those kind remarks.

I want to say this in conclusion. I wish the Members of the Senate could see these kids come in trying to get these jobs each summer. Long lines of kids want to work. They need to work. They stand in these lines by the thousands to get these jobs.

My friends, this extra $100 million would give 88,000 more kids in the inner cities of our great country an opportunity to be employed this next summer. Give them that chance, I ask you.

Give us this $100 million. That is taken from another fund. It will not cost a dime in additional funding. It is not going to in any way affect what we have done in the budget. It does not affect what we have done in our attempts to comply with Gramm-Rudman-Hollings. It does not affect in any way adversely the continuing resolution, reconciliation, or anything else we have done. If you will give us this $100 million, I think you will be doing a great act of compassion and justice for fine young men and women in

America that want summer employment.

I thank the President. I thank the distinguished manager and the ranking member for giving me this opportunity to be heard.

I ask all of you in a compassionate way to examine your hearts, and see whether you cannot find the kindness there to do this decent act to support employment in the major cities of America.

Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. 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. HATFIELD. 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. HATFIELD. Mr. President, I would like to respond briefly to my good friend from Illinois.

He refers to the $100 million that is in the so-called unallotted funds of the Appropriations Committee. The Senator is correct. But under the Budget Act of 1974, only the committee itself has been designated with the authority to allocate those funds under the 302(b) program. That is No. 1.

No. 2, there are major differences between the House and the Senate appropriation actions that have thus far occurred. There will have to be adjustments made between the levels of spending on many programs, and worthy programs that I know are high priority to the Senator from Illinois, as well as to myself.

So that $100 million in effect will have to be utilized in making those adjustments between the House levels and Senate levels, in order to stay within the levels of a bill that would be signed by the President.

So I want the Senator to understand that we do not have that $100 million back there sort of in a pot waiting to either not be spent or to throw it out at some lesser worthy program, and to also indicate that it is more than merely a technicality that I at this point feel constrained to raise a point of order under section 302(f) of the Budget Act as amended in that the amendment provides budget authority in excess of the committee's 302(b) allocation under the fiscal year 1987 concurrent resolution on the budget, and is not in order.

Mr. DIXON. Mr. President, I move to waive provisions of the Budget Act.

The PRESIDING OFFICER. The motion is debatable. Is there debate?

Mr. DIXON. I have no further desire for a debate, Mr. President, but I ask for the yeas and nays on that proposition.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Illinois to waive section 302(f) of the Budget Act. 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. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

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

The result was announced—31 yeas, 67 nays, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—31

Biden	Glenn	Metzenbaum
Boren	Gore	Pell
Bradley	Harkin	Pryor
Bumpers	Hart	Riegle
Burdick	Inouye	Rockefeller
Byrd	Johnston	Sarbanes
Cranston	Kennedy	Sasser
D'Amato	Kerry	Simon
Dixon	Lautenberg	Specter
Eagleton	Levin	
Ford	Matsunaga	

NAYS—67

Abdnor	Grassley	Murkowski
Andrews	Hatch	Nickles
Armstrong	Hatfield	Nunn
Baucus	Hawkins	Packwood
Bentsen	Hecht	Pressler
Bingaman	Heflin	Proxmire
Boschwitz	Heinz	Quayle
Broyhill	Helms	Roth
Chafee	Hollings	Rudman
Chiles	Humphrey	Simpson
Cochran	Kassebaum	Stafford
Cohen	Kasten	Stennis
Danforth	Laxalt	Stevens
DeConcini	Leahy	Symms
Denton	Long	Thurmond
Dodd	Lugar	Trible
Dole	Mathias	Wallop
Domenici	Mattingly	Warner
Durenberger	McClure	Weicker
Evans	McConnell	Wilson
Exon	Melcher	Zorinsky
Gorton	Mitchell	
Gramm	Moynihan	

NOT VOTING—

Garn	Goldwater

So the motion to waive section 302(f) of the Budget Act was rejected.

□ 1640

The PRESIDING OFFICER. It is the ruling of the Chair that the amendment would provide new budget authority in excess of the appropriate allocation reported under section 302(b) in connection with the budget resolution for fiscal year 1987. Therefore, the amendment violates section 302(f) of the Budget Act. The point of order is sustained. The amendment falls.

Mr. MATTINGLY. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. HATFIELD. Mr. President, I believe that the Senator from Illinois is prepared to offer an amendment at this time.

Mr. SIMON. Mr. President, if I may say to my colleague from Oregon, I understand my colleague from Iowa has been waiting for some time to offer an amendment.

The PRESIDING OFFICER. The Chair suggests that someone offer an amendment.

AMENDMENT NO. 3105

(Purpose: To provide additional funds for carrying out the Department of State Soviet-East European Research and Training Act and the United States Information Agency Educational and Cultural Exchanges Programs, and to reduce funds for the Department of State's acquisition and maintenance of buildings abroad)

Mr. SIMON. 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 Illinois [Mr. SIMON], for himself, Mr. PELL, Mr. MOYNIHAN, and Mr. MATSUNAGA, proposes an amendment numbered 3105.

Mr. SIMON. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

At the end of the joint resolution, add the following new section:

SEC. . Notwithstanding any other provision of this joint resolution, not more than $248,200,000 may be appropriated for the account entitled "Department of State Acquisition and Maintenance of Buildings Abroad." There is $800,000 appropriated in addition to funds otherwise appropriated in this joint resolution for the purpose of carrying out the Department of State Soviet-East European Research and Training Program. There is $24,000,000 appropriated in addition to funds otherwise appropriated in this joint resolution for the purpose of carrying out the United States Information Agency Educational and Cultural Exchanges Programs, which shall be available only for the purposes of providing expenses of Fulbright, International Visitor, Humphrey Fellowship and Congress-Bundestag Exchange Programs, as authorized by Reorganization Plan No. 2 of 1977 and the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2451 et seq.).

Mr. SIMON. Mr. President, this is a relatively simple amendment but it is an important amendment. This amendment replaces $24 million that has been taken from the Fulbright fund and restores it to fiscal year 1986 levels. It restores the $800,000 that has been taken from Soviet studies.

In Soviet studies, we have had what everybody acknowledges to be a major deficiency. The chairman of the For-

eign Relations Committee, Mr. LUGAR, very appropriately has asked that we appropriate money in that area and we have, for the last couple of years, been doing that.

□ 1650

Under this appropriation bill that would be cut $800,000. Senators who have visited anywhere in the world have run into people in other governments who have a feeling of kinship not only toward the United States but to the whole process of a free democracy at work, and I have experienced it. Many of us have experienced it. This does not increase the total appropriation. We take it from the building fund which has some money that clearly can be used for this purpose. I think this is a very rational amendment.

I might add that my colleagues, Senator PELL, Senator MOYNIHAN, and Senator MATSUNAGA are cosponsors. I believe this amendment makes sense. It is penny wise and pound foolish to cut back on the Fulbright Program, one of the finest investments we have made. I think it is universally acknowledged. If we want to build a world of peace, we are not going to do it only with summit meetings in Iceland and arms control agreements with the Soviets. We are going to have to do it by building understanding between people. That is what this is all about.

I would be happy to answer any questions that anyone may have. I have talked with a few people on both sides of the aisle. I think it makes sense. I urge favorable consideration of the amendment.

I see my colleague from New Hampshire frowning and so he must have a question on his mind. I will be pleased to yield to him.

Mr. RUDMAN. I wonder if the Senator from Illinois will yield for a couple questions and observations.

Mr. SIMON. I am very pleased to yield.

Mr. RUDMAN. As the Senator from Illinois knows, the Senator from New Hampshire chairs the particular subcommittee in the Appropriations Committee that has jurisdiction over the item, and I have a couple of problems with it. I am checking out one of the problems. The problem we have in our subcommittee is that, as with all appropriations subcommittees, we are bound by so-called 302(b) allocations as to outlays. Not all items within this appropriation or any other appropriation outlay at the same rate. The $248,200,000 item for acquisition and maintenance abroad outlays at a particular rate, which I believe is somewhat considerably less than 1 for 1. It is my belief that the amendment offered by the Senator from Illinois would outlay at a nearly 1 to 1 ratio, that all of that $800,000 would outlay precisely dollar authorized/dollar spent. If that is so—and I am not representing it to be so; we are checking it right now—then I would have to consult with the chairman of the full committee because the committee is perilously close to being at its limit of 302(b) outlay authority under the Budget Act. So if the Senator from Illinois would like to carry on a discussion with others while I am checking that, I wish he would and he can come back to the issue, hopefully, in a couple minutes.

Mr. SIMON. If my colleague will yield, we have tried to check to see what those precise figures are, and it is very difficult to check. Now, if to be prudent you would want to reduce that building and construction fund a little further, that would be perfectly acceptable to me. I am not trying to create outlay problems for the committee obviously, but I do not think it is in the interest of the Nation to cut back on the Fulbright Program.

Mr. RUDMAN. I make one comment and then I am going to make a unanimous-consent request. I want to make a comment that the fact that these funds are not obligated at the present time, that the Senator from Illinois is referring to—he is absolutely correct—the fact is we have had a long and intensive discussion with the State Department on what they must do with these funds. And these funds, although currently not obligated, are all pretty much specified for projects at levels greatly below what State had requested. Let us check a couple of facts to see what we might do with this, and I would then ask, with the consent of the Senator from Illinois, unanimous consent, Mr. President, that the pending amendment offered by the Senator from Illinois be laid aside temporarily while we are able to confer on that, and that it be the pending order of business after the disposition of the following amendment.

Will that be acceptable to the Senator?

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object——

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Reserving the right to object, if the Senator will withhold that unanimous-consent request for a few minutes so we might discuss this amendment, those of us who would like to speak on the substance of it, and then at an appropriate point when we exhaust discussion make the question, that will be satisfactory.

Mr. RUDMAN. I withdraw the request. The reason I made the request is the chairman is interested in saving time. If there is discussion, let us have it now. Maybe, after the discussion is ended, we will have the facts before us and then we can decide to either take the amendment or vote on the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I congratulate the Senator from Illinois on this amendment. I am very glad to cosponsor it with him. It is particularly needed because the money for the Fulbright Program, the exchange program, have been cut about 20 percent in accordance with the resolution before us. It is interesting that this is the 40th anniversary of the Fulbright Program, that we have now something like 35 current and former heads of Government, 400 Cabinet-level officials who have been through this program. It would seem a very valuable program, indeed, and I submit that it would be better to have Fulbright scholars coming and going back to their own countries with new ideas than it is to have approved buildings.

Mr. DODD. Will the Senator yield.

Mr. PELL. I yield.

Mr. DODD. I join the distinguished ranking member of the Senate Foreign Relations Committee and my colleague from Illinois in support of this amendment. The Senator from Rhode Island has accurately pointed out that there are virtually hundreds of people from one end of this globe to the next who are beneficiaries of this program and as a result have embraced and adopted much of the values and the principles of this country in no small measure because of the influence of the Fulbright Program. I speak with some personal experience in the fact that one of my aunts was a Fulbright scholar as a public high school teacher for 40 years, a teacher of German and French, who studied for 2 years under the Fulbright Program, and my older brother is a senior Fulbright scholar and spent time in Latin America under that particular program. Countless leaders and heads of state around the globe, as the Senator from Rhode Island points out, have served under this program. It is one of the best investments this country makes, one of the best investments we make, to enhance our ideals of democracy around the globe, to invest this relatively small amount of money for an educational program that attracts the brightest and the best people from across the globe. I hope we can work out the problem the Senator from New Hampshire has in terms of the budget process. I know of no other program that returns as much to this country as does this program. The Senator from Illinois is appropriate and proper in raising it and suggesting that we try to fund this program to an adequate level, and I am delighted to

be a cosponsor. I thank the Senator for yielding.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

Mr. PELL. I agree wholeheartedly with the Senator form Connecticut. I recall very clearly when I used to be stationed behind the Iron Curtain in the Foreign Service, I never saw a student or scholar go to our country and return more convinced about democracy. As a general rule, when exposed to our kind of thinking, they came back less enthusiastic Communists. The more exchanges we have the better. I would like to see 100,000 young people go back to each other's country. A program of this sort, which is now down to a miniscule amount, certainly should not be cut any further and anything we can do to expand it we should. I think it is interesting that in the Soviet Union they have more people who speak English than we have teachers of Russian in our country.

□ 1700

Mr. SIMON. Mr. President, if the Senator will yield, I join my colleague from Rhode Island, and I applaud his comments.

The reality is that everywhere we have had these Fulbright scholars, it has created goodwill.

I remember being in the Sudan one time, shortly after they had thrown off Soviet dominance in that area, and met with members of the Cabinet, and one after another had been a Fulbright scholar.

For us to cut back in this area does not make sense.

If I may have the attention of the chairman of the subcommittee, I point out that in addition to the mistake of cutting back ordinarily, the fact is that the dollar is slipping in value; so that even if we were to maintain the 1986 level, as I am suggesting, it still means a substantial cut in the Fulbright program.

So I hope that after my colleague from New Hampshire checks this out, we can work out something and that we can find something that is acceptable to the Senator from New Hampshire.

Mr. RUDMAN. Mr. President, we have been able to check it out, and let me just address the issue.

In the first place, the subcommittee came in with an appropriation this year about 10 percent less than the previous year. The fiscal year 1986 appropriation in this classification is about $134.5 million. We are down to about 10 percent from that. That is precisely what the budget resolution called for. We tracked the budget resolution passed by Congress exactly as it was represented and passed.

So here we are with a very laudable amendment offered by my friend from Illinois. I cannot disagree with what the Senator from Illinois says, nor with what the Senator from Rhode Island says. The fact is that we are in a budgetary crunch where the State-Justice-Commerce Subcommittee is now $44,000—that is not a term we use in this Chamber often—from its 302(b) allocation.

I have been informed by the budget analysts that the acquisition and construction side of our bill spends out at a 25-percent rate—roughly 4 to 1—authority to outlay; whereas, the exchange programs covered by the Senator's amendment spend out at a 50-percent rate.

So the problem we face is twofold.

No. 1, if we are going to adopt the idea proposed by the Senator from Illinois, we will have to cut the construction account even more, because there is no way that the chairman of the full committee is going to allow this subcommittee chairman—and I agree with his position—to exceed the allocations that are binding upon us by the Senate budget resolution. That is the bind we find ourselves in.

In addition, I will say one last thing: The State Department informs us that all the funds that are contained in this bill, although not obligated, are specifically now designated, and a major portion for projects which have been appropriated by this Congress in Honduras, Cyprus, Switzerland, Bahrain, Jordan, and Somalia—those projects which are underway. Even if we take a relatively small amount by the standards of this budget, $8 million, from that, then they will have a problem completing some of those projects within the timeframe. Whether that is fatal or not, I do not know.

That is the dilemma I face right now, and I advise the chairman of the full committee that if we were to adopt this amendment in its present form, it will break out the 302(b) allocations.

I yield the floor.

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

Mr. RUDMAN. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, first of all, I am in full agreement that we have to reach these targets. I am one of those who supported something called Gramm-Rudman, and the Senator from New Hampshire will recall that passed this body. I serve on the Budget Committee.

The reality is that we have from last year $340 million in unobligated balances. The Senator serves on the Appropriations Committee, and I serve on the Budget Committee. The reality is that there is always some softness in those figures. There is also the ability to slow down certain things.

The question is, should we take advantage of some softness in some figures like that, or should we cause some slowdown in whatever may be under construction in Switzerland or wherever else we may have something? Is it worth it to have the Fulbright program at the level we had last year and Soviet studies at the level we had last year? My strong conclusion is that it is.

I am willing to accommodate the Senator's staff in modifying these figures so that we do not have a problem here.

I ask unanimous consent of this body that we adjust the figures here so that we do not have a problem on that.

Mr. RUDMAN. Mr. President, will the Senator yield for a question and a comment?

Mr. SIMON. I yield.

Mr. RUDMAN. The Senator from Illinois knows that I do not disagree with the thrust of his amendment. No one can deny successfully that the Fulbright grants, the Pell grants, and the Soviet fellowship grants are very good for this country and are important. I do not have that problem.

The problem I have is that having worked through this entire matter for 5 months, I find that every major department—the State Department, the Commerce Department, and even the Justice Department, who I think we treated fairly—is very unhappy with this subcommittee's markup.

In order to accommodate my friend from Illinois, and I would like to accommodate him, I would have to then make some more reductions from this $339 million figure well below what I think the State Department reasonably would wish to accept, and I would like to discuss it with them. On that basis, I am not willing to do that.

If there is some other place in this budget that we could find a spendout that truly was not going to be deleterious to whatever project it was, I would accept that. But this one, we cannot, and the chairman advises me that he does not agree that we should make further reductions at this point that will result in hurting this project, in order to meet the 302(b) obligation.

As we say in New Hampshire, and maybe in Illinois, I am between a rock and a hard place.

I agree with what the Senator from Illinois wants to do. I am not in a position to do it and keep this bill within budgetary allocation.

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

Mr. COCHRAN. Mr. President, a parliamentary inquiry.

Did I hear the Senator from Illinois correctly, that he asked unanimous consent to make a correction in the bill? If that was his request, I think an objection should be lodged.

The PRESIDING OFFICER. The Senator is correct. There was a unanimous-consent request. At this point, there has been discussion, but no objection has been lodged.

Mr. RUDMAN. Mr. President, reserving the right to object, if I understood the Senator, he has not asked for the yeas and nays yet on his amendment, and he would have a right to modify his own amendment.

Is the Senator from New Hampshire correct?

The PRESIDING OFFICER. That is correct. But the Chair also observes that it is impossible to determine precisely what the Senator has in mind, because we have no way of knowing how to reassign or to reprogram within this budget limitation. If the Senator from Illinois has some specific words or a specific proposal, he should submit it to the desk.

Mr. RUDMAN. Mr. President, further reserving the right to object, let me simply state that obviously the Senator from Illinois is free to modify his amendment any way he deems proper, and the Senator from New Hampshire will not object to that. That is not to say I will agree with the amendment.

□ 1710

Mr. HATFIELD. Mr. President, I would like to say to the Senator from Illinois that I take the back seat to no one in this body in support for these programs which the Senator is addressing. It is not solely a matter as chairman of the Appropriations Committee that I would be called upon to raise a point of order, but it is under the Gramm-Rudman requirements that each of our bills must be in line with the 302(b) allocation. They stand as 13 separate target figures within the continuing resolution.

We have to do it not only as a matter of law, but I would certainly do it as a matter of Appropriations Committee policy.

I shall pose a unanimous-consent request at this time that we do temporarily lay this amendment aside.

I urge that the sponsor of the amendment and the subcommittee chairman with staff get together and see if there is some way that if we cannot follow that particular procedure at this time, I would have to at this time raise a point of order in that it does violate 302(f) of the Budget Act, and we have checked this with CBO, the Budget Committee analysts, and the Parliamentarian, and I am sure it would be ruled as out of order on that basis.

The Senator would then be privileged to offer a motion to waive the Budget Act which would require 60 votes, and I am sure the Senator does not want to go through that especially if there is a possibility, and I see a glimmer of possibility, from what the chairman of the subcommittee has stated that this might be worked out.

Mr. SIMON. Mr. President, I think the suggestion is an excellent one, that this be set aside temporarily and try to get together to see if we cannot work this out.

Mr. HATFIELD. Mr. President, I make that unanimous-consent request.

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

The unanimous-consent agreement sets the amendment aside.

Mr. SIMON. Mr. President, I also ask unanimous consent to add Senator HARKIN as a cosponsor of my amendment.

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

Mr. BUMPERS. Mr. President, a comment before anyone leaves to try to work this out. First of all, I support and will vote for the amendment of the Senator from Illinois. But I do want to serve notice on this body that should efforts to work out an agreement on this amendment not be successful, I will offer a similar amendment that would add $15 million to the Educational and Cultural Exchange Programs. The Senate Appropriations Committee cut the budget for these programs to $120 million.

The Fulbright program accounts for about two-thirds of the spending on exchange programs. Other exchange programs funded by USIA include the Humphrey Program, the International Visitor Program, and the Congress-Bundestag Program. The House has $144 million in its bill. And the Senator from Illinois would bring the Senate to the House figure of $144 million.

I hope we can do that and I will support that. In the event we cannot, I want you to know there will be an alternative. My amendment would add $15 million, which would bring us to $135 million—as opposed to the House figure of $144 million.

That would at least give us a little maneuver room with the House of Representatives. Funding for the exchange program would probably wind up at about $140 million.

My amendment would take $15 million from the National Endowment for Democracy and transfer those funds into the exchange programs. I do not want to debate my amendment now, but I simply want to say that I think the best way in the world to teach citizens of other countries about democracy is bring them here and let them observe it, see it, and experience it.

If you look at the alumni of the Fulbright Program, you will find that the program has been immensely successful. Twelve of Japan's Ambassadors were Fulbright scholars; 39 sitting heads of states were Fulbright scholars.

So I ask you: Do you think it is better to give $15 million a year to the AFL-CIO and the chamber of commerce to build democracy around the world or do you think it is better to bring students here and let them see democracy firsthand and experience democracy firsthand and go back home with a thorough understanding of how it works and try to build on it there?

My amendment does not have the spend-out problem that this amendment has. The National Endowment for Democracy spends out 90 percent next year. The Fulbright Scholarship Program spends out at 50 percent. So actually we get a little bit of outlay savings the first year if we adopt my amendment.

So I am not trying to undercut the Senator's amendment. I will support it, but if it does not work out, my colleagues will have another opportunity to vote on this.

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

Mr. HARKIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. COHEN). The Senator will state it.

Mr. HARKIN. What is the pending business of the Senate?

The PRESIDING OFFICER. The bill is open to amendment.

AMENDMENT NO. 3106

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and Mr. GRASSLEY, proposes an amendment numbered 3106.

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

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

The amendment is as follows:

At the end of the resolution, add the following new title:

TITLE —

SEC. . This title may be cited as the "Agricultural Program Payment Limitation Act of 1986".

SEC. . (a) Effective with respect to each of the 1987 through 1990 crops, section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended—

(1) by striking out paragraphs (1), (2), and (3) and inserting in lieu thereof the following new paragraphs:

"(1) For each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any deficiency payments described in paragraph (2)(B)(iv) and land diversion payments that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

"(2)(A) For each of the 1987 through 1990 crops, the total amount of payments described in subparagraph (B) that a person shall be entitled to receive under one or

more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey, and (with respect to clause (iii)(II) of subparagraph (B)) other commodities, when combined with payments for such crop described in paragraph (1), shall not exceed $500,000.

"(B) As used in subparagraph (A), the term 'payments' means—

"(i) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

"(ii) any disaster payment under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

"(iii)(I) any gain realized by a producer from forfeiting or repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a), 105C(a), 103A(a), 101A(a), or 201(b), respectively, of such Act (7 U.S.C. 1445b-3(a), 1444e(a), 1444-1(a), 1441-1(a), or 1446(b)); or

"(II) any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level than the original loan level established under such Act;

"(iv) any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, of such Act as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of such Act;

"(v) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(b), respectively, of such Act; and

"(vi) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively, of such Act.";

(2) by adding at the end of paragraph (5) the following new subparagraph:

"(C) The regulations issued under subparagraph (A) shall provide that the term 'person' shall not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.";

(3) in paragraph (6)—

(A) by striking out "lands owned" and inserting in lieu thereof "lands or animals owned"; and

(B) by inserting ", or animals are husbanded," after "lands are farmed"; and

(4) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(b) The amendments made by subsection (a) shall not apply with respect to any payment or loan received under any agreement or contract made before the date of enactment of this Act.

(c)(1)(A) The Secretary of Agriculture shall review the regulations in effect on the date of enactment of this Act that define the term "person" under section 1001 of the Food Security Act of 1985 and related regulations in effect on such date otherwise affecting the payment limitations under such section, to determine ways in which such regulations can be revised to better ensure the fair and reasonable application of limitations and eliminate fraud and abuse in the application of such payment limitations.

(B) The Secretary also shall review the amendments to section 1001 of the Food Security Act of 1985 made by this section.

(2) Passed on the reviews conducted under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, not later than March 1, 1987, a report on such reviews and—

(A) with respect to the matters reviewed under paragraph (1)(A), proposed regulations or amendments to regulations, to take effect not earlier than October 1, 1987, that will meet the objections with respect to limitations specified in paragraph (1)(A); and

(B) with respect to the matters reviewed under paragraph (1)(B), recommendations on legislative changes to section 1001 of the Food Security Act of 1985 that the Secretary determines are necessary or appropriate.

Mr. HARKIN. Mr. President, the amendment that I have sent to the desk addresses the issue of farm program payment limitations and it is similar to a provision that was adopted by the House of Representatives during their consideration of the continuing resolution.

My amendment would place a total payment and a nonrecourse loan limit of $500,000 per farmer on our most costly commodity programs.

Mr. President, I might just note that I offered this amendment in the full committee. It was narrowly defeated by one vote with a number of Senators on the Appropriations Committee having their votes cast by proxy on that occasion. I am hopeful that perhaps they might want to express themselves on this amendment right now in a nonproxy manner.

The need for the amendment, Mr. President, has become clear in recent months. We are reading now more and more stories about the multimillion dollar payments that are going to farmers in various parts of the country. People warned us about this. They said last year when the 1985 farm bill was passed that it was full of loopholes and it was going to come back to haunt us this year. That is absolutely true. That is what is happening.

Let me just quote what Robert Thompson, USDA Assistant Secretary for Economics, said. He has one word for the multimillion dollar payments authorized by Congress in the 1985 Farm Act and I quote the word "obscene."

I am quoting now from the issue of Farm Journal of August 1986. They say, "Some farm groups view payments like Bozwell's"—I get to that in a minute—"as an embarrassment. Congress created loopholes around. They made the $50,000 payment to farms," says, Bob Mullens, the director of National Farmers Union. "It will turn out to be quite a scandal when the public catches on."

Mr. President, it has become a scandal. Here is one. J.G. Bozwell Co., Kings County, CA. In 1983 in the PIK Program they got 3.7 million dollars' worth of PIK wheat. This year they are going to get a cotton payment totaling $8.5 million estimated, $8.5 million, one farm entity under this farm bill.

It is obscene, Mr. President. It is unconscionable and we ought to put a halt to it.

Most people think we had a $50,000 payment limit in the farm bill. That is true. There was a $50,000 payment limitation. But there were a lot of other loopholes that were put into it.

Here are the ways that people get around the $50,000 limit. We have the $50,000 limit on deficiency payments and land diversion payments. There is then a $100,000 limit on disaster payments. But there are six other ways that they get around these limits.

For example, on the Findley payments, and I will talk about that in a second, no limit. Inventory reduction payments, no limit. Gain from marketing loan, no limit. Loan deficiency payment, no limit. Resource adjustment and public access payments, no limit. Nonrecourse loans, no limit.

So these abuses are happening because we have these large number of exemptions to the $50,000 payment limitation contained in the 1985 farm bill.

Couple that with the low market prices which trigger many of these payments and now you get these $8.5 million payments to one farm entity.

First of all, Mr. President, I said we have the Findley payments.

These Findley payments compensate farmers for price decreases when the Secretary reduces the commodity loan rates below the basic loan rates established by law. For example, this year the basic loan rate for corn ws $2.40 a bushel. However, under the new farm bill, the Secretary has the discretionary authority to reduce the basic loan an additional 20 percent.

This authority was exercised by the Secretary and the new reduced loan rate was made at $1.92 per bushel for this year.

□ 1720

Well, because the corn cash prices are far below the loan rate, each corn farmer will receive a 48-cent-per-bushel Findley payment to make up the difference. And there are no limits on that. It can go way above the $50,000, to $100,000, $500,000, $1 million, or, in the case of Boswell and his cotton, it could go up to $8.5 million. So that is one loophole that is in there that allows them to get around the $50,000 limit.

Another major exemption from the $50,000 payment limitation is the gain that farmers realize from the use of marketing loans currently being made available to the cotton, rice, and honey producers. Under this new program, farmers may repay the Commodity Credit Corporation loans at

the prevailing loan price rather than the full amount of the loan. Because the size of a given loan is limited only by the amount of commodity harvested, the gain realized by a large farmer under this program can be several million dollars.

So, Mr. President, with exemptions like this, is it any wonder that the farm program costs this year are going to cost probably $30 billion?

But who benefits the most from these massive payment schemes? It is not the family farmer, but the large-scale megafarms that least need the help at all.

So, in an attempt to bring some sanity and some sense of proportion to this situation, I have developed an amendment which terminates the very large payments and the most flagrant abuses. What my amendment basically does, first of all, is it retains the current $50,000 payment limit on deficiency payments. So you have the $50,000 limit. And it places a new aggregate limit on all these other payments and nonrecourse loan forfeitures of $500,000 for the 1987 through 1990 crop years for the following commodities: Wheat, feed grains, upland cotton, extra long staple cotton, rice, and honey.

Now I mentioned the specific payments before that are included in this $500,000 limitation, and let me go through those again: Deficiency payments and land diversion payments, disaster payments, Findley payments, inventory reduction payments, gains from marketing loans, loan deficiency payments, resource adjustment and public access payments, and nonrecourse loans.

The second part of my amendment would clarify the relationship between cooperative associations that market commodities for producers to ensure that this limit is not applied to cooperative associations.

Finally, Mr. President—and one of the most important, I think, parts of the amendment—my amendment would require the Secretary of Agriculture to review the regulations that define "person" and submit a report to the House and Senate Agriculture Committees by March 1987 with recommendations for legislative changes. This would be a first step toward eliminating much of the fraud and abuse that has occurred due to the reconstitution of farms.

Now, we all know, and we have all heard stories, perhaps many of us even know of individual examples, of large farm entities that have been broken up into separate entities. One farm that I personally know of has been broken up into over 27 different entities so that it can get this $50,000 payment on each one of the 27 different entities. Well, that is because we do not really have a good definition of "person" in the farm bill.

And so what this third part of my amendment says to the Secretary of Agriculture is to review the regulations and submit a report to Congress with recommendations on legislative changes so that we can close that loophole, because that loophole has to be closed. My amendment is a first step in that direction by limiting that overall payment of $500,000.

But, again, it does not do anything about these entities that are being broken up, because that is something that is going to have to be done legislatively and very carefully crafted with the cooperation of the Department of Agriculture. But I do believe they ought to report to Congress no later than next March on how we ought to accomplish this.

Now, I am sure that many Senators may be wondering why I am offering a limitation that seems to be so large—$500,000—especially when the House passed a limitation of $250,000. Well, there is one very important difference with my amendment, different from the House. The House has a limit of $250,000, but it does not include nonrecourse loans. My amendment includes nonrecourse loans. Any commodity loan forfeited to the CCC would be counted toward this limitation.

Now, under the 1985 farm bill, any payment limitation that does not include nonrecourse loans will be meaningless. That is why the House amendment has got a loophole big enough to drive a Mack truck through, because it does not even address the problem we are having with the nonrecourse loans.

The reason that it would be meaningless if we do not close that loophole is that the CCC loan program is no longer just a loan program. It is also a payment program.

The marketing loan I discussed earlier is a case in point. Little would be accomplished by placing a limit on the gains realized from the marketing loan program on cotton or rice or any other commodity if any producer could simply forfeit his loan, thus pocketing the entire amount of the loan proceeds. So you could go in and get a $5 million loan from the Commodity Credit Corporation and then, if you wanted to, you would just say, "Well, it is a nonrecourse loan. Keep the grain and I will keep the $5 million." So that loophole also has been closed. And that is why my amendment is so different than what was passed in the House, because it does put a $500,000 aggregate limitation on those nonrecourse loans.

I might just add that the Department, if they wanted to give them recourse loans above that, fine. And I think that is a good point to make. If you get a farm as big as Boswell's—what is it; 83,442 acres—I would submit that that farmer Boswell or the Boswell Co. is big enough that they can go to a local bank or lending institution and get a regular loan. They do not need the nonrecourse loan program of the Federal Government.

Mr. President, who would be affected by this limit? Assuming that a farmer forfeits his entire crop, using average yields, the minimum farm size that would be affected by my amendment in 1987, next year, would be, for wheat, 3,950 acres, based upon 40 bushels per acre. That is the minimum farm that would be affected for wheat.

For corn, it would be 1,800 acres, based upon 110 bushels an acre; cotton would be 1,435 acres; rice, 1,300 acres.

Now, let me just say that those last two commodities, cotton and rice, that under cotton, with the marketing loan provision in effect as it is being administered by the Secretary of Agriculture, that could, in fact, be almost five times as much. It could, in fact, probably go up as high as about 7,000 acres the way the Secretary is administering the program. And for rice, it could go up to about 2,600 acres.

So, what I am saying is that we are not hurting our family farmers. In fact, how many farmers would be affected by this limitation? Well, very few.

Let me use some data that was done by the Senate Budget Committee on the 1982 farm program. The study broke down farm program participation by farm size categories with 2,500 acres and above being the largest category. So, for wheat, only 1.34 percent of the producers farmed more than 2,500 acres. Only 1.34 percent.

On my amendment, as I pointed out, the minimum farm would be 3,950 acres. So for wheat farmers, then it would probably cover less than 1 percent, less than 1 percent of the wheat farmers in America would feel any repercussion from this amendment, and they would be the largest wheat farmers in America.

For corn farmers, only 0.78 percent of the producers farmed more than 2,000 acres. My amendment would cover 1,800 acres. So, again, for corn farmers it would affect probably about 1 percent maybe, again, a little bit less than 1 percent of the largest corn farmers in America.

For cotton, only 3.31 percent of the producers farmed more than 1,500 acres in cotton. As I say, my amendment, the minimum acreage would be 1,435 acres, based upon 600 pounds an acre average yield. And, as I said, the way the Secretary is administering the program for the marketing loan, that would be up to around 7,000 acres. So, again, we are only affecting, for cotton, probably somewhere between 1 and 3 percent. But, at the maximum, 3 percent of the largest cotton farmers in America would be affected.

□ 1730

For rice, only 4.57 percent of the farmers farm more than 1,500 acres. So, again, for the rice farmers we are talking again about 3 to 4 percent of our rice farmers would feel financial repercussions from this limitation.

So the point I am making, Mr. President, is that in all of the commodities that we are talking about, my amendment would not affect probably anywhere over 96 percent of the farmers of America. They would not be affected but it is that top 4 percent in those commodities of wheat, corn, cotton, and rice that are taking the Government for a ride and getting these $8.4 million, $2 million payments. That is what we have to stop. It is a scandal. It is affecting all of our farm programs. It is affecting the way that our urban cousins look at the farm programs, and I think it has to be rectified.

Last, Mr. President, there may be an argument made against us that these megafarms will not participate in this program if you have this limitation. That is simply not true. The price guarantees under the farm program are so good relative to current cash prices that no farmer no matter how big can afford to stay out of these programs. What business person, what farmer would turn his or her back on a $500,000 payment from the Government? I dare say no one would do that.

Finally, I suspect that opponents of this amendment might say that the action is too hasty, too complicated to take at this time, that we should take it up next year, and take it up in the Agriculture Committee in the new Congress.

Mr. President, let me make this point. The signup for the 1987 farm programs are about to begin. If we act now we can curb these giant payments for next year, but if we fail to act, these farmers will enter into contracts for the 1987 crops during the next few months, and then we will be powerless to do anything about the next year. And then we will have to wait another year. So next year we will be faced with more of these $8 million kinds of payments to these big farmers.

Let me repeat. If we do not take this action now, farmers will sign up this fall, and next year if we go into the next spring and say we are now going to put the limit on it, it will not go into effect until next year. So we will have 2 years in a row running of these tremendously large farm payments.

Again, it is a scandal. It is something that we ought to take care of. As I said, the House passed a limitation of $250,000. They left a big loophole by not covering the nonrecourse loans.

So this amendment closes that loophole, raises that payment limitation up to $500,000.

So I know a point of order probably will be raised on germaneness on this amendment. I want to say to Senators if you want to end these big payments—not this year, we cannot end it this year because the contracts are made and we have to honor those contracts—next year I hope you would vote to make sure it is germane now. Because I believe the vote will succeed on the floor of the Senate. But if you want to see these big payments made again next year, then I guess you would have to vote, and say this is not germane.

I sympathize with the distinguished chairman of the committee who has done an outstanding job and who is a dear friend of mine. I have the highest respect and admiration for him. He knows that. I know he does not want the continuing resolution to be loaded down with nongermane amendments. Here is something that is going to save the Government money. It is going to take care of a scandal that is going to blow up in all of our faces this year with these huge payments all over America that are just now being made. You wait until next month or December when we finally get the tally sheet on these payments. Any support those of us who represent rural areas try to get from our urban brethren better start ducking because they will say why should we pay any program that pays one farmer $8.5 million for 83,442 acres in California? So I hope in this one case this would be supported to be germane because it does save the Government money.

Mr. METZENBAUM. Will the Senator be good enough to yield for a question?

Mr. HARKIN. I am delighted to yield for a question without losing my right to the floor.

Mr. METZENBAUM. The Senator is trying to limit the maximum that can be paid under the Farm Security Administration Act? Is that correct?

Mr. HARKIN. I am trying to limit the total amount of money that one farmer, farm entity, could get under the present farm bill that we are operating under right now.

Mr. METZENBAUM. Does the Senator have an estimate as to how much this would save the American taxpayers if his amendment is adopted?

Mr. HARKIN. The point is that this will save nothing in 1987 because the payments will be paid in 1987 on this crop year now. It will be made in 1987. But for the next year after, if we were to pass this now, a rough estimate is about $50 million that this would save, about $50 million in the next year after. If we do not act on this now, we will make the payments next year for this crop year, they will sign up this year to make the contracts this year, and then in 1988 we will have to make the same payments again.

Mr. METZENBAUM. There is nothing in this amendment that will adversely affect the family farmer? This will only affect the corporate farmer?

Mr. HARKIN. I pointed out in all of the commodities that I know of, over 95 percent in every case of the farmers in America will not be affected one bit. But 5 percent will. The biggest 5 percent will.

Mr. METZENBAUM. I commend the Senator from Iowa. I think it is a good amendment. I recognize the parliamentary procedure. But if there is some way we can find to save $50 million next year, I sure hope we can do it.

Mr. SIMON. Will my colleague yield?

Mr. HARKIN. I yield to my distinguished colleague.

Mr. SIMON. I want to commend him. I would go for a lower figure. But I think at the least we ought to accept this. My colleague will remember when Congressman Findley, at one point, tried to make a limitation of $25,000 payments. I voted for that. That is $25,000 which, because of inflation, is in fact worth $50,000 today. But my colleague from Iowa and I and others from farm States share the same problem. People are saying why should we support agricultural programs when somebody in California gets $19, $20 million, and we are just going to get barraged with that thing over and over again.

I think it is a sensible amendment. I hope somehow between the chairman of the committee and the two distinguished Senators from Mississippi, who are on the floor right now, this thing gets worked out. I really think this is an amendment that makes sense.

Mr. HARKIN, I thank my friend from Illinois. Let me point out one other thing.

Representative PANETTA from California pointed up another potential problem. I think this is an interesting point. He has asked the GAO to survey 400 counties where 90 percent of the foreign-owned cropland is concentrated to see how many payments are going to aliens. Preliminary estimates, preliminary results from six California counties alone, show 1.3 million in payments to foreign farmers. We are paying this money to foreigners who are coming in here and overproducing. And our taxpayers are being burdened with that. That is the kind of stuff we have to knock out.

Mr. DeCONCINI. Would the Senator yield for a question without losing his right to the floor?

Mr. HARKIN. Yes.

Mr. DeCONCINI. What if a large recipient, a so-called corporate farmer, was restricted and decided not to go into the program. Then could not that farmer, if he wanted to, go ahead and produce outside the various farm programs. Then he could perhaps flood

the market, and not be subject to the restraints of the various programs which normally force farmers to cut back so that the product is not overproduced? Seriously. How does the Senator answer that?

Mr. HARKIN. That is a legitimate question. I would answer it in two ways. No. 1, under the system we have right now of crop acreage reductions we are reducing acreage but what is happening is farmers are producing more. The surpluses are enormous.

Mr. DeCONCINI. They are producing more under the program?

Mr. HARKIN. Oh, yes. We have got more acreage reduction now than we had last year, and yet we have more crops than we had last year. Because what farmers do is they pour on more fertilizer, they farm more intensely and they grow more and whatever they have left. The second answer is, and I mention this in my remarks, there is a $500,000 limit. I do not know of any farmer, I do not care how big he is, that would not go into the program for at least $500,000 guarantee that is sitting there. Even Boswell would do something like that.

□ 1740

Mr. DeCONCINI. If the Senator will yield, if you take out that farmer, the $500,000 or $200,000 farmer, who does not go into the program because he falls outside your limits. So he is not in the program.

Now, what is going to keep him from, instead of producing on perhaps 50 percent of his land, cultivating and producing 100 percent and thereby putting more into the market?

Mr. HARKIN. I would just answer the distinguished Senator from Arizona that the Secretary has the authority to reduce for these larger farmers the amount of acreage they have to set aside.

Mr. DeCONCINI. Do you mean under the program?

Mr. HARKIN. He has the authority to reduce it so they do not have to set aside the normally required amount.

Mr. DeCONCINI. So you limit the amount of money they can collect in the program, and you are assuming that they will still stay in the program and thereby the Secretary can restrict them on how much they can plant?

Mr. HARKIN. No. What the Secretary can do is that the Secretary can adjust or set aside acreage to lessen the impact on these larger farmers of these types of limits.

Mr. DeCONCINI. Yes, if they stay in the program.

Mr. HARKIN. If they stay in the program.

Mr. DeCONCINI. What about the farmers who feel they will be reduced to whatever level you set, and says, "I am going to get out." Then there is no control on that farmer, is that correct, if he elects to go outside the program?

Mr. HARKIN. If he does not elect to go into the program there is no controlling what he will do. He can do whatever he wants to do.

Mr. DeCONCINI. If he is big, will he not produce more and try to make it up on volume?

Mr. HARKIN. If he can do it that way, that is fine. Boswell, on his 83,442 acres, if he does not want to get into the program, if he wants to produce whatever he wants to produce, let him do it. Then he has to take the market price for what he has done.

Here is my point: As I said, in terms of cotton, an estimate I have is that only about 3 percent or maybe less of the farmers would be affected.

Cotton would be about 3 percent or less of the cotton farmers in America who would be affected by this limit. What I am saying is that those 3 percent will not affect the other 97 percent.

Mr. DeCONCINI. Will the Senator yield for one followup question? I do not pretend to have a thorough knowledge of this, but it seems to me that if you restrict that farmer and he decides not to go into the program and then he decides to produce more and he is subject totally to the market, then he will produce a great deal. Or perhaps you have a lot of farmers that start producing a great deal of say cotton, and the market price goes down, then the deficiency payments are going to be greater. Is that correct? Has anybody figured out what the difference might be in putting a limitation on payments as the Senator is proposing, versus the lowered price and the increase in the deficiency payments?

Mr. HARKIN. I think the Senator is making a good point, but I think, again, that it is the argument that these large farmers always use. It is the one that the Boswells and the others always use to try to get us to not have any program. They say, "We will not go into the program. We will raise all these commodities and we will depress the prices. Then the Government will have to make up more to the farmers who are in the program."

Mr. DeCONCINI. The Senator from Iowa says that argument does not hold water?

Mr. HARKIN. I say it is very specious. The reason I say it is specious is because with the $500,000 program they will still go into the program because there are other benefits they will get.

Second, commodity prices right now, the cash price, whether it is cotton, corn, or wheat, is so low that they cannot make money producing at those prices. They will go broke tomorrow if they are not in the program. If Boswell had to take a cash price for his cotton, he is out of business.

Mr. DeCONCINI. I do not know about Boswell but some farmers in my State contract their cotton a number of years ahead for a set price because they are big. It is contracted to go to Korea or somewhere. So they will not be affected if they go outside the program, and some are outside the program anyway. My concern is if they produce a lot, is the price going to go down? You say yes. But I understand the Senator he is saying notwithstanding a $500,000 limitation, most will go in.

Mr. HARKIN. Most will go in. As I mentioned under my amendment, using average yields, for cotton we are talking about 1,435 acres to be the minimum size farm.

Mr. DeCONCINI. I thank the Senator.

Mr. President, just 9 months ago, Congress completed debate on a comprehensive farm policy with passage of the Food Security Act of 1985. During year-long consideration, the members of the Agriculture Committee and the Members of the Senate debated and formulated a policy on payment limitations that were determined to be appropriate in the context of overall agricultural policy.

Today, just a short time after the farm bill has been implemented, we are being asked to approve the imposition of arbitrary limitations on Farm Program benefits without the benefit of an analysis of the impact of the proposal. We are being asked to make decisions on a very complex issue, without knowing what the implications would be on our Nation's overall agricultural policy.

Do we know how this proposal will affect small farms; what will be the impact on our ability to be competitive with subsidized competition; what impact will this have on the volume and mix of commodities produced in this country; will this limitation be applied just to producers or will it be extended to include processors; will the limitation apply to the Export Enhancement Program and other programs designed to help U.S. agriculture compete?

I urge you to resist changing the farm programs at this time because of the instability that will result. Producers are already making decisions on 1987 cropping plans and seeking appropriate financing. Any changes in our farm law would add confusion and thereby worsen an already difficult credit problem for many producers.

There are simply too many questions to be answered and too much uncertainty already exists to make changes in farm policy without the benefit of committee consideration.

Mr. ANDREWS. Would the Senator yield?

Mr. HARKIN. I am delighted to yield to my distinguished colleague.

71-059 O-87-33 (Pt. 19)

Mr. ANDREWS. Mr. President, I appreciate the Senator yielding. Let me point out that in relation to what my colleague from Arizona has pointed out, in the past, under farm programs in the past where the loan was kept high, there was a distinct advantage to the farmer who wanted to farm to stay out of the program. The average size farmers took the cuts and really took care of the big guy who stayed out.

As I would point out, under the program we have now, the market rate is low and the support is given through target prices.

Under the amendment my colleague has offered we have a loan that is at a higher price but it is limited to the number of bushels. I am looking at his amendment and there are a good number of good points in it. In fact, it is similar to the Old McNarry program. Then there is a payment for exports, as I understand, for export at the lower level price.

Again, am I not correct, might I ask the Senator from Iowa, under either the amendment we now have or the amendment the distinguished Senator from Iowa has just offered, the incentive for the big guy staying out of the program and making out like a gangster is no longer there?

Mr. HARKIN. The Senator is correct.

The Senator is right on the point.

I also want to recognize my colleague has also worked hard on this amendment in the committee and I want to compliment the good work he has done, also trying to bring some sense of balance or rationality to these payment limitations.

Mr. ANDREWS. If the Senator will yield further, my concern is that farmers need a farm program. They are not the ones who caused the disaster in low prices, the deficits and a lot of other things. We can all grow seven extra fingers on each hand pointing at someone else for the problem.

They have the problem. They have the safety net. But they will lose it if the Eastern press keeps printing multibillion dollar payments to farm X, Y, and Z, even though the Office of Budget tells us that this will not save too many billions of dollars, though it is estimated to save $100 million.

The savings in bad press is so important in keeping a quality farm program that I had introduced, as my colleague knows, the $250,000 limit and my colleague increased it to $500,000. I support the $500,000 level because I think it is a step in the right direction.

I support what my colleague is doing. I think he is right on track. I wanted to make sure that our colleagues know that either under Senator HARKIN's amendment just offered or under the new farm bill that we passed the old gravy train for the big guy who could farm the whole township is gone, it has disappeared. Is that not correct?

Mr. HARKIN. The Senator is exactly correct. I thank him for his contribution.

Mr. KASTEN. Mr. President, I rise in support of the Harkin amendment.

What this amendment does is force us to address a fundamental question: What is our farm policy supposed to accomplish?

The rhetoric that we hear so often around this place would indicate that our farm policy is supposed to help family farmers stay on the land and keep their place as the foundation of the American rural economy. Clearly, our current farm policy has not been successful at fulfilling this purpose, despite the highest farm program outlays in history.

Current farm policy aims at supporting the price that every farmer receives for his crop or his milk. By definition, under current farm programs, the largest farms receive the largest benefits, whether they be in the form of Government checks or indirect income enhancement through price support programs. Simply put, we are trying to help our small to midsized family farmers through programs that direct assistance disproportionately to the largest farms.

I have nothing against large farms. We have some of them in Wisconsin, though they represent a much smaller percentage of all farms than is the case in some other States. The problem with making farm program benefits available based on output is simply that we have only so much money to go around.

The Department of Agriculture estimates that we will spend upwards of $26 billion in farm program costs this year. The signs are growing that the public is not prepared to support payments of hundreds of thousands or even millions of dollars to wealthy farmers, corporations, and even foreigners.

Let me give for a moment a perspective from the Nation's largest dairy State. Dairy farmers in Wisconsin and across the country have endured support price cuts, assessments, and a whole-herd buyout in their effort to bring supply in line with demand. We are not all the way there yet, but progress has been made to the point that USDA estimates that, in fiscal 1987, the dairy price support program, serving our Nation's second biggest farm industry, will cost less than the rice program—$1.1 to $1.25 billion.

I have nothing against growers of rice, but I would remind my colleagues that there simply aren't very many of them. A 1985 study by the Congressional Budget Office, using statistics from the 1982 census of agriculture, found that there are fewer than 4,000 commercial farmers for whom rice is the most important crop. The same study found fewer than 16,000 farmers for whom cotton was the most important crop.

Mr. President, there are about 26,000 commercial dairy farms just in Wisconsin. Why do the much smaller numbers of large producers of rice and other crops deserve more support? More to the point of this amendment, it is obvious that much of the Government spending on some of these commodity programs is coming in the form of enormous payments to individual farmers.

This is the real equity question here. While family farmers who produce milk or corn or soybeans—to say nothing of pork and vegetable growers—struggle to produce for the market, many large farms are producing for Government programs—sometimes more than one at a time. And they are being paid handsomely for it.

Mr. President, this amendment sets an overall limit of $500,000 in farm program payments to any one farmer. I cannot imagine any standard by which $500,000 should be considered too small a measure of support to hold up the income of one single farmer.

Any farmer who needs more than a $500,000 Government check in order to stay in business had better start looking for another line of work.

This amendment is not heartless; it is not inequitable. It represents a recognition of the fact that we have a deficit in this country. We cannot afford to throw money around to benefit a relative handful of wealthy farm operators. If we are going to help farmers—and we should—we should target assistance to the small to midsized operations that derive most of their income from farming.

Mr. President, I urge adoption of the Harkin amendment.

Mr. BUMPERS. Will the Senator yield?

Mr. HARKIN. I just want to conclude by saying that we are really in danger of losing any safety net for farmers. Here is the headline we see, "More Farmers Beating $50,000 Subsidy Cut."

We cannot take it anymore. We will lose the whole thing. Then we will really be in serious trouble.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I raise the point of order that under rule XVI the amendment is not germane to the appropriations bill now before us.

The PRESIDING OFFICER. Under rule XVI the question of germaneness is submitted directly to the Senate without debate. The question before the Senate is, Is the Harkin amendment No. 3106 germane?

Mr. ANDREWS. 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 yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

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

The result was announced—yeas 47, nays 56—as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—47

Abdnor	Ford	Metzenbaum
Andrews	Glenn	Mitchell
Baucus	Grassley	Moynihan
Biden	Harkin	Nickles
Bingaman	Hart	Nunn
Boschwitz	Heinz	Pell
Bradley	Hollings	Pressler
Broyhill	Humphrey	Proxmire
Burdick	Kasten	Riegle
Byrd	Kennedy	Rockefeller
Chafee	Kerry	Roth
Cohen	Lautenberg	Sarbanes
Dixon	Leahy	Simon
Dodd	Levin	Specter
Durenberger	Mattingly	Trible
Eagleton	Melcher	

NAYS—52

Armstrong	Gramm	Packwood
Bentsen	Hatch	Pryor
Boren	Hatfield	Quayle
Bumpers	Hawkins	Rudman
Chiles	Hecht	Sasser
Cochran	Heflin	Simpson
Cranston	Helms	Stafford
D'Amato	Inouye	Stennis
Danforth	Johnston	Stevens
DeConcini	Kassebaum	Symms
Denton	Laxalt	Thurmond
Dole	Long	Wallop
Domenici	Lugar	Warner
Evans	Mathias	Weicker
Exon	Matsunaga	Wilson
Goldwater	McClure	Zorinsky
Gore	McConnell	
Gorton	Murkowski	

NOT VOTING—1

Garn

□ 1800

The PRESIDING OFFICER. The amendment is not germane. Therefore, the amendment falls as not germane.

□ 1810

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was declared not germane.

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I believe we are now ready to go to third reading.

The PRESIDING OFFICER. The Senate will be in order.

The question recurs on the amendment of the Senator from Illinois [Mr. SIMON].

Mr. HATFIELD. Mr. President, an effort is being made at the moment by some committee chairmen and the author of the amendment, Mr. SIMON, to reach some kind of accommodation. I think once that is disposed of, I know of no other amendments that are ready to be offered on my side. I inquire of the Senator from Mississippi, the comanager, if he is aware of any amendment ready to be offered on his side.

He has no knowledge of any amendment to be offered on his side. Therefore, I would say that as soon as we can get this accommodation on the pending amendment, and before 7 o'clock, when we have to set aside this bill for the debate on the veto message we would be ready for third reading.

Mr. BYRD. I am sorry to have to utter a discordant note here, but I thought for a moment that the chairman was serious. [Laughter.]

I understand that there are a hundred or more amendments. I have asked the staff on this side to contact Senators individually as they come in, to see if they would be willing to enter into a time agreement on their amendments or perhaps not offer them.

We will be in a position tomorrow, when the Senate resumes consideration of this matter, to perhaps know what the picture is over here.

Mr. HATFIELD. I say to the Democratic leader that the managers of the bill are ready to accommodate any Senator.

My statement just now was made seriously, recognizing that it might be an encouragement as well as an invitation to Senators to appear with their amendments.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senate will be in order.

Mr. GOLDWATER. Mr. President, recently I have made comments on the fact that I wholeheartedly favored the budget bill when it first came up for passage. But under the actions of the budget bill and the operations of the Appropriations Committee, I have a strong feeling that the committee system in the Senate is slowly deteriorating. We have had very good evidence and experience of this in the recent and continuing conference with the House on armed service matters.

Mr. President, there was an article in "Defense Report" of the National Journal on September 27, entitled "Chaos on Capitol Hill," and I ask unanimous consent to have it printed in the RECORD.

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

[From the National Journal, Sept. 27, 1986]

CHAOS ON CAPITOL HILL

(By David C. Morrison)

Congress, which has done its share of complaining about the way in which the nation's defense business is conducted, is engaging in some uncharacteristic self-criticism of its own contribution to the defense management mess.

Last October's Senate Armed Services Committee staff study on defense organization, like last June's report by the President's Blue Ribbon Commission on Defense Management (the Packard Commission), contained chapters highly critical of the redundancy, legislative delay, turf building, pork barreling and micromanagement that increasingly characterize Congress's defense budgeting and oversight.

Many Members freely concede the accuracy of the criticism. "Bills are needed on Congress as well as [on] the Pentagon," said House Armed Services Committee member Jim Courter, R-N.J. "We're always saying 'Shame on your house.' But we have our own shame here. We can't reform the Pentagon until we've reformed ourselves."

Such self-criticism is a bipartisan excercise. The Democratic Leadership Council, which counts 88 Senators and House Members in its membership, noted in a just-released defense policy report that "legislative oversight is necessary, but if conducted in a meddlesome and indisciplined way will disrupt the environment of stability which military planning and funding require."

Last October, in introducing a defense reorganization bill. Sam Nunn of Georgia, the Senate Armed Services Committee's ranking Democrat, argued that Congress was, in fact, a "major part" of the problem and so must be part of the solution. "We are focusing on the grains of sand on the beach while we should be looking over the broad ocean and then beyond the horizon," Nunn said. "We are not fulfilling our responsiblities to serve as the board of directors for the department of defense. Instead, Congress has become 535 individual program managers that are micromanaging the department at an alarming rate."

Symptoms of these ills are easily quantified. In 1962, for instance, in weighing the fiscal 1963 defense budget request, the Senate and House Armed Services Committees held 27 hearings and published 1,400 pages of testimony. Last year, in deliberating the fiscal 1986 defense budget, the two committees held 80 hearings, publishing 11,246 pages of transcripts. Moreover, the House and Senate Appropriations Subcommittees on Defense conducted their own extensive reviews, holding a combined total of 62 additional hearings and publishing another 10,492 pages of testimony.

This prodigious deployment of people and paper is only one corner of the congressional defense oversight picture.

Over the past four years, according to a February report by the General Accounting Office (GAO), an annual average of 1,306 Pentagon witnesses spent 1,420 hours testifying before 84 committees and subcommittees. The number of witnesses and the time they spend have actually declined over the past 15 years, the GAO found, but the number of subcommittees delving into defense matters has more than tripled. This accelerating diffusion of interest in defense

matters beyond the official defense oversight committees has generated no small frustration on the part of both the members of those panels and Defense officials.

The degree of detail in which Congress reviews defense spending requests is also reflected in the number of changes it makes. The House and Senate defense authorization conferees this year must iron out differences on 1,600 separate items in their two bills. A thousand of those are changes made by the Armed Services Committees in the 2,600 line items—each representing an individual weapons system or ammunition program—that the Pentagon submitted in its research and procurement budget requests alone.

This annual tinkering, critics say, costs the taxpayers by encouraging pork barrel deals and creating program instability. Donald A. Hicks, the Defense undersecretary for research and engineering, warned the Senate Appropriations Subcommittee on Defense last March, "If I am going to be responsible to make certain that I have done a good job in trying to prioritize defense systems. I can hardly be held responsible if in one-third of my programs I am told by Congress what to do, not to kill a program or to add this or subtract that."

At Congress's behest, the Defense Department next year will submit a biennial budget for fiscal 1988-89; but few realistically expect Congress to deal with it on a two-year basis.

PERENNIAL TARDINESS

Dragging this ever more fine-toothed comb through the defense budget, understandably, takes a lot more time than the legislative calendar allots. In the 1950's, Congress typically enacted the final defense appropriation bill 32 days after the beginning of the fiscal year, by the mid-1970s, the lag time had dragged out to 165 days. In 1976, Congress bought three extra months for itself by moving the fiscal new year from July 1 to Oct. 1, and for the next two years, it moved the budget out on time. But final action on the defense bill has fallen steadily behind again—last year, by 80 days.

This perennial tardiness has been driven by the fact that the budget comb is wielded three times in each chamber every year: An over-all defense budget ceiling must be set by the House and Senate Budget Committees, after which funds for individual defense programs are authorized by the Armed Services Committees and then appropriated by the Appropriations Committees. All three bills have to be marked up by committees in each chamber, approved on the floor, brought to conference with the other chamber and then again subjected to floor votes.

Floor debate, too, has grown increasingly protracted. Over the past decade, the number of days spent in both chambers debating the defense authorization bill has almost tripled, while the number of amendments has increased more than fivefold. These statistics represent a variety of factors at work: the irresistibility of the huge defense bill as an opportunity to bring home the bacon, the post-Vietnam loss of consensus on defense issues and the activism of Members with enhanced access to independent defense analysis.

Delay in any step in the baroque, three-tiered defense budget process unleashes a domino effect of missed deadlines and legislative gridlock. Last year, the budget resolution was not adopted until Aug. 1, by which time the defense authorizers had already come to conference without knowing what their final budget ceiling would be. This year, the budget resolution was not adopted until June 26, forcing the two Armed Services Committees to go back into markup—the House panel to add money to its bill and the Senate committee to strip funds from its measure. Four out of the past six years, including this one, the defense appropriators have had to mark up their bills before an authorization bill was adopted.

A spreading overlap between the committees responsible for authorizing and appropriating defense funds has only exacerbated the budgetary chaos on Capitol Hill: The Armed Services Committees mark up the defense request at the appropriators' level of line-item detail, while the Defense Appropriations Subcommittees appropriate funds that were never authorized. This functional redundancy is prompting calls for committee consolidation, but there is little hope for a consensus on which committee should be weakened or eliminated.

The new fiscal year typically opens without the defense appropriations bill having been enacted, necessitating a continuing resolution permitting spending for several months as a rate pegged to the previous fiscal year. The final defense appropriations measure, more often than not, is eventually enacted in an end-of-the-year rush as part of a massive omnibus spending bill.

Because of this "spider web of legislative actions necessary for our defense bill," said Senate Defense Appropriations Subcommittee chairman Ted Stevens, R-Alaska, "you're dealing with a government that's run by continuing resolutions."

"What we have here is a three-layer cake, and Congress is just not capable of doing the same thing three times a year," complained Senate Armed Services Committee member Dan Quayle, R-Ind. "You just get stressed out through the budget process. There just aren't that many months in the year.

ANY MEMBER CAN PLAY

Some aspects of Congress's budgetary chaos may actually be the negative side effects of more favorable trends. In the past, Congress was more an ally for the individual services in their internecine battles with Defense Secretaries and White House budget cutters than an independent overseer.

Pentagon witnesses, for instance, once routinely submitted in advance questions for committee members to ask at hearings. "In 1969, however, this practice lost favor," wrote Harvard University professor and former assistant Army secretary J. Ronald Fox in *Arming America: How the U.S. Buys Weapons* (Harvard University Press, 1974). "Some confusion arose during a hearing in that year when a committee member read both the prepared question and its answer."

Today, Members need not rely solely on the defense analysis that Pentagon officials supply. The GAO, the Congressional Research Service, the Congressional Budget Office and the Office of Technology Assessment (OTA)—the first two of which were beefed up and the second two created in the early 1970s—now present Congress with a virtual deluge of defense analyses. Mushrooming congressional staffs have furthered this broadening and deepening of the defense debate.

LES ASPIN: IS HE TRIMMING HIS SAILS?

"There's always a lot of institutional pressure" on the defense budget, said Senate Armed Services Committee member Dan Quayle, R-Ind., gloomily assessing the forthcoming defense authorization conference in a Sept. 15 interview. "But we've got one huge unknown factor that's plugged in this time: the chairmanship of Les Aspin. It makes for a very dicey situation [because] he has to do a lot for a pricklish constituency called the Democratic Caucus."

If the defense budget process has become an indigestible three-layer cake, challenges to House Armed Services Committee chairman Aspin may be only further impeding Congress's attempts to consume it in a budget season already complicated by Balanced Budget Act spending ceilings and a legislative calendar compressed by the national elections.

A campaign to replace Aspin as committee chairman has forced the Wisconsin Democrat to cover his left flank, say critics on the right; they point to his alliance this year with liberal activists to secure favorable votes for strong arms control amendments that are considered tempting veto bait for President Reagan and that could deadlock the conference with the Senate.

If Aspin is, in fact, trimming his legislative sails, it is in response to winds of discontent gusting from the liberal wing of the House Democratic Caucus. In January 1985, he vaulted from seventh in committee seniority to the chairmanship vacated by the just-ousted octogenarian, Melvin Price, D-Ill. By that summer, however, Aspin had already alienated some Democrats by engineering a compromise that secured more MX missiles than its opponents wanted and by bringing back from conference a defense bill that many believed ceded too much ground to the Senate.

Liberal distress came to a head last June, when Aspin voted for aid to the Nicaraguan contras. Often accused of following too closely his own obscure agenda, Aspin contends that his actions have been misunderstood. But that has not staved off the challengers.

The first hat thrown in the ring, unpredictably, belonged to Rep. Marvin Leath, D-Texas, who is 14th in committee seniority and has the third-weakest record in the House of supporting Democratic majority positions. But his willingness to push for defense cuts on the Budget Committee lends his candidacy more life than might otherwise be expected. Leath asserted that his conservatism and lack of senority will not be stumbling blocks when the Democratic Caucus meets next January.

Installing a conservative in the Armed Services Committee chair would lend new credibility to a "party that has been seen as antidefense," Leath argued. And, thanks to Aspin's ground-breaking climb to power via a challenge from the floor, "seniority is a moot question on the committee at this time," he said. "It's like if you told your daughter, 'You can go out and mess around seven times, but if you do it once more, it's a sin.' "

Seniority means much more to second-ranking Armed Services Committee member Charles E. Bennett, D-Fla. Bennett was badly stung last year when, after having been tapped by the Democratic Caucus's Steering and Policy Committee to fill Price's chair, he was beat out, 125-103, by Aspin; he is now making another run. "I have a personal interest in seeing the seniority system retained," acknowledged the 75-year-old Bennett, who pledged that if elected, he would not hold the chair for more than two terms.

Like Leath, who uncharacteristically voted last month for a nuclear test ban, Bennett seems to have been pulling toward

the center. While he voted along with Leath and Aspin for contra aid, his voting record this year and last shows him siding more often with the Democratic majority than he did during Reagan's first term. "I haven't changed my voting pattern at all," Bennett contended. "The chairmanship doesn't mean that much. St. Peter will not ask me whether I was a chairman of the Armed Services Committee."

Although monosyllabic on the subject of the challenge to his chairmanship, Aspin denied that he feels pressure from the left. "I was involved in the arms control amendments last year," he said. Rep. Patricia Schroeder, D-Colo., an Aspin supporter who is also one of the most liberal members of the committee, agreed—if somewhat left-handedly. "I think Les has come home to where he was originally," she said, but "others say, 'no, he left us forever.'" If Aspin is unseated next January, the ninth-ranking Schroeder added she would run for chairmanship. Nicholas Mavroules, D-Mass., the 11th-ranking member of the committee, who is considered a moderate, has hinted that he may have similar plans.

"It's not an easy committee to be on," Schroeder said, rapping the party's liberal discontents. "And I resent people who have not gotten on the committee because they don't want their life to be that miserable to sit on the outside and decide who should be chairman."

Given that the leading contenders are a junior-ranking boll weevil and a senior member aleady once rejected, however, many handicapping this race believe that Aspin is likely to continue to be chairman provided he wends his way carefully through the remaining hazardous yards of this year's legislative minefield.

"There are people up there who have a lot more technical background on these [defense] programs than before," said Packard Commission member R. James Woolsey, an attorney with the Washington law firm of Shea & Gardner who served as general counsel to the House Armed Services Committee from 1970-73. "It's improved because of the ancillary organizations like OTA" and better staffing.

Consequently, at a time when defense spending is a hot political issue, "a whole bunch of people who didn't get to play before on defense issues have a whole lot of room to run; the defense oversight committees, those baronies, are no longer the only game in town," said Gordon Adams, director of the Defense Budget Project in Washington. The Military Reform Caucus, only 26 of whose 133 members sit on a defense oversight committee, is a product of this evolution.

"The downside," Adams added, "is that you do get this phenomenon of everybody looking for their issue and having the staff to exploit it: a combination of micromanagement and flagwaving."

Even absent their multitude of aides, however, Members would still descend en masse on the annual defense bill if only because it accounts for almost 70 percent of what the Office of Management and Budget (OMB) considers controllable outlays. "If you want anything for your district, you're not going to get it in housing or any other place," said House Armed Services Committee member Patricia Schroeder, D-Colo. The balanced Budget Act "and the deficits have knocked that out [and so] the only place there is any money at all is the Armed Services Committee bill."

The House's vote last month to provide funds for the Air Force's T-46 jet trainer is a case in point. The Air Force chose not to request continued financing because of poor performance by the contractor, the Fairchild-Republic Co.; but the company provides 3,500 jobs in the Long Island district of Rep. Thomas J. Downey, D-N.Y., and he and the rest of the New York state delegation strove to keep the Air Force from burying the troubled bird.

In an angry statement after the House approved a $285 billion fiscal 1987 defense authorization bill, the Armed Services Committee's ranking Republican, William L. Dickinson of Alabama, charged that "Many of the very people who voted to cut the defense budget Friday led the fight to stuff the T-46 into the budget Monday. The T-46 is a $3 billion program of airborne pork, . . . a program that wasn't even included in the $320 billion budget request these same people call bloated.".

Richard A. Stubbing, a retired 20-year veteran of OMB's national security division, contends in *The Defense Game* (Harper & Row, 1986), that "individual members cannot be blamed for supporting defense programs in their districts." That, after all, is what they are in part elected to do. "The problem, however," he writes, "lies in the cumulative impact of this overriding interest in the economic aspects of defense," which is to subordinate broader national security considerations to narrower parochial interests.

Another reason the defense authorization bill is attracting more debate on the floor, noted Stephen Daggett, a budget analyst with the Committee for National Security in Washington, is that the House Armed Services Committee "has always been really conservative and insulated from the House. That started breaking down in the last couple of years, a real revolt on the part of liberal and mainstream Democrats."

A consequence of this revolt was the unexpected elevation of Les Aspin of Wisconsin, the committee's seventh-ranking Democrat and a moderate on defense issues, to chairman last year. Another was the success last month of moderates in securing House passage of five arms control measures—moratoria on nuclear and antisatellite tests, limitation of "Star Wars" spending to $3.1 billion, forced adherence to the terms of the 1979 Strategic Arms Limitation Treaty and a ban on chemical weapons production—most of which were considered too strong to even bother pressing for in committee. Similarly, a large number of procurement reform amendments that committee members opposed were successfully offered on the floor in recent years.

The defense bill is also an important event for Congress because it is the only major authorization measure that passes through every year. As a result, Aspin said, it "is heavy with action. If you want to do procurement reform, there it is. If you want to do arms control, there it is. If you want to do a lot of foreign policy, there is no sure other vehicle coming through every year. You can word almost anything to be germane to the [defense] authorization bill. That puts us square in the middle, which is fine with me."

TURF WARS

Congress's primary procedural shortcoming in dealing with the defense budget, Woolsey said, "is not the fact that they get into it too deeply, it's the fact that they get into it too often." Indeed, it is hard to find a Member who is happy with today's time-consuming and barely digestible three-layer cake approach to defense budgeting. But it is no less difficult to find Members agreeing on what should be done.

The problem seems so intractable because it is wrapped around the issue of committee jurisdiction. The almost 100 per cent overlap in the functions of the Armed Service Committees and the Defense Appropriations Subcommittees is partly attributable to a steady extension of authorization requirements by the Armed Service Committees over the past quarter-century.

At one time, those panels authorized defense programs only with the broadest brush, a classic example being a 1956 law authorizing 24,000 aircraft for the Air Force, which has never operated more than 9,500. In 1959, however, a law was adopted requiring that the Armed Service Committees annually authorize the Pentagon's requests for aircraft, missile and naval vessel procurement. Twelve other laws, the last of which was enacted in 1983, have imposed similar requirements on virtually all of the remaining defense budget components.

Turf building, obviously, has helped to drive this trend. But, argued House Armed Services Committee aide Warren L. Nelson, each addition to the committee's authorizing powers has also been prompted by some problem. The last major increment, operations and maintenance in 1980, "came out of the hearings and debates of the late 1970s over this institution chopping away too much at readiness," Nelson said. "So it's not just that somebody sits down and says, 'What aren't we authorizing?' and then just gloms on to it."

The resulting line-item review in both the authorizations and appropriations cycles is wastefully redundant and has created tension between authorizers and appropriators. "If they would just concentrate on new policy," Appropriations subcommittee chairman Stevens said of the Armed Services Committees, "we would get along a lot better. They want not only to devise the programs, they want to say how many nuts we have that fit certain kinds of bolts [and dictate] that they only be made in one state."

The authorizers, however, have their own complaints about the appropriators. In 1984, $3 billion was appropriated without prior authorization. Only when it became clear that the Pentagon planned to spend the money despite the Armed Services Committee's objections did those panel retroactively authorize the funds in the spring of 1985. Last December, the Senate appropriators locked in another $6.5 billion in unauthorized defense funds, provoking a monumental clash between Stevens and Senate Armed Services Committee chairman Barry Goldwater, R-Ariz. The waters were not calmed until last June, when Stevens and Goldwater signed a sort of truce. In return for the authorization of all but $952 million of the disputed funds, Stevens pledged not to do it again. They also agreed that the ranking members of the two panels could attend each others' markup deliberations to help forestall future unpleasantness.

Nunn and Goldwater, exercising that right, were sitting in on the defense appropriations markup earlier this month, however, when Stevens added almost $3 billion for a new space shuttle to the Air Force budget, a plan that the Pentagon and the Senate Armed Services Committee objected to. Nunn was able to forestall Stevens's bid to appropriate $4.8 billion for the Star Wars program, for which his Armed Services had authorized $3.6 billion. "I'm cautiously optimistic," Nunn said of relations between the

two committees. "Everybody's got the same motive in making more sense out of our process."

Although such disputes are less bitter on the House side, House Defense Appropriations Subcommittee chairman Bill Chappell Jr., D-Fla., last month got an amendment passed to delete a section in the defense authorization bill that, he argued, would have established "an inflexible system requiring subsequent authorizing legislation to be enacted every time an appropriation amount exceeds [the Armed Services Committee's] line-item funding level."

The upshot of such turf disputes, complained deputy Defense Secretary William H. Taft IV, "has been nothing but trouble for the Defense Department as these titans have disagreed as to what our budget is. We've lost money from programs that most people wanted us to have."

Stevens said that because the authorization bill is consistently so late, his subcommittee must act without it. And then, he said, "everybody stands around and says: 'What are you doing? That's not authorized.' It's a tough mother." The bill is often held up, of course, because the budget resolution is late.

Where Members stand on what should be done to reduce this multiplicity of review processes depends, predictably, on where they sit. Stevens, for instance, in 1984 testimony to the Temporary Select Committee to Study the Senate Committee System, proposed that Congress "do away with authorizing committees and they would become the subcommittees of Appropriations." Quayle, who chaired that special committee, recommended in a recent interview that the Appropriations Committees do the work of the Budget Committees and that the Armed Services Committees do both the authorizing and appropriating, an approach that both Nunn and Aspin tended to agree with. Asked about the political feasibility of this route, Nunn laughed. "One thing to remember, politically," he said, "is that there are a lot more [people on the] authorizing committees than on [the] appropriating committees."

Given the unlikelihood that the reigning bull elephants on Capitol Hill will cede an inch of their hard-won territory, however, a remedy is unlikely to be enacted anytime soon. Last January, Courter introduced a resolution that would combine authorizations and appropriations under the aegis of the Armed Services Committee, confining defense oversight to it and the Budget Committee while preventing other committees from stirring the Pentagon pot. Courter's bill secured precisely three co-sponsors and is bottled up in the House Rules Committee, from which it will likely never escape.

Nevertheless, questions about which of the two functions—authorizing or appropriating—has become irrelevant add to the pressure on the defense authorizers to slog through their annual budgetary trek. This year, for instance, arms control measures in the House authorization bill prompted a stern veto threat from President Reagan, which has made for an exceedingly difficult conference with the Senate authorizers. But defense authorizers in both chambers have a strong motivation to struggle toward a compromise because, as a House aide put it, after laboring so long on their bills, they "don't want to commit abortion in the ninth month."

That overriding motive to maintain legislative credibility exists despite the fact that the arms control amendments included in the House's authorization bill were by prearrangement also placed directly into the House defense appropriations bill and so will have to be negotiated eventually with the Senate and the White House, even if the authorizers run into a conference impasse.

A TWO-YEAR BUDGET?

The Packard Commission and others have proposed a solution to Congress's budget snarl that seems, at least superficially, to be more feasible than committee consolidation. "A two-year appropriation for defense," the commission wrote, "would stop the yearlong chaos of budget making that we now have, or, at minimum, allow it to happen only every two years rather than annually."

Next February, pursuant to amendments pressed in the Senate by Nunn and in the House by Dave McCurdy, D-Okla., the Defense Department will submit a two-year budget to Congress. The department annually sends up a five-year defense plan with numbers for the next fiscal year and the following four years. In preparing a two-year budget, said Taft, the Pentagon will carefully go through both years "and really insist on hitting a number in the second year as well as the first year and [be] prepared to defend those proposals at the level of detail that a budget implies."

Congress is under no obligation to deal with the biennial defense budget one way or another; history suggests that it will likely not deal with the second year at all. The 1974 budget law, for instance, directed the Pentagon to submit two-year budgets, which Congress consistently ignored. "It's going to be a real challenge to Congress," Nunn said in an interview. "We're going to have to have much closer coordination between the Budget, Armed Services and Appropriations Committees. We could conceivably have a two-year authorization and appropriate one year at a time. But it would be better to have a two-year authorization and appropriation and use the off-year to do a supplemental."

As last year's Senate staff study noted, timing is of the essence. A two-year budget adopted in odd-numbered years would compel Members to run for reelection on the basis of compromises made a year earlier. Biennial budgets adopted in even years would force newly elected presidents to wait three years before making their imprint on policy. "Since either situation would likely be unacceptable, supplemental budgets would be necessary and could quickly evolve into an annual budget review," the study said, "negating the purpose of the shift to a biennial budget."

Congress, observed the Defense Budget Protect's Adams, "wants and demands the flexibility to spend on a year-to-year basis. Budgets are power, and you don't voluntarily give up a year of your power—especially to the executive branch."

Similar institutional roadblocks would await milestone financing, whereby weapons systems would be debated and given funds only at two or three significant milestones in their evolution, rather than annually. This was one of the Packard Commission's central recommendations, said Woolsey, and was likely a precondition for a successful transition to biennial budgeting.

Milestone financing, of course, would require Congress to give up its line-item review of major big-ticket portions of the defense budget. That would be very difficult, Aspin said. "People are driven into this process by the fact that the defense budget has to be cut. So you look at the budget in line-item ways, cutting the number of F-16s from 300 to 200 or something. That's how you reduce the budget, that's where this place really lives, that's what Congress is all about."

Because there is no "Super Congress" standing over this one to legislate reform of its practices in the way that Congress can mandate Pentagon reorganization, any mending of its defense budgeting ways is likely to be halting, spurred on only by mounting desperation over what every year becomes a more unmanageable and all-consuming process.

"I always hesitate to predict what Congress will do; there's too many possibilities." Taft said. "But I do sense some frustration up there with the instability of the program. And that is promising, because we certainly have that down here."

Congressional defense budgeting reform, Quayle said, will have to be accomplished "salami style, one slice at a time." It is, he said, "a very sticky, sensitive question. How are you going to balance jurisdiction, ego and personalities? God only knows how it's going to come out."

ATTRACTING LOTS OF FLIES

"As legislative gridlock developed during the latter half of the 1970s and through the early 1980s, annual defense bills have become a primary means for advancing legislative proposals that probably would not otherwise get over all the legislative hurdles," noted a Senate Armed Services Committee staff study on defense organization released last October. Because these bills are guaranteed action in Congress and are considered veto-proof, the study added, "they become vehicles for a host of amendments, many of which are only remotely germane to the primary legislation."

Or, as stated more succinctly by House Armed Services Committee member Jim Courter, R-N.J., "By the nature of the bill, it's going to attract a lot of flies."

Two striking indices of Congress's growing preoccupation with an all-consuming defense budget process are the time it spends debating the annual defense authorization bill and the number of amendments it considers. As the table shows, the average number of days spent in both chambers debating the authorization bill almost tripled between the first and second halves of the past decade, while the average number of amendments has more than quintupled.

Calendar year	House		Senate	
	Days debated	Amendments	Days debated	Amendments
1977	3	0	2	6
1978	3	0	2	18
1979	5	33	3	11
1980	4	17	3	18
1981	8	49	3	16
1982	8	78	7	61
1983	12	64	13	72
1984	6	52	10	107
1985	9	140	9	107
1986	9	116	7	83

SELF-PROTECTION

(By David C. Morrison)

FORT LEE, VA.—Chemical warfare is "a big unknown," acknowledged Capt. David Clement, chemical officer for the unit training directorate of the Army Logistics Center, headquartered here at Fort Lee in Petersburg, Va. "I myself have reached into a glove and seen GD [nerve agent] coming down my arm. It's an extremely frightening

circumstance. But when you're familiar with it and you know that protection works, then it becomes less frightening."

In one of those programmatic swings so characteristic of U.S. military affairs, the services are now striving to renew their familiarity with the exigencies of chemical warfare. While a new General Accouunting Office (GAO) report found that after a half-decade of sustained effort, "the chemical warfare readiness of U.S. troops is in doubt," chemical training and preparedness have nonetheless progressed a quantum leap ahead of where they were a decade ago.

At its 1960 peak, Army chemical expert Lt. Col. Hugh L. Stringer noted in *Deterring Chemical Warfare: U.S. Policy Options for the 1990s* (Institute for Foreign Policy Analysis, 1986), "the U.S. chemical establishment included two nerve agent production facilities, a supporting network of arsenals and depots for stockpiling and maintenance of both chemical weapons and defensive material, a research establishment and a substantial troop complement." At the end of the decade, however, prompted by the accidental 1968 nerve gasing of thousands of sheep in Utah and by President Nixon's 1969 ban on the production of new chemical agents, the huge chemical establishment entered a long decline. By the mid-1970s, the U.S. Army Chemical School at Fort McClellan, Ala., had closed its doors, and the number of special chemical defense troops had dwindled to 2,000.

Then, in 1980, arguing that "Soviet forces appear to be prepared to fight in a [chemical] environment and show willingness to do so if it is advantageous to them," then-Defense Secretary Harold Brown called for a revitalization of U.S. chemical capabilities. One component of the Brown initiative—which like so many Carter-era military programs was adopted and expanded by the Reagan Administration—was a plan to build new "binary" weapons, in which two relatively nontoxic chemicals are mixed to produce deadly nerve agents. That $2.5 billion program has consistently been a bone in Congress's throat; last month, the House voted once again against putting the binary weapons into production.

Congress has looked far more favorably, however, on chemical defenses. In 1978, the entire chemical warfare budget was only $111 million; this year, almost $1 billion will be spent on the defensive program alone. This fiscal emphasis is also reflected in the field. The Chemical School, reopened in 1980, will inaugurate early next year a unique indoor training facility where live nerve agents can be released in a controlled environment. The U.S. Army-Europe, according to the GAO report, "generates interest in nuclear, biological and chemical [NBC] defense training by holding annual 'NBC Days' [which] are conducted like the Olympics or a fair."

Increasingly, the services stage large-scale training exercise in full protective gear, prominent examples being the Army's continuing Combined Arms in the Chemical and Nuclear Environment (CANE) exercises and the Air Force's 1985 SALTY DEMO European airbase survivability exercise.

The degradation caused by soldiering in hot and cumbersome gas masks, charcoal-impregnated overgarments and rubber gloves is usually cited as 30-50 percent of normal performance. But, Clement observed, "Necessity is the mother of invention. It was not until recently that the Army came out with requirements to train in [protective] gear. . . . As these things are happening, the ability to operate this equipment is growing rapidly."

This rededication to learning how to sustain combat on a chemical battlefield has been accompanied by several doctrinal shifts that somewhat simplify the task.

One is a loosening of the traditional insistence on 100 percent protection. "Commanders who would never accept a debilitating defensive posture against conventional high-explosive weapons," Stringer wrote, "are inexplicably willing to accept a virtually incapacitating defensive posture in anticipation of the mere threat of chemical attack." Consequently, doctrine now being written stresses "contamination avoidance," or averting chemical degradation through mobility, deception and protective coverings.

And, even though the Army Chemical Corps has more than quardrupled from its 1975 nadir to 9,000 troops, another doctrinal change is shifting chemical defense and decontamination duties onto the individual soldier. "They have to be responsible for their own actions in an NBC environment," argued Maj. Nyle Hedin, chemical officer for the Army Logistics Center's concepts and doctrine directorate. "Given the force structure that's available, there aren't going to be enough chemical units to do it. And the chemical units that are available are not going to be able to . . . make everything magically clean again."

For all of the thought, energy and dollars that have gone into the program in recent years, the GAO still found numerous chemical preparedness shortcomings: delays in getting new equipment into the field, shortfalls in specialized chemical troops and often unrealistic training. But, as a Pentagon official noted, "you could pour literally billions of dollars into chemical defenses every year and never get to the level that you would want to achieve." In large part, that is simply because chemical warfare poses operational problems of a nastiness rivaled only by nuclear weaponary.

Just how nasty is vividly illustrated by instructions on graves registration found in an Army draft manual on logistics support in a chemical environment that Maj. Hedin has written. Chemically "contaminated remains are interred at an interim site as close to the site of death as possible," the manual recommends. "The entire site is marked with the standard NATO NBC marker and may become a toxic waste site."

AGRICULTURE APPROPRIATIONS

Mr. GORTON. Mr. President, I would like to take a moment to address a number of provisions in the agriculture appropriations portion of the continuing resolution for 1987, which are fundamentally important to the farmers of Washington State.

First and foremost, the bill contains $2 million under the Research Facilities Act (sec. 1411) for startup building expenses for the new Food—Human Nutrition Center at Washington State University in Pullman, WA. Already, the State of Washington has committed $13.898 million toward the cost of this $24 million facility and it is my well-founded hope that this appropriation will serve as the beginning of the $10.5 million Federal commitment necessary to complete the center.

As envisioned, the Food—Human Nutrition Center will provide the Nation and the Northwest with invaluable research in the areas of animal and plant biotechnology, food quality, food marketing, and food processing. The facility will also house the Western Wheat Quality Lab located at the university.

The research carried out at the center will be critical to the wheat and feed grain industries as they work to establish new markets around the world, and to reestablish markets we have lost to subsidized foreign competition. If American agriculture hopes to return as a competitive supplier of foodstuffs to the world, facilities such as the WSU Center are required. The center has support throughout the Pacific Northwest: the Washington Association of Wheat Growers, the Washington Barley Commission, the Washington Wheat Commission, the University of Idaho and Oregon State University have all lent their support to this effort.

Mr. President, I would like to express my deep appreciation to Senator COCHRAN for his willingness to work with me and Senator EVANS to ensure that adequate funding was made available in the bill for the center. I recognize and understand the severe budget restraints under which he and the rest of the subcommittee must operate. The Food—Human Nutrition Center is a valuable addition to the agriculture industry of the Northwest and will serve as a spring-board to new wheat varieties, better yields and enhanced exports. I would also like to thank Senator HATFIELD for his support of this effort—he has worked with me for 2 years toward this important appropriation. I look forward to working with each Senator to ensure adequate funding for the facility in the years ahead.

Mr. President, the Senate bill also contains $4 million to carry out the program authorized by section 1475 of the National Agriculture Research, Extension, and Teaching Policy Act of 1977, as amended. As the committee report states, section 1475(d) authorizes four centers for aquaculture research development, and demonstration. The centers shall be established, one each to serve the southern, north central, northeastern and western regions. The University of Washington is the leadership school for the consortium of institutions that will serve the western region. Together with the other member institutions of its consortium, the University of Idaho, the University of California at Davis, the University of Alaska, and Oregon State University, the University of Washington will carry out research on shellfish, silver salmon, trout, catfish, striped bass and sturgeon. Research done by these universities will help relieve America's growing dependence on imported seafood products and im-

prove our overexploited fisheries and shellfish resources. I commend the committee for its foresight in including funding for these regional centers and encourage members of the conference committee to work to maintain the Senate appropriations, which is double that included in the House passed bill.

The committee has also included report language which is vitally important to the fruit growers of Washington and the Northwest. It recommends that the Agriculture Research Service [ARS] commit $97,000 to help fill needed positions for a pathologist and post-harvest physiologist at the USDA fruit research lab in Wenatchee. Also, the committee instructs the Department of Agriculture to begin a search for a new site for the Yakima insect biology and pest management lab. This frontline USDA lab is currently overcrowded and dilapidated. This situation is exacerbated by the fact that the lease for the present facility expires in September 1987. I applaud the committee's requirement that the Department report back to Congress with its findings on or before March 30, 1987.

Finally, Mr. President, I am pleased that the Senate bill maintains a responsible budget for the Cooperative Extension Service. Extension is the farmer's partner in progress and agriculture education. From a young age when future farmers develop leadership skills and take on personal responsibility as members of 4-H clubs, Extension is an integral part of life in virtually every rural community. As my colleagues know, the President sought to cut the Extension Service budget to the bone in fiscal year 1987. As a member of the Budget Committee, I am proud that we were able to produce a budget blueprint for 1987 that restored Extension funding to the proper level. The Appropriations Committee has followed through on this commitment and I commend the members for their effort in this regard. The farm families of Washington and across America need Extension, and we have properly lived up to our responsibility to keep it a viable program.

Mr. DIXON. Mr. President, I rise to discuss an issue of particular importance to my home State of Illinois. There is widespread agreement throughout this country, and among our colleagues on both sides of the aisle, that new uses of agricultural commodities would help alleviate the problem of our Nation's agricultural surpluses.

I am pleased to say that a project initiated by the private sector, in Illinois, offers an opportunity to tap the creativity of private enterprise and the insights of leading scientists in cooperative research. This research would seek to create new products and open new markets based on technologies developed in our country's agricultural laboratories.

This innovative research project is a cooperative research and development initiative among the Agricultural Research and Development Center, the Biotechnology Center at the University of Illinois, and at least 15 private companies interested in investing in agricultural research. The $2 million grant as recommended by the House of Representatives would be leveraged and matched, if not exceeded, by financial support from the State of Illinois and private companies.

Mr. COCHRAN. I am aware of this project and its possible importance in the development and improvement of products, processes, applications, and uses of agricultural commodities and resources. The gentleman from Illinois can be assured that I will give this project every consideration during our efforts to work out the differences between the House and Senate versions of the continuing resolution.

Mr. DIXON. Mr. President, I ask the distinguished chairman of the Appropriations Subcommittee on Agriculture Rural Development and Related Agencies, the Senator from Mississippi [Mr. COCHRAN] if he would engage in a colloquy with me on a project of considerable importance not only to the State of Illinois, but to the future of U.S. agriculture as well?

Mr. COCHRAN. I am pleased to respond to my distinguished colleague, the Senator from Illinois.

Mr. DIXON. I thank the Senator. In fiscal year 1986, Congress provided $3 million for the planning costs associated with the construction of a Plant and Animal Sciences Research Center at the University of Illinois. This new facility will be an integral part of a new advanced research complex to which the State of Illinois has committed more than $75 million. State funds have been pledged to totally equip and operate the center, which will provide laboratory space for agricultural biotechnology research directed toward reduced production costs and expanded use of U.S. agricultural products.

The chairman has amply demonstrated his long-standing commitment of both of these objectives, and to the need for continuing support and intensification of U.S. agricultural research in this direction at a time when our efficient producers and bountiful harvests are blessing this land with the problems of plenty. This kind of research is critical to our efforts to help bring agricultural supply and demand into better balance, and to lessen the financial burdens of surplus on beleaguered producers as well as on U.S. taxpayers.

Mr. COCHRAN. The Senator is correct with respect to my support for research aimed at reducing the costs of production and expanded uses of our agricultural products.

Mr. DIXON. I would just like to add this emphasis. Time and again in the past, appropriate agricultural research has shown us new ways of handling problems—innovative solutions that we would not have dreamed possible. I am not holding it up as a panacea, Mr. Chairman, but you and I know from experience that a small investment in well-directed, tightly focused research can yield dividends worth many, many times the original cost.

That is why, Mr. Chairman, I believe that the Plant and Animal Sciences Research Center should be funded in fiscal year 1987. The House of Representatives has recommended the amount necessary to do this—$27 million. I know the chairman shares my views on the need and importance of this item, and I am certain that as you resolve the differences between the House and the Senate on this bill, he will do his utmost to find a way to accommodate this small investment in the future.

Mr. COCHRAN. Mr. President, I thank the Senator from Illinois for bringing this matter to the attention of the Senate, and I can assure him that, within the constraints of the subcommittee's 302(b) allocation, every consideration will be given to including this item in the bill as it is debated in the conference on the continuing resolution.

Mr. DIXON. I would like to focus the attention of the Senate on a research program which is critically important to the coal industry and the agricultural economy of the Illinois coal basin, which includes Illinois, Indiana, and western Kentucky.

In 1977, Congress passed the Surface Mining Control and Reclamation Act to establish a national program to protect our environment from the adverse effects of surface coal mining operations. Special provisions were included in this law to protect one of our Nation's most vital resources, our prime farmland.

I know that my good friend, the chairman of the Appropriations Subcommittee on Agriculture, Rural Development and Related Agencies, would agree that we must protect our prime farmland.

Mr. COCHRAN. The Senator from Illinois is correct. During debate on the 1985 farm bill, we both supported a strong conservation title which would protect our natural resources.

Mr. DIXON. I thank the Senator. A recent study by the congressional Office of Technology Assessment [OTA] concluded, however, that the coal industry still faces problems meeting the stringent requirements of the Surface Mining Control and Reclamation Act. Although promising alternatives have been developed, the in-

dustry lacks the capability to predict with sufficient certainty which procedures will be effective.

In response to the problem, the Illinois Coal Association and the Illinois Farm Bureau have proposed a 5-year Prime Farmland Research Program to be supported jointly by the Federal Government through the Cooperative States Research Service and the coal industry. The program would fund two research centers and smaller specific research projects to develop the technology required to reclaim prime farmland and other high-quality cropland to premine levels of productivity.

An appropriation of $3 million for this project was included in the House appropriation bill for agriculture. This research project is critically important to the agricultural economy and the coal industry of the Midwest.

I ask my friend to give this project his every consideration when the House and Senate meet in conference on this legislation.

Mr. COCHRAN. I should like to assure the Senator that I will keep this project very much in mind when we meet with the House to work out the differences between the two versions of this bill.

Mr. CHILES. Mr. President, on Friday September 26 at the full committee markup of the continuing resolution in the spirit of comity, I withdrew report language which would have directed the Air Force to look for offsets in order to restore full funding to the C-17 air transport. I believe the Air Force needs to look at its priorities and work with the Defense Subcommittee to insure this program is adequately funded. It was my understanding the chairman of the Defense Subcommittee was willing to accept this report language. I would like to ask the chairman if that was his understanding?

Mr. STEVENS. Yes, it was.

Mr. CHILES. It is also my understanding the Air Force is anxious to assist the chairman as he moves to conference with the House. I believe the C-17 is one of the services highest priorities. At this time I would like included in the record the balance of my statement, the letter I referred to earlier along with a letter to Chairman Chappell from the Chiefs of Staff of the Army and Air Force and the Commandant of the Marine Corps reiterating their support for the C-17. It is my understanding that the Senate Subcommittee on Defense has received a similar letter.

Mr. STEVENS. That is correct. We did receive the letter and the services have expressed much support for the C-17.

Mr. CHILES. Mr. President, on September 26, 1986, I sent a letter to the distinguished chairman and ranking member of the Appropriations Committee signed by a bipartisan group of fourteen other senators and myself concerning the funding status of the C-17 air transport. The letter set forth the reasons we support funding of this aircraft and urged support for any reasonable effort to restore funding to the system.

Mr. President, Gen. F.K. Mahaffey, the commander in chief of the Readiness Command, in testimony before the Senate Armed Services Committee this year put it succinctly, "Further delays in the development and procurement of the C-17 will severely limit our ability to reinforce and sustain our forces on a global scale." Furthermore, he stressed, "The key to victory in any future battle will lie in our ability to project power to the battlefield, where it is needed and when. In my opinion, the C-17 is vital if we are to be able to project that power."

This is where the constituency for the C-17 lies, in the field, with commanders who have to be ready to fight. To them the key element of deterrence is logistics—the ability to resupply with beans, bullets and bandaids. So, unlike some of its predecessors, the C-17 was designed with combat and the troops in mind.

First, the C-17 has "long legs" or excellent range payload capabilities in the critical intercontinental distances of 2,400 to 3,200 nautical miles. Second, unique design characteristics permit the C-17 to land at forward locations with shorter runways. Third, and perhaps most importantly the design of the aircraft maximizes maneuverability and rapid offload. These factors greatly contribute to the C-17's greatest single contribution which is significant increases in what the operators refer to as "through-put." This translates into three times as much cargo as its closest competitor and minimum exposure to hostile fire.

In summary, Mr. President the C-17 is a superb aircraft which fulfills a vital if unglamorous role. It embodies the experience we have gained from previous aircraft, the best of technology and most importantly the input of the services who will use it and the pilots who will fly it. The C-17 enjoys the complete support of our men in the field. I will work hard to see that funding is restored in conference.

The letter follows:

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE CHIEF OF STAFF,
U.S. AIR FORCE,
Washington, DC, September 26, 1986.

Hon. BILL CHAPPELL, Jr.,
Chairman, Subcommittee on Defense, Committee on Appropriations, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We are very concerned about recent congressional action that threatens to delay or possibly cancel the production of the badly needed C-17 aircraft. Further delays will severely limit our ability to deploy, employ, and sustain our forces on a global scale.

We have examined the airlift modernization issue from every angle and are convinced that the C-17 is the solution. It is not only the most cost effective solution, but gives us the greatest capability—a capability that we must have if we are to meet our country's airlift requirements.

The C-17 has been jointly supported from the ground up and is crucial to the rapid deployment of our combat forces. The key to victory in any future conflict lies in our ability to project our power into the battlefield. The C-17 is vital to projecting this power.

We strongly urge your support for production of the C-17 now—an aircraft that is critical to our national interests.

Sincerely,

JOHN A. WICKHAM,
General, USA, Chief of Staff.
LARRY D. WELCH,
General, USAF, Chief of Staff.
PAUL X. KELLEY,
General, USMC, Commandant.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, September 26, 1986.

Hon. MARK HATFIELD,
Chairman,
Hon. JOHN STENNIS,
Ranking Minority Member,
Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MARK AND JOHN: We are writing to express our concerns over the appropriations actions taken this year on the C-17 transport. While we recognize the difficulty of the choices before the Committee, we believe it would be ill-advised to further delay production of this vital addition to our strategic mobility.

The mobility shortfall has been a continuing problem through repeated administrations. This problem persists because mobility and its companion logistics are poorly represented among the constituencies which compete for defense resources, and are therefore priorities which are consistently deferred until we face a crisis.

The current rationale for delay is contraints on the defense budget. Some critics cite the erosion of the defense consensus as the reason for this. This is particularly unfortunate in the case of C-17 because it has been a model program since its inception. Combining the best of defense industry and interservice cooperation, it has become the classic operator's system.

As such, the C-17's greatest constituency is in the field with the soldiers and marines who will rely on it for resupply in combat and with the pilots and the airmen who will fly it. Unlike some previous systems, the C-17 has been designed with the troops in mind. Therefore, maximum attention has been paid to rapid ingress, minimum time over the target, and rapid egress in order to get in and get out quickly, minimizing its exposure to the threat. Furthermore, redundancy, hardening, provisions for armor, defensive systems and self-sealing fuel lines are all part of the aircraft design.

General Bernard W. Rogers, in testimony before the Senate Armed Services Committee, said it best. "With respect to our national commitment to reinforce NATO . . . the earliest possible fielding of the C-17 is crucial. Without early reinforcment in the face of a large conventional attack, we will face fairly quickly the choice between escalation to the use of nuclear weapons or capitulation."

It is important to note that historically the Defense Subcommittee has provided strong and consistent support for the C-17. In the coming years, we will face many diffi-

cult funding choices as we review the defense budget. In addition, the Defense Subcommitte has demonstrated great skill, integrity and originality in meeting the budget authority and outlay targets set forth in the budget resolution. It is also clear that DoD will need to show similar capabilities if additional funds are to be made available. Our purpose is clear. We consider full funding of the C-17 one of the highest conventional priorities and we fully support any reasonable effort to restore funding to the system.

Sincerely,

DALE BUMPERS.
ALAN CRANSTON.
DENNIS DECONCINI.
PATRICK LEAHY.
THAD COCHRAN.
J. BENNETT JOHNSTON.
JIM SASSER.
LAWTON CHILES.
PETE DOMINICI.
FRANK N. LAUTENBERG.
TOM HARKIN.
DANIEL INOUYE.
PHIL GRAMM.
ARLEN SPECTER.
PAUL LAXALT.

INJURY PREVENTION RESEARCH PROGRAM

Mr. GORTON. Mr. President, I rise today to discuss an issue that has the potential of affecting each one of us in this Chamber, either directly or indirectly. The issue is trauma. Every day, hundreds of people across the country are directly affected by trauma. My State, Mr. President, is privileged to have a superior trauma unit. In fact, Mr. President, Harborview Hospital in Seattle, together with the Seattle Fire Department, pioneered the Medic I program. Emergency medical response teams, such as Medic I, now operate out of fire departments in many of our Nation's largest cities. The units have contributed greatly to the ability of our health care system to save the lives of many injured people.

Mr. President, the development of programs such as Medic I require extensive research in the development stage. The Center for Disease Control administers a grant program in the research of trauma prevention. At this time, many hospitals and medical schools across the country have submitted grant proposals to CDC for research projects in the field of trauma prevention. Such proposals include: The development of new and more effective ways of identifying prehospital factors and responses which are detrimental to injury recovery and the development of new techniques which will prove more effective in the resuscitation of injured patients, the identification of factors which contribute to the long term disability of patients, and the development of an educational program to rigorously prepare new investigators in the field of injury research.

As I hope you can see, Mr. President, research such as this has the potential to reap incredible benefits—benefits that may at some point benefit every person in this country.

The House, in marking up the Department of Transportation authorization bill included $10 million for the CDC Injury Prevention Research Program, the Senate did not include any funds for this program. I would like to ask that the distinguished chairman keep my concerns and these points in mind when the two bodies meet in conference. I believe the $10 million this program costs, is a relatively small amount when one weighs the effect that it will have on our ability to save lives.

Mr. ANDREWS. Mr. President, I agree with the distinguished Senator from Washington that the CDC Injury Prevention Research Program has much merit. The House funding level of $10 million covers the second year of a 3-year project, which initially began in fiscal year 1986. This funding does compete with a number of projects and programs administered by the National Highway Traffic Administration. This funding level will be an issue for conference, and I will keep the concerns of the Senator from Washington in mind.

RED RIVER ARMY DEPOT COLLOQUY

Mr. BUMPERS. Mr. President, I would like to bring to the attention of my colleagues, especially those who serve with me on the Appropriations Committee, some important language which the House added to its report accompanying the continuing appropriations resolution concerning the central distribution center project at the Red River Army Depot in Texarkana, TX.

The central distribution center project is very important to both Texas and Arkansas, whose border Texarkana straddles, and the Army. Since 1974, the workload at the depot has more than doubled, with line items received and shipped increasing from 750,000 in 1974 to 1,930,000 in 1985. This increased workload has necessitated multishift operations, the use of outdated equipment, and fragmented operations, with little flexibility to respond to emergency or mobilization requirements.

The central distribution center at Red River is the logical response to this problem. It is the last of the three major projects that the Department of the Army has begun to modernize its worldwide logistical support to our fighting troops. The first two, at Sharpe Army Depot in California and New Cumberland Army Depot in Pennsylvania, are already underway.

The House language concerning Red River calls for the initiation during fiscal year 1988 of phase I site work and phase II construction of the central distribution center at the Red River Army Depot in Texarkana, TX, subject to certain very reasonable conditions.

Those conditions are that the Army shall utilize the existing Government request for proposal [RFP] for phase I and Phase II, that the RFP shall be issued by January 1, 1987, with the requirement that the bidder finance phases I and II as part of their proposal, and that the Army shall award the contract in fiscal year 1988 provided, of course, that the funds are authorized and appropriated by the Congress.

The issue of third-party testing, which has been raised in the past in connection with this project, is directed to be tested via the commercial activities review after the construction of the central distribution center.

This language seems quite reasonable to me, and I would very much like to see it adopted in the conference report on the continuing resolution.

I would like to ask my good friend, the Senator from Georgia and chairman of the Military Construction Subcommittee of the Appropriations Committee, if he shares my views about the importance of this project and the desirability of the House langauge.

Mr. MATTINGLY. Mr. President, I am pleased to say to my good friend from Arkansas that I do support the modernization of the Red River Army Depot and that the central distribution center project is essential to ensure that the depot can continue to fulfill its role in providing timely and responsive logistical support to the Army.

The language contained in the House report, however, highlights some problems. The Army has indicated to me that they may not be able to meet all the deadlines that the report cites and have suggested some alternate dates, some as much as a year later than indicated in the House language. I am aware of the slow pace of the Army on reviewing of third-party construction and operation. I would hope this pace can be quickened, and therefore the dates suggested to me by the Army moved forward.

It is my intention to review this matter further between now and the conference and to include language in the conference report, making only such changes in the current House language as necessary to move the process along as quickly as possible. I would propose a date of July 1, 1987, for completion of the entire study.

Mr. BUMPERS. Mr. President, I am pleased to hear of the subcommittee chairman's support for the project, and like him I am concerned about the slow pace of the Army on this project. I urge the Army to expedite its handling of the study to allow construction to begin as soon as possible.

DEFENSE ACCESS ROAD FUNDING FOR U.S. 85 BETWEEN CHEYENNE AND TORRINGTON, WY

Mr. SIMPSON. Mr. President, there is an important matter on which I would request clarification. It concerns defense access road funding for

a portion of U.S. Highway 85 in my home State of Wyoming. Would the distinguished Senator from Georgia [Mr. MATTINGLY], be willing to respond to some questions of a clarifying nature?

Mr. MATTINGLY. I would be happy to respond to the Senator.

Mr. SIMPSON. I thank the Senator. It is my understanding that defense access road funding is intended to be used either to upgrade roads which are inadequate for defense needs or to pay for repairs to roads damaged by unusual defense impacts. Is my understanding correct?

Mr. MATTINGLY. The Senator from Wyoming is correct. The Nation's highway system is, of course, intended to be used for defense purposes as well as for private and commercial traffic, but any damage that is attributable to extraordinary or unusual traffic demands resulting from construction or operation of defense-related projects is the responsibility of the Military Traffic Management Command under the Defense Access Roads Program—and should be repaired and paid for out of those funds.

Mr. SIMPSON. That was also my firm understanding. There has been such an unusual impact on U.S. Highway 85 between Torrington and Cheyenne, WY, as a result of construction related to the Peacekeeper (MX) missile project. An immediate need for resurfacing approximately 20.4 miles of that highway, beginning at Torrington, has arisen because of construction traffic related to the Peacekeeper project. Overweight traffic is being generated by both construction contractors and the Air Force, and such traffic is far beyond the usual or ordinary defense use to which that highway would ordinarily be subjected. Is the present construction-related damage to this highway the type of damage that is eligible for funding under the Defense Access Roads Program?

Mr. MATTINGLY. That is correct. It is.

Mr. SIMPSON. How would these funds for the repair work then be made immediately available?

Mr. MATTINGLY. I would expect the Air Force, Department of Defense, and the Military Traffic Management Command to work cooperatively with the Wyoming Highway Department and the Federal Highway Administration to determine just how much damage is actually proven to be attributable to Peacekeeper-related construction and to then make available such funds as may be needed for repair and resurfacing necessitated by Peacekeeper-related damage through the Defense Access Roads Program, but only when that damage has been thoroughly identified and documented by the Wyoming Highway Department and other authorities.

Mr. SIMPSON. That was exactly my understanding. I very much thank the distinguished Senator from Georgia.

WALLA WALLA VETERANS ADMINISTRATION MEDICAL CENTER

● Mr. GORTON. Mr. President, I rise to express my concern over a proposal generated by the Veterans' Administration which calls for the elimination of the inpatient services currently provided at the Walla Walla Veterans Administration Medical Center.

Currently, an estimated 75,000 veterans residing in the largely rural areas of southeast Washington, northeastern Oregon, and central Idaho—54,000 of whom are from the State of Washington—rely upon the Walla Walla Veterans Medical Center to meet their health care needs. If the current 150 inpatient beds are eliminated, these veterans and their families will be forced to travel great distances in order to receive inpatient care. For many of these veterans who rely on the Walla Walla Veterans Medical Center for inpatient care—those with serious service connected disorders and countless destitute and older veterans—the elimination of the Medical Center's acute beds will effectively keep them from securing critically needed medical attention.

Mr. President, also of significance is the profound impact that this mission change will have on the economy of Walla Walla—one which is already feeling the effect of a depressed farm economy. With an annual budget of $12 billion, and a workforce of more than 300 medical and auxiliary staff, the Walla Walla Veterans Medical Center is the third largest employer in the community. In addition to its $9 million annual payroll, the Medical Center holds extensive contracts with the community for services, supplies and construction. These contracts are worth several million dollars per year to the businesses of Walla Walla. If the proposed mission change were to be implemented the result would be a loss of 40 to 50 employees and a budget reduction of more than $89 million—certainly a disastrous loss for any small community.

I first learned of the Veterans' Administration's proposal last December. Most disturbing to me is the fact that the Veterans' Administration, up to this date, has shown a great lack of consideration toward a community which is understandably distressed by the prospect of such a change in the mission of the Medical Center. Since the proposal first surfaced, community leaders and representatives of the veterans organizations have attempted to understand the Veterans' Administration's argument that budget constraints prevent continued full operation of the Walla Walla Veterans Medical Center and have attempted to work with Veterans' Administration officials to reach some accommodation that would keep the inpatient facility intact by substituting nursing home beds or other alternative services for a portion of the present inpatient beds. To date, the Veterans' Administration has largely ignored the local community's plans to be drawn into the planning process and has repeatedly refused to share pertinent data that might justify such a major change of mission.

Finally, there is a great deal of dispute over whether this proposed mission change would actually save the Veterans' Administration money. At a minimum, many of those employees who will likely be dismissed will have to be paid severance pay, the Veterans' Administration will certainly incur substantial shutdown costs and some added costs by transferring the Walla Walla Veterans Medical Center inpatient load to either local hospitals—on a contract basis—or other Veterans' Administration facilities.

I hope the distinguished chairman will consider this situation as the conferees discuss the language that was included by the House in its version of the report on the continuing resolution.

● Mr. EVANS. Mr. President, I share the views of the distinguished senior Senator from the State of Washington. I, too, have been involved in this situation for quite some time and am frustrated at the fact the Veterans' Administration has not adequately involved the community and those veterans served by the Medical Center in the planning process that resulted in this proposal.●

I join my colleague in urging that the distinguished subcommittee chairman consider inclusion of the House language in the final version of the report.

● Mr. GARN. I appreciate the fact that the Senators from the State of Washington have brought this issue to my attention. I am sympathetic with respect to the situation faced by the veterans and community of Walla Walla and will certainly keep this issue in mind as we go to conference with the House.●

ROCAP

Mr. LEAHY. Mr. President, in January 1984 the National Bipartisan Commission on Central America recommended that the United States expand its regional economic assistance programs. In response, AID requested 1984 supplemental funds and 1985 and 1986 funds totaling $378 million for programs administered by its Regional Office for Central America and Panama (ROCAP).

Because those amounts represented such a dramatic increase over the $15 million fiscal year 1984 regional program, I requested the General Accounting Office to review how these funds were being used, how ROCAP

evolved, how its projects compliment AID's bilateral programs, and whether a regional approach for AID programs was feasible given existing political and economic conditions in Central America.

The GAO published its report earlier this month, and the Subcommittee on Foreign Operations, on which I sit, has reviewed it. The subcommittee has also had an opportunity to review a report of a recent audit of ROCAP's programs by the AID regional inspector general.

While I believe other members of the subcommittee agree with me that the United States should encourage regional economic cooperation in Central America, both reports identify serious problems in the way ROCAP's funds have been administered and raise profound questions about the future role of ROCAP. Accordingly, I have prepared report language on ROCAP containing recommendations to address these problems, which I understand the subcommittee is prepared to accept.

Mr. KASTEN. If the Senator would yield, I want to thank him for his initiative in requesting the excellent report by GAO, and for bringing it and the AID inspector general's audit report on ROCAP to the attention of the subcommittee. The Senator from Vermont has once again lived up to his reputation as a tight-fisted Yankee who leaves no stone unturned in tracking down how U.S. tax dollars are spent on foreign aid.

Mr. President, ROCAP was established in 1962 to provide U.S. economic aid to support regional integration in Central America. ROCAP's activities in the 1960's supported the Central American Common Market, through which regional organizations were established to address a broad range of regional development problems, including agricultural development, management training, and the improvement of regional transportation and communication links.

Unfortunately, efforts toward regional economic integration broke down in the 1970's on account of growing imbalances in the region's economies, slowing of progress in the industrial sector, and increasing political tensions throughout Central America.

AID's emphasis on regional programs has undergone frequent questioning, reassessment and change. ROCAP's funding and staffing levels have fluctuated accordingly. In the early 1980's, AID began to place greater priority on bilateral assistance programs and in 1983 decided to phase down its regional programs, reducing its staff from 14 to 9 and allocating no funds for new regional projects in fiscal year 1984. Senator LEAHY has already explained that AID's reversal of this decision in 1984 caused him to request the GAO study.

The GAO report indicates that AID obligated $79 million for ROCAP-administered projects in fiscal year 1985, less than half of the $162 million actually obligated in that year for regional programs. The balance was obligated for projects administered by AID/Washington. The report also reveals a lack of coordination between ROCAP projects and projects administered by the bilateral missions.

The AID inspector general's audit report, which Senator LEAHY mentioned, also describes a number of serious problems and deficiencies with respect to administrative procedures, fiscal procedures and systems, internal control systems, organization, and compliance with applicable laws and regulations by ROCAP's grantees. These problems have resulted in $454,197 in questioned costs, and raise doubts about the long-term viability of certain regional institutions which are major recipients of ROCAP funds.

The subcommittee is deeply concerned about these problems, and accordingly is prepared to accept the report language which Senator LEAHY has requested. I will have this language included in the statement of managers in the continuing resolution conference report. I will also convey the subcommittee's concerns in a letter to AID Administrator Peter McPherson. I ask that the ROCAP report language be printed in the RECORD at this point.

REPORT LANGUAGE ON ROCAP

The Committee has reviewed the AID Regional Inspector General's recent report of its audit of Regional Office for Central America and Panama (ROCAP) Institutional Grantees' Economy, Efficiency and Compliance. The Report identifies a number of serious problems and deficiencies with respect to administrative procedures, fiscal procedures and systems, internal control systems, organization, and compliance with applicable laws and regulations by ROCAP's grantees. These problems have resulted in $454,197 in questioned costs, and raise doubts about the long-term viability of certain regional institutions which are major recipients of ROCAP funds. It is the Committee's recommendation that no additional funds be obligated to ROCAP until the recommendations of the Inspector General contained in the audit report are fully complied with.

The Committee has also reviewed GAO's report entitled "Questions on the Central American Regional Program Need to Be Resolved." This Report, dated September 1986, cites the ineffectiveness of some prior regional programs and raises profound questions about the role of regionalism in Central America and the need for ROCAP. While the Committee believes the United States should encourage regional economic cooperation in Central America, the GAO report reveals that half of AID regional programs are administered by AID/Washington. Accordingly, the Committee recommends that AID submit to the Congress within 90 days a report analyzing the prospects and utility of regional programs, and the management and control of these programs with AID.

Mr. President, current political and economic conditions in Central America make the successful implementation of regional programs difficult. However, as Senator LEAHY has said, the subcommittee strongly believes the United States should continue to encourage economic cooperation in that region. We urge AID to take our recommendations seriously, so that its Central America regional program will become the fiscally responsible and effective program the American people rightfully expect.

Mr. LEAHY. If the chairman would yield, I want to thank him for his kind words and for his fine leadership during a difficult year. The subcommittee was faced with the exceedingly difficult task of applying Gramm/Rudman to the foreign aid budget, without abandoning our commitment to the security of allies or our commitment to encouraging economic growth in the developing nations. I believe we have done that, and it is mostly due to the tireless work of Chairman KASTEN and the Ranking Member Senator INOUYE.

I also would like to reiterate one point Senator KASTEN made. It is not the subcommittee's purpose to eliminate ROCAP. ROCAP's goals are ones we share. But it's results have been disappointing, and in these times of severe budget cuts we want to know that ROCAP's 1987 funds will be managed wisely, and that ROCAP is the right organization to be administering these regional projects in the future.

Mr. INOUYE: If the distinguished Senator from Vermont would yield, I want to join with Chairman KASTEN in congratulating him for his efforts to see that our foreign aid dollars are fully accounted for and accomplish the purposes intended by Congress. By obtaining this GAO report, Senator LEAHY has brought to the subcommittee's attention a number of serious problems in the Central American regional program, and I fully endorse the comments of the chairman and the subcommittee's report language on ROCAP.

Mr. LEAHY: I thank the distinguished Senator from Hawaii, and appreciate his support and the support of Chairman KASTEN for including this important langauge in the continuing resolution conference report.

Mr. GORTON. Mr. President, I would like to engage the Chairman in a colloquy on three programs of great importance to the State of Washington.

First, I am concerned with the funding level for Space and Defense Power Systems, which includes space reactor development for the SP-100. The House bill contains $58.7 million for space and related defense power systems. The Senate bill cuts this pro-

gram to $37.7 million, a reduction of $21 million.

The SP-100 operating account provides the design, development and supporting technologies for compact, high performance nuclear power systems. A key element of this activity is the tri-agency—Department of Energy [DOE], Department of Defense, and NASA—SP-100 program. This program will provide hundreds of kilowatts of electric power for national security missions, such as radar and communications as well as civil missions, such as advanced space station and outer planet exploration.

The SP-100 concept selection was made in August of 1985 after 4 years of technology development, and is now entering the system design, engineering development, and ground demonstration test phase. The Hanford Engineering Development Laboratory [HEDL] at Hanford, WA, was selected by DOE as the site for the ground demonstration test. The purpose of this test is to demonstrate the safe performance of a full scale prototypic assembly for SP-100. Additional activities in the area of space power technology also are being done at Hanford. These activities primarily focus on prototypic fuel elements and material testing. It would be unfortunate if important civilian space missions are jeopardized because we failed to adequately fund the development of the technology necessary to provide sufficient electricity for space programs.

Can the chairman [Mr. HATFIELD] give assurances that he will support funding for SP-100, as close as possible to the request levels, in order to maintain the anticipated pace of this developmental program?

Mr. HATFIELD. Yes, I can assure the Senator from Washington that, while supporting the Senate level for space nuclear activities, I will make every effort to fund the SP-100 at the highest possible level to support important civilian space missions.

Mr. GORTON. Second, I would like to address funding for the Fast Flux Test Facility, referred to as FFTF. The report accompanying your Energy and Water Appropriations bill adds $6 million for facilities at the Hanford Engineering Development Laboratory and the Argonne National Laboratory West. The House report for Energy and Water adds $6 million just for the FFTF.

The full $6 million increase for FFTF is critical to sustain a meaningful technology program at the laboratory, and to avoid additional lay-offs. FFTS is a world-class civilian test facility that continues to break records and now sets the standard of reliability by which other facilities are measured. Even with the additional $6 million, the operating budget for FFTF would be $10 million below this year's level.

Given the importance of FFTF to our civilian research and development capability, will the chairman assure me that he supports the funding increase?

Mr. HATFIELD. Yes, I can assure you that I will work with other conferees, including the Senator form Idaho, Senator MCCLURE, who has an interest in this matter, to secure the highest possible funding level for the Fast Flux Test Facility. I agree with the Senator from Washington that this facility should continue operating in fiscal year 1987.

Mr. GORTON. Lastly, I would like to discuss the proposed feasibility assessment of a cogeneration facility for the Fast Flux Test Facility. The House report for Energy and Water Appropriations earmarks $5.5 million of previously appropriated Clinch River Breeder Reactor moneys to study the feasibility of a privately financed cogeneration facility at the FFTF.

The House report states that this feasibility study "should proceed promptly." The Senate report language from your subcommittee appears to support the House authorization for the study with additional conditions.

This cogeneration facility represents a wise investment, and I urge the chairman to support the project in conference. The nonnuclear cogeneration facility will be privately financed and operated by three public utilities. If found feasible, all study costs will be reimbursed to the Federal Government. This facility will generate low-cost electric power and revenues that will help offset the Federal operating funds for FFTF. The project capitalizes on our Federal investment in steam generators and other Clinch River Breeder Reactor components currently wasting away in storage. There are also substantial prospects for international cooperation for both the reactor and the cogeneration facility.

On balance, this project benefits all parties: the ratepayers, the Federal Treasury, and our valuable research and development infrastructure. The up-front study costs, which will be paid back if the project is found feasible, are an entirely appropriate use of prior funds set aside for Clinch River termination.

Accordingly, I ask the chairman if he supports DOE funding the feasibility study costs for this cogeneration project within current, unobligated moneys set-aside for Clinch River Breeder Reactor termination?

Mr. HATFIELD. As the Senator indicates, there were unobligated funds in the nuclear energy area which the committee used to offset other activities within the energy supply research and development account. The committee, however, does provide funds for additional detailed design activities for the proposed cogeneration project at FFTF under certain conditions outlined in the committee report.

This additional work should provide the department with information to determine more accurately the cost-effectiveness of the proposed cogeneration facility. After getting a firmer cost estimate and with the continued operation of FFTF, the facilities revenues should return enough funds to repay the Federal design costs.

As you know, there is a long-term surplus of power in the Northwest, particularly on the public power side. Although the committee supports moving ahead with the design, under certain conditions, we also should get a better indication from the Bonneville Power Administration on the need for this additional power and some assurance from the Department of Energy on the future operation of FFTF before further obligation of funds on the cogeneration facility. I can assure my colleague from Washington that I will give due consideration to the funding of the FFTF cogeneration project.

Mr. GORTON. I thank the chairman for his assurances and help on these matters of importance to the State of Washington.

MLRS

Mr. BUMPERS. Mr. President, I was concerned to see in the Defense appropriations bill that $34.4 million was cut out of the multiple launch rocket system [MLRS] for 20 self-propelled launcher/loaders, which were authorized by the Senate. The launcher/loaders are the heavy duty vehicles that transport and fire the MSLR rockets, our most potent nonnuclear weapon against enemy troops and their equipment massing for attack.

The MLRS is one of the biggest success stories in the Defense Department. The Army is getting a critically important battlefield weapon on schedule and within budget under a fixed-price agreement. MLRS plays a crucial role in our nonnuclear defense posture in Europe and Korea. By threatening the accurate delivery of massive firepower against troop concentrations, it will deter our adversaries from massing for attack—or make them pay a very heavy price if they do.

The reduction of 20 MLRS launcher/loaders—from 44 down to 24—would cut directly into the muscle of our fighting forces. it would delay the fielding of MLRS units in Europe and Korea and would slow down the introduction of MLRS into the National Guard. In addition, the slower production rate would result in a 10-percent increase in the price we will pay for the launcher/loaders. Accordingly, the Army has identified this MLRS cut as

one of only 13 procurement cuts that it is appealing to the committee.

I recognize the major fiscal constraints under which we must operate, but we must not allow them to mislead us into making cuts that directly weaken the cutting edge of our fighting forces. Accordingly, I intend to offer an amendment to the continuing resolution to restore this important item.

Before doing so, however, I want to inquire of my good friend and chairman of the Defense Appropriations Subcommittee how he intends to deal with this matter in conference with the House.

Mr. STEVENS. I thank the Senator for raising this issue. As my colleague is well aware, the House has cut defense even more than the Senate has. There will be a good bit of negotiations with them during which I will keep the Senator's interest in the MLRS in mind.

Mr. BUMPERS. Mr. President, I understand the circumstances of which my good friend from Alaska speaks and I would urge him to recede to the House position on this issue.

In view of this, Mr. President, I will not pursue my amendment on MLRS, and I thank the subcommittee chairman.

Mr. DIXON. Mr. President, I would like to thank the Senate Appropriations Committee for including authorizing language for the Emergency Food and Shelter Program which originated in 1983 as part of the emergency jobs bill, as well as an emergency shelter grants program and a transitional living demonstration program.

It is significant that the committee took the initiative of approving $70 million for the emergency program and $30 million for the demonstration programs. Because of the committee action, we are at the point for the first time in 3 years where a floor amendment for funds has not been necessary. This is really a step in the right direction. The most basic food and shelter needs of the homeless have been partially addressed by the Federal Government through five separate appropriations totaling $250 million since 1983. In that time, we have not had authorizing legislation beyond the immediate appropriation period. The program, operated by the Federal Emergency Management Agency and the Emergency Food and Shelter National Board, has distributed grants to 9,000 agencies in 1,500 communities. They have provided over 200 million meals at an average cost of 75 cents and over 45 million nights of shelter at an average cost of $2.25. They have turned away many of the homeless and the hungry because their resources were depleted.

The one thing that continued to surface during our discussions with the national board in drafting this measure was the great need for continuity. The Emergency Food and Shelter Program has operated for 3 years without an authorization. Those who provide the services to the homeless have depended on the Board for answers. Until now, they haven't been able to tell these service providers what would happen to future funding because the Congress has acted in the course of appropriation bills at the 11th hour when funds were exhausted.

This bill contains a 2-year authorization which I sponsored in the Banking Committee as a separate amendment. This approach will provide the continuity and ability to plan that is so greatly needed.

The homeless have needs which are greater than a bowl of soup and a night's sleep on a cot. If we are to in any way stop this vicious cycle of poverty, we must begin to address the root causes of homelessness and help to provide assistance to these people which will help them to find employment, education, permanent housing, health care, and other services designed to lead to their independence and stability. The transitional living component of the bill will begin to address the long-term needs of the homeless. The shelter grants portion of the bill will also provide some of that assistance to shelters which have been limited to addressing basic, immediate needs of the homeless. These demonstration programs will seek to establish some future directions which can be replicated across the country and finally lead to the elimination of this national tragedy.

The authorization expands the Board to include participation by the Department of Housing and Urban Development, the Department of Agriculture, the Department of Health and Human Services and an additional person who has worked to alleviate homelessness and hunger. It is my hope that this will assist the original Board participants, so capably led by the Federal Emergency Management Agency, in involving these other agencies in services to the needy.

This measure was crafted with the cooperation of several members of the Senate Banking, Housing, and Urban Affairs Committee in consultation with those who have had the experience in running the program for the past 3 years. We believe it addresses the major concerns of everyone involved.

Hunger and homelessness are the responsibility of each segment of society. The private sector, and State and local governments are already actively involved in providing services to the homeless. The Federal Government has been a reluctant participant. By authorizing a program of this sort, we have established that the Federal Government, although not solely responsible, is equally responsible for helping to alleviate the suffering of millions of Americans.

I want to thank the distinguished chairman of the HUD-independent agencies Subcommittee on Appropriations, Senator GARN, who also serves as chairman of the Banking Committee, for his cooperation in moving this legislation this year. We have had many discussions on the Senate floor during consideration of several of my appropriation amendments for the Emergency Food and Shelter Program about the need for an authorization. We both agreed the need was there, but at long last we have gotten it to the floor.

I would be remiss if I did not mention the other principal participants in developing the bill which was included in S. 2507, the Senate housing authorization bill, Senator GORTON and Senator HEINZ have both been tireless advocates for this program.

In addition, we are grateful to representatives of two national board agencies, Ellen Witman of the Council of Jewish Federations and Jack Moskowitz and Ike Fields of United Way, who have worked diligently to make sure that this legislation is enacted into law.

Finally, I would like to urge our collegues in the House of Representatives to accept this language in lieu of that which they have proposed. This program has been carefully crafted and enjoys the full support of those who are most directly involved in providing these services. Without the cooperation of the House, we will be back again next year without an authorization, and the cycle will have to be repeated. A unified approach will keep us on track and moving ahead.

AMENDMENT 3102

● Mr. MOYNIHAN. Mr. President, earlier the attention of the Senate was directed to the T-46 Trainer Program. The Air Force awarded the contract for its next generation trainer to Fairchild Republic in 1982, and the first T-46 flew last October. The program is now threatened with cancellation, a fate which would deal serious harm to the training of Air Force pilots and eliminate a long-time defense contractor as well.

The trainers being used at Air Training Command are 25 years old, older than many trainees. They are near the end of their service life. Their age and inherent limitations are resulting in too few training hours for our pilots. No one disputes that the Air Force needs new trainers soon. That is why it began the process in 1980.

Two prototypes are flying. The commander of Edwards Air Force Base described the T-46 as "a good little airplane. I'm enthusiastic about the airplane and its future as a trainer," he said. The projected fuel and mainte-

nance costs are remarkably low and will save the taxpayers much.

But the Air Force now says it does not want the T-46, even though $400 million have been spent in development and testing. It wants to rebuild 25-year-old trainers so they will last a few more years while it holds a new competition, at a total cost of $900 million. Fairchild is free to again compete for the contract it won fair and square, but it will not win. The company will not survive if its present contract is cancelled.

Why should it be cancelled? Fairchild did have production problems 2 years ago, but the commander of the Air Force Contracts Management Division says there has been a remarkable turnaround at the plant. The Air Force budget has been cut, but the cuts must not exacerbate the problem of inadequate pilot training by delaying the procurement of adequate trainers.

With Fairchild poised to manufacture the first lot of trainers, we must not squander scarce defense funds on 25-year-old aircraft so that the Air Force will have time to award the trainer contract somewhere else. Our pilots deserve the T-46 and Fairchild deserves the contract. Let them get what they deserve.●

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1820

Mr. DOLE. 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. DOLE. Mr. President, if we could have order, I will make an announcement.

The PRESIDING OFFICER. The Senate will be in order.

The majority leader is recognized.

□ 1830

Mr. DOLE. Mr. President, I am advised by the manager, the distinguished chairman of the Appropriations Committee, that there is an amendment pending which needs to be looked at by other Members on each side who are not present. There is probably not much possibility to complete that by 7 o'clock.

I would suggest that we start now on South Africa—there are no other amendments, as I understand, to be offered on the continuing resolution this evening—and we could use up some of the time.

So there will be no more votes tonight. I guess that is the announcement people are interested in.

If you want to be heard on South Africa, tonight is a good night. We will have at least 2½ hours, maybe a little more, of debate time. If it is not all used, we will not use it, of course.

I am advised by the Senator from South Dakota, Senator PRESSLER, that he would like to be the leadoff speaker. If he would come to the floor, we would be very happy to accommodate him.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. I would try to get our Senators ready.

Mr. President, I designate Mr. PELL to control the time on this side, which, under the order, would be under the control of the minority leader. Whenever Senators are available over here, we would begin.

I believe, under the order, at the conclusion of the utilization of the time for this evening, the Senate was not to debate further. I assume the majority leader would want to get an order putting the Senate out at that time. I do not intend to be here that long this evening myself.

As a word of caution at this time, I would point out that if we begin time running now, it is not supposed to begin running until under the order, the majority leader might wish to change that and also to make sure that once that amount of time has run that the Senate will go over until tomorrow.

The Senator may be here at that time, I do not know. If he is, that will be taken care of.

Mr. DOLE. I thank the distinguished minority leader.

If there is no objection, I ask unanimous consent that the time on the South African debate begin now rather than at 7 p.m.

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

Mr. DOLE. Mr. President, let me visit with the distinguished minority leader privately on what happens when the debate ends and then I will make an announcement later.

Mr. THURMOND. 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.

□ 1840

Mr. DOLE. 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. DOLE. I ask unanimous consent that the time used for the wrap-up business would not be charged against South Africa time.

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

THE CALENDAR

Mr. DOLE. Mr. President, I would like to inquire of the distinguished minority leader if he is in a position to pass or indefinitely postpone any of the following calendar items: Calendar No. 1013, Calendar No. 1022, Calendar No. 1023, Calendar No. 1024, Calendar No. 1025, and Calendar No. 1026?

Mr. BYRD. Mr. President, all of the items specified by the distinguished majority leader have been cleared by all Members on this side. We are ready to proceed.

Mr. DOLE. I thank the distinguished minority leader.

I ask unanimous consent that the calendar items just identified be considered en bloc and passed or indefinitely postponed en bloc, and that all committee-reported amendments and preambles be considered agreed to.

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

ESTABLISHMENT OF A CHILDREN'S CHALLENGE CENTER FOR SPACE SCIENCE

The joint resolution (S.J. Res. 336) to express the sense of Congress on recognition of the contributions of the seven *Challenger* astronauts by supporting establishment of a Children's Challenge Center for Space Science, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 336

Whereas the crew of the space shuttle Challenger was dedicated to stimulating the interest of American children in space flight and science generally;

Whereas the members of that crew gave their lives trying to benefit the education of American children;

Whereas a fitting tribute to that effort and to the sacrifice of the Challenger crew and their families is needed; and

Whereas an appropriate form for such tribute would be to expand educational opportunities in science by the creation of a center that will offer children and teachers activities and information derived from American space research: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that—

(1) a Children's Challenge Center for Space Science should be established in conjunction with NASA at the Johnson Space Center as a living memorial to the seven Challenger astronauts who died serving their country and to other individuals who gave their lives in exploration of the space frontier; and

(2) the Federal Government should, along with public and private organizations and persons, cooperate in the establishment of such a Center.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

COMMEMORATING THE 100TH ANNIVERSARY OF THE BIRTH OF DAVID BEN-GURION

The joint resolution (S.J. Res. 422) commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 422

Whereas David Ben-Gurion is a man of great historical importance, not only to the Jewish people but also to all people striving for freedom;

Whereas his leadership made realizable in-gathering of the exiles that brought millions of homeless Jews scattered throughout the world to Israel where they were united both with each other and with their ancient homeland;

Whereas the Declaration of Independence of the State of Israel, a milestone in the life of David Ben-Gurion, echoes the American Declaration of Independence in its recognition of the universal equality of man;

Whereas as Israel's first Prime Minister and Minister of Defense, Ben-Gurion led the newly formed state through its most difficult period, directing the desperate efforts to secure Israel's survival and independence;

Whereas his pragmatic solutions to Israel's overwhelming problems, paralleled with his desire to create a society based on justice and peace, guided the fledging state and formed the values on which Israel rests today and the basis for what Israel strives for in the future;

Whereas Ben-Gurion's vision of the Greening of the Desert through the application of science and technology continues to be an important aspect of Israel, as well as a factor that can help solve food production problems in arid regions all over the world;

Whereas 1986 marks the hundredth anniversary of the birth of David Ben-Gurion, leader of his people for two generations; and

Whereas the United States and Israel share many of the same fundamental values of democracy and freedom, and a common history of accepting immigrants from all over the globe: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress, in this the centennial of David Ben-Gurion's birth joins in the celebration of this great statesman, urges all Americans to take note of this commemoration, and applauds the David Ben-Gurion Centennial Committee of the United States of America in its work promoting the yearlong national celebration of David Ben-Gurion and his achievements.

(b) The President is authorized and requested to issue a proclamation in honor of this celebration.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

RESTORATION OF THE BYZANTINE RITE CATHOLIC CHURCH IN EASTERN EUROPE

The resolution (S. Res. 454) urging the full restoration of in Eastern Europe of the Byzantine Rite Catholic Church and of freedom of religion for the people of all captive nations, and for other purposes, was considered, and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 454

Whereas the Soviet Union, Romania, Czechoslovakia, and virtually all other Soviet-bloc Eastern European countries are parties to the Final Act of the Conference on Security and Cooperation in Europe and the Universal Declaration of Human Rights;

Whereas the Soviet Constitution provides that religious freedom is guaranteed to all and that anyone is free to adhere or not to adhere to a religious creed and that freedom of worship is guaranteed;

Whereas the Romanian Constitution provides for freedom of conscience and freedom of religion, and Romanian law guarantees full religious freedom to all citizens and states that no one may be persecuted for religious beliefs;

Whereas more than four million Ukrainians, 1,200,000 Romanians, and millions of other Eastern Europeans belong to the Byzantine Rite "Uniate" Catholic Church and cherish the principles of religious freedom;

Whereas the Government of Romania (through Decree 358 of December 1, 1948) and the Government of the Soviet Union suppressed the Byzantine Rite Catholic Church by forcing a merger with the Orthodox Church and imprisoned (1) Ukrainian Archbishop Metropolitan (Cardinal) Josyf Slipyi and all members of the Byzantine Catholic hierarchy, (2) Czechoslovakian Bishop Paul Goydych and all members of the Byzantine Catholic hierarchy, and (3) Romanian Cardinal Julius Hossu and all bishops, and members of the Byzantine Catholic hierarchy;

Whereas the Byzantine Rite Catholic Church is unique and is tied by Church law to the Pope in Rome who is recognized as head of the Church;

Whereas the Communist-controlled governments of the Soviet Union, Romania, and other Warsaw Pact nations have systematically sought to annihilate organized religions, especially the Byzantine Rite Catholic Church, by every possible means, including the imprisonment and or death of the Church hierarchy—the only Church leaders with authority to make decisions for the faithful;

Whereas no ecclesiastical document with canonical value exists calling for the dissolution of the Byzantine Rite Church, and no bishops have endorsed or agreed to any merger with the Orthodox Church, choosing instead intense suffering, persecution, and death at the hands of their captors;

Whereas even after brutal torture, intimidation, imprisonment, and threats against their families less than 40 of the considerably more than 2,000 priests in Romania submitted to the pressure of the Government of Romania and even so continue to practice their faith;

Whereas 142 Byzantine Rite Catholic monasteries and convents, 4,119 churches and chapels in Ukraine, and countless other such facilities and Church properties were seized throughout Eastern Europe, including the Romanian Catholic cathedral at Blaj;

Whereas the Byzantine Rite and Latin Rite Catholic faithful in Ukraine, Romania, Czechoslovakia, and throughout Eastern Europe continue to profess and practice their faith despite a history of persecution which includes torture, imprisonment, harassment, and threats;

Whereas Byzantine Rite Catholic bishops and priests continue to be ordained and to serve the spiritual needs of the faithful in catacomb-like secrecy;

Whereas although the Soviet Union and its satellites wish the world to think that there are no Byzantine Rite Catholics within their borders, millions remain faithful to the Holy See and are conscientious, practicing Catholics and have asked their brethren in the West to plead for their religious freedom and the restoration of their Churches; and

Whereas the Government of the Soviet Union and the governments of other Soviet-bloc Eastern European countries refuse to allow the restoration of the Byzantine Rite Catholic Church on an equal basis with other recognized religions and refuse to restore all confiscated property of the Byzantine Rite Catholic Churches: Now, therefore, be it

Resolved, That (a) the Senate hereby recognizes the continuing right of the people of Ukraine, Lithuania, Romania, Czechoslovakia, and all other Soviet-bloc Eastern European countries to have freedom of religion.

(b) The Senate hereby deplores the refusal of the Soviet Union and Romania to officially recognize the Byzantine Rite Catholic Church and the refusal of the Soviet Union, Romania, and Czechoslovakia (which allowed the restoration of the Byzantine Rite Church in 1968) to restore all Church properties and possessions.

(c) It is the sense of the Senate that the President should instruct the United States delegation of the Review Meeting of the Conference on Security and Cooperation in Europe, scheduled for November 4, 1986, to press for the full restoration of the Byzantine Rite Catholic Church and freedom of religion for the people of all the Captive Nations before the world community.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

RELEASE TO MUSEUMS OF CERTAIN OBJECTS OF THE UNITED STATES INFORMATION AGENCY

The bill (H.R. 5522) to authorize the release to museums in the United States of certain objects owned by the United States Information Agency, was considered, ordered to a third reading, read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

CONCERNING THE SOVIET PERSECUTION OF MEMBERS OF THE UKRAINIAN AND OTHER PUBLIC HELSINKI MONITORING GROUPS

The concurrent resolution (S. Con. Res. 154) concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups, was indefinitely postponed.

CONCERNING SOVIET PERSECUTION OF MEMBERS OF THE UKRAINIAN AND OTHER HELSINKI MONITORING GROUPS

The concurrent resolution (H. Con. Res. 332) concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups, was considered, and agreed to.

The preamble was agreed to.

Mr. DOLE. Mr. President, I move to consider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

□ 1850

ELECTRONIC COMMUNICATIONS PRIVACY ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar No. 700, H.R. 4952, dealing with electronic communications.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4952) to amend title 18, United States Code, with respect to the interception of certain communications other forms of surveillance, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3107

(Purpose: To insert a substitute amendment)

Mr. BYRD. Mr. President, on behalf of Senators LEAHY, MATHIAS, and THURMOND, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. LEAHY (for himself and Mr. MATHIAS, and Mr. THURMOND), proposes an amendment numbered 3107, in the nature of a substitute.

Mr. BYRD. 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:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Communications Privacy Act of 1986".

TITLE I—INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent

thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": *Provided*, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) PENALTIES MODIFICATION.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) STATE OF MIND.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 103. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) COMPUTATION OF DAMAGES.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and

outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) REIMBURSEMENT FOR ASSISTANCE.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) COMMENCEMENT OF THIRTY-DAY PERIOD AND POSTPONEMENT OF MINIMIZATION.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 107. INTELLIGENCE ACTIVITIES.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. 108. MOBILE TRACKING DEVICES.

(a) IN GENERAL.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) DEFINITION.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 109. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.—" before "Whoever" the first place it appears;

(2) by inserting "(b) NOTICE OF SEARCH.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 110. INJUNCTIVE REMEDY.

(a) IN GENERAL.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 111. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or (c), this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such interception occurs during the period

beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this Act.

(c) EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.—Section 104 of this Act shall take effect on the date of enactment of this Act.

TITLE II—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

SEC. 201. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.
"2701. Unlawful access to stored communications.
"2702. Disclosure of contents.
"2703. Requirements for governmental access.
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704 or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) EXCEPTIONS.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) BACKUP PRESERVATION.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) CUSTOMER CHALLENGES.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3 destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such infor-

mation. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access 2701".

SEC. 202. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

TITLE III—PEN REGISTERS AND TRAP AND TRACE DEVICES

SEC. 301. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.

"3121. General prohibition on pen register and trap and trace device use; exception.

"3122. Application for an order for a pen register or a trap and trace device.

"3123. Issuance of an order for a pen register or a trap or trace device.

"3124. Assistance in installation and use of a pen register or a trap and trace device.

"3125. Reports concerning pen registers and trap and trace devices.

"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service, or with the consent of the user of that service.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement

or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) DEFENSE.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices ..... 3121".

SEC. 302. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this title; or

(2) the date two years after the date of the enactment of this Act.

SEC. 303. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United

States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

Mr. LEAHY. Mr. President, not long ago, a message was transmitted by first class mail, by wire, or by some form of wireless communications link. Each had its advantages and vulnerabilities. Each was regulated by separate legislation that provided a legal framework of appropriate privacy protection of the user. It was a neat and tidy world, in which private users, common carriers, and Government knew their rights and limits.

Today, Americans have at their fingertips a broad array or telecommunications and computer technology, including electronic mail, voice mail, electronic bulletin boards, computer storage, cellular telephones, video teleconferencing, and computer-to-computer links. These technological advances are wonderful. They make the lives of individual citizens easier and they promote American business.

Unfortunately, most people who use these new forms of technology are not aware that the law regarding the privacy and security of such communications is in tatters.

The primary law in this area is the Federal wiretap statute, title III of the Omnibus Crime Control and Safe Streets Act of 1968. When title III was written 18 years ago, Congress could barely contemplate forms of telecomunications and computer technology we are starting to take for granted today. Congress could not envision the dramatic changes in the telephone industry which we have witnessed in the last few years. Today, a phone call can be carried by wire, microwave, or fiber optics. Even a local call may follow an interstate path. And an ordinary phone call can be transmitted in different forms—digitized voice, data or video. In addition, since the divestiture of AT&T and deregulation, many different companies, not just common carriers, offer a wide variety of telephone and other communications services.

In short, technology and the structure of the communications industry have outstripped existing law.

Senate bill 2575, the Electronic Communications Privacy Act of 1986 which I introduced with Senator MATHIAS and which Senators THURMOND, STAFFORD, ANDREWS and DECONCINI have cosponsored, is designed to update title III of the Omnibus Crime Control and Safe Streets Act to provide a reasonable level of Federal privacy protection to these new forms of communication.

The substitute amendment Senators MATHIAS, THURMOND, and I are offering today to the House version of the Electronic Communications Privacy Act, H.R. 4952, is the culmination of 2 years of hard work with Congressmen KASTENMEIER and MOORHEAD and their staffs on the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. We have also worked with the Department of Justice, the American Civil Liberties Union, representatives of the computer and telecommunications industry, the Federal Communications Commission, representatives of the satellite dish industry, and satellite dish owners, radio hobbyists, and technology and privacy groups. I want to thank all those people who have worked with me, with Senator MATHIAS and our staffs to make the Electronic Communications Privacy Act a better bill.

Let me describe the Electronic Communications Privacy Act briefly. It provides standards by which law enforcement agencies may obtain access to both electronic communications and the records of an electronic communications system. These provisions are designed to protect legitimate law enforcement needs while minimizing intrusions on the privacy of system users as well as the business needs of electronic communications system providers.

At the request of the Justice Department, we strengthened the current wiretap law from a law enforcement perspective. Specifically, we expanded the list of felonies for which a voice wiretap order may be issued and the list of Justice Department officials who may apply for a court order to place a wiretap. We also added a provision making it easier for law enforcement officials to deal with a target who repeatedly changes telephones to thwart interception of his communications, and created criminal penalties for those who notify a target of a wiretap in order to obstruct it.

The legislation creates a statutory framework for the authorization and issuance of orders for pen registers and trap and trace devices. It also creates civil penalties for the users of electronic communications services whose rights under the bill are violated. Finally, it preserves the careful balance governing electronic surveillance for foreign intelligence and counterintelligence purposes embodied in the Foreign Intelligence Surveillance Act of 1978. And it provides a clear procedure for access to telephone toll records in counterintelligence investigations.

Since we introduced S. 2575 in June, Senator MATHIAS and I have continued to improve this legislation, and the substitute we are offering today to H.R. 4952, the House-passed version of the Electronic Communications Act includes several important changes.

In order to address the recent Captain Midnight incident, at the request of the FCC, we added a provision to increase the penalties for the intentional or malicious interference with a satellite transmission.

We wanted to underscore that the inadvertent reception of a protected communication is not a crime. In order to do that, we changed the state of mind requirement under title III of the Omnibus Crime Control and Safe Streets Act from "willful" to "intentional."

Mr. President, as the Subcommittee on Patents, Copyrights and Trademarks prepared to markup S. 2575, Senators LAXALT, GRASSLEY, DECONCINI, GORE and SIMPSON expressed concerns about the bill's penalty structure for the interception of certain satellite transmissions by home viewers. In order to address those concerns we have completely restructured the penalty provisions of the bill for such conduct.

That restructuring is accomplished through Senator GRASSLEY's proposal which eliminates from the Electronic Communications Privacy Act, criminal penalties for the home viewing of private satellite video communications. Senators LAXALT, MCCONNELL, SIMPSON, and DENTON are cosponsors of the Grassley amendment.

The amendment is incorporated in the substitute we are offering today, and I would like to describe it briefly. The criminal penalties and civil liability provisions of chapter 119 of title 18 of the United States Code have been modified so that there is a two-track, tiered penalty structure for home viewing of private satellite transmissions when that conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

On the public side, a first offender would be subject to a suit by the Government for injunctive relief. If injunctive relief is granted, one who violates the injunction would be subject to the full panoply of enforcement mechanisms within the court's existing authority, including criminal and civil contempt. Second and subsequent offenses carry a mandatory $500 civil fine for each violation. The term "violation" in this context refers to each viewing of a private video communication.

On the private side, a person harmed by the private viewing of such a satellite communication may sue for damages in a civil action. If the defendant has not previously been enjoined in a Government action as described above, and has not previously been found liable in a civil suit, the plaintiff may recover the greater of his actual damages or statutory damages of $50 to $500. A second offender—one who has been found liable in a prior private civil action or one who has been enjoined in a government suit—is subject to liability for the greater of actual damages or statutory damages of $100

to $1,000. Third and subsequent offenders are subject to the bill's full civil penalties.

It also takes outside the penalty provisions of the Electronic Communications Privacy Act, the interception of a satellite transmission via audio subcarrier if the transmission is intended for redistribution to facilities open to the public, provided that the conduct is not for the purpose of direct or indirect commercial advantage or private financial gain. Audio subcarriers intended for redistribution to the public include those for redistribution by broadcast stations and cable and like facilities. They also include those for redistribution to buildings open to the public like hospitals and office buildings that pump in music which has been transmitted via subcarrier. As specified in the substitute, this audio subcarrier exclusion does not apply to data transmissions or to telephone calls.

The private viewing of satellite cable programming, network feeds, and certain audio subcarriers will continue to be governed exclusively by section 705 of the Communications Act, as amended, and not by chapter 119 of title 18 of the United States Code.

Mr. President, this is a very good compromise. Those Senators who originally brought these concerns to our attention, are happy with it. So are the representatives of the satellite dish owners and manufacturers.

Senator SIMON expressed concerns that the Electronic Communications Privacy Act's penalties were too severe for the first offender who, without an unlawful or financial purpose, intercepts a cellular telephone call or certain radio communications related to news-gathering. Senator MATHIAS and I have accepted Senator SIMON's amendment, and it is incorporated in the substitute. The Simon amendment reduces the penalty for such an interception of an unencrypted, unscrambled cellular telephone call to a $500 criminal fine. Unencrypted, unscrambled radio communications transmitted on frequencies allocated under subpart D of part 74 of the FCC rules are treated like private satellite video communications are under Senator GRASSLEY's amendment.

Because we have been able to reach agreement on the Grassley and Simon amendments, there are no outstanding issues to be resolved.

I would like to thank all those who have worked with us to bring the Electronic Communications Privacy Act to the point of Senate passage. First, let me thank my principal cosponsor, Senator MATHIAS and his staff, Steve Metalitz and Ken Mannella. Senator THURMOND and his staff, Dennis Shedd and Cindy Blackburn have been very helpful.

I also would like to thank Congressmen KASTENMEIER and MOORHEAD and the staff of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice, David Beier, Deborah Leavy, and Joe Wolfe. Finally, I would like to thank my own staff, John Podesta, Ann Harkins and Tom Hodson.

Mr. President, let me just remind my colleagues in closing, that since the beginning of our national history, first class mail has preserved privacy while promoting commerce. Today a wide variety of new technology is used in American businesses and American homes side-by-side with first class mail. It is high time we updated our laws to bring them in line with that technology.

Mr. LEAHY. Mr. President, I ask unanimous consent that a summary of the Electronic Communications Privacy Act be printed in the RECORD at this point. This summary was prepared by the staff of the Senate Judiciary Committee's Subcommittee on Patents, Copyrights and Trademarks. Of course, the relevant legislative history is the Senate Judiciary Committee's report on S. 2575.

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

A SUMMARY OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT

The Electronic Communications Privacy Act amends Title III of the Omnibus Crime Control and Safe Streets Act of 1968—the federal wiretap law—to protect against the unauthorized interception of electronic communications. The bill amends the 1968 law to update and clarify federal privacy protections and standards in light of dramatic changes in new computer and telecommunication technologies. Originally introduced in the Senate as S. 1667 by Senators Leahy and Mathias, and H.R. 3378 by Congressmen Kastenmeier and Moorhead, the bill has gone through a substantial revision as a result of negotiations with interested Senators and their staffs, various industry and privacy groups and the Department of Justice.

On June 11, the House Judiciary Committee unanimously reported H.R. 4952. On June 19, Senators Leahy and Mathias introduced that bill as S. 2575. On June 23, the House passed H.R. 4952. On August 12, the Subcommittee on Patents, Copyrights and Trademarks of the Senate Judiciary Committee reported S. 2575. During Subcommittee consideration some Senators expressed concern that the penalties for private viewing of certain satellite transmissions were too severe. Their concerns have been addressed by a reduction of the private and public penalties for home viewing. The bill also addresses the recent Captain Midnight incident by increasing penalties for interference with satellite transmissions.

The Justice Department strongly supports this bill. The Judiciary Committee reported S. 2575 on September 19.

Highlights of the Leahy-Mathias substitute to amend the Electronic Communications Privacy Act of 1986 follow.

Currently, Title III covers only voice communications. The bill expands coverage to include video and data communications.

Currently, Title III covers only common carrier communications. The bill eliminates that restriction since private carriers and common carriers perform so many of the same functions today that the distinction no longer serves to justify a different privacy standard.

At the request of the Justice Department, the bill continues to distinguish between electronic communications (data and video) and wire or oral communications (voice) for purposes of some of the procedural restrictions currently contained in Title III. For example, court authorization for the interception of a wire or oral communication may only be issued to investigate certain crimes specified in Title III. An interception of an electronic communication pursuant to court order may be utilized during the investigation of any federal felony.

Wire communications in storage, like voice mail, remain wire communications.

To underscore that the inadvertent reception of a protected communication is not a crime, the bill changes the state of mind requirement under Title III from "willful" to "intentional."

Certain electronic communications are exempted from the coverage of the bill including—

The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

Tone-only paging devices;

Amateur radio operators and general mobile radio services;

Marine and aeronautical communications systems;

Police, fire, civil defense and other public safety radio communications systems;

Specific transmissions via audio subcarrier;

The satellite transmission of network feeds;

The satellite transmission of satellite cable programming as defined in Section 705 of the Communications Act of 1934;

Any other radio communication which is made through an electronic communications system that is configured so that such communication is "readily accessible to the general public," a defined term in the bill.

The term readily accessible to the general public does not include communications made by cellular radio telephone systems; therefore, the bill continues current restrictions contained in Title III against the interception of telephone calls made on cellular telephone systems. However, the criminal penalty for an unlawful interception of cellular phone call and similar communications is reduced from the current five-year felony.

Under the Simon amendment that criminal penalty is reduced to a $500 fine.

The bill expands the list of felonies for which a voice wiretap order may be issued. It also expands the list of Justice Department officials who may apply for a court order to place a wiretap.

The bill creates a limited exception to the requirement that a wiretap order designate a specific telephone to be intercepted where the Justice Department makes a showing that the target of the wiretap is changing telephones to thwart interception of his or her communications.

A telephone company may move to quash an order for such a "roving tap" if compliance would be unduly burdensome.

The bill makes it a crime for a person who has knowledge of a court authorized wiretap to notify any person of the possible interception in order to obstruct, impede or prevent such interception.

Title II of the bill creates parallel privacy protection for the unauthorized access to the computers of an electronic communications system, if information is obtained or altered. It does little good to prohibit the unauthorized interception of information while it is being transmitted, if similar protection is not afforded to the information while it is being stored for later forwarding.

The bill establishes criminal penalties for any person who intentionally accesses without authorization a computer through which an electronic communication service is provided and obtains, alters or prevents authorized access to a stored electronic communication. The offense is punished as a felony if committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain; otherwise it is punished as a petty offense.

Providers of electronic communication services to the public and providers of remote computing services to the public are prohibited from intentionally divulging the contents of communications contained in their systems except under circumstances specified in the bill.

The contents of messages contained in electronic storage of electronic communications systems which have been in storage for 180 days or less may be obtained by a government entity from the provider of the system only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent state warrant.

The content of messages stored more than 180 days and the contents of certain records stored by providers of remote computer processing services may be obtained from the provider of the service without notice to the subscriber if the government obtains a warrant under the Federal Rules of Criminal Procedure or with notice to the customer pursuant to an administrative subpoena, a grand jury subpoena, or a court order based on a showing that there is reason to believe that the contents of the communication are relevant to a legitimate law enforcement inquiry. Provisions for delay in notice are also included.

An electronic communications or remote computing service provider may disclose to a non-governmental entity customer information like mailing lists, but not the contents of the communication. Disclosure of such information to the government is required, but only when the government obtains a court order, warrant, subpoena, or customer consent.

At the FCC's request, a section was added to the bill to address problems highlighted by the recent Captain Midnight incident. The bill increases penalties for the intentional or malicious interference with satellite transmissions.

The bill clarifies that telephone companies and other service providers are not civilly or criminally liable for good faith assistance to law enforcement agencies.

Civil penalties are created for users of electronic communications services whose rights under the bill are violated.

The Grassley amendment, which the sponsors have accepted, sets up a reduced penalty structure for the private home viewer whose reception of specified satellite transmissions is not for commercial gain.

The Simon amendment, which the sponsors have accepted sets up the same penalty structure for the interception of radio communications transmitted on frequencies allocated under subpart D of part 74 of the FCC rules.

The penalty structure under the Grassley and Simon amendments is:

A first offender will be subject to a suit by the federal government for injunctive relief. If injunctive relief is granted, the court may use whatever means in its authority, including civil and criminal contempt, to enforce that injunction. It must impose a $500 civil fine. In addition, the penalty for second and subsequent offenses is a $500 fine in a suit brought by the government.

Under the private civil damages provisions of the bill, the first offender may be sued for the greater of actual damages or statutory damages of $50 to $500. The second offender is subject to suit for the greater of actual damages or statutory damages of $100 to $1000. Third and subsequent offenders are subject to full civil damages under the bill.

The bill creates a statutory framework for the authorization and issuance of an order for a pen register or a trap and trace device based on a finding that such installation and use is relevant to an on-going criminal investigation.

Mr. President, just very, very briefly, this Electronic Communications Privacy Act takes into consideration the fact that communications no longer are transmitted simply by wire. Now come communications are transmitted by computer, others in digitized form, and so forth.

This amendment is designed to bring the law concerning communications not only into the 20th century, but well into the 21st century.

Mr. President, I yield to the distinguished Senator from Maryland, the chairman of our subcommittee and a cosponsor with me on this amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, today the Senate considers an important bill to enhance the privacy of Americans and update the provisions the 1968 wiretap act. The Electronic Communications Privacy Act of 1986, H.R. 4952, passed the House Judiciary Committee by a vote of 34 to 0. That bill was approved by the House by a voice vote on June 24.

The Subcommittee on Patents, Copyrights and Trademarks held hearings last fall on an earlier version of this legislation. In essence, the Electronic Communications Privacy Act responds to new developments in computer and communications technology by amending title III of the Omnibus Crime Control and Safe Streets Act of 1968—the Federal wiretap law—to protect against the unauthorized interception of electronic communications. Currently, title III covers only voice communications. The bill expands coverage of the wiretap act to include data and video communications on nearly the same basis as conventional telephone technology. In addition, the bill eliminates the distinction between common carrier communications and private carrier communications. S. 2575 extends privacy protection to new forms of electronic communications, but is careful to exempt media in which privacy is not expected, such as tone only paging devices; amateur radio services; police, fire, and other public safety radio communications systems; and many satellite transmissions, including network feeds destined for rebroadcast, and satellite cable programming as defined in section 705 of the Communications Act of 1934.

Since Senator LEAHY and I introduced the first version of this bill, S. 1667, the legislation has been substantially revised and improved. S. 2575, the companion bill to H.R. 4952, was reported by the Subcommittee on Patents Copyrights and Trademarks to the full Senate Judiciary Committee on August 12. Both the Senate and House versions of this important legislation enjoy the full support of the Justice Department, as well as major communications and computer industry groups and the American Civil Liberties Union.

Today, Senator LEAHY and I introduce an amendment to H.R. 4952 that incorporates the improvements in the bill made by the Subcommittee on Patents, Copyrights and Trademarks. This substitute amendment makes several minor and technical changes in the bill. Senator LEAHY has already placed a summary of this amendment in the RECORD. But I want to call the attention of my colleagues to the most important differences between the Senate and House versions of this important legislation.

First, the Federal Communications Commission has brought to our attention the problem they have encountered in a recent highly publicized case of "jamming" of satellite cable programming. The FCC has suggested a new provision to clarify and strengthen legal protection against deliberate or malicious interference with satellite transmissions. Senator THURMOND has suggested that this bill may be an appropriate vehicle for this important but noncontroversial change, and the subcommittee has agreed.

Second, a recurring concern throughout the consideration of this legislation has been the fear for inadvertent overhearing of electronic communications. The changes made by the House have gone a long way toward allaying this fear, but to drive the point home, this amendment provides that only intentional acts of interception—those meeting the highest standard of specific intent—can be published criminally.

Third, the Judiciary Committee has wrestled with another problem that was considered at length on the House side: Criminal liability for unencrypted radio signals, particular private satellite video transmissions.

The problem is to strike the right balance between privacy policy and the realities of physics. Individuals and businesses surely expect privacy when they participate in a private

video-teleconference or, in the case of a television network, when they transmit raw news footage via satellite by a "backhaul feed." Certainly the law ought to enforce that expectation of privacy. At the same time, the engineers tell us that home satellite dishes may be able to receive some of this material, and that for truly private communications, encryption is a viable alternative.

This amendment contains substantial barriers to imposing liability on satellite dish owners: the exemption for cable programming and network feeds, for example, and the requirement of an intentional interception. But, at the urging of Senator LAXALT, Senator GRASSLEY, and others, we have reexamined this issue. The amendment before the Senate provides a remedy for intentional interception of private video transmissions via satellite; but in a proceeding brought by the Government it would reduce that sanction to the lowest possible level—injunctive relief. It also provides for lower statutory damages in private suits involving interception of video transmissions via satellite than those imposed for other types of violations. We believe this strikes the right balance: It defines these interceptions as wrongful, but takes into account the equities on the other side of the issue. This is particularly true since these interceptions are already covered by section 705 of the Communications Act. The provisions in this legislation are in addition to any remedies that may be available to the Government or to a private party under the Communications Act.

Finally, the substitute amendment now before the Senate incorporates important changes suggested by Senator SIMON. One of those changes is the elimination of the 6-month jail term, included in the House-passed bill, for first offenders whose conduct is the interception of the cellular portion of a telephone call, when the offender has committed no act beyond listening to the contents of the call.

Many Senators have contributed to the development of this comprehensive privacy legislation. I have mentioned a few earlier in my remarks; however, I would like to take this opportunity to commend particularly the efforts of the Senator from Vermont [Mr. LEAHY] who has worked tirelessly on this proposal from its origination through its successful conclusion. In the other body, the chairman and ranking minority member of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Representatives ROBERT KASTENMEIER and CARLOS MOORHEAD, have shown exemplary leadership on this issue, and I am confident that through their continued efforts, this important and innovative bill will soon arrive on the President's desk for signature.

Mr. THURMOND. Mr. President, today, I rise in support of the amendment to H.R. 4952, the Electronic Communications Privacy Act of 1986. The Leahy, Mathias, Thurmond substitute amendment is S. 2575, the Senate companion, which has been reported by the Judiciary Committee.

As a cosponsor of S. 2575, the Senate bill, I commend Senator PATRICK J. LEAHY and Senator CHARLES McC. MATHIAS, JR., for introducing this much-needed legislation. The bill is the product of over a year's worth of negotiations and is now strongly supported by business groups as well as the Justice Department.

This legislation updates present wiretap law which currently provides privacy protection only for voice communications that are transmitted in whole or part by wire by adding new protection for certain voice communications, regardless of how they are transmitted, as well as data communications and electronic mail.

This legislation is necessary due to the changes that have occurred in communications technology since the current law was enacted in 1968. Along with providing privacy protection for new forms of technology, this bill also clarifies the procedures that law enforcement officers must follow when they seek permission for a wiretap.

When S. 2575, was first introduced and referred to the committee, it contained a provision that would make it a criminal offense to intercept satellite communications—known as backhauls—which are transmissions between a television affiliate and the network, as well as video conferences transmitted by satellite. Concern has been expressed in the committee that such a provision may unfairly subject unknowing satellite dish owners to criminal liability. This amendment responds to this concern by providing that a person must intentionally intercept such communications to be subject to penalties, and those penalties will be civil only. This amendment also contains other changes which serve to strengthen this bill.

I believe that this amendment strikes a reasonable balance between legitimate privacy concerns and the importance of Federal officials using electronic surveillance as an effective and valuable law enforcement tool. Because this needed legislation is supported by all members of the Judiciary Committee, and because I have been informed that the essence of this Senate amendment will be maintained through conference, I am willing to support this expedited process. I urge each one of my colleagues to vote for this amendment, and support the amended bill.

Mr. President, the House has passed this legislation. The Senate Judiciary Committee considered it carefully. We approved it, and the report is here now in the Senate.

Mr. GRASSLEY. Mr. President, I am very pleased with the agreements we were able to reach concerning the provisions in this bill which relate to home dish users. First, we have affirmed the right of dish users to listen to all unencrypted audio subcarriers that are redistributed by facilities open to the public. This includes subcarriers meant for redistribution by broadcast stations, cable systems, and like facilities and those subcarriers made available in office buildings and other public places. Further, we have decriminalized the private noncommercial viewing of unscrambled satellite video programming that would have previously resulted in the imposition of criminal sanctions on people who simply view television in the privacy of their own homes.

Anyone who has actually viewed programming from a satellite Earth station will find that many channels are indistinguishable from one another in terms of network, nonnetwork, backhaul, or affiliate feeds. With dozens of sporting events, for example, it is difficult to tell whether one is watching a so-called affiliate feed or a backhaul feed. Similarly, with teleconferences, there is often little difference in screen format from own own hearing or Senate floor coverage.

Finally, by decriminalizing the private viewing of most satellite televisions signals, we avoid the problem of potentially invading the privacy of these people who watch television in their own homes.

The new sections regarding home dish viewing of private unencrypted satellite video transmissions provide for injunctive relief in the case of intentional viewing of such signals. Intentional viewing means that the Earth station owner must know that he is viewing a prohibited signal and that that type of viewing is not permited under the act.

So, in this case, the applicable remedy would be injunctive relief and, upon a second occurrence, a $500 civil penalty. This would give networks and other programmers the ability to claim protection under the act without scrambling their signals. These claims would largely be a fiction under any set of circumstances: however, I cannot see imposing criminal sanctions on an innocent viewing public for the benefit of those who could scramble but choose not to.

The new satellite dish provisions would affect 1.5 to 2 million American families nationwide who receive their television programming via satellite. Satellite dish technology is especially important to rural Americans who do not have the same access to a multi-

plicity of television programming as do their urban counterparts.

I wish to thank my colleagues, Senators LEAHY and MATHIAS, and their competent staffs for their diligent work on resolving the satellite dish issues.

Mr. DANFORTH. This legislation covers some conduct that also is prohibited under section 705 of the Communications Act of 1934. Do I understand correctly that the sanctions contained in this legislation would be imposed in addition to, and not instead of, those contained in section 705 of the Communications Act?

Mr. MATHIAS. That is correct. This legislation is not intended to substitute for any liabilities for conduct that also is covered by section 705 of the Communications Act. Similarly, it is not intended to authorize any conduct which otherwise would be prohibited by section 705. The penalties provided for in the Electronic Communications Privacy Act are in addition to those which are provided by section 705 of the Communications Act.

As a general rule, conduct which is illegal under section 705 of the Communications Act would also be illegal under this bill. These supplemental sanctions are particularly important where an unauthorized interception is made for direct or indirect financial gain. This bill is designed to help put an end to such conduct.

The exception to the general rule is that we do not provide liability for the noncommercial private viewing of unscrambled network feeds to affiliated stations by the owners of home satellite dishes. Accountability for that conduct will be determined solely under section 705 of the Communications Act. The private viewing of any other video transmissions not otherwise excepted by section 705(b) could be subject to action under both the Communications Act and this legislation.

Mr. DANFORTH. So although the proposed legislation which amends title 18 of the United States Code replaces, for specified conduct, the penalty structure of the Electronic Communications Privacy Act as introduced, and substitutes a scheme of public and private remedies under title 18, am I correct that conduct prohibited by the Communications Act will continue to be governed by that Act?

Mr. MATHIAS. That is correct. Conduct which is not prohibited by the Electronic Communications Privacy Act, but which is prohibited by the Communications Act, still will be subject to the full range of remedies and penalties under the Communications Act.

Mr. DANFORTH. I thank the distinguished Senator for this clarification.

Mr. DOLE. Mr. President, has the Leahy substitute been adopted?

The PRESIDING OFFICER. No, it has not. Is there further debate?

If not the question is on agreeing to the amendment.

The amendment (No. 3107) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 4952), as amended, was passed.

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

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

The motion to lay on the table was agreed to.

REFERRAL OF S. 2575

Mr. DOLE. Mr. President, I ask unanimous consent that once the Judiciary Committee reports S. 2575, Electronic Communication Privacy Act, it be referred to the Commerce Committee for a period of 24 hours and at the end of that time, the committee be discharged, and the bill be placed on the calendar.

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

Mr. DOLE. Mr. President, I further ask unanimous consent that if a conference on S. 2575, or the companion, H.R. 4952, is necessary, that two members of the Commerce Committee be included as Senate appointed conferees, for consideration of those matters that fall under the Commerce Committee jurisdiction.

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

COMPUTER FRAUD AND ABUSE ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar 883, S. 2281, the Computer Fraud and Abuse Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2281) to amend title XVIII, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers and further purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments as follows:

(The parts of the bill intended to be stricken are shown in bold-faced brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 2281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof; and

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).".

(b) MODIFICATION OF EXISTING GOVERNMENT COMPUTERS OFFENSE.—Section 1030(a)(3) of title 18, United States Code, is amended *to read as follows*—

[(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

[(2) by striking out ", or having accessed" and all that follows through "prevents authorized use of, such computer";

[(3) by striking out "It is not an offense" and all that follows through "use of the computer."; and

[(4) by striking out "if such computer is operated for or on behalf of the Government of the United States and such conduct affects such operation" and inserting in lieu thereof "if such computer is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, if such computer is used by or for the Government of the United States and such conduct affects such use".**]**

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;".

(c) MODIFICATION OF AUTHORIZED ACCESS ASPECT OF OFFENSES.—Paragraphs (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out ", or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) NEW OFFENSES.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer without authorization, or exceeds authorized

access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

[“(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters information in that computer, or prevents authorized use of that computer, and thereby causes loss to another of a value aggregating $1,000 or more during any one year period; or]

“(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

“(A) causes loss to one or more others of a value aggregating $1,000 or more during any one year period; or

“(B) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

“(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

“(A) such trafficking affects interstate or foreign commerce; or

“(B) such computer is used by or for the Government of the United States;”.

(e) ELIMINATION OF SECTION SPECIFIC CONSPIRACY OFFENSE.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out “(1)”; and

(2) by striking out paragraph (2).

(f) PENALTY AMENDMENTS.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out “of not more than the greater of $10,000” and all that follows through “obtained by the offense” in subsection (c)(1)(A) and inserting “under this title” in lieu thereof;

(2) by striking out “of not more than the greater of $100,000” and all that follows through “obtained by the offense” in subsection (c)(1)(B) and inserting “under this title” in lieu thereof;

(3) by striking out “or (a)(3)” each place it appears in subsection (c)(2) and inserting “, (a)(3) or (a)(6)” in lieu thereof;

(4) by striking out “of not more than the greater of $5,000” and all that follows through “created by the offense” in subsection (c)(2)(A) and inserting “under this title” in lieu thereof;

(5) by striking out “of not more than the greater of $10,000” and all that follows through “created by the offense” in subsection (c)(2)(B) and inserting “under this title” in lieu thereof;

(6) by striking out “not than” in subsection (c)(2)(B) and inserting “not more than” in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting “; and” in lieu thereof; and

(8) by adding at the end of subsection (c) the following:

“(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

“(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph.”.

(g) CONFORMING AMENDMENTS TO DEFINITIONS PROVISION.—Section 1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after “As used in this section” and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting “(1)” before “the term”;

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

“(2) the term ‘Federal interest computer’ means a computer—

“(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects [such use] *the use of the financial institution's operation or the Government's operation of such computer;* or

“(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

“(3) the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

“(4) the term ‘financial institution’ means—

“(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

“(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

“(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

“(D) a credit union with accounts insured by the National Credit Union Administration;

“(E) a member of the Federal home loan bank system and any home loan bank; and

“(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

“(5) the term ‘financial record’ means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution; [and]

“(6) the term ‘exceeds authorized access’ means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or [alter.”.] *alter; and*

“(7) the term ‘department of the United States’ means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.”.

(h) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITY EXCEPTION.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

“(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.”.

Mr. DOLE. Mr. President, I move the committee amendments be agreed to en bloc.

The PRESIDING OFFICER. Is there objection to agreeing to the committee amendments en bloc? Without objection, it is so ordered.

The committee amendments were considered and agreed to en bloc.

AMENDMENT NO. 3108

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senators TRIBLE and LAXALT and ask for its immediate consideration.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. TRIBLE and Mr. LAXALT, proposes an amendment numbered 3108.

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

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

S. 2281 is amended—

1. In Section 2(b), by adding the term “(1)” before the words “to read as follows”; and

In Section 2(b), by adding at the end thereof the following new paragraph:

“(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with “It is not an offense” and all that follows through “use of the computer.”;

2. In Section 2(a), by adding at the end thereof the following new paragraph:

“(3) by striking out the term “or” where it appears at the end of section 1030(a)(2) of title 18.”

3. In Section 2(f), by adding at the end thereof the following new paragraph:

“(9) by deleting the term “(b)(1)” where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term “(b)”.”

4. In Section 2(g), by adding to the list of terms to be defined as “financial institutions” the following:

“(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934;

“(H) the Securities Investor Protection Corporation.”

5. In Section 2(a), by deleting the period at the end of paragraph (2) and inserting in lieu thereof a semicolon.

In Section 2(a), by adding at the end thereof the following new paragraph:

“(3) by adding after the term “financial institution” the following: “or of a card issuer as defined in section 1602(n) of Title 15,”.

Mr. TRIBLE. Mr. President, I want to offer a small package of amendments to S. 2281, on behalf of myself and Senator LAXALT.

This amendment will make several minor changes in the bill. The first three changes are technical in nature and do not affect the substance of the legislation. The fourth change enlarges slightly the types of financial institutions whose computers will be

protected by S. 2281, and I would like to explain this change briefly.

First, the amendment will extend the protections afforded by S. 2281 to computers belonging to broker-dealers who are registered with the Securities and Exchange Commission. A similar change has already been made by the House of Representatives in passing its computer crime bill, and this simply makes an identical change.

Second, the amendment affords protection to the securities investor protection corporation. The SIPC is charged with insuring certain securities transactions. It does for securities what the FDIC and the FSLIC do for banking transactions. I am told by the Securities and Exchange Commission that the SIPC has a liability level of roughly $1 billion. Given the Federal Government's ultimate responsibility for that debt, I believe that the computers of the SIPC should be protected. I recognize that the SIPC is not traditionally recognized as a financial institution, and I want to make clear that it will be so defined only for purposes of including it within the ambit of S. 2281.

The fifth and last amendment will protect the computers of card issuers as defined in section 1602(n) of title 15. These entities are covered under the existing computer crime statute, 18 U.S.C. 1030(a)(2). They were inadvertently omitted from coverage because of a definitonal change made by S. 2281, and the Trible-Laxalt amendment simply restores their coverage under 18 U.S.C. 1030(a)(2).

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3108) was agreed to.

Mr. THURMOND. Mr. President, I am pleased that the Senate has turned its attention to S. 2281, the Computer Fraud and Abuse Act sponsored by Senator TRIBLE.

This legislation is needed to address the real and growing danger of computer crime. Although Congress enacted a computer crime statute in 1984, that law was quite limited in scope. It provided criminal penalties only for stealing national security-related data, for trespassing onto Government computers, or for stealing computerized information on individuals' credit histories.

Because the 1984 statute was quite limited, there remains a great deal of computerized information that is wholly unprotected against computer crime. For the past 2 years, the Senate Judiciary Committee has tried to reach a consensus on how far to expand Federal jurisdiction over computer crime. The Subcommittee on Criminal Law held a hearing in October 1985, on two computer crime measures: S. 440, sponsored by Senator TRIBLE, and S. 1678, which I sponsored at the request of the administration. In April of this year, the full Judiciary Committee held a hearing on S. 2281, a revised computer crime bill sponsored by Senator TRIBLE and Senator LAXALT. S. 2281 was reported unanimously by the Judiciary Committee on June 12, 1986.

This bill will clarify the 1984 statute to make clear that acts of simple trespass by unauthorized users of Government computers are punishable. It will also proscribe acts of fraud via computer or intentional destruction of computer data. Both fraud and destruction of property will be covered by S. 2281 when they are committed against computers belonging to the Federal Government or to federally insured financial institutions. The same offenses will be covered when the crime itself is interstate in nature. Finally, S. 2281 will permit prosecution of those who traffic in computer passwords belonging to others.

Mr. President, I believe the Senate must act quickly to give Federal prosecutors the tools they need to respond to computer-related crimes. S. 2281 will accomplish that goal, and I urge its adoption by the Senate.

Mr. DENTON. Mr. President, I rise today to express my strong support for S. 2281, the Computer Fraud and Abuse Act of 1986. I am pleased to be an original cosponsor of the bill, which was introduced by my distinguished colleague from Virginia, Senator TRIBLE, whom I congratulate and commend for his leadership on this issue.

Mr. President, the explosive growth and development of computer technology in recent years has left Government and many businesses vulnerable to new and highly sophisticated forms of criminal activities. Such crimes involve the use of computers to steal from, defraud, and vandalize government agencies, banks, and other businesses, schools, and other entities whose operations depend heavily upon the use of computers.

As an American Bar Association survey revealed last year, nearly one-half of American businesses and government agencies had been the victims of computer crime during the previous 12-month period. Such crimes resulted in known financial losses as high as $730 million, a figure which does not include crimes which go unreported either because they are not detected or because companies are reluctant to disclose the vulnerabilities of their computer systems.

Especially ominous is the threat which computer crime poses to financial institutions and sensitive Government operations. Today, electronic transfers of funds among banks is routine, and computer fraud, trespass, and theft could wreak havoc in this process. Furthermore, a computer criminal who gains access to classified Government information could thereby jeopardize the national security.

The rapid evolution of computer technology has required us on several occasions to reassess the adequacy of our existing criminal statutes to deal with the novel patterns of criminal activity made possible by the widespread use of computers. For instance, in June 1985, as chairman of the Senate Judiciary Subcommittee on Security and Terrorism, I chaired a hearing on the use of computers to transmit material that incites crime and constitutes interstate transmission of implicitly obscene matter. That hearing yielded abundant evidence of various courses of criminal conduct which were difficult or impossible to prosecute under existing law because the conduct occurs, in whole or in part, through computer transmissions.

The legislation before us today, S. 2281, is intended to ensure that our criminal justice system will be equal to the task of combating these new patterns of criminal activity. The bill is designed specifically to deal with crimes spawned by the computer age.

S. 2281 clarifies and strengthens existing Federal protections against computer crime. The bill makes it clear that unauthorized access to a Government computer is a trespass offense, as surely as if the offender had entered a restricted Government compound without proper authorization. The bill also broadens Federal privacy protections for data relating to individuals' credit histories to include the computerized records of all customers—individual and corporate—of federally insured financial institutions.

The bill creates new offenses to deal with certain acts which are not now crimes under Federal law, such as theft by computer with the intent to defraud and the intentional destruction of computer property, when those offenses are committed on an interstate basis or involve the computers of federally insured financial institutions.

S. 2281 addresses computer crimes which are properly matters of Federal concern. The legislation is needed to keep our Criminal Code relevant to such criminal activities, which are made possible by the continually developing technology in the computer field. I urge my colleagues to vote for passage of this timely and much-needed legislation.

Thank you, Mr. President.

Mr. LAXALT. Mr. President, I enthusiastically support S. 2281, the Computer Fraud and Abuse Act of 1986. This bill is the result of more than 2 years of careful deliberation and review by members of both the House and the Senate Committees on the Judiciary. In this Chamber, my good friend from Virginia, PAUL TRIBLE, took the lead in seeking the

best possible means for addressing the problems posed in this country by computer crime. S. 2281 is largely his handiwork, and I am pleased to be a cosponsor of the bill.

The bill primarily does two things: First, it carefully extends Federal criminal jurisdiction to several types of conduct not presently covered by Federal law; and, second, the bill amends and adjusts several provisions of current law in order to respond to the suggestions of experts in the field and of the attorneys in the Department of Justice. S. 2281 does not represent the furthest possible reach of Federal jurisdiction in this area: it is not intended to. It is the general belief of the sponsors of this bill and of the Department of Justice that in this rapidly changing area of computer technology, the best legislative approach is to proceed cautiously, to address effectively known evils of computer misuse, and not to attempt to enact comprehensive or exhaustive computer crime legislation at this time. I fully expect Congress to continue to review the problems caused by computer fraud and abuse and to respond to them with appropriate remedies.

In this legislation, Senator TRIBLE and we on the Judiciary Committee attempted to respond to the suggestions and the advice of as many computer and legal experts as possible. We believed that computer crime legislation should be devised to deter the misuse of three sets of computers: computers owned or operated by or for the Federal Government, computers owned or operated by the Nation's financial institutions, and computer systems operating in two or more States where the law enforcement resources of State and local governments may be inadequate to address the multistate scope of the misconduct.

These three sets of computers are not treated identically. We attempted to deter misuse of Government computers as completely as possible. In the other two sets of computers, we attempted to address the most serious forms of abuse. Clearly, Congress will be open to further adjustment of the law covering these latter two sets just as Congress was willing to amend the 1984 statute in light of its practical effect.

I would like to make just one more point, Mr. President. We have tried to establish the most complete legislative history possible to provide information about the intended meaning of the legislative language before us today. The committee reports of the Senate and the House Committees on the Judiciary and the floor statements and section-by-section analyses that accompanied the introduction of S. 2281 on April 10, 1986, provide an excellent background for the new statutes. Because of the complexity of the subject matter, we wanted to be as certain as we could that the limits and the intended scope of this bill be clear to prosecutors and computer users alike. I believe that we accomplished that goal, and I thank my colleague from Virginia, Senator TRIBLE, and also the excellent chairman of the Committee on the Judiciary, Senator THURMOND, for their efforts in this regard.

In sum, I strongly support this legislation, and I urge my colleagues to do so here today. This legislation is timely and it is necessary. Senator TRIBLE and Representative BILL HUGHES should be commended for their excellent work.

Mr. TRIBLE. Mr. President, I am pleased that the Senate has turned its attention to S. 2281, a bill I have sponsored to enact new criminal penalties for computer-related crimes.

This legislation culminates several years of effort by the Congress to prevent the Nation's criminal laws from becoming obsolete, and to ensure that our criminal justice system is capable of addressing the types of offenses that have accompanied the rise of new technologies.

For some time, our criminal laws lagged behind technological innovation, specifically innovations in computer technology. Prosecutors at both the Federal and State levels have had difficulty adapting older criminal statutes—many of which were written before the advent of computer technology—to computer crimes. As a consequence, the vast array of computer data relied upon by government, businesses, and individuals has been largely unprotected against criminal misconduct.

During the past decade, many States have tackled this problem. Roughly 35 States now have some form of computer crime law on the books, including my own State of Virginia. The Federal Government, too, now penalizes some types of computer crime. Under legislation approved by the Congress in 1984, it is a Federal offense to steal national security-related data via computer, to trespass onto Government computers without authorization, or to steal data relating to individuals' credit histories.

These State and Federal actions are welcome. Yet, there remains an enormous amount of computerized data wholly unprotected against acts of theft, vandalism, and trespass. In the Government's race to protect this computer data against crime, the hour is late. Quite simply, the criminals have the technological edge.

Mr. President, it is time to dispel the notion that computer crime is a game, or a challenge to be overcome. The fact is, the computer criminal is a lawbreaker just like any other, and deserves to be treated as such.

To that end, I introduced legislation early in 1985 to strengthen Federal penalties for computer-related crime. That bill, S. 440, was the subject of hearings before the Senate Subcommittee on Criminal Law last October. Since then, I have worked closely with the Chairman of that subcommittee, Senator LAXALT, to reach a consensus on the proper scope of Federal jurisdiction over computer crime. The bill before us, S. 2281, embodies that consensus and was reported unanimously by the Senate Judiciary Committee in June.

This bill will assert Federal jurisdiction over computer crimes only in those cases in which there is a compelling Federal interest. This reflects my belief and the Judiciary Committee's belief that the States can and should handle most such crimes, and that Federal jurisdiction in this area should be asserted narrowly. To accomplish that, S. 2281 will increase the protections currently afforded computers belonging to the Federal Government, it will provide similar protections to computers belonging to federally insured financial institutions, and it will proscribe certain crimes that are$interstate in nature.

Mr. President, for the past two decadew, the United States has experienced a technological revolution.$Widespread computer use has brought a great many benefits to American business and to all of our lives. But it has also$created a new type of criminal—one who uses computers to steal,$to defraud, and to abuse the property of others.

I believe it is time for the Congress to give Federal prosecutors the tools to respond to computer crime. S. 2281 will do so, and I urge my colleagues to join me in supporting this bill.

I also want to extend my special thanks to Senator LAXALT. He has been most helpful in fashioning this legislation and in guiding it through the Judiciary Committee, and I deeply appreciate his leadership. In addition, I want to thank the other cosponsors of S. 2281 for their valuable help—Senators DENTON, ARMSTRONG, STEVENS, ABDNOR, GLENN, and DIXON.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further 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:

S. 2281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).";

(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18; and

(4) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of Title 15,".

(b) MODIFICATION OF EXISTING GOVERNMENT COMPUTERS OFFENSE.—Section 1030(a)(3) of title 18, United States Code, is amended

(1) to read as follows—

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;".

(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.";

(c) MODIFICATION OF AUTHORIZED ACCESS ASPECT OF OFFENSES.—Paragraphs (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out ", or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) NEW OFFENSES.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

"(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

"(A) causes loss to one or more others of a value aggregating $1,000 or more during any one year period; or

"(B) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

"(A) such trafficking affects interstate or foreign commerce; or

"(B) such computer is used by or for the Government of the United States;".

(e) ELIMINATION OF SECTION SPECIFIC CONSPIRACY OFFENSE.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out "(1)"; and

(2) by striking out paragraph (2).

(f) PENALTY AMENDMENTS.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out "of not more than the greater of $10,000" and all that follows through "obtained by the offense" in subsection (c)(1)(A) and inserting "under this title" in lieu thereof;

(2) by striking out "of not more than the greater of $100,000" and all that follows through "obtained by the offense" in subsection (c)(1)(B) and inserting "under this title" in lieu thereof;

(3) by striking out "or (a)(3)" each place it appears in subsection (c)(2) and inserting ", (a)(3) or (a)(6)" in lieu thereof;

(4) by striking out "of not more than the greater of $5,000" and all that follows through "created by the offense" in subsection (c)(2)(A) and inserting "under this title" in lieu thereof;

(5) by striking out "of not more than the greater of $10,000" and all that follows through "created by the offense" in subsection (c)(2)(B) and inserting "under this title" in lieu thereof;

(6) by striking out "not than" in subsection (c)(2)(B) and inserting "not more than" in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting "; and" in lieu thereof; and

(8) by adding at the end of subsection (c) the following:

"(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph.".

(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)".

(g) CONFORMING AMENDMENTS TO DEFINITIONS PROVISION.—Section 1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after "As used in this section" and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting "(1)" before "the term";

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

"(2) the term 'Federal interest computer' means a computer—

"(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects the use of the financial institution's operation or the Government's operation of such computer; or

"(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

"(3) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

"(4) the term 'financial institution' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal home loan bank system and any home loan bank;

"(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

"(H) the Securities Investor Protection Corporation.

"(5) the term 'financial record' means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;

"(6) the term 'exceeds authorized access' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter; and

"(7) the term 'department of the United States' means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.".

(h) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITY EXCEPTION.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.".

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

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

The motion to lay on the table was agreed to.

PROVIDING FOR THE REPLACEMENT OF CERTAIN LANDS WITHIN THE GILA BEND INDIAN RESERVATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to consideration of H.R. 4216, dealing with settlement of the Papago Tribe, now being held at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4216) to provide for the replacement of certain lands within the Gila Bend Indian Reservation and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

71-059 O-87-34 (Pt. 19)

There being no objection, the Senate proceeded to consider the bill.

Mr. DECONCINI. Mr. President, I am a cosponsor of legislation introduced by my distinguished colleague, Mr. GOLDWATER, S. 2105, the Gila Bend Indian water settlement legislation. The companion legislation in the House, H.R. 4216, sponsored by Congressman UDALL and Congressman MCCAIN, passed the House on September 16, 1986. That legislation is being held at the desk in the Senate and like my colleague from Arizona, Mr. GOLDWATER, I ask that the House bill, H.R. 4216, be considered and passed by this body in lieu of S. 2105.

The Gila Bend Indian water settlement will settle all claims of the Tohono O'Odam Nation against the Federal Government for the harm caused to the Gila Bend Reservation as a result of the operation of Painted Rock Dam, a Corps of Engineers structure. Repeated flooding of the Gila Bend Reservation from the operation of the Painted Rock Dam has literally rendered the tribal lands within the reservation useless for agricultural purposes. Additionally, there has been a very high incidence of disease such as hypertension and kidney disorders because of the high salt content in the drinking water. Many believe this is attributable to flooding of lands in the entire Gila Bend area.

The Tohono O'Odam Nation has suffered both economically and psychologically because of the failure of the Federal Government to take action which could remedy this situation. As the trustee for Indian lands and people, the Secretary of the Interior has a responsibility to see that those residing in Indian country do not continue to suffer. This legislation will remedy the longstanding problems associated with the construction of the Painted Rock Dam.

The Gila Bend Reservation was established by President Chester Arthur in 1882 for the Papago Indians—currently known as the Tohono O'Odams—living in the Gila Bend area. Presently there are about 800 tribal members living in an area of approximately 10,297 acres. In 1949, the Secretary of the Interior approved an economic development plan for the Tohono O'Odam Nation which included the irrigation of 1,200 acres of farmland on the Gila Bend Reservation. About 3 months after the Papago Development Program was published, the Secretary of the Interior approved a request by the U.S. Army Corps of Engineers to construct a flood control dam on the Gila River 10 miles downstream of the Gila Bend Reservation. Before construction of the dam could take place, the corps had to obtain a flowage easement of 7,700 acres of reservation land from the Papago Tribe. However, prior to the tribe agreeing to the taking of its reservation land for a flowage easement, the corps went ahead with the construction of the Painted Rock Dam and completed the structure in 1960. At that time, the corps and the BIA indicated that there would be infrequent flooding of the reservation lands that would not impair the tribe's ability to farm the land within the flowage easement.

Three years later, the U.S. Geological Survey, after conducting an investigation of water supply and irrigation potential in the Gila Bend area, concluded that full operation of the Painted Rock Dam would inundate the entire Gila Bend Reservation. Consequently, the first major flooding of the reservation occurred in 1978-79 and reoccurred in 1981, 1983, and 1984. Each time the extent and duration of the flooding was much greater than anticipated when the dam was authorized. Eventually, the reservation became unusable for economic purposes. Dense salt cedar from the flooding grew larger, and the reservation lost all productive capacity.

Recognizing the economic difficulties facing the Tohono O'Odam Tribe because of the flooding, the Congress, when it enacted the Southern Arizona Water Rights Settlement Act of 1982, authorized the Bureau of Indian Affairs to conduct a study of the reservation and directed the Secretary of the Interior to find suitable lands for a tribal reservation. The BIA completed its study in October 1983 and found that because of repeated flooding, silt deposition and salt cedar infestation, the Gila Bend Reservation has become unusable. The Secretary's search to find suitable Federal lands to replace the reservation lands from within a 100-mile radius of the reservation proved unsuccessful. After many discussions with the Department of the Interior and attempts at negotiations for a settlement, the tribe came to Congress with a proposed legislative settlement. That settlement, although subtantially modified from the earlier proposals, is now embodied in the provisions of H.R. 4216.

The Gila Bend settlement will allow the Tohono O'Odam Nation to locate and develop 9,880 acres of replacement land to be held in trust by the Secretary of the Interior. The Federal Government will provide the tribe with $30 million plus interest for the purpose of obtaining replacement lands, $10 million will be made available to the tribe each year over a 3-year period. The replacement lands will be found in Arizona by the tribe but must be outside the corporate limits of any city or town and outside the boundaries of the counties of Maricopa, Pinal, and Pima. In exchange, the tribe will assign all rights to the 9,880 acres of land comprising the Gila Bend Reservation to the United States and waive all claims against the Federal Government for harm suffered by the tribe and its members. If private lands are acquired by the tribe, the Secretary of the Interior shall pay in-lieu taxes to the local governments.

While this may seem a large amount of money in these times of spiraling deficits, I am convinced that it will save the taxpayers millions of dollars in the long-run in litigation and lengthy court time. It will allow the Tohono O'Odam Nation to find suitable replacement lands and develop those lands for the economic well-being of its tribal members. It will also release the Government from any tribal claims to water from the Gila River. It is a fair and just settlement that has been hammered out by the tribe, Mr. UDALL and Mr. MCCAIN, and one which I feel is in the best interest of the tribe and the Federal Government.

I support H.R. 4216 in its present form and urge its adoption by the full Senate. Over 3 years of work have gone into this settlement and Congressman UDALL and Congressman MCCAIN have contributed substantially to bringing about this settlement. Additionally, Mr. Michael Jackson, professional staff of the House Interior Committee, as well as other staffs, have spent a great deal of time on trying to develop a fair and reasonable settlement. I want to thank my colleagues and the staffs involved for forging a compromise which is acceptable to this Senator.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4126) was ordered to a third reading, was read the third time and passed.

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

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

The motion to lay on the table was agreed to.

PROVIDING FOR THE SETTLEMENT OF CERTAIN CLAIMS OF THE PAPAGO TRIBE OF ARIZONA ARISING FROM THE CONSTRUCTION OF THE TAT MOMOLIKOT DAM

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 4217, dealing with certain claims of the Papago Tribe being held at the desk.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 4217) to provide for the settlement of certain claims of the Papago Tribe

of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and is open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4217) was ordered to a third reading, was read the third time and passed.

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

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

The motion to lay on the table was agreed to.

STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT AMENDMENTS

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3773.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendments of the Senate to the bill (H.R. 3773) entitled "An Act to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Fuqua, Mr. Walgren, Mr. Lundine, Mr. Lujan, and Mr. Boehlert be the managers of the conference on the part of the House.

Mr. DOLE. Mr. President, I move that the Senate insist on its amendments and agree to the conference requested by the House and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. DANFORTH, Mr. GORTON, Mr. PRESSLER, Mr. HOLLINGS, and Mr. RIEGLE conferees on the part of the Senate.

PROVIDING FOR A TEMPORARY EXTENSION OF THE INTERSTATE TRANSFER DEADLINE FOR THE H-3 HIGHWAY

Mr. BYRD. Mr. President, on behalf of Mr. INOUYE, I ask unanimous consent that S. 2900, which is at the desk, be called up and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2900) to provide a temporary extension of the interstate transfer deadline for the H-3 highway

The PRESIDING OFFICER. Without objection the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and 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 (S. 2900) was ordered to be engrossed for a third time, was read the third time, and passed as follows:

S. 2900

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Subsection 103(e)(4) of title 23, United States Code, is amended by inserting the following new sentence after the third sentence: "With respect to any route which on the date of enactment of the Federal-Aid Highway Act of 1978 was under judicial injunction prohibiting its construction, the Secretary may approve the withdrawal of such route only until ten days after the final legislative day of the 99th Congress of the United States."

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

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

The motion to lay on the table was agreed to.

BILL HELD AT THE DESK—H.R. 5554

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 5554, a bill dealing with credit unions, it be held at the desk pending further disposition.

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

BILL HELD AT THE DESK—H.R. 5564

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 5564, to amend the National Housing Act, it be held at the desk pending further disposition.

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

BILL HELD AT THE DESK—H.R. 5488

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House, 5488, to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, it be held at the desk pending further disposition.

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

BILL HELD AT THE DESK—H.R. 4917

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 4917, Depository Institutional Examination Improvement Act, it be held at the desk pending further disposition.

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

□ 1900

BILL HELD AT DESK—H.R. 4823

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 4823, dealing with immigration and nationality, it be held at the desk pending further consideration.

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

BILL HELD AT DESK—H.R. 5558

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 5558, to amend the Immigration and Naturalization Act, it be held at the desk pending further disposition.

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

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I inquire of the distinguished minority leader if he is in a position to consider either or both of the following nominations on the Executive Calendar: Calendar No. 1049, William R. Graham, and Calendar No. 1050, Dale D. Myers.

Mr. BYRD. Mr. President, there is no objection on this side to the consideration of either of the two nominations referred to by the majority leader.

Mr. DOLE. I thank the minority leader.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the two nominations referred to.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

Mr. DOLE. Mr. President, I ask unanimous consent that the two nomi-

nations be considered en bloc and confirmed en bloc.

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

The nominations are considered and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

EXECUTIVE OFFICE OF THE PRESIDENT

William R. Graham of California, to be Director of the Office of Science and Technology Policy, vice George A. Keyworth II, resigned.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Dale D. Myers, of California, to be Deputy Administrator of the National Aeronautics and Space Administration, vice William Robert Graham.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediatley notified that the Senate has given its consent to these nominations.

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

Mr. DOLE. I move to reconsider the vote by which the nominations were confirmed en bloc.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to legislative business.

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

ORDERS FOR TOMORROW

RECESS UNTIL 8:30 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 8:30 a.m. on Thursday, October 2, 1986.

The PRESIDING OFFICER (Mr. HELMS). Is there objection? Without objection, it is so ordered.

PERIOD FOR ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that, following the recognition of the two leaders under the standing order, there be a period for the transaction of routine morning business not to extend beyond the hour of 9 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

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

PROGRAM

At 9 a.m., the Senate will resume consideration of House Joint Resolution 738, the continuing resolution.

By a previous unanimous-consent agreement, at 2:15 p.m., the Senate will resume debate on the veto message to accompany the South Africa bill. At 4 p.m., a vote will occur on the question "Shall the bill pass, the objections of the President to the contrary notwithstanding?"

Following the vote on the veto message, the Senate will resume consideration of the continuing resolution. I am advised by the distinguished chairman [Mr. HATFIELD] that votes will occur throughout the session on Thursday and a late night is expected.

□ 1910

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, earlier I had asked unanimous consent that the debate on South Africa start at 6:30. I would amend that request, that it start at 7:10, so that none of that time between 6:30 and 7:10 will be charged against either side.

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

Mr. DOLE. And then I would ask unanimous consent that at the hour of no later than 11:15 p.m., after the debate on the South African veto, and debate only, the Senate stand in recess until 8:30 a.m. on Thursday, October 2, 1986.

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

Mr. BYRD. Mr. President, I just want to make doubly sure. Under the orders this time is to be allocated for the purpose only of debate, and even if the time were to run out and there were 5 or 10 minutes somewhere loose, no motion could be made this evening; am I correct?

Mr. DOLE. That is correct.

Mr. BYRD. No motion, nothing but debate.

Mr. DOLE. Debate. And I would also indicate, if we conclude debate by 9:30, we could leave at 9:30.

Mr. BYRD. What was the hour, the latest hour?

Mr. DOLE. 11:15.

Mr. BYRD. 11.15. I thank the majority leader.

COMPREHENSIVE ANTI-APARTHEID ACT OF 1986—VETO MESSAGE

The PRESIDING OFFICER. The Senator from South Dakota [Mr. PRESSLER] is recognized under the previous order.

Mr. PRESSLER. Mr. President, I open this debate on the South African question with the strongest feeling that the President of the United States is right. I know this vote that we will be taking tomorrow is viewed by many as a civil rights vote domestically, and that is unfortunate, because we must submit the South African question to the rigorous analysis of a foreign policy vote and not have it be interpreted merely as a domestic civil rights vote.

Certainly, we are all very interested in civil rights. We all want to see apartheid ended, and I know that the President of the United States wants to see apartheid ended. It is a matter of how to accomplish that end.

It is my personal feeling that economic sanctions will prolong apartheid. I am supported in this belief by Mrs. Helen Suzman, one of the harshest critics of apartheid in South Africa over the last few decades. I refer you to her excellent article in the Sunday New York Times Magazine in August. In this debate there are some who have taken a rather sanctimonious approach and have said that apartheid is so bad; therefore, let us have economic sanctions. It is bad, and it should be changed, and let me make it very clear that I have never suggested that apartheid should not be ended. I am convinced that this country should send as many signals as it can to end apartheid in South Africa, but it is my strongest conviction that economic sanctions will not accomplish that. It is also my strongest feeling—and I agree with Margaret Thatcher—that economic sanctions could certainly be counterproductive in this particular area of the world.

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

Mr. PRESSLER. I would rather give my presentation. I have a statement regarding the Executive order, but if the Senator's question is a brief question——

Mr. KENNEDY. I do not want to interrupt the Senator's presentation. I would hope, listening to him at the outset talk about the questions of sanctions, perhaps the Senator would distinguish his own position in opposing sanctions in South Africa and his supporting this President on sanctions in Nicaragua or supporting economic sanctions against Libya or against countries in Eastern Europe such as Poland. If the Senator has supported economic sanctions in those circumstances, I would hope——

Mr. PRESSLER. I appreciate very much——

Mr. KENNEDY. As he expressed his view, I think it would be valuable for those of us who take a different position if he would be able to spell out the reasons and the justifications for it.

Mr. PRESSLER. I shall be happy to do so. In fact, ironically enough, I have opposed sanctions in many cases including the grain embargo and in many other areas, but I will be getting into that later in my speech. I am going to present the material that I have and I will be delighted to engage in debate, but I do want to read from the President's Executive order. I do want to state my case and I will be listening to my colleagues later and I very much appreciate their interest.

MORALITY REQUIRES REFLECTION—NOT IMPULSE

The greatest religious and social philosophers over the past 2,000 years have emphasized that theme on every major issue requiring rigorous thought. I hope we can give equal care to this major foreign and domestic issue currently facing the United States: South African sanctions.

It seems to me that morality—true morality—requires reflection, not impulse.

There is nothing inherently just in provoking unemployment, confrontation, and bloodshed in South Africa, yet we would surely do all these things by passing this legislation.

By the same token, there is nothing moral in punishing those we seek to help. This bill does this in dozens of ways.

Morality in our Western tradition is not rooted in pious preaching. It is based on reason and vindicated by example. If we truly care about the plight of South Africa, then we must exercise reason and act compassionately. Let us not be like the hypocrites of Biblical times. Let us, then, do what is right and not what is simply pious and expedient.

I know that there is ample pressure to take quick and forceful action and that an easy answer might be to acquiesce to that pressure. I do not believe, however, that precipitous action in the Senate to override the President's veto is in the best interests of the United States, of South Africa, or of the region.

There are three basic assumptions that we have been operating under that are wrong in terms of the way the media has reported the South African issues and in terms of the way that the issues have been framed by those who support economic sanctions.

First of all, there is an assumption that economic sanctions will force the Botha government to move to the left. Based on my visit to South Africa and based on my participation in hearings, it is my feeling that the Botha government would in fact, move to the right. The main political threat to the Botha government comes from the right, not the left. I think that the South African Government would become more repressive and that apartheid would be ended in a much slower manner if we had harsh, punitive economic sanctions.

A second assumption that is thrown about in our media and in our discussions is that the civil rights movement in the United States in the 1950's and 1960's is analogous to what is going on in South Africa. There are some analogies, but there are many differences. For example, there is a great deal of difference in the philosophy of the Oliver Tambos of South Africa and of Martin Luther King. The African National Congress is engaged in the "necklacing" of people; that is, putting a tire around their necks, filling it with gasoline and lighting it as a means of execution of those, usually other blacks, who do not agree with them. Moderate blacks are being executed by the blacks of the African National Congress. That is quite a different philosophy. The African National Congress is not interested in democracy and free elections. When it comes to power, if ever it does, we will see a totalitarian Communist state. We should realize what we are dealing with and take a very careful look at the African National Congress.

A third assumption we are operating with is that it is believed by many that the conflict in South Africa is the whites versus the blacks.

It is much more complicated than that—I have a map of South Africa here that I hope to refer to later in this debate—in South Africa there are many competing groups: The Afrikaners, the whites of Dutch descent; those of English descent, so-called coloreds; those of Asian descent; and upwards of a dozen separate black groups.

Mr. DOLE. Mr. President, I wonder if the Senator from South Dakota will yield for a question.

Mr. PRESSLER. Yes, I yield to the majority leader.

Mr. DOLE. I have heard reports the last several days, reliable reports that the South Africans were about to announce that they would, if sanctions are imposed, which I think is one of the consequences we ought to consider, immediately stop buying American grain, wheat, and corn. I assume that is a matter that everyone will consider tomorrow when they vote on whether or not to sustain the President's veto. But they have bought in the past substantial quantities of wheat and corn from the United States.

□ 1920

I am not suggesting that that in itself should make the difference, but I do believe it makes the point that if we are going to impose sanctions in excess of what the President suggests, there may be some consequences that people in our States, farmers, will have to deal with.

Mr. PRESSLER. I appreciate the majority leader's statement. I certainly would not vote with the President solely for that reason.

Mr. DOLE. No.

Mr. PRESSLER. That point leads to another point, and that is that if the economy of South Africa is destroyed, it would not be able to buy anything from the United States or from our allies. They pay cash for corn and wheat. They also affect the economic stability of Mozambique and all the other surrounding States in the region. Most of the commerce for the entire region moves in and out of South Africa. Oddly enough, with all the problems that South Africa has, people want to emigrate from those countries into South Africa, where there is a higher standard of living, higher medical care, and much better wages—not to mention hundreds of thousands of jobs that the region cannot produce or sustain.

In my visit to South Africa, it seemed to me that the groups most against apartheid were the businessmen. They have a constructive impact on the government. Yet, with this sanctions bill, the businessmen groups would be destroyed. Such damage to the business sector would be extremely serious, for they provide key services to the people, and they buy and sell and provide the highest standard of living in Southern Africa, if not in Africa.

We should think about that, because if the South African economy is destroyed it will be exactly what the African National Congress wants. They want chaos in South Africa, and we will be forced to mount a massive aid program to feed people in that region of the world—if these sanctions are carried out to the fullest extent. South Africa will not be able to buy anything, if the full wishes of those on the other side, those who advocate these sanctions, are carried out.

Mr. DOLE. I certainly share the views expressed, for the most part, by the Senator from South Dakota. I agree that this would not be enough in itself. I think we should be alert that things will go forward from what we do. Maybe it should make no difference. Maybe we have made a judgment that no matter what happens, this will not wreck the American farm economy. No one will believe that. But I believe we should be fully aware of that when we make the judgment that we are going to go beyond what the President of the United States may recommend; and I must say that I think his letter outlines a rather stiff policy so far as South Africa is concerned and so far as apartheid and the Botha government are concerned.

When we start going beyond that—and they do not care for what the President has done, either—then we may be asking for some problems that we are not aware of.

Mr. PRESSLER. I say to the majority leader that I do have the President's letter to the majority leader, and I shall be reading the President's proposed steps, which I think send a clear signal that they will not destroy the economy of that country in such a fashion that would just lead to chaos—as this bill clearly would.

(Mr. WALLOP assumed the chair.)

Mr. HELMS. Mr. President, will the distinguished Senator from South Dakota yield to me briefly?

Mr. PRESSLER. I yield for a question.

Mr. HELMS. I am not sure I can handle it with a question. I suggest that the Senator ask unanimous consent that he yield for a further comment about the distinguished majority leader's comments.

Mr. KENNEDY. Mr. President, reserving the right to object—and I do not want to object to exchanges——

Mr. HELMS. I will ask the Senator a question, rather than engage in a discussion with the Senator from Massachusetts.

Mr. PRESSLER. I yield.

Mr. HELMS. Is the Senator from South Dakota familiar with the history of purchases of United States wheat and feed grains by South Africa?

Mr. PRESSLER. I am generally aware, but I would appreciate it if the chairman of the Agriculture Committee would insert that.

Mr. HELMS. Is the Senator aware that in 1982 and 1983, for example, it was about 200,000 tons of corn; in 1983 and 1984, 2,700,000 tons of corn; 900,000 tons of corn in 1984 and 1985; 300,000 tons of wheat in 1985 and 1986; and that South Africa had contemplated going even higher than that in 1987 and thereafter?

As a matter of fact, is the able Senator from South Dakota aware of the article in Wednesday, September 17, 1986, Journal of Commerce, headed "S. Africa Likely to Become Major Mart for U.S. Wheat"?

It is a very enlightening analysis of what some in Congress and elsewhere are doing to shoot the U.S. farmers in the foot, people who so selectively raise their indignation. Many of the people who are so piously indignant about South Africa, seldom have a mumbling word to say about Communist countries. As a matter of fact, they object to sanctions against Nicaragua, for example, but insist on sanctions certain to create chaos in South Africa.

I have heard Libya mentioned on this floor this evening, about Libya, a non sequitur if ever one was ever uttered in this Chamber.

If the Senator will yield further for a question, is he aware of this paragraph in the article published by the Journal of Commerce? It reports that South Africa will need to import between 19 million and 37 million bushels of wheat in 1987, and that if South Africa were to buy the 37 million bushels from the United States, it would become the fifth or sixth largest customer for wheat produced by United States farmers?

I say to the Senator from South Dakota that the Foreign Minister of South Africa this afternoon called me, and several other Senators, including the distinguished ranking minority member of the Agriculture Committee, Mr. ZORINSKY. The Foreign Minister said that until this point, his Government had been able to reason with the farmers of South Africa, who are indignant about the actions of the United States Congress with respect to sanctions. They resent this intrusion into the affairs of their country. Therefore, they were able to proceed with the purchase of U.S. grain. But he said to me: "Senator, I can't hold them off any longer. We'll have to announce that we must cease to purchase U.S. grain from the United States if the President's veto is overridden."

I thank the Senator for yielding.

Mr. PRESSLER. I thank the Senator.

Mr. KENNEDY. Let me——

Mr. PRESSLER. I will not yield further at this time.

Mr. KENNEDY. I understand that you yield to certain ones and not to others, even on this issue. I am trying to find out whether we are going to debate tonight.

Mr. PRESSLER. I do not yield.

The PRESIDING OFFICER. The Senator from South Dakota has the floor.

Mr. PRESSLER. Mr. President, let me continue by saying that another assumption about South Africa is that if there were a civil war there, it would be strictly blacks against whites. The situation is much more complex. There is a colored minority. There is an Asian minority. There is Chief Buthelezis, tribal group, the Zulus. He is the leader of the largest black political party in South Africa, and he is opposed to sanctions, and he is a black leader elected by the largest black political party in South Africa: InKatha.

□ 1930

We do not hear much about this in our news media, and I think that the Senate of the United States should be aware of it.

Also, Mrs. Sussman, who is a liberal Member of Parliament and a strong opponent of apartheid, has written an indepth article stating our oppositions to sanctions. It argues persuasively that sanctions will probably cause apartheid to last longer.

There is also an assumption that the current Government of South Africa will cut and run, so to speak. That is not my judgment at all. In fact, under the kind of pressure that people are talking about, I think it would become more repressive. I should mention again that I am not a supporter of that Government. I think that there is a need for reform and improvement in that country as there is in many other countries.

(Mr. HELMS addressed the Chair.)

Mr. PRESSLER. So, I urge my colleagues to listen to the eight reasons why I will support the President in sustaining his veto. I find these arguments extemely convincing, and I suspect my colleagues will also. Let me add that there has been much discussion today since the President is going to Iceland to meet the Soviet leader, and that he should be given a victory here to show he is in charge of foreign policy. That is certainly true. But that is not the underlying reason that I take the position that I am taking.

Also, there is talk that South Africa will buy more wheat from us, and so forth. That is important and we need to consider that, I come from a farm State; but, that is not the basic reason why I am supporting the position that I am today.

I am supporting the President because I believe he is right in this case. It was the same position that I took in the Foreign Relations Committee and the same position I took on the Senate floor long ago.

Let me summarize for you the eight reasons I have for supporting the President.

Let me say, first, that I very much admire the grace with which Senator DOLE has approached this very difficult situation. I thank him for the attention and consideration he has given to all on both sides of this issue and I think he has done an excellent job.

I would also say that I have the greatest respect for my esteemed colleague, Senator LUGAR, and I value the contributions he has made as our chairman, but I find myself in disagreement with him on this particular issue.

I have been a persistent opponent of apartheid throughout my entire career in Congress, and I remain a strong opponent of apartheid.

However, we must consider that if we do not sustain this veto I am convinced that the legislation will harm America's interests and will cause great suffering for nonwhites in South Africa. This legislation is also likely to wreak havoc with the economies of South Africa's neighbors. Similarly, while we are struggling for the most sensible and useful policy, I hope that we will not take steps that would undermine our constitutional powers and the time-honored relationship between the President and Congress.

Specifically, there are eight serious problems that I see with this legislation.

1. PUBLIC OPINION HAS BEEN MISREPRESENTED

First, pubic opinion has been misrepresented. No matter how great our concern, Congress cannot micromanage foreign policy. I know that there is ample pressure to take quick and forceful action and that an easy answer might be to acquiesce to that pressure. However, I also know that public pressure is not overwhelming. As I mentioned, 70 percent or more of the American public has consistently stated in opinion polls that they do

not support punitive economic sanctions that would damage the South African economy and take away nonwhite jobs. Similarly, opinion polls taken of South African blacks consistently show that they do not support sanctions if sanctions mean that they will suffer economic hardships.

If the American public has not pressured Congress for punitive economic sanctions, and punitive economic sanctions are not wanted by the poor blacks in South Africa who would suffer, what right do we have to destroy that economy and throw those blacks out of jobs?

2. FURTHER SANCTIONS WON'T BRING DEMOCRACY

Second, further sanctions will not bring democracy. My second reason for supporting the President's veto concerns the logic and morality issues that I spoke about earlier. Proponents of sanctions assume that further economic sanctions will force the Pretoria government to cede power. I am convinced that that is a dangerous assumption, one that is simply not borne out by the facts.

Anyone who really knows the Botha government and has seen the massive South African military machine and its all-pervasive secret police knows that the South African Government will not be economically pressured into ceding power. More likely, in fact, another scenario: inflation in South Africa would rise, unemployment becomes crushing for nonwhites, security is tightened, repression is enhanced, and violence is heightened. That is what I think would happen. Mrs. Sussman, by the way, takes a similar view.

I cannot be responsible for such an immoral fiasco of a pious policy. Anyone who charges that harsh punitive actions are the only moral course of action open to America is dead wrong. Indeed, the President of the United States has proposed an alternative course, which I think is much better.

The truly moral action is a far harder one to undertake, because it means permanent engagement of an active sort. It means devising positive inducements, harsh diplomacy, and active negotiations, not simply washing one's hands and doing economic murder from 10,000 miles away. The United States should not and must not induce more violence in South Africa.

3. SANCTIONS WILL ELIMINATE BLACK JOBS

Third, sanctions will eliminate black jobs.

The third reason why I will support the President is a very basic one. Frankly, I am worried about putting more nonwhites out of work, and the resulting violence that is bred among hungry people with no jobs. Thousands have already lost their jobs over the last 18 months as the South African economy has suffered blow after blow: Bans on major bank lending, Western sanctions, and a crisis in the investment climate.

I am also worried that those who assert that new sanctions will not hurt many blacks are deceiving themselves.

Let me set the problem up as a logical argument: If sanctions will not hurt, why impose them? If they will cause great damage, then we must detail the cost: in jobs loss, educational expenditures cut, and more people starving. Very few of those who support sanctions have ever bothered to vigorously count the consequences of their actions.

Where is their moral accountability to match their moral fervor? I think that that is something we need to think about very much.

Everybody says we have to do something; let us put sanctions on. But, have we vigorously analyzed what the results will be? Have we really carefully looked at the impact that this will have on the poorest people in that country, the people whom we would like to help out?

4. SANCTIONS WILL HEAVILY DAMAGE SOUTH AFRICA'S NEIGHBORS

Fourth, sanctions will heavily damage South Africa's neighbors. Look at the map here. I think that the countries that would be most hurt will be Zimbabwe, Mozambique, Botswana, Swaziland and Lesotho among others throughout the southern African region.

I predict that if we do go along this path of putting economic sanctions on, the time will come when the United States will be called upon for a massive aid program. It will be our fault, so to speak, because the region will not have a viable transportation system, the people will not have food or medical supplies. These harsh economic realities we will be creating, and imposing on people, are something that should be considered in a vigorous analysis of the results of economic sanctions.

The fourth reason why I support the President is as I mentioned, the fact that sanctions will heavily damage the whole region in terms of its economic ability to take care of its people.

This is another terrible cost to these sanctions that most of those who wish to impose sanctions discount. These sanctions will cause long-term structural damage throughout southern Africa.

Southern Africa is the most closely interrelated economic system in the world. South Africa's 10 immediate neighbors and its 90 million people are directly dependent upon South Africa for telecommunications, passenger and export rail transport, many key road transport systems, legal or illegal employment of approximately 1.5 million people, food shipments, agricultural assistance, health care, and animal disease control.

I might add that when I was in Zimbabwe, it was pointed out to me that the only place one can fix a jet aircraft engine in the region is in South Africa. This is just an illustration, but if that economy is destroyed, what effect will it have on medicine, food supply, and telecommunications?

In addition, South Africa coordinates the customs systems of three states in the region and is directly or indirectly responsible for more than 50 percent of the GNP of five neighboring states. We should think very carefully about that. It is directly or indirectly responsible for more than 50 percent of the GNP of five neighboring African states.

During the sanctions debate in the Foreign Relations Committee, I indicated that the direct or indirect costs of sanctions on South Africa's neighbors could be a billion United States dollars or more. Calls have already come from the administration and from Congress to introduce legislation costing at least $500 million to help South Africa's neighbors. The taxpayers of this country should be aware of that.

Already it has been estimated that if the sanctions were to go into effect, as some of my good-intentioned friends suggest, are carried out, we would have to produce at least $500 million in aid to sustain South Africa's neighbors. Yet, only the other day we were unable to produce $200 million for our ally the Philippines. Thus, I think we need to look very carefully at what we are doing to some of our friends in that part of the world, and consider the fact that we probably won't have the means to put "humpty-dumpty" back again once we've pushed him off the wall.

Is it wise for Congress to unilaterally take a step with a price tag of at least $500 million without looking at every possible alternative.

Similarly, if aid is not provided to the region, and it may not be, given Gramm-Rudman and the budgetary deficit we have, who will feed and care for those 120 million people?

No one introducing this or other sanctions legislation can quantify that. We have not heard the rigorous analysis from our friends of that question, and I would hope that we will before any American votes to impose them.

It is clearly not the intention of this body or the drafters to subject South Africa's neighbors to hardship as a result of South Africa's racial policies, but I bring this issue up because I think that we have to consider the whole region of southern Africa. Frequently this particular debate is framed in a domestic civil rights context, and not in the context of the impact of sanctions on poor blacks, colored, Asians, and the whites of not

only South Africa but also of the region.

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So, I hope that Senators will rigorously analyze the entire picture. This question too often comes up as a throwaway domestic civil rights vote, very frankly, without any downslide to it. And one can prove how much they are for civil rights by voting for sanctions against South Africa. Logically, however, one does not follow the other, if the issue is rigorously analyzed, particularly if we assess what the economic sanctions will do.

Given the massive difference in per capita income between South Africa and its neighbors, and given the recent and extended drought in the region that has caused massive starvation, it is both prudent and moral to consider that food shortages might be the result.

We have a moral obligation to consider that food shortages in that region will result. South Africa is already importing its food, and South Africa's neighbors are starving. This is certainly a moral question.

The food situation in South Africa could become more precarious in the near future.

The drought has ended in most regions, but plentiful rainfall has brought a new curse—the worst locust and grasshopper infestation in 60 years. The United Nations lists six countries in Africa as still facing famine emergencies, and three of these are in southern Africa: Angola, Botswana, and Mozambique. A single swarm of the four African locusts now hatching have been known to devour as much as 80,000 metric tons of cereal crops a day—or enough food to feed 480,000 people for a year at emergency ration levels. The locust danger swarming out of Botswana when the rains come in October could last 3 to 4 years—this is the region that I am speaking of, just north of South Africa, in Botswana. It is expected to severely threaten crops in Botswana, Zimbabwe, Zambia, Namibia, and Angola.

Do we really want to put 120 million people in jeopardy by leaving them open to South African retaliation? Although retaliation might be too harsh a word. South Africa may not be able to provide the services it traditionally offers that area, because it will lack the economic wherewithal to do so if sanctions are imposed.

Do we really want to deprive the South African economy—which feeds the region—from the wherewithal it needs?

5. EUROPE HAS BACKTRACKED SIGNIFICANTLY

A fifth reason that I support the President in this area and oppose economic sanctions relates to what Europe has said on the issue. I do not feel that I am led around by Europe, but I think the opinion there should be considered. For example, Margaret Thatcher has been very courageous in pointing out that economic sanctions will not achieve the goal of mending apartheid; indeed, the result may be just the opposite.

There is a major misperception of public pressure from abroad. In August, the Congress was pressured to move quickly with harsh punitive sanctions because, it was argued, "Our European allies were taking the lead." Wait a minute. Are they really? It was argued that Europe was for sanctions, yet, over the last 6 weeks, it has become clear that the debate over sanctions in Europe primarily turns on protectionist concerns, a stand that the free-trading United States cannot and must not support.

What has happened in Europe most recently? The European Economic Community has dropped the controversial coal sanction—because they stand to lose too much—and they have left iron and steel in because they buy so little from South Africa. Similarly, they are adamantly against restrictive landing rights, from which they benefit so much. Indeed, the argument for sanctions has been led by the small European Economic Community states, ones with no experience or relationship with South Africa and with no trading ties. It is fairly easy to be for sanctions in that situation.

Not only have cooler heads prevailed in Europe and the pressure for punitive sanctions is abating, but many sanctions supporters are revealed for what they are: Protectionists first, moralists second. This is hardly a justification for the U.S. Senate to use as an example. Rather, we should face up to the realities of the situation, and not use European "pressure" as a cloak for precipitous and dangerous actions. Similarly, we cannot cloak "protectionist" actions taken against South Africa with "morality."

6. THE SPECTER OF RETALIATION

A sixth reason that I support the President of the United States in this veto debate concerns the specter of retaliation. I would hope that South Africa would not retaliate against its neighbors or against the United States, if the United States imposes harsh and punitive economic sanctions. And let me say that I hope that if Pic Botha has called Members of the Senate today, I would question the effectiveness of that tactic. And if I were asked my opinion, I would encourage against it. However, if he has called and said that South Africa will not buy any further grain at some point, I hope and trust that his remarks are couched in language that indicates that it is unable to buy grain, because of economic difficulties and not as a threat. Because I am uncomfortable with the specter of retaliation.

Although I do not advocate it, it is my judgment that the Afrikaner determination would cause them to retaliate, rightly or wrongly. But they are a very determined people and they are not going to cut and run, because they have no place to cut and run to.

Maybe the Anglo South Africans can go back to England, but the Afrikaners are there to stay, and the only way they will leave is to die. They are ingrained there; it is their home. There would be much bloodshed before anything of that sort were to happen.

Thus, it is my judgment that the Government of South Africa will probably retaliate if there are sanctions. I should stress that I am not advocating that, but my judgment of their government is that they would.

Countless states in the past have taken similar actions, and a state pushed against the wall will often forgo diplomatic niceties for a tough response.

What could South Africa do to the United States? First and foremost, it could retaliate against us using our strategic minerals dependence on South Africa.

Would they use such a form of retaliation? It is quite likely, as strategic minerals only account for 4 percent of their foreign exchange earnings, while the United States and the West in general is highly dependent.

Let me refer you to a new report issued by the Department of Interior called "South Africa and Critical Minerals." It is a report that should be read by Members of this body. I introduced it during the debate in the Foreign Relations Committee. It was issued in July 1986. It is my strong feeling that it should be included in our analysis tonight.

It quantifies, for the first time in an unclassified source, the costs to the U.S. economy of a disruption in southern Africa supplies of strategic minerals in the following areas: Direct costs to U.S. consumers by mineral losses in U.S. gross national product, and the decrease in U.S. jobs associated with gross national product losses. Data on Japanese and EEC losses if also provided.

Why is this relevant in the current debate?

Serious strategic mineral supply disruptions are well within the immediate realm of possibility, and their consequences for the American, European and Japanese economies should be considered rigorously.

South African supply disruptions could occur as a result of any of the following:

Retaliation as a byproduct of Western sanctions; labor unrest/strikes; guerrilla attack (the ANC has recently announced that such installations will not longer be eschewed; major unrest,

with a breakdown in infrastructure; and a successor regime less inclined to sell to the United States and its allies.

My greatest fear now is retaliation. If they would only lose 5 percent of their foreign exchange, they might do it.

U.S. capabilities to respond to a strategic mineral supply disruption are far less than most Members of Congress and policymakers know. Why?

First. Admit it or not, the United States, Europe, and Japan are heavily dependent upon southern Africa in certain of these strategic areas.

Second. Strategic stockpiles not available short of war. The U.S. strategic reserves cannot be used, except in a national emergency (generally interpreted to mean a "war") and on the President's order. The law specifically states that they are not intended to be used to respond to economic disruptions.

Third. Stockpiles are grossly inadequate. With the exception of platinum-group metals [PGM's], U.S. supplies of chromium, manganese and cobalt "wouldn't make much good road fill," in the words of a senior Bureau of Mines official. That is a very serious matter. Citing poor quality control, years of degradation, and excessive past sales, the "only strategic stock worth its name is $70 million worth of cobalt bought 3 years ago.

From that point of view, we should think very carefully about our country's strategic supplies in rigorously analyzing what economic sanctions may do. Yet, what we usually hear is something quite different: a highly emotional moralistic equating of the 1960's civil rights movement to the current situation in South Africa.

I want the Senate to rigorously analyze what is really going to happen if these sanctions are put on, if they are carried out to the nth degree. It will be just the opposite of what some of my moralistic friends hope.

Fourth. Virtually all stocks are slated to be sold. Under the President's proposal to "modernize" the national defense stockpile, announced in July 8, 1985, U.S. strategic stocks will be drawn down from approximately 16 billion dollars' worth of key commodities to approximately $700,000. Another "supplemental stockpile" of $5 billion has been suggested, but is not provided for in any law and is not part of the official plan. Implementation studies are proceeding.

Fifth. Insufficient legal and regulatory authority to exploit domestic reserves. The Department of Interior lacks legislative authority to develop ocean floor deposits off of U.S. territories. Thus, it cannot exploit Johnson's Island, the only U.S. ocean site of current interest for major offshore mineral development. Also, Interior lacks the regulatory authority to develop hard mineral capabilities. Without legislation and regulatory authority, which it has been seeking over the past 3 years, the United States would be greatly delayed it it had to shift to domestic exploitation of mineral reserves.

Sixth. The United States is rapidly losing ferroalloy processing capabilities. The United States is rapidly losing its ability to process strategic minerals, even if it uses its stockpiles or is able to buy from abroad. Over two-thirds of U.S. ferroalloys are currently purchased or processed aboard. Most of our major ferroalloy plants have been moved offshore, including Union Carbide's plant to South Africa. A disruption of supplies from South Africa would cause immediate shortages in ferrochromium, ferromanganese, silicon metal, and ferrosilicon. Europe and Japan have an even more limited capacity, with processing restricted to three plants—one in Japan, one in Germany, and one in Norway.

A complete cutoff of chromium from South Africa lasting 3 years—assuming a 90-percent cutoff from Zimbabwe due to its ore transport on South African railways. The direct cost to U.S. domestic consumers has been estimated by the Bureau of Mines in July 1986 at $3.6 billion. Assuming maximum conservation and substitution, the shortfall of chromium would reduce both intermediate and final product production during the 3-year period. The estimated impact on U.S. GNP resulting from the constraint imposed on domestic production would be $8.7 billion in the first year with over 296,000 jobs lost; during the second year, the GNP loss would be $4.6 billion and about 100,000 jobs; during the third year, GNP losses would be approximately $1.9 billion with about 41,000 jobs lost. A 3-year loss would cost $18.8 billion and 437,000 jobs.

A complete cutoff of manganese from South Africa: Direct costs to U.S. consumers of a cutoff of South African manganese would be approximately $1 billion. There would be little or no effect upon GNP or employment.

A complete cutoff of the platinum group metals and cobalt would be extremely serious, although dollar value estimates are not yet available. In fact, many GAO and Bureau of Mines estimates view the cutoff of these materials as more serious than the loss of chrome, as there are no U.S. domestic supplies of the platinum-group metals.

The Department of Interior has just released a major study on this issue and the consequences are shocking.

If we lost South Africa chromium alone, the cost to the United States economy over a 3-year period would be $18.8 billion and 435,000 jobs. Of course, this is only one of many strategic minerals that the United States imports from South Africa.

So to conclude that point, on strategic materials, I hope that this Senate makes a rigorous analysis of the impact of what sanctions would do to the region. Some optimists believe that simply by destroying the economy of South Africa, we would suddenly see all sorts of wonderful things. I believe, however, that many bad things would happen to the United States and to South Africa, not to mention to other countries.

Before leaving that point I might add there was in the original sanctions bill a provision to urge the President to sell our gold, and by so doing, to destroy the world's gold market. It was intended to hurt South Africa. I offered an amendment to delete that provision. I think that the Senate was very wise in taking that section out because, upon analysis, it was found that the United States gold mines and those of our other allies, such as the Philippines, would be badly hurt. The United States produces gold at a much more expensive level, and it would thus, be damaged by such a move. We would be hurting ourselves by putting people in our country out of work, putting people out of work in our allies' countries, and probably not hurting the South Africans much at all. Fiascos such as this make it clear that this whole sanctions bill has not been rigorously analyzed. We really must do so.

7. GREAT PROGRESS HAS BEEN MADE THAT WE MUST NOT FORGET

Not one of the so-called pillars of apartheid has been left untouched by the Botha reform program. Over the past 7 years, great progress has been made in virtually every aspect of nonwhite life. The formerly all-white Parliament has been integrated through the creation of separate chambers for "colored" and Asian citizens, and the next session of Parliament will continue the process by calling for all members of Parliament—white, colored, and Asian—to debate all measures together. The pass laws have been abolished, with 19 million blacks allowed free movement throughout the Republic. Blacks have been given the right to freehold tenure in the formally white areas, and there has been a sevenfold increase in expenditures on black education.

I might add, as a former Rhodes scholar that I am serving on the board of directors of a group of former Rhodes scholars from throughout the world who are trying to improve education in southern Africa. In an earlier bill we passed increased expenditures on black education, and I viewed this as the sort of constructive impact we can have on South Africa. All American actions can not be punitive—more of them really should be positive.

The prohibition of the Immorality and Mixed Marriages Acts have been

repealed. In addition, Botha has recently established a "statutory council" whereby blacks and whites can "advise" the Government on further constitutional reforms.

Given the fact that apartheid took nearly 20 years to put into effect, and encompasses some 4,000 regulations, I do not think 5 years to dismantle its most egregious provisions is too much.

Progress is being made. I wish it were being made faster. But we must recognize that it is being made.

I also believe that the South African Government deserves time to make further improvements. Let me remind my colleagues that our own country was not made over in a day, and that we have had and still have problems in the area of race relations. I also believe that they deserve time to make further improvements.

Serious unrest, sparked at least in part by the economic downturn of 1984, has further exacerbated the economic crisis in South Africa. Black unemployment in many urban areas is estimated at 50 percent, and even white unemployment is rising. Some foreign companies have already shut down their operations in South Africa.

South Africa has a total foreign debt of $24 billion, and felt forced to declare a unilateral moratorium on debt repayment, largely due to the severe effect of a decision by major United States banking houses to cut off further loans.

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Western sanctions have further eroded investor confidence in South Africa, and contributed to a precipitate fall in the value of the rand over the last 18 months.

Great damage has already been done to a budget that had scheduled massive increases in spending for nonwhites. For the last 2 years, the South African Government has been spending more on black education than it has on its national defense.

Mr. President, let me repeat that, because I think it is very important. For the last 2 years, the South African Government has been spending more on black education than it has on its national defense.

Thus, we must surely encourage Botha's government to continue these major reforms. Yet, with greatly increased pressure on the economy, many of these expenditures are in doubt.

Indeed, as we toy with imposing severe economic sanctions, few of us realize that we would doom massive South African expenditures for nonwhite education, health care, and job training.

My last reason for supporting the President, and there are many, and I have one more, is No. 8.

8. IMPLICATIONS FAR BEYOND APARTHEID

Of equal importance are the profound, but unintended, consequences of this act. I would have to vote against it for this reason alone, because the consequences are so serious.

Many provisions of this bill have implications far beyond what was ever intended by the drafters. There are several examples that I could point to, but perhaps most importantly, is the recourse to section 301 of the Trade Act of 1974 for retaliation against our allies if they do not match our sanctions; such action could initiate a vicious round of trade wars against our NATO allies. Is this intended? I certainly hope not; yet, it would be the consequence of this rash act.

Similarly, the ambiguity in the ban on parastatals could affect more than 3,000 entities in South Africa, including cooperative efforts by black businesses and Western states. Do the authors of this bill really want to wipe out over 40 years of success rebuilding black businesses, black foundations, black self-help plans? Well, they will. The bill could also wipe out 48 percent of South Africa's hard currency exports and perhaps millions of jobs. Was the ambiguity in the bill deliberate? Even if it were not intended, the consequences would be disastrous.

Likewise, upping the ante to sanctions on strategic minerals seems almost inevitable with this legislation, with tragic consequences for business and employment in the United States, economic development in southern Africa, and for the international monetary and trading system.

If we are against this bill, we are not without influence. I will aggressively work toward more constructive alternatives that pressure the white government to reform, but do not have the negative consequences that this bill entails. I value the President's instincts on this matter.

I wish to call the attention of the Senate to the letter which the President wrote to Senator DOLE regarding South Africa. He commits himself to a system of steps that I think is a much better and considerately more positive alternative than the sanctions that are imposed in this bill.

The President says, in this letter to all Senators, that he understands and shares the very strong feelings and sense of frustration in the Congress and in our Nation about apartheid, an unconscionable system that we all reject. The ongoing tragedy in South Africa tests our resolve as well as our patience. None of us wants to aggravate that tragedy.

The President goes on to trace some of the history of the situation. Then, he turns to say that he is prepared to sign an expanded Executive order that:

Strongly signals our rejection of apartheid and our desire to actively promote rapid positive change in South Africa. I am prepared to expand the range of restrictions and other measures that will characterize our relations with South Africa. There would be strong sanctions in my new order, sanctions that I earnestly wish were unnecessary. These sanctions, directed at the enforcers not the victims of apartheid, encompass measures recently adopted by many of our Allies, as well as many elements of the original Senate Committee version of the bill. They are incontestably necessary in today's circumstances. My intention is to make it plain to South Africa's leaders that we cannot conduct business-as-usual with a government that mistakes the silence of racial repression for the consent of the governed.

My new Executive order will, therefore, reaffirm and incorporate the measures I imposed last year (i.e., bans on loans to the South African Government and its agencies, all exports of computers to apartheid-enforcing entities and the military and police, all nuclear exports except those related to health, safety, and IAEA programs, imports of South African weapons, the import of Krugerrands, and a requirement for all U.S. firms to apply fair labor standards based on the Sullivan principles).

That is a very important statement. The Executive order will also add:

A ban on new investments other than those in black-owned firms or companies applying the fair labor standards of the Sullivan principles;

A ban of the import from South Africa of iron and steel;

A ban on bank accounts for the South African Government and its agenices;

A requirement to identify countries taking unfair advantage of U.S. measures against South Africa with a view to restricting their exports to the United States by the amount necessary to compensate for the loss to U.S. companies;

A requirement to report and make recommendations on means of reducing U.S. dependence on strategic minerals from southern Africa;

A requirement to provide at least $25 million in assistance for scholarships, education, community development, and legal aid to disadvantaged South Africans with a prohibition on such assistance to any group or individual who has been engaged in gross violation of internationally recognized human rights;

That, I think, is also very important. While I was in South Africa, I visited one of the colored universities and was in touch with business leaders from the black, colored, Asian, and white sectors. All of them talked about the importance of education, which now is pretty much at a standstill in South Africa, mainly because of the terrorism bred by the African National Congress.

The President also speaks of:

The imposition of severe criminal and civil penalties under several statutes for violation of the provisions of my Executive order;

A requirement to consult with Allies in order to coordinate policies and programs toward South Africa;

A requirement to report on whether any of these prohibitions has had the effect of increasing U.S. or allied dependence on the Soviet bloc for strategic or other critical ma-

terials, with a view to appropriate modifications of U.S. measures under my Executive order should such dependency have been increased;

And a clear statement that the Executive order constitutes a complete and comprehensive statement of U.S. policy toward South Africa, with the intent of preempting inconsistent State and local laws which under our Constitution may be preempted.

The President goes on to state his opposition to apartheid. I ask unanimous consent that the President's letter be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, DC, September 29, 1986.

Hon. ROBERT DOLE,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR BOB: I understand and share the very strong feelings and sense of frustration in the Congress and in our Nation about apartheid, an unconscionable system that we all reject. The ongoing tragedy in South Africa tests our resolve as well as our patience. None of us wants to aggravate that tragedy.

In the last several months, the South African Government, instead of moving further down the once promising path of reform and dialogue, has turned to internal repression. We all know that South Africa's real problem traces to the perpetuation of apartheid. And we know that the solution to this problem can only be found in lifting the present State of Emergency, repealing all racially discriminatory laws, releasing political prisons, and unbanning political parties—necessary steps opening the way for negotiations aimed at creating a new, democratic order for all South Africans. The South African Government holds the key to the opening of such negotiations. Emerging from discussion among South Africans, we want to see a democratic system in which the rights of majorities, minorities, and individuals are protected by a bill of rights and firm constitutional guarantees. We will be actively pursuing diplomatic opportunities and approaches in an effort to start a movement toward negotiations in South Africa.

I outlined in my message to the House of Representatives on Friday my reasons for vetoing the Comprehensive Anti-Apartheid Act of 1986, principally my opposition to punitive sanctions that harm the victims of apartheid and my desire to work in concert with our Allies. I also indicated in that message that I am prepared to sign an expanded Executive order that strongly signals our rejection of apartheid and our desire to actively promote rapid positive change in South Africa. I am prepared to expand the range of restrictions and other measures that will characterize our relations with South Africa. There would be strong sanctions in my new order, sanctions that I earnestly wish were unnecessary. These sanctions, directed at the enforcers not the victims of apartheid, encompass measures recently adopted by many of our Allies, as well as many elements of the original Senate Committee version of the bill. They are incontestably necessary in today's circumstances. My intention is to make it plain to South Africa's leaders that we cannot conduct business-as-usual with a government that mistakes the silence of racial repression for the consent of the governed.

My new Executive order will, therefore, reaffirm and incorporate the measures I imposed last year (i.e., bans on loans to the South African Government and its agencies, all exports of computers to apartheid-enforcing entities and the military and police, all nuclear exports except those related to health, safety, and IAEA programs, imports of South African weapons, the import of Krugerrands, and a requirement for all U.S. firms to apply fair labor standards based on the Sullivan principles). The Executive order will also add:

A ban on new investments other than those in black-owned firms or companies applying the fair labor standards of the Sullivan principles;

A ban on the import from South Africa of iron and steel;

A ban on bank accounts for the South African Government and its agencies;

A requirement to identify countries taking unfair advantage of U.S. measures against South Africa with a view to restricting their exports to the United States by the amount necessary to compensate for the loss to U.S. companies;

A requirement to report and make recommendations on means of reducing U.S. dependence on strategic minerals from southern Africa;

A requirement to provide at least $25 million in assistance for scholarships, education, community development, and legal aid to disadvantaged South Africans with a prohibition on such assistance to any group or individual who has been engaged in gross violation of internationally recognized human rights;

The imposition of severe criminal and civil penalties under several statutes for violation of the provisions of my Executive order;

A requirement to consult with Allies in order to coordinate policies and programs toward South Africa;

A requirement to report on whether any of these prohibitions has had the effect of increasing U.S. or allied dependence on the Soviet bloc for strategic or other critical materials, with a view to appropriate modifications of U.S. measures under my Executive order should such dependency have been increased;

And a clear statement that the Executive order constitutes a complete and comprehensive statement of U.S. policy toward South Africa, with the intent of preempting inconsistent State and local laws which under our Constitution may be preempted.

Sanctions, in and of themselves, do not add up to a policy for South Africa and the southern Africa region. Positive steps as well as negative signals are necessary. This unusually complex and interrelated part of the world is one that cries out for better understanding and sympathy on our part. We must consider what we can do to contribute to development of healthy economies and democratic institutions throughout the region and to help those who are the victims of apartheid.

Following the Congress' lead and building on existing programs, I plan to expand our assistance to those suffering the cost of apartheid and to help blacks as they prepare to play their full role in a free South Africa. We spent $20 million in FY 86 and have requested $25 million in FY 87. We will do more, much of it along the lines incorporated in the South Africa bill.

I am also committed to present to the next Congress a comprehensive multi-year program designed to promote economic reform and development in the black-ruled states of southern Africa. We intend to seek the close collaboration of Japan and our European allies in this constructive effort. Our goal is to create a sound basis for a post-apartheid region—a southern Africa where democracy and respect for fundamental human rights can flourish.

I believe the United States can assist responsibly in resolving southern Africa's tragic dilemma. Many observers in and outside South Africa regard present trends with despair, seeing in them a bloody inevitability as positions harden over the central question of political power. This is a grim scenario that allows no free choice and offers a racial civil war as the only solution. It need not be so if wisdom and imagination prevail.

South Africans continue to search for solutions. Their true friends should help in this search. As I have said before, our humanitarian concerns and our other national interests converge in South Africa as in few other countries. With the actions I propose today, I believe it is clear that my Administration's intentions and those of the Congress are identical. May we unite so that U.S. foreign policy can be effective in bringing people of good will and imagination in South Africa together to rebuild a better, just, and democratic tomorrow.

Sincerely,

RONALD REAGAN.

(Mr. HUMPHREY assumed the chair.)

Mr. PRESSLER. Mr. President, I think what we see here is a very strange set of circumstances developing. The very thing that we wish to achieve—helping South Africa move in an orderly process toward ending apartheid—would be hampered by the bill that is before us. I should remind my colleagues that some people do not recognize that certain South African black leaders are against sanctions in South Africa.

In the Washington Post, 2 or 3 days ago, an article appeared entitled "Buthelezi Defiant at Zulu Ceremony." Mr. Buthelezi is clearly against sanctions. He heads the largest black political party and he is a moderate. He is a critic of the Government, but his group has over a million dues-paying members. That is almost more than certain political parties have in this country. He is a very significant tribal leader from Qua Zulu, a hereditary chief, but he is also elected. He has the largest black political organization in South Africa. His body, Inkatha, is opposed to the African National Congress. They had a large rally just recently and he repeated his opposition to sanctions.

Chief Buthelezi also was critical of the South African white government.

The point that I would like to make is that in our news media, we do not hear that the leader of the largest black political party in South Africa is against sanctions. How many people have heard that in our news media? I do not think very many. I compliment the Washington Post, which I rarely do, for including it.

I think it is a very significant argument that Buthelezi has reiterated his opposition to sanctions, in the midst—of this acrimonious debate, and at a certain threat to his life.

Before concluding, Mr. President, I also wish to call the attention of my colleagues to an article I have already placed in the RECORD entitled "What America Should Do About South Africa. A South African Liberal Tells Why."

□ 2010

It is a New York Times magazine article by Helen Suzman; she was first elected to the South African Parliament in 1953. She is an opposition member, and has been an outspoken critic of apartheid. Mrs. Suzman is probably the most celebrated critic of the Government in South Africa. She wrote a very passionate article in the Sunday New York Times magazine that argued that sanctions would probably be the worst thing the United States could do if we wanted to end apartheid. I know that there are speeches given on this floor about how terrible apartheid is, and I agree. I could give such a speech. We could give them all night. But, as I have tried to illustrate, that is not the complete issue. It is the issue in the sense that we want to end apartheid, but the manner in which we pursue that end must be rigorously analyzed. Sanctions are the issue we are discussing in this bill. Passage of this bill will not end apartheid. It will impose economic sanctions on South Africa, but there will be terrible effects. These sanctions would undo much of the development in the region that has been put into place over the past 80 years. It will cause great damage to the poor blacks living in South Africa, in effect, depriving them of their futures, and their children's futures. The same will happen in the other countries of the region—Botswana, Zimbabwe, Mozambique, Lesotho, Swaziland, et cetera. I also fear that retaliation toward the United States might be the result, in terms of our supply of strategic materials. Before we go forward with this bill, let us think very carefully.

I know it is said that the President is 3 or 4 votes short of the 34 needed to sustain his position, so I hope Senators will carefully consider the foreign policy implications and the economic implications of this legislation. I am much afraid that this vote will be viewed solely as a civil rights vote in the minds of the media and in the minds of many who have framed it. People come up to me and say, "My word, why are you defending that awful South African Government?" I am not. I would love to see them change. But the bill before us will not do it, it cannot do it. I am very much afraid that it will push South Africa away from reform. Thus, I urge the Senate to sustain the President of the United States tomorrow as we vote.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. Mr. President, as I stated last Saturday, I intend to vote to override the President's veto of H.R. 4868, the South African sanctions legislation. Enactment of this legislation, even over the President's objections, is essential.

The question before us is a simple one: Are we going to take concrete action to push the Botha government to act to dismantle apartheid while they still have time, or are we going to stand with that repressive government as it works to continue to deny basic human rights to the black majority.

There is a strong moral case for imposing sanctions on South Africa. Apartheid is institutionalized evil. It is contrary to the basic principles on which the United States was founded. It is repugnant to all Americans.

There are many examples of the kind of brutal, disgusting policy the current South African Government follows that I could cite. I will not take the time of the Senate to do so, since I know my colleagues are well aware of the horrors this Government perpetrates in order to preserve its position. I cannot proceed, however, without briefly discussing a matter that I find almost too terrible to believe—the practice of prohibiting funerals, and breaking up funerals that do occur.

Think of it. A funeral is a sacred occasion. In South Africa, because all types of public meetings have been prohibited, funerals can take on a political dimension, but even so, families and friends are entitled to an opportunity to bury their dead, without running the risk of being beaten, or even killed by the police. Yet that is a common occurrence in South Africa. The Government now in control of South Africa actually sends police to break up funerals—funerals—and to gas, beat, and shoot those who attend. Evidently, according to the twisted logic of the South African Government, the way to express sorrow and grief at the death of one of its residents is to cause more pain, more anguish, and sometimes even more deaths, at the memorial services for those who have died.

Mr. President, we simply cannot afford to support in any way, or even to appear to support in any way, a government that has a policy of breaking up funerals. A government that feels threatened by funerals has lost all claim to legitimacy.

We therefore cannot continue to follow the bankrupt policy of "constructive engagement." The administration no longer uses the term "constructive engagement"—even they have recognized that this phrase has come to symbolize all that is wrong with our approach to the problems facing South Africa—but they continue to refuse to change that wrong-headed policy.

Congress, therefore, must take the lead if a policy change that is already long overdue is ever to be implemented. The President's veto of the sanctions package that passed the Congress with overwhelming bipartisan support cannot be allowed to stand.

Although the moral arguments for sanctions are compelling, it must also be noted that sanctions are in our long-term foreign policy interests. I am ordinarily very skeptical about sanctions. I think that Presidents, both Republican and Democrat, have all too often turned to sanctions in an attempt to achieve goals that sanctions cannot achieve.

For example, President Reagan imposed what have come to be known as the "pipeline" sanctions in an attempt to prevent construction of a Soviet pipeline designed to supply natural gas to Western Europe. The sanctions did not work. The pipeline was built. The Russians were not hurt but Americans were. American companies lost business to European and Japanese competitors. They lost the Soviet market and their ability to compete in other world markets was significantly weakened.

The South African situation, however, is significantly different. In South Africa, we are not trying to use sanctions to achieve an unachievable economic goal—like ensuring that the Soviet pipeline was not built. We are not trying to unilaterally prevent the transfer of state-of-the-art goods or technology without the cooperation of our allies that also produce these goods or that also possess this technology. Rather, we are imposing sactions for political reasons, to demonstrate that we will not economically or politically support a government that practices apartheid.

Sanctions can effectively be used to make that point. American companies that operate internationally do, in a way, represent the United States. Our trade relationship with a country is, to some extent, a gauge of our political relationship with that country. Imposing sanctions to limit our trade relationship with South Africa, therefore, is an appropriate way to express our view that apartheid must be ended.

Imposing strong sanctions on South Africa, sanctions that have been requested by the black leadership in that country, makes it clear that the United States stands with the black majority and not with a government attempting to deny most of its citizens the dignity and respect—the basic

human rights—to which they are entitled.

Apartheid, in the long run, will not last. It cannot last. The issue is whether apartheid can be peacefully ended, or whether the growing level of violence in South Africa will escalate into civil war. I believe we should do all we can to ensure apartheid is ended, and ended peacefully.

I share the President's view that South Africa is important strategically to the United States. However, I cannot understand how vetoing sanctions legislation can contribute to constructive change in South Africa and to that country's long-term stability or to the maintenance of friendly relations between South Africa and the United States.

Frankly, I believe the veto contributes to instability in South Africa and puts the United States on the wrong side of an issue that we all know will not go away. I do not view sanctions as an isolationist withdrawal from South Africa. Rather, I believe sanctions legislation demonstrates our commitment to the process of peaceful change in the country, our concern for the rights of the black majority, and our willingness to use all the powers at our command on behalf of that oppressed majority. Our willingness to impose sanctions is a clear indication of the desire of the United States to actively work for change in South Africa.

I do not argue that enactment of the sanctions legislation now before us will ensure that apartheid is ended, and that sanctions will ensure a stable, Western-oriented South Africa over the long run. I do know, however, that sanctions are the only chance we have to put real pressure on the current Government to change peacefully before it is too late. The process of change in South Africa will be long and difficult. There is no guarantee that American objectives in that country will be met.

Sustaining the President's veto, on the other hand, does have a guarantee attached to it. That action is guaranteed to alienate black South African leadership, to contribute to instability in South Africa, and to decrease the chances that the United States will be able to constructively participate in ending apartheid.

Sustaining the veto would put us on the side of a morally bankrupt system of government. It would put the United States on record as supporting the status quo in South Africa—that is, as supporting apartheid—and that is intolerable.

Sustaining the veto would worsen our relationships in all of black Africa. It will provide aid and comfort for Soviet efforts to promote instability.

I would like to support the President. I recognize that the Constitution gives him the preeminent role in the foreign policy area, and I know it is much harder to succeed in the foreign policy area when Congress and the President are not working together. I was elected however, to exercise my best judgment—to vote for the President when he is right and against him when he is wrong. The Constitution does not give the President sole authority in the foreign policy area; Congress also has an essential role to play.

In a close case, I like to try to give the President the benefit of the doubt, but this is not a close case. The President is wrong. He is clearly wrong. This veto must be overridden. I urge my colleagues not to yield to Presidential pressure, but to stay with the position that they know is right. I hope the Senate will join the House of Representatives and vote to override the President's veto.

□ 2020

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, I yield 10 minutes to the distinguished Senator from North Carolina [Mr. BROYHILL].

Mr. BROYHILL. I thank the Senator from South Dakota for yielding.

Mr. President, I asked the Senator to yield time on this matter because I am very concerned about this legislation and what we are about to do here.

I oppose apartheid. I join all Senators on both sides of the aisle who have expressed their opposition to the discriminatory system of government endured by black people in South Africa.

I also am just as determined as anyone else in this Chamber to send a very strong signal to the South African Government. We do not agree with what is going on there, and we do not want to maintain business-as-usual relations with a country that violates the human rights of the majority of its people.

I, too, want to see the South African Government move toward negotiation with the black majority in that country. But I just cannot bring myself to believe that this bill is the best way to do it. This bill, it appears to me, is declaring economic warfare on the very people we are trying to help. This bill imposes broad economic sanctions on numerous industries.

I ask the Senate: Does it make any sense to adopt these economic sanctions, these import bans and restrictions on investment by American firms there, which threaten to throw tens of thousands of black Africans, both inside and outside of South Africa, out of work? Yet, there are provisions in this bill that at the same time authorize the use of emergency food aid in South Africa.

We are trying to send a strong message to the South African Government. I do not believe we should be declaring economic warfare on the very people who are victims of apartheid.

It is for these reasons that I voted "no" on this legislation when it was before us, and it is for these reasons that I shall continue my stand in opposition to this legislation.

I am convinced that disrupting the South African economy and creating more unemployment will add to the violence and the depression that already exist there.

For example, banning the import of sugar—that is something all of us have said, "Let us do that; we can do that." But that affects the livelihoods of 25,000 black farmers, most of them Zulus. Their chief—the leader of 6 million blacks—has come out and said that he opposes these kinds of economic sanctions; he is as determined as anyone else to work toward the end of apartheid.

We are told that black unemployment in South Africa is already high, in some areas close to 50 percent. Creating more unemployment in an economy that is experiencing negative growth rates, it seems to me, is also going to create conditions of violence. This is hardly the best condition for promoting negotiation.

This afternoon, I met with some constituents from my State of North Carolina who know firsthand the problems of black unemployment in South Africa. In fact, they went to that country and formed a joint venture, in an attempt to alleviate the unemployment problem. I was told that this joint venture has resulted in the creation of over 2,000 new jobs for black South Africans, as well as opening of new employment opportunities for North Carolinians.

The constituents who visited me are people who genuinely care about the fate of black South Africans, and they sincerely want to do something to help them. Yet, they are going to be foreclosed from making the investments that would be necessary to accomplish their purpose. Should we deny these individuals, as well as others like them, the opportunity to help black South Africans? Can we, in good conscience, deny South Africans the chance to be helped? I do not think so. That is what this bill would do, and that is why I oppose it.

We in America are deeply troubled by the growing racial conflict in South Africa, and we are moved by the desire to do something to help that country.

Also, we want to do it in such a way that we avoid bloodshed.

In this legislation, Congress called for a timetable to end apartheid. This includes the release of all political prisoners. It includes the release of Nelson Mandela. It calls for allowing black liberal organizations to meet, and in this bill it calls for negotiations

to achieve a political system where the rights of all individuals will be protected by law.

□ 2030

I would point out to my colleagues who might be listening, that the President has also called for all of those things. Congress in this legislation has called for assistance to the victims of apartheid and also has called for more economic opportunities for blacks in South Africa.

I would point out that the President has already requested $25 million in fiscal year 1987 for programs that are targeted at South African blacks in order to help them. And, of course, in his recent letter that he addressed to the majority leader, he promised to do more.

Congress reaction has been to call for sanctions that might, I am convinced, damage the fragile economies of not only South Africa but South Africa's neighbors.

About 350,000 black workers, I am told, are from neighboring states. They are legally employed in South Africa and their paychecks, which amount to as much as $200 million a year, go back into those countries and are supporting an additional 2 million to 3 million people at home. The President's approach to these regions' need for economic development is to try to help them with economic aid. This legislation would, in effect, call for a wide array of sanctions that would disrupt not only the South African economy itself but also the economies of the neighboring countries in that region of the world.

So, the President has proposed further steps that we need to take in order to bring an end to apartheid in South Africa. He has stood up against this repugnant system. I agree with the President. I join him in his abhorrence of this system. But the punitive approach that is represented in this final version of this sanctions bill does not fight the forces that undermine this system. It seems to me that it contributes to it by creating more misery, more violence, more repressions, and fewer possibilities for negotiation between white and black South Africans.

I thank the Senator.

Mr. PRESSLER. Mr. President, will my colleague yield for a question?

Mr. BROYHILL. I am delighted to yield.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. PRESSLER. I yield additional time to my colleague to respond to this question.

I compliment my colleague on his excellent statement. I enjoyed serving in the House of Representatives a number of years ago with my colleague. I think he has brought a great deal to the Senate in his speech in the area and with his long service in the House Commerce Committee the statement indicates his understanding of some of the economic consequences of sanctions, and we are lucky to have his analysis.

My question is: What does the Senator think these sanctions would do that would be harmful to the United States in an economic sense?

Mr. BROYHILL. My observation is that it would do relatively little harm immediately to the United States. Perhaps the Senator from South Dakota has other information. I think it would be devastating, however, in its harm of the South African economy as well as the economies of the neighboring countries in that area and would do significant harm to the very people that we are trying to help.

I am sure there would be some isolated industries that would be hurt by these sanctions, but it would appear to me that in some instances what we are doing here is actually aiding certain industries. It could be determined in some instances as a way to keep imports out of this country.

Now, perhaps the Senator from South Dakota has done a better job of analyzing that and has had more time to do that than I have had. When I was voting on these amendments and listening to the debate that occurred a few weeks ago on this legislation, it appeared to me that some of the sanctions that were contained in the legislation were aimed at protecting certain U.S. industries.

I thank the Senator for yielding and I yield back to him the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield 10 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, thank you.

Mr. PELL. In doing this, I must say he has taken a leading roll in the Senate in this whole matter and he is outstanding to lead off.

Mr. KENNEDY. Mr. President, I thank my friend and colleague who is the ranking minority member on the Foreign Relations Committee. He has over a very long and distinguished period of time made such an important difference on this issue and so many others.

Mr. President, the vote to override President Reagan's veto will be the single most important vote cast by the 99th Congress.

We must override this veto to keep faith with the American people. Throughout our Nation, our citizens have been working and marching and protesting and petitioning—in the universities, in the churches, in the union halls, in the corporate board rooms, and in the city council rooms and State legislatures throughout the land—to put America finally and for all time on the right side of freedom and justice in South Africa.

We must override this veto to remain true to our own most important and fundamental ideals. Three hundred years ago, our Founding Fathers pledged "their lives, their fortunes and their sacred honor" in the struggle for independence. In the face of the racism and repression and violence of apartheid, Americans cannot remain passive or silent and be true to our heritage. The days of meekness, weakness and hesitation must come to an end.

We must override this veto to give hope to the people of South Africa who every day put their lives and their liberty at risk in the struggle to end apartheid. With this vote, we will tell Desmond Tutu and Alan Boesak and Beyers Naude and Winnie Mandela and 26 million black people that, yes, America is with you, and together we shall overcome.

We must override this veto to restore our Nation to its rightful place as the defender of democracy and as the moral leader of the Western World. With constructive engagement, we have squandered our moral standing in the world. The whole world is watching and listening tonight. What we do and what we say will make a difference—not only to our friends and allies who yearn for leadership, not only to the people of South Africa who cry out for help, but also to ourselves. If we step forward now—with strength and with certainty and with confidence—we will be at the front again, where we belong, on the side of freedom.

We must override this veto to protect our own national security interests in the world. It is true that our adversaries seek every opportunity to expand their influence at our expense. It is also true that every day that constructive engagement lives on, America's enemies prosper. One day there will be freedom in South Africa, and on that day, I hope that the new leaders of South Africa will look to America as having been not only a friend of freedom when freedom was in trouble but also as having been a leader in the struggle.

And we must override this veto to tell the politicians in Pretoria that President Reagan does not speak for America on this issue. They must know that the days of indulgence are over. They must know that the double-standard has been destroyed. They must know that we care as much about the freedom of black people in South Afirca as we do about the freedom of white people in Poland or in the Soviet Union.

Mr. President, history will record this veto as the darkest day in President Reagan's tenure in the White House. But it is much, much more

than that. This veto is the worst veto in American history. No President has ever used a veto in a way that so clearly challenges America's most fundamental ideals and values.

Andrew Jackson vetoed a bill to recharter the Bank of the United States, because he saw it as the tool of special interests.

John Tyler's veto of a tariff bill led to the first attempt by Congress to impeach a President.

Andrew Jackson fought Congress during Reconstruction and lost many veto fights. For those who wonder about hardball tactics used in veto fights, I would note that in preparing for the override of President Johnson's veto of the Civil Rights Act of 1866, the Senate actually expelled a Senator who supported Andrew Johnson. To override President Johnson's veto, the Senate first threw out Senator John P. Stockton of New Jersey. This happened when hardball had barely been invented.

Grover Cleveland vetoed hundreds of private pension bills and outraged veterans groups.

Franklin D. Roosevelt was the first President ever to veto a revenue bill, the Revenue Act of 1943. FDR called it "Tax Relief not for the Needy but for the Greedy"—but Congress overrode his veto anyway.

Harry Truman vetoed the Taft-Hartley Act, and a Republican Congress overrode his veto.

Most recently, in the aftermath of the Vietnam War, Richard Nixon vetoed the War Powers Act and Congress overrode his veto.

□ 2040

The controversies of the past have led to confrontations between Congress and the President. Each of those confrontations stirred the passions of the times and caused feelings to run high.

But President Reagan's veto has a different ring. He has reopened an issue that was long settled in America—this Nation's fundamental commitment to civil rights, human rights, and the ideals of individual liberty and equal justice under law—which appears in stone over the Supreme Court. History will look at this veto as a curious aberration, the least defensible veto that any President has ever issued.

President Reagan says that, with these sanctions, we "threaten the livelihood of 23,000 black farmers and 500,000 black miners." President Regan asks, "Are we truly helping the black people of South Africa when we throw them out of work and leave them and their families jobless and hungry?"

But Archbishop Desmond Tutu answers:

> Blacks are suffering already. To end that suffering, we will support sanctions, even if we have to take on additional suffering * * * To whom is the international community willing to listen? To the victims and their spokesmen or to the perpetrators of apartheid and those who benefit from it?

President Reagan says that, with these sanctions, we are "declaring economic warfare against the people of South Africa."

Archbishop Desmond Tutu answers:

> I do not want to destroy a land I love passionately. But if the South African Government remains intransigent and obstinate, then sanctions or no sanctions, the economy will be destroyed in the wake of the violence, bloodshed and chaos that will ensue if a full-scale civil war breaks out.

President Reagan says that these sanctions will be a "devastating blow to the neighboring states in southern Africa." But just last week, the President of Botswana said:

> Here is a country—South Africa—which attacks mine without provocation and yet expects to use us in its defense against sanctions. This is unacceptable. It is also unacceptable that friends of South Africa should try to use us to try to justify their support for South Africa. We think they should stop being disingenuous.

President Reagan stands alone—in this country and in the world.

Mr. President, Senator PRESSLER spoke about retaliation and its impact on American farmers. Senator LUGAR just a few minutes ago revealed that the Foreign Minister of South Africa, "Pik" Botha, has called up at least two farm State Senators and threatened them. Botha also bribed them. He said that if the veto were overriden, South Africa would stop purchasing United States grain. He also promised that if the veto were sustained, South Africa would buy more United States wheat.

I agree with Senator LUGAR. This is bribery. This is intimidation. We should not let the bullies and the thugs of Pretoria intimidate the Senate of the United States.

Does this not tell us a little about the kind of people who are running that government?

This bill does not prohibit grain or wheat sales to South Africa. There is no grain embargo in this legislation. The concern here is for retaliation—threats, intimidation, coercion—not for any embargo.

South African purchases of U.S. wheat is minimal. According to the Department of Commerce in terms of total dollar value, wheat does not even appear as one of the top 40-most important exports from the United States to South Africa for the years 1983, 1984, and 1985.

The South Africans may say that they will buy wheat, but they have not done it yet. And if they stop doing it now, it will not have much of an impact.

Mr. President, I hope that the Senate of the United States will override the President's veto.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. I yield to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, tomorrow the Senate will act on whether to override President Reagan's veto of the South Africa sanctions bill. If successful, this override will amount to little more than the United States shooting itself in the foot and then penalizing, through a series of harsh and regressive measures, the innocent victims of apartheid whom we are trying to protect.

It is an action I cannot support, despite my deep and abiding belief that apartheid is morally wrong and that the discriminatory policies of the white minority government in South Africa must be brought to an end.

Without question, this issue has torn at the hearts of our citizens; the conscience of its leaders; and has tried the patience of every decent person who has watched the violence against blacks unfold in this turbulent corner of the world.

All of us are in agreement on the central point of this debate: That apartheid is a cruel and inhuman system which must give way to a democracy which recognizes the basic rights of all people—regardless of race—and a pluralistic society where blacks and whites live in harmony.

However, there is deep division, not only in this body but across the Nation, on how to accomplish this goal, and in particular, what role the United States should play in bringing about these changes.

The measure vetoed by the President, although sponsored and supported by well-intentioned men and women, will not, in my opinion, accomplish our goal of ending apartheid. Rather, it strikes out at South Africa through a series of harsh and regressive sanctions and, in doing so, jeopardizes the security interests of the United States and the economic and political interests of the thousands of black South Africans. In addition, harsh sanctions will strengthen the resolve of the South African Government to stand firm against outside pressure.

South Africa is a source of rare minerals vital to the defense of the United States, and it remains a staunch anti-Communist nation in a strategically important area of the world.

Frankly, I was prepared to support the bill reported out of the Foreign Relations Committee under the sponsorship of its able and distinguished chairman, Senator RICHARD LUGAR of Indiana. During the debate on this issue, I indicated my willingness to support that measure, which I believe struck a more thoughtful and rea-

soned approach to the sanctions issue. However, I cautioned my colleagues that by adding still more sanctions to the bill, they risked losing not only my support, but directly impeded progress in ending apartheid in South Africa and directly jeopardized United States security interests there.

These are not concerns that can or should be taken lightly. Despite our moral outrage over apartheid, we cannot simply turn a blind eye to the realities of the political situation in that nation or the legitimate defense and security imperatives of our own Nation.

□ 2050

President Reagan, despite the hue and cry of his critics, has taken action to end apartheid. His policy of working through diplomatic channels has yielded results, and his Executive order mandating realistic sanctions against the Pretorian government is a step in the right direction. Over the objections of foreign policy experts and the President himself, Congress moved relentlessly forward toward enacting a bill which defeats the very purpose for which it was proposed.

The legislation was, therefore, vetoed by the President for all of the right reasons. When all is said and done on this issue, I believe that, instead of weakening the resolve of those bent on perpetuating the system of apartheid, their hand will be infinitely strengthened, while the security interests of our Nation will be diminished.

Finally, let us be honest with ourselves. It is rank hypocrisy for the United States to seek punishment of human rights violations in South Africa while we look away from the heinous atrocities being committed in the Soviet Union and its surrogate nations. This selective morality is more than inconsistent. It demeans the entire issue of challenging human rights violations because it shows to the world—and in particular the Soviet Union—that we are quite willing to kick certain nations for their abuses, while winking at others. To that extent, an override of the President's veto is a mockery of justice.

For those reasons, I will vote to sustain President Reagan's veto of this legislation and hope that this runaway train can be sidetracked and replaced with a policy that yields real and beneficial results, not just headlines for activists.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I yield 7 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I rise to urge my colleagues to vote to override the President's veto of the legislation dealing with South Africa to which both Houses of Congress have already given overwhelming approval. This is the exact piece of legislation which passed the U.S. Senate by a vote of 84 to 14 only a few weeks ago; exact. It has not been changed in one respect. Eighty-four Members of this body voted to enact this legislation into law.

While the President's decision to veto the legislation was not a surprise, it is a keen disappointment and in my judgment ill considered, and ill timed.

With strong bipartisan support in both Houses, legislation has passed the Congress sharply reversing the Reagan administration's policy of constructive engagement, a failed and discredited policy that is perceived by black and white South Africans alike as an endorsement of the vicious apartheid system.

Mr. President, everyone says they deplore apartheid. Let us talk for a moment of what apartheid involves. Apartheid is an institutionalized system of the most vicious racial discrimination, in fact carried to such an extent that 22 million blacks, the vast majority of the population of South Africa are denied any opportunity to participate in setting the course of their future.

They are subjected to the most outrageous indignities in terms of their daily lives, and separated from their families. Apartheid is the most anti-family system in existence. It really destroys and undercuts the family. It is no wonder that all across this country people have had a sense of revulsion against the system, and seek to bring about change in South Africa.

The Government has imposed a limited state of emergency that has led to the deaths of hundreds and the detention of thousands. South Africa's black political leadership, most notably Nelson Mandela, remains in prison. And South Africa continues its acts of military aggression against neighboring States, and has recently initiated a series of damaging economic measures.

In the meantime, the degrading structure of apartheid remains in place. The Senate's response when it enacted this legislation to the continuing tragedy and outrage in South Africa was logical, it was necessary, and it was right. Major new provisions in the bill prohibit new investments, bank loans to the private sector, imports of goods produced by state owned or controlled corporations, and it suspends direct air travel in order to bring home in effect to the privileged in South Africa the consequences of the policy that the Government is pursuing in that country.

And it provides in a very carefully framed way the opportunity to terminate the sanctions that are in the bill, providing South Africa releases Nelson Mandela and other political prisoners, undertakes to lift the state of emergency, unban the political parties so they can operate in a free and open way, repeal the group areas and population registration, and undertake a good-faith commitment to negotiations.

If South Africa were to take those steps, the bill stipulates that the sanctions may be lifted.

Some critics of this legislation have argued that sanctions will hurt the blacks in South Africa. Bishop Desmond Tutu has eloquently rebutted this argument when he said, "Blacks are saying we are suffering here. To end it, we will support sanctions even if we have to take on additional suffering. I must ask to whom is the international community willing to listen; to the victims and their spokesmen, or to the perpetrators of apartheid and those who benefit from it?"

Critics also argue that sanctions will not work. Such an argument addresses the wrong question. We do not know for certain that sanctions will work, or that it will in fact bring change in South Africa. We know, however, that the absence of sanctions which has been the condition up to date has not worked, and the Commonwealth Eminent Persons Group, a very distinguished group of men and women from the Commonwealth, after 6 months of intensive study and negotiations in South Africa concluded, "It is not whether such measures will compel change"—referring to sanctions—"It is already the case that their absence and Pretoria's belief that they need not be feared defers change."

It was the same Commonwealth Eminent Persons Group which in their report stated, "While the Government claims to be ready to negotiate, it is in truth not yet prepared to negotiate fundamental change nor to countenance the creation of genuine democratic structures. Its program of reform does not end apartheid but seeks to give it a less inhuman face."

The time has come to take measures designed to end apartheid. I agree with the nearly 100 presidents of major American colleges and universities who concluded, "Sanctions legislation offers a critical opportunity for the United States to make a forceful bipartisan statement against apartheid."

□ 2100

"Legislation will convey more effectively than anything else the breadth and depth of national feeling against apartheid. Such action at this time offers the best prospect of inducing other nations to follow suit, thus placing strong pressure on the South African Government to pursue a different course."

Mr. President, a sanctions policy, as Bishop Tutu said not long ago, "Is the last nonviolent option left, and it is a risk with a chance."

In the face of the South African Government's intransigence, it is a chance we must now take.

In terms of all we stand for with respect to justice and to freedom, it is important to pass this legislation. I urge my colleagues to override the veto of the President.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by Bishop Tutu and the letter from the college presidents previously referred to.

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

[From the New York Times, June 16, 1986]

SANCTIONS VS. APARTHEID

(By Desmond M. Tutu)

A clear message resounds in recent surveys in South Africa in which more than 70 percent of blacks supported sanctions against the Government. Blacks are saying: "We are suffering already. To end it, we will support sanctions, even if we have to take on additional suffering."

Our people have shown they mean business by their use of consumer boycotts. Last year, organizations representing more than 12 million South Africans called for sanctions and economic pressure. These are not insignificant actions or irresponsible bodies or individuals.

I must ask, To whom is the international community willing to listen? To the victims and their spokesmen or to the perpetrators of apartheid and those who benefit from it?

I would be more impressed with those who made no bones about the reason they remain in South Africa and said, honestly, "We are concerned for our profits," instead of the baloney that the businesses are there for our benefit. We don't want you there. Please do us a favor: get out and come back when we have a democratic and just South Africa.

It is true that many foreign corporations in South Africa have introduced improvements for their black staff. They now have a better chance of promotion. They get better salaries. But these improvements have come about largely through the pressures of the disinvestment campaign. American companies, especially, have begun to speak out more forth-rightly against apartheid than has been their wont, and they would be the first to admit that they got a considerable jog to their consciences from the disinvestment campaign.

There has been progress, but we do not want apartheid ameliorated or improved. We do not want apartheid made comfortable. We want it dismantled.

You hear people say sanctions don't work. That may be so. But if they don't work, why oppose them so vehemently? If they don't work, why did Margaret Thatcher apply them to Argentina during the Falkland war? Why did the United States apply them to Poland and to Nicaragua? Why was President Reagan so annoyed that his European allies did not want to impose sanctions against Libya? If sanctions are so ineffective, why does the United States still maintain a blockade of Cuba? Yet we have all this wonderful sophistry when it comes to South Africa.

I am unaware of anything that has changed in South Africa without pressure. Changes in the sports policy were due to pressure from the sports boycott and not because there had been a change of heart on the part of white sports administrators.

We hear some say that sanctions will destroy the South Africa economy and leave us with a financial morass. My response is that the ball is surely in the South Africa Government's court. Its decisions about the future of the country will determine whether sanctions should be invoked or not. I certainly do not want to destroy a land I love passionately. But if the South Africa Government remains intransigent and obstinate, then sanctions or no sanctions the economy will be destroyed in the wake of the violence, bloodshed and chaos that will ensue if a full-scale civil war breaks out.

There is no guarantee that sanctions will topple apartheid, but it is the last nonviolent option left, and it is a risk with a chance. President Reagan's policy of constructive engagement, and similar efforts to persuade white South Africans who support apartheid to change, have failed dismally. Let's try another strategy.

There are those who are not ashamed to argue that if they pull out others will come in to exploit black South Africa. The moral turpitude of that argument is quite breathtaking. We are not asking people to make economic or political decisions. We are asking for a moral decision.

There is no room for neutrality. When you say you are neutral in a situation of injustice and oppression, you have decided to support the unjust status quo. Are you on the side of injustice? Are you on the side of oppression or liberation? Are you on the side of death or of life? Are you on the side of goodness or of evil?

Desmond M. Tutu, the 1984 Nobel Peace Prize winner, is Anglican Archbishop-elect of Cape Town, South Africa. This article was adapted from his recent commencement address at Hunter College, in New York City.

JULY 7, 1986.

Hon. ROBERT DOLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR DOLE: We wish to express our deep concern about the situation in South Africa and our support for imposing legislative sanctions on the South African government. We offer our views in our individual capacities and do not purport to speak on behalf of the institutions we serve. But our work has caused us all to give many hours of thought to the injustices of apartheid and to the various ways in which this nation's government and its citizens and private institutions can respond.

Many of us wrote to you in July of last year expressing our belief that legislation directed against the South African government was an effective way to undermine apartheid and hasten its end. Thereafter, as you know, the President issued an Executive Order containing some of the provisions of the legislation which then seemed virtually certain to be enacted by Congress. Since then, however, the crisis in South Africa has worsened so dramatically that we believe that our country must do much more to express a rejection of the apartheid system.

Our conclusions find support in the recent findings of the Commonwealth mission known as the Eminent Persons Group. Their report expresses little hope that the South African government will voluntarily enter into meaningful negotiations that could lead to a peaceful end to apartheid. As they point out, effective concerted action by the international community seems to offer the last opportunity to bring about such negotiations and avert massive bloodshed.

As the Commonwealth report reached the public, the South Africa government instituted new repressive measures which offend fundamental principles of human rights. Censorship has limited the available information on the effects of the new measures, but press reports indicate that they have failed to stem the violence and the number of deaths. Indeed, during the last three months, the weekly death toll has more than doubled.

Against this backdrop, sanctions legislation offers a critical opportunity for the United States to make a forceful, bipartisan statement against apartheid. We do not attempt to state the precise features that should be included in the legislation. We do urge that the measures adopted conform to the following criteria:

1. Sanctions should be sufficiently strong to demonstrate the depth and sincerity of this country's disapproval of apartheid.
2. The primary target of the sanctions should be the source of apartheid: the South African government itself.
3. Sanctions should avoid harming nonwhite South Africans to the extent possible.
4. The legislation should hold forth the prospect of additional measures if certain prescribed forms of progress are not achieved by a specified date.

We speak most effectively as a nation when we speak with one voice through laws enacted by our elected representatives and signed by the President. Legislation will convey more effectively than anything else the breadth and depth of national feeling against apartheid. Such action at this time offers the best prospect of inducing other nations to follow suit, thus placing strong pressure on the South African government to pursue a different course.

If we do not take this step and the violence continues to mount in South Africa, will we be able to say that we did everything possible to forestall further losses of life? Although no one can state with certainty what steps will bring justice and peace to South Africa most quickly, we believe that legislated sanctions offer the best chance we have of encouraging peaceful change and avoiding increased violence and bloodshed.

Sincerely,

David Alexander, President, Pomona College.

Edward J. Bloustein, President, Rutgers University.

Derek Bok, President, Harvard University.

William G. Bowen, President, Princeton University.

John Brademas, President, New York University.

Carroll W. Brewster, President, Hobart and William Smith Colleges.

H. Keith H. Brodie, President, Duke University.

William J. Byron, President, Catholic University of America.

Colin G. Campbell, President, Wesleyan University.

J. Martin Carovano, President, Hamilton College.

John T. Casteen III, President, University of Connecticut.

Alice Chandler, President, State University of New York, College at New Paltz.

Martha E. Church, President, Hood College.
Lattie F. Coor, President, University of Vermont.
Henry J. Copeland, President, College of Wooster.
Robert A. Corrigan, Chancellor, University of Massachusetts.
William R. Cotter, President, Colby College.
Richard M. Cyert, President, Carnegie-Mellon University.
John DiBiaggo, President, Michigan State University.
Robert H. Donaldson, President, Fairleigh Dickinson University.
Mary M. Dunn, President, Smith College.
Melvin A. Eggers,, President, Syracuse University.
David W. Ellis, President, Lafayette College.
Alice F. Emerson, President, Wheaton College.
James F. English Jr., President, Trinity College.
William P. Gerberding, President, University of Washington.
Melvin D. George, President, St. Olaf College.
Marvin L. Goldberger, President, California Institute of Technology.
Hanna H. Gray, President, University of Chicago.
Paul E. Gray, President, Massachusetts Institute of Technology.
A. LeRoy Greason, President, Bowdoin College.
Sheldon N. Grebstein, President, State University of New York, College at Purchase.
W. Lawrence Gulick, President, St. Lawrence University.
Sheldon Hackney, President, University of Pennsylvania.
Evelyn E. Handler, President, Brandeis University.
Paul Hardin, President, Drew University.
Bernard W. Harleston, President, City University of New York, City College.
Theodore M. Hesburgh, President, University of Notre Dame.
Ira Michael Heyman, Chancellor, University of California, Berkeley.
Stephen Horn, President, California State University, Long Beach.
Edward B. Jakubauskas, State University of New York, College at Geneseo.
Eamon M. Kelly, President, Tulane University.
Elizabeth T. Kennan, President, Mount Holyoke College.
Donald Kennedy, President, Stanford University.
Nannerl O. Keohane, President, Wellesley College.
William A. Kinnison, President, Wittenberg University.
James T. Laney, President, Emory University.
George D. Langdon, Jr., President, Colgate University.
Earl E. Lazerson, President, Southern Illinois University.
Peter W. Likins, President, Lehigh University.
John David Maguire, President, Claremont Graduate School.
Jean Mayer, President, Tufts University.
Ellis E. McCune, President, California State University, Hayward.
Mary P. McPherson, President, Bryn Mawr College.
Paul B. Mohr, Sr., President, Talladega College.
Francis C. Oakley, President, Williams College.
Joseph A. O'Hare, President, Fordham University.
Vincent O'Leary, President, State University of New York.
Paul Olum, President, University of Oregon.
Robert M. O'Neil, President, University of Virginia.
Wesley W. Posvar, President, University of Pittsburgh.
Peter R. Pouncy, President, Amherst College.
Harold Proshansky, President, City University of New York, Graduate School and University Center.
David V. Ragone, President, Case Western Reserve University.
Frank H. T. Rhodes, President, Cornell University.
Olin C. Robinson, President, Middlebury College.
George Rupp, President, Rice University.
Benno C. Schmidt, Jr., President, Yale University.
Ruth A. Schmidt, President, Agnes Scott College.
Donna E. Shalala, President, Hunter College.
Harold T. Shapiro, President, University of Michigan.
Robert L. Sinsheimer, Chancellor, University of California, Santa Cruz.
Michael I. Sovern, President, Columbia University.
S. Frederick Starr, President, Oberlin College.
Robert B. Stevens, President, Haverford College.
Jon C. Strauss, Worcester Polytechnic Institute.
Jerome H. Supple, Acting President, State University of New York, College at Plattsburgh.
Howard R. Swearer, President, Brown University.
Richard P. Traina, President, Clark University.
Rolf A. Weil, President, Roosevelt University.
Kenneth J. Weller, President, Central University of Iowa.
Joe B. Wyatt, Chancellor, Vanderbilt University.
Charles E. Young, Chancellor, University of California.
Richard C. Atkinson, Chancellor, University of California, San Diego.
Clifford D. Clark, President, State University of New York, Binghamton.
George A. Drake, President, Grinnell College.
Frank S. Falcone, President, Springfield College.
David W. Fraser, President, Swarthmore College.
Ulric Haynes, Jr., Acting President, State University of New York, College at Old Westbury.
David Lloyd Johnston, President, McGill University.
D. Bruce Johnstone, President, State University of New York, College at Buffalo.
David T. McLaughlin, President, Dartmouth College.
Percy A. Pierre, President, Prairie View Agricultural and Mechanical College.
Albert Somit, President, Southern Illinois University.
Clifton R. Wharton, Jr., Chancellor, State University of New York.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I shall try to be brief.

I would, for the purposes of the RECORD, appeal for reason on the part of my colleagues, please I say to them, look at both sides.

First of all, if the mail and telephone calls coming to my office are any measure, a vast majority of the American people wonder what we are trying to do, meddling in such a distructive way into the affairs of South Africa.

I do not understand the political emotionalism. It seems to me that there are a few facts that ought to be borne in mind.

First of all, what are the options with respect to South Africa?

The options really are whether this Government, the United States Government, will continue to encourage and press the South African Government to continue the reforms that are now well underway. Or will we selectively intrude upon the affairs of South Africa which has been a friend and an ally down through the years, a country that believes in the free enterprise system, which has been a reliable ally and a responsible trading partner with the United States—a country which is doing its best to cope with an admittedly difficult situation?

Over and over again on this floor Senators, including this one, have said they find apartheid repugnant. The South African Government, I repeat, has already instituted a long list of reforms. It is not necessary to take the word of a Senator from North Carolina in this regard. Let me quote a black city councilman from Oklahoma who went to South Africa. He reported that a member of the governing council for the black South Africans in the township of Soweto was beheaded the day the Oklahoma City councilman Goree James arrived for a 10-day visit.

Who did the beheading? Not the Government, Mr. James said. It was the followers of the so-called African National Congress, that marvelous group which so many Senators have praised on this floor, a group which has endorsed and perpetuated a heinous activity called necklacing.

Necklacing. That is, seeking out and finding those who are not in favor of sanctions, hanging automobile tires around their necks, pouring kerosene or gasoline in them and setting them on fire.

That is the way the followers of the ANC like to enforce discipline on this matter.

For my part, I want no part of the ANC, the majority of whose directors are known Marxists. This leads to the crucial point, Mr. President: that being that our choice is between working with the government in Pretoria and encouraging further reforms, or

turning the whole situation there into a blood bath.

The beneficiary of the latter would be the Soviet Union, which has orchestrated the violence, the bloodshed, and the disruption in all of Africa. Look at all of the Communist nations, those surrounding South Africa, those in other parts of Africa. That is where the degradation of humanity really occurs, and it is never criticized on this floor. That is where people are starving. That is where there are no jobs.

And yet, those who have been so vociferous in their demands for our Government to impose sanctions upon South Africa never say a word about the atrocities of the African National Congress.

Let me refer further to City Councilman Goree James of Oklahoma City, and his visit to South Africa. Upon his return, according to the September 14, 1986, edition of the Sunday Oklahoman, Mr. James said:

> My trip to South Africa was one of the most exciting experiences I've ever had in my life. To say the least, All the things I have been led to believe about South Africa were not true, James said. The whole country is under a spirit of guilt, especially when it comes to what they feel Americans think about them.

Then he said:

> I had heard that all blacks had to get out of town (Johannesburg) before dark and that in the daytime they were limited where they could go. Black people go about wherever they want to in South Africa, restaurants, hotels, wherever.

The article continues:

> In Johannesburg, a city of 2 million people, I was expecting wholesale segregation. I was not expecting to find blacks in significant jobs, especially skilled jobs. Blacks hold almost 62 percent of the jobs in Johannesburg. They are administrators, engineers, managers, clerks, stenographers, mechanics, bricklayers, and heavy equipment operators.

So if Senators are willing to look at both sides, and have an opportunity to read what this black city official from Oklahoma City, OK, discovered when he went to South Africa, maybe there will be some changed minds. But I doubt it.

He said:

> It wasn't, however, a totally joyful trip. Soweto, a city of 2.5 million people the group visited, was rife with unrest. Students boycotted schools, renters refused to pay their landlords, and landlords were evicting their tenants. It's a powder keg.

James continuing said:

> Where the trouble lies, and I talked with citizens of Soweto, is the media gives you an opinion there's a band of soldiers with 15 to 20 people charging them. It's not 15 or 20 people, it may be a 1,000 or 2,000 people attacking the police.

I recommend the reading of this article by those who want to be fair to the President of the United States, not to mention the country of South Africa.

I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HELMS. Earlier this evening a distinguished Member of this body, a treasured friend of mine, went to the press gallery, and, to put it mildly, he unloaded. I was surprised, frankly, at the tone of the Senator's remarks because what he said was not typical of him.

He was angered, apparently, because the Foreign Minister of South Africa called me this afternoon.

□ 2110

The Senator went to the press gallery without consulting me to make the allegation that I was engaged in lobbying for the South African Government, that I was participating in a bribe—and other charges were made by the Senator, none of which was true.

I did talk to Pik Botha this afternoon. I have known the Foreign Minister of the Government of South Africa, since my early days as a Member of the Senate. He has been here many times. He has met with countless Senators. I consider him a friend. And he is and has been a friend of the United States. He called me today simply to advise that the situation in South Africa, as concerned the farmers of that country, was becoming very tense.

The farmers, he said, resent the instrusion by the United States Government, particularly that of the United States Congress, into the affairs of South Africa. These are black farmers as well as white farmers.

Pik Botha said that up to now, "We have restrained them, calmed them down," emphasizing to them that the United States is and has been a friend of South Africa, though critical of some of the difficulties there.

"But," he said, "My Government has now reached the point that we can no longer resist our farmers who are demanding that we stop importing wheat, feed grains, and other commodities among many other things from the United States."

Pik Botha said, while he was on the telephone, "If Senator ZORINSKY is available to the telephone, I think I owe him the courtesy of telling him the same thing," inasmuch as Senator ZORINSKY is the ranking Democrat on the Senate Agriculture Committee, which I happen to chair.

So I put down the phone, came on the Senate floor. I met Senator ZORINSKY there, in the middle aisle. I told him that Pik Botha was on the telephone and wanted to speak to him. Senator ZORINSKY went to the phone and had a conversation. I do not know what the substance of the conversation. Certainly, I do not know what Senator ZORINSKY said.

It is my understanding that two or three other Senators talked to Botha, who know him—Paul LAXALT, for example.

But for a distinguished Senator of this body, who is chairman of the Foreign Relations Committee, to go to the press gallery and make allegations about the nature and motivation of a telephone conversation with Pik Botha is, it seems to me, entirely inappropriate. I had thought better of him, but I bear him no ill will.

I later told the media that I would paraphase Shakespeare and say simply that methinks Senator LUGAR doth protest too much.

Senator LUGAR himself has discussed a $200 million appropriation with the President of the Philippines. I suppose could be called lobbying. But I do not make that charge against Senator LUGAR. He is my friend; I like him; I admire him. I simply regret that he lost his temper when, apparently, he became fearful that the President of the United States might win this vote tomorrow.

I do not know whether the President will win or not. I hope he will. I shall support him. I hope others will as well.

But let me point out, Mr. President, that the South African Government and its entrepreneurs, during the past 4 years, have bought 4,100,000 tons of wheat and feed grains from the United States. According to the Journal of Commerce of Wednesday, September 17, South Africa, prior to this development with the sanctions, had planned to import between 19 million and 37 million bushels of wheat in 1987. So, the point, Mr. President, is that by intruding into the affairs of the South African Government, we are shooting the farmers of America in the foot, and I shall have no part of it.

Mr. President, I ask unanimous consent that the article from the Journal of Commerce to which I have just alluded be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. HELMS. I thank the Chair.

Now, then, another article, this one from the Kansas City Times of September 5, said:

> The president and the executive director of the 4,000 member Kansas Association of Wheat Growers has sent House Speaker Mike Hayden a letter critical of his support for a ban on wheat sales to South Africa.

I cannot imagine House Speaker Mike Hayden, whoever he is, doing such a thing, but I think it is of sufficient interest for that article to be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. HELMS. Mr. President, I had a letter from a distinguished American just a few days ago, Mr. John A. Davenport of Middletown, NJ, with whom I have corresponded in the past. Mr. Davenport is a former editor of Barron's Weekly and a member of the board of editors of Fortune magazine. Mr. Davenport wrote an article published on September 22 for the Asbury Park Press. He discusses the irony of this sanctions proposition being conducted during the years when Ronald Reagan is President. He calls it a catastrophe. Let me quote just a paragraph or two from this fine article by Mr. Davenport.

The chances of preventing this catastrophe never looked bleaker than in this autumn of 1986 when even the friends of South Africa seem to have lost heart and when both Houses of Congress have declared war against a country which has never harmed American life or property, which supplies the United States with strategic minerals wholly essential to our peacetime and defense industries and which, by its very location, is the key to defending United States interests in the South Atlantic and Indian Oceans.

This is the point that is scarcely ever mentioned on this floor. What happens when—and I do not say if—when the Soviet Union completes the job of taking over the entire continent of Africa? Do not make any mistake about it, the Soviet Union has its eyes on the minerals which are available almost solely in South Africa. The Soviet Union wants control of the vital shipping lanes, as Mr. Davenport has indicated. So that is what the battle is all about—whether the Soviet Union will now be put in a position to take over the entire continent of Africa.

They now have taken over a great many countries, all of which now are suffering from proverty and starvation and disease and tyranny and murder, violence, just as always happens when a country is subjugated and controlled by the Soviet Union.

□ 2120

Mr. Davenport concluded his article, which is entitled "Apartheid, Like Walls of Jericho, is Falling," with this paragraph which ought to be fair warning to all Senators:

Sanctions are wrong because they run counter to U.S. adherence to the principles of free trade and free investment. They are wrong because they jeopardize our supply of strategic minerals. And they are wrong because they encourage those in South Africa who choose revolution as against evolution, terror as against order. It is time to support South African whites and blacks in working out their own destiny and their own form of power-sharing.

A very eloquent article. I ask unanimous consent, Mr. President, that the article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

(See exhibit 4.)

Mr. HELMS. I thank the Chair.

Mr. President, I have selected two or three letters out of the thousands that have come to me, and I would estimate that no more than 1 percent of all of the letters have favored sanctions that the Senate will be voting on tomorrow.

There is a letter, for example, from Richard Fox, who identifies himself as having earned a BS degree at Carnegie-Mellon University; MBA at the University of Cape Town. He is a first lieutenant in the U.S. Army, retired. He said:

DEAR SENATOR HELMS: I am a 51 year old Detroit-born U.S. citizen living in South Africa. My South African wife died earlier this year, leaving me with our five minor children. I have few assets outside this country, having lived here since 1964, and we could survive as a family only with great difficulty if we returned to the U.S.A.

I am second in the hierarchy of a South African company with four factories and about 1300 employees. We are engaged in two of the less attractive sections of any economy—the foundry and machine shop business. Most days I am at my office at 7 a.m., and I go home when I am able.

Our industry pays "rate for the job", and blacks, whites and coloreds (the latter somewhere in between the poles) work side by side in the same trades. The average white artisan will have 7th or 8th grade education, the black or colored worker less. Because there is a chronic shortage of engineers, technicians, and managers in this country, most supervisors have a span of responsibility greater than that of U.S. or European managers.

He goes ahead and tells about his salary. He says he earns about $35,000 a year, and he talks about the tax situation and so forth. I am skipping around, but I am going to ask unanimous consent in a moment that this letter be printed in the RECORD because it is of great interest, I believe, or should be to Senators considering this question. He said:

The world, led mostly by the U.S. Congress, has intensified its pressure for a quick fix to an Apartheid problem which originated in 1652 with the first permanent white settlement at Cape Town.

If the Congress of the United States genuinely wants the South African whites to yield some or all of their power to "the black majority" (after all, is that appellation not the quintessence of racialism?) then Congress ought to state clearly and unambiguously what exactly is required of the white minority comprising nearly 5 million people, 3 million of whom have roots stretching 15 generations or more back to the Cape and no other place to go. If it is to surrender their fate to the whims of whichever black clique which emerges with power, then only direct military intervention by the U.S.A. or the Soviet Union will achieve that surrender.

Now, he did not say so, but he made clear that he knew which one would intervene and, of course, it will be the Soviet Union. He said:

With further sanctions now inevitable I predict the post-sanctions scenario as follows: Increasing unemployment will result in increasing crime such as car theft, housebreaking, mugging in the white areas. The police and army, who have used only a fraction of the power available to them will react with increased force to black on black, black on white, and white on black violence. Then U.S. legislators, amid expressions of horror and condemnation, will pass further acts of sanction to fuel the upward spiral of violence further.

The man has it absolutely right. That is exactly what is going to happen. And this Senator from North Carolina wants no part of it. And then very wryly, Mr. Fox concludes:

When I am deported penniless by the present South African government, forced to leave or face punishment by the U.S. Government, or forced to flee from the radical black socialist government which surely would result under "majority"-racist-black rule, the bloated Senator from Massachusetts will find me protesting on his doorstep in Hyannisport. That's a promise.

Now, that is typical of the kind of letter we are receiving from various people.

Mr. KENNEDY. Would the Senator from North Carolina be willing to yield for a question?

Mr. HELMS. I will yield for a question, yes.

Mr. KENNEDY. I was wondering if the Senator could tell us which other Senators——

Mr. HELMS. Mr. President, I will yield for a question on the Senator's time.

Mr. KENNEDY. Could I have 3 minutes?

Mr. PELL. I yield 1 minute to the Senator from Massachusetts.

Mr. KENNEDY. I was wondering if the Senator could tell us which other Senators had the opportunity to talk with the Foreign Minister of South Africa.

Mr. HELMS. I have told the Senate all I know about the situation, I will say to the Senator from Massachusetts. I am confident that Pik Botha knew it would be an exercise in futility to try to speak to the Senator from Massachusetts because your mind has been made up for a long, long time.

Mr. KENNEDY. The Senator indicated that Pik Botha spoke to a number of Senators, and I was just wondering if the Senator from North Carolina could tell us which other Senators other than Senator ZORINSKY and yourself the Foreign Minister of South Africa spoke to.

Mr. HELMS. If the Senator had been listening carefully, he would have heard me say that Senator LAXALT spoke with him. I believe Senator GRASSLEY also spoke with him and Senator ZORINSKY, and of course myself.

Mr. KENNEDY. Would the Senator share with us the nature of the conversation? It has been alleged that the

Foreign Minister indicated to one or more of the Senators according to the chairman of the Foreign Relations Committee that if the President's veto——

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. KENNEDY. Will the Senator yield 1 more minute?

Mr. PELL. I yield 1 more minute.

The PRESIDING OFFICER. The Senator is recognized for 1 more minute.

Mr. KENNEDY. If it was sustained, that there might be increased sales of wheat and other farm products to South Africa.

Mr. HELMS. He made no such statement.

Mr. KENNEDY. Well, is there anything that the Senator would like to tell us about the nature of the conversation that would help us make our own judgment about whether it is really intimidation or in effect a bribe by a foreign minister, a member of a government to an American Senator? Is there anything that the Senator can tell us about so that we could make our own judgments, other Senators would be able to read through this and make their own judgment?

Mr. HELMS. I did not catch the last part of the Senator's question.

Mr. KENNEDY. So that other Senators would be able to read the RECORD and know, on the basis of what the conversation was between the Foreign Minister and the Senator from North Carolina, whether that conversation really would fall under the accusation of being a bribe?

The PRESIDING OFFICER. The Senator's time has again expired.

Mr. KENNEDY. Or intimidation?

Mr. HELMS. Mr. President, as the saying goes, there he goes again. The Senator is characterizing something he knows nothing about, with the somewhat less than clever question——

Mr. KENNEDY. Those are Senator LUGAR's words.

Mr. HELMS. I do not yield further, Mr. President. Regular order.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. The Senator can say whatever he likes on his own time. But I have related in full to the Senate earlier in my remarks exactly what happened this afternoon and what was said.

Mr. KENNEDY. Will the Senator yield on my time?

Mr. HELMS. Regular order, Mr. President.

Mr. KENNEDY. So I can give the authority for those words?

Mr. HELMS. Mr. President, will you advise the Senator from Massachusetts who has the floor?

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. I thank the Chair.

□ 2130

Mr. President, I am willing to go further, if Mr. KENNEDY or anybody else will tell me the justification for support of people who boast about their power to inflict their will upon innocent people by hanging automobile tires around their necks, filling them with gasoline and setting them afire. But you do not hear the Senator from Massachusetts talk about that.

Mr. KENNEDY. Will the Senator yield and let me restate my position on that, or will the Senator deny me that opportunity?

Mr. HELMS. The Senator can have the floor in just a minute and speak. I do not have to stand here and listen to him. The Senator is not going to harass the Senator from North Carolina.

The Senator, throughout this thing, has supported the violent factions of South African puppets, and he knows it is a fact. What is at stake here, what is at issue, is whether the Soviet Union will take over the entire continent of Africa, including the minerals, including the shipping lanes, and convert it into a continent of tyranny and terror.

The Senator finds scarcely anything wrong with what is going on in Nicaragua, except he does not like the freedom fighters. He constantly complains about those. But this Senator differs with the Senator from Massachusetts. I am an anti-Communist, and unhesitatingly so I think that is the issue before this country—and its foreign policy all over the world.

Mr. President, I do not know whether the President will be sustained in his veto tomorrow. I hope he will. If he is not, it will be a tragic mistake for which the people of America, including the farmers, will pay a terrible price. The President has taken a stand, I admire him for it. I stand with him, and I hope he wins.

I yield the floor.

The exhibit follows:

EXHIBIT 1

CITY COUNCILMAN GETS DIFFERENT PICTURE OF SOUTH AFRICA

(By Wayne Singleterry)

A member of the governing council for the black South African township of Soweto was beheaded the day Oklahoma City Councilman Goree James arrived in that country to begin a recent 10-day visit.

Despite that gruesome incident, James, who returned to Oklahoma City last week, said he discovered that South African racial violence wasn't nearly as widespread as most Americans believe.

He also learned the plight of South Africa's blacks is not as bad as most Americans suspect.

"My trip to South Africa was one of the most exciting experiences I've ever had in my life. To say the least, all the things I had been led to believe about South Africa were not true," James said.

"The whole country is under a spirit of guilt, especially when it comes to what they feel Americans think about them," James said.

"It's the laws that are wrong. The majority of white people would like to see those laws changed. If there was a popular vote today, racial restrictions would not be there," he added.

In one of the few remaining countries where a racial minority controls the government, James said a South African black has a better chance of becoming part of society's mainstream than American blacks did in the 1950s.

"I had heard that all the blacks had to get out of town (Johannesburg) before dark" and that in the daytime they were limited where they could go.

"Black people go about wherever they want to in South Africa, restaurants, hotels, wherever."

In Johannesburg, a city of 2 million people, "I was expecting wholesale segregation. I was not expecting to find blacks in significant jobs, especially skilled jobs."

Blacks hold almost 62 percent of the jobs in Johannesburg. They are administrators, engineers, managers, clerks, stenographers, mechanics, bricklayers and heavy equipment operators.

James said he was also surprised to see blacks in the city after dark for leisure activities and shopping.

"I attended a Methodist Church expecting the worst, only to find the choir," James said.

"Most people think of South Africa emotionally. I conceived it out of my own experience during the years of segregation.

"Blacks will not have a hard time in South Africa melting into leadership roles as we did in this country," James said.

"I don't like to waste hate. Everybody who hears of South Africa has a common feeling of hatred toward everybody in South Africa. I don't think that's good for humanity," James said.

Accompanying James on his trip were a council member from Cincinnati; the mayor of Tel Aviv, Israel; the mayor of Taipei, Taiwan, and other dignitaries. Each

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Oklahoma City taxpayers did not fund James' trip, he said.

During his visit, James and other officials addressed Johannesburg's chief elected officials about that community's laws restricting where blacks, Asians and coloreds can live.

Anyone born of a mixed marriage between blacks and Asians, whites and blacks, of Asians and whites is called a colored. Asians are mostly people from India.

"Our suggestions to the council and administrators were to do away with the group area act that says blacks got to live here, Asians here, etc."

James said he brought tears to their eyes when he talked about some of his experiences during the American struggle for integration and civil rights in the 1950s and 1960s.

"I don't ever go just to learn. I went to effect a change," James said.

He learned later that the council had no authority to change that policy. The change had to be approved in Pretoria, the country's center of government and administrative power.

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saying they would no longer prosecute anyone for violating that order.

"That was real refreshing," he said.

A mass transportation system that prohibits blacks, coloreds and Asians from riding the same buses as whites may also be on its way out.

James said he was told the 43-member Johannesburg council is one vote shy of being able to eliminate segregated busing.

The visitors also discussed blacks' involvement in business, and other relationships between the white minority and the people they rule.

"We labored real hard in discussions." James said he spent more time with the nationalists, the ruling conservative party, than he did with more liberal organizations.

Everywhere they went, James said people they were trying to do.

"They were the friendliest people I have ever met in my life," James said.

During his visit, James celebrated his 53rd birthday. He was frequently greeted with cakes and people singing "Happy Birthday."

Newspapers and local television stations did features on the group's visit.

It wasn't, however, a totally joyful trip.

Soweto, a community of 2.5 million people the group visited, was rife with unrest. Students boycotted schools, renters refused to pay their landlords and landlords were evicting their tenants.

"It's a powder keg," James said.

But the violence often shown on television between police and Soweto residents was overblown. Much of the actions against police were caused by gangs of hoodlums, just like the gangs in large America

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the violence shown on television before South Africa banned the foreign news media, James said.

"So far as the media reflects the kind of laws on the books, we are getting a correct picture.

"Where the trouble lies, and I talked with citizens of Soweto, is the media gives you an opinion there's a ban of soldiers with 15 or 20 people charging them.

"It's not 15 or 20 people, it may be 1,000, to 2,000 people attacking the police."

James said full integration and the sharing of power by the white with the racial majority may occur quicker than many people believe.

He said he wants to return to South Africa later to determine if there are improvements.

EXHIBIT 2

SOUTH AFRICA LIKELY TO BECOME MAJOR MART FOR U.S. WHEAT

(By Dirck Steimel)

Failing crops in Africa and dwindling worldwide demand for U.S. wheat have combined to catapult South Africa into a position to become a major market for the winter wheat grown in U.S. Wheat Belt states.

But no one is putting South Africa, previously only a minor importer of U.S. grain, on the customer list yet. Politics has become a major hurdle.

Widespread condemnation of South Africa's apartheid policy has swept the farmers—and their representatives in Washington—into the intense debate over whether economic sanctions should be imposed on the South African government.

Regardless of sanctions, South African officials estimate that their nation will need to import between 19 million and 37 million bushels of wheat in 1987.

If South Africa were to buy the 37 million bushels from the United States, it probably would become the fifth or sixth largest U.S. wheat customer, said Richard Fritz, director of market analysis for U.S. Wheat Associates, a Washington-based export group.

South Africa's growing need for wheat coincides with a slump in U.S. grain exports, which could be aggravated further by the reluctance of the Soviet Union—traditionally a leading buyer of U.S. wheat—to fulfill its purchase commitment under a long-term trade agreement.

The United States sold 900 million bushels of the 1985 wheat crop overseas—only half of the 1.8 billion bushels sold in the peak year of 1981. The outlook for export sales of this summer's crop is only slightly better, according to the Agriculture Department.

Farm states are ensnared in the controversy over sanctions against South Africa. Several farm-state lawmakers have voiced opposition to a grain embargo, which has been widely discussed, saying that taking such action to protest the white minority government's racial policies would hurt U.S. farmers more than the Pretoria government.

The debate has spilled over into the governor's race in Kansas, the nation's top wheat-producing state. House Speaker Mike Hayden, the Republican candidate, drew criticism from some farm groups by saying he favors banning all sales—including grain sales—to South Africa. Lt. Governor Tom Docking, the Democratic candidate, opposes an embargo.

A bill that would have halted all trade with South Africa, including grain sales, was killed in the U.S. House in favor of a milder Senate-passed bill. The Senate version would ban U.S. investments and bank loans in South Africa and clamp down on mineral and food imports. But it would not block grain exports.

President Reagan is almost certain to veto the measure, although it appears there are enough votes for a two-thirds majority to override his veto. According to White House press secretary Larry Speakes, Mr. Reagan thinks the bill would "impede rather than advance the goal of further change in South Africa."

The South African government to some extent has fanned the controversy over sanctions by reminding U.S. legislators in a news release sent to Capitol Hill and the Washington press corps that it is potentially a major U.S. wheat customer.

The release, mailed out in July, underscored South Africa's record of buying grain from the United States and said it trusted that the United States would continue selling grain to Pretoria on a "non-discriminatory basis."

However, the release noted, "Should developments dictate otherwise in the future, the South African government would be forced to drastically review its purchasing policy from abroad."

EXHIBIT 3

[From the Kansas City Times, Sept. 5, 1986]

WHEAT GROWERS RIP HAYDEN'S SOUTH AFRICAN EMBARGO STANCE

WICHITA.—The president and the executive director of the 4,000-member Kansas Association of Wheat Growers have sent House Speaker Mike Hayden a letter critical of his support for a ban on wheat sales to South Africa.

Del E. Wiedeman, a WaKeeney farmer and group president, and Howard W. Tice, executive director, said in their letter Wednesday that any embargo would cause enormous damage to the United States reputation as a reliable supplier of wheat. They said much hard work has gone into rebuilding that reputation after the embargo against the Soviet Union imposed by President Jimmy Carter in 1980.

Mr. Hayden, Republican gubernatorial candidate, took the stand against wheat sales to South Africa during an agricultural news conference sponsored by the Kansas Farm Bureau last week.

Kelley Hayden, the candidate's brother and campaign spokesman, said the letter had been received and a response was being prepared. He said despite the wheat growers' criticism, telegrams from Democratic legislators and the state's congressional delegation and a verbal blast from a member of the Kansas Wheat Commission, Mike Hayden's stand has drawn positive comments from some people.

"It's all just a tempest in a teapot stirred up by the Democrats," Kelley Hayden said. "We're getting favorable response."

Mr. Weideman said he is registered as a Democrat, but he said that was beside the point.

"I know Mike Hayden and like him and think he'd make a fine governor," Mr. Wiedeman said. "But to advocate we might consider an embargo, no matter what country is involved, is not acceptable."

Mr. Wiedeman said he thinks that is an opinion shared by a majority of members of the wheat growers association.

EXHIBIT 4

[From the Asbury Park Press, Sept. 22, 1986]

APARTHEID, LIKE WALLS OF JERICHO, IS FALLING

(By John A. Davenport)

It would be an irony would it not, if the Republican conservative administration of President Reagan went down in the history books as that which has finally unhinged South Africa from the West, thereby completing the Sovietizing of the whole African continent. The chances of preventing this catastrophe never looked bleaker than in this autumn of 1986, when even the friends of South Africa seem to have lost heart and when both houses of Congress have declared war against a country, which has never harmed American life or property, which supplies the U.S. with strategic minerals wholly essential to our peacetime and defense industries and which, by its very location, is the key to defending U.S. interests in the South Atlantic and Indian oceans.

What in the name of common sense justifies this mindless adventure? The charitable answer is that our congressmen are concerned less with the national interest than with winning votes in the next election and appeasing liberal sentiments. In the process they and the country have been swamped by a virulent campaign against "apartheid"—an ugly word for separateness never defined in the legislation but always fraught with opprobrium.

Yet apartheid is a slippery term carrying two different meanings. If it refers to the natural desire of the tribes and races in a mixed society like South Africa to associate with each other, then it is no more offensive than that blacks in New York should congregate in Harlem or Germans in Yorkville. If, on the other hand, apartheid means forced separation by government, then it is morally offensive.

But, as matters are going, such enforced separation seems to be falling down like the walls of Jericho: gone the ridiculous signs directing whites and blacks to different fa-

cilities; gone their separation on the playing fields and in the factories; gone, finally, the hated pass laws which prevented blacks from moving freely around the country. But with each concession still more is asked of the South African government by our Senate and House.

This escalation of demands is best seen in Sen. Lugar's so-called "compromise" bill which may shape the final legislation going to the president for signature or veto. The bill inflicts on South Africa such wounds as forbidding it landing rights in this country but promises much more punishment tomorrow unless South Africa agrees to certain concessions. These include the freeing of Nelson Mandela, who could walk out of jail today if he would renounce the use of terror in that country; the immediate lifting of emergency edicts and, worst of all, the recognition of all South African political parties including the South African Communist Party and the African National Congress, whose stated purpose is to make the country "ungovernable."

No government in the world would accept such conditions in its own country, and President Botha is quite right in saying that he prefers U.S. sanctions to suicide. For what the United States is really asking is the abdication of the present South African government and the information of a new government to take its place.

This is very dangerous business as all history shows. It is all very well to dream that a new Kerensky will take over in South Africa, but in the end, Kerensky proved no match for Lenin. Just so present demands of Congress and the U.S. State Department are an invitation to anarchy and chaos in which all will lose and only the Soviets will win.

In the end only the president can stop this subversion, but so far he has spoken with a very uncertain trumpet. He is against sanctions but he has failed to develop a coherent argument against current proposals. Surely the country would be better served by plain speaking.

Sanctions are wrong because they run counter to U.S. adherence to the principles of free trade and free investment. They are wrong because they jeopardize our supply of strategic minerals. And they are wrong because they encourage those in South Africa who choose revolution as against evolution, terror as against order. It is time to support South African whites and blacks in working out their own destiny and their own form of power-sharing.

Several Senators addressed the Chair.

Mr. PELL. Mr. President, I yield 2 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KENNEDY] is recognized.

Mr. KENNEDY. Mr. President, as sometimes happens in this body, a Senator will state a position which is not the position of a Senator and then differ with him. That has just been done by the Senator from North Carolina, when he indicated that I was supporting regimes, organizations, or individuals who believe in violence in South Africa. That is completely untrue.

I yield to no one in this body, including the Senator from North Carolina, in deploring violence, and I believe that my record on that, in opposing violent groups, speaks for itself, and it will not be sullied by any statement, accusation, or false representation by the Senator from North Carolina. I wanted to make that point clear.

I regret, Mr. President—I know that my friend from Michigan wishes to speak, and I will have another opportunity tomorrow—that we did not have an opportunity to have a full revelation for the Senate about the nature of the conversation between Pik Botha, the Foreign Minister of South Africa, and the particular Senators, including the Senator from North Carolina, who spoke about the particular conversation. It was represented by the chairman of the Foreign Relations Committee as characterized as being a bribe and an attempt to intimidate the Members of the U.S. Senate. Those were not the words that were used by the Senator from Massachusetts but by the chairman of the Foreign Relations Committee.

Any Senator, including the Senator from North Carolina, who does not understand the distinction between Members of the Senate speaking with a friendly government and the President of a friendly government, like Cory Aquino, who represents ideals and shared values with the United States about the best way we can most effectively help her, and understanding and speaking with the Foreign Minister of a government that is committed by nature, disposition, and policy to a racist policy of apartheid——

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

Mr. KENNEDY [continuing]. I think fails to understand any significance in terms of foreign policy.

I ask for 1 more minute.

Mr. PELL. I yield 1 additional minute to the Senator.

Mr. KENNEDY. Fails to understand the significant difference in our role under the Constitution and foreign policy. I think the distinction is self-evident, and it is one that should even be appreciated by the Senator from North Carolina.

I wish we were faced with the issue in question about how the United States could best help the causes for democracy and those forces that are committed to democratic ideals, instead of a government that has a tradition and a commitment to violate them.

I thank my colleague, the Senator from Rhode Island.

Mr. DOLE. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 46 minutes remaining.

Mr. DOLE. I yield 10 minutes to the Senator from Utah.

Mr. HATCH. I ask my colleague from Michigan if he is waiting.

Mr. LEVIN. I am willing to continue our process of switching. I wonder if I can inquire of the Senator about how long he expects to be.

Mr. HATCH. Not much longer than 10 minutes, unless we get into a dialog.

Mr. PELL. I promise no dialog.

Mr. HATCH. I thank the majority leader for this time.

Mr. President, I am one of the four Senators who voted for the Anti-Apartheid Act. I am also one of the Senators who supports the President's veto of that bill, and there are two basic reasons for my position.

First, I visited South Africa during the recess and learned, for instance, that Senator KENNEDY's friend Bishop Tutu is not what Senator KENNEDY claims him to be. Tutu's own church does not support his call for sanctions, and he has had to acknowledge that fact at an embarrassing press conference from which I will quote in a moment.

Not only does Tutu's Anglican Chuch not support his personal desire for sanctions, but also, two other black church groups that are larger than Tutu's have opposed his call for sanctions. The leader of the Zionist Christian Church, with 9 million members, Mr. Barnabas Lekgonyane, oppose sanctions, as does the leader of the Alliance of Independent Reformed Churches, Mr. Isaac Mokoena, with nearly 6 million followers. That is not to mention Chief Buthelezi, with whom I also met.

Mr. President, remember how many times we have heard the claim that Bishop Tutu and the black churches of South Africa want sanctions, no matter how many millions of blacks will be thrown out of work? This Chamber has echoed with this claim. Yet I learned in South Africa that Tutu, himself, has acknowledged that he is speaking only for Desmond Tutu, not his church. Indeed Tutu told a press conference in August that he believes his church is probably opposed to sanctions.

□ 2140

So Tutu wants them but his church members do not; neither do many of the other black church leaders. In fact 70 percent of the blacks in South Africa oppose sanctions or at least disinvestment.

Before this debate is over, Mr. President, I hope that those who wish to override the President on this issue will clarify who in South Africa is really calling for sanctions and who do they represent? It is naive to vote for sanctions in the belief that black South African churches are calling for them, because that is not the case. Yet many of my colleagues still seem to believe just that. Some are still confused because they have not yet visited South Africa, so they project the

American civil rights struggle and the vital role played by black church leaders in that struggle in the South in the 1960's to the South African scene today. But this is not so. This is not an American civil rights controversy. Nor does it have any innerworkings of an American civil rights controversy. It is much more complex than that and virtually everybody I met who opposed apartheid, from opposition political leaders to black leaders, to black political leaders to black small business people to black people who work for American businesses, oppose disinvestment and oppose sanctions and realize those things are going to hurt blacks all over Africa today.

My second reason for supporting the President's veto will be clear to anyone who will take the time to read the President's letter to our majority leader. President Reagan has accepted most of the important sanctions in the Antiapartheid Act, the Foreign Relations Committee version of the bill, and he has accepted my emphasis on black development aid funds to be spent in South Africa to strengthen black institutions such as the trade union movement.

I have good credentials here along with Senator Kennedy because the two of us worked very hard back in 1981 to see that the free black trade union leadership had support and they could develop and learn the skills of how to develop free black trade unions. They are not just limited to blacks. They invite nonblacks to join as well. So it has been a very good development and, of course, we worked very hard to do that together.

In other words, it would be wrong to argue that the issue is now sanctions or no sanctions.

The President has agreed to enough sanctions, in my view, to make the point with South Africa. Now a vote to override this veto is a vote to add additional sanctions that Senators ought to be prepared to justify to their constituents. The additional sanctions are almost certain to bring retaliation from South Africa that will hurt our own farmers.

We were on the floor today with another big farm amendment. How important that was to do something for the farmers, and yet here we are with I think a situation where our farmers can be definitely hurt and at the same time many blacks in Africa can be definitely hurt as well.

Mr. President, I hope that no one in this debate will suggest that the issue is sanctions or no sanctions. To do so would mean that the President's letter on the sanctions he intends to impose has not been read at all.

Let me outline some examples of the additional sanctions that some would like if we override the President's veto.

The additional sanctions will seriously harm not only South African blacks but American farmers and workers as well. These additional sanctions include a ban on imports of South Africa textiles, coal and uranium and agricultural products. If South Africa retaliates, bear in mind that since June 1986 South Africa has purchased over 160,000 tons of our wheat. Projected sales of United States wheat to South Africa in 1987 go as high as 1 million tons. Moreover, South Africa bought nearly $400 million of American corn in 1987, $50 million worth of rice and 170,000 bales of cotton.

The additional sanction of agricultural imports will mean that hundreds of thousands of black agricultural workers will be unemployed. About 400,000 black workers are already in the fruit industry in the Cape Province with almost 2 million dependents. There are nearly 100 million black workers and dependents involved in the sugar industry who will be affected if we override the President's veto.

In other words, Mr. President, the President has eliminated the sanctions that would cause the most harm to black workers and their families, such as the landing rights of South African Airways and the agricultural imports and the coal imports. There are still plenty of sanctions left to send a message to South Africa. Those who vote to override cannot claim that they just want to do something about apartheid. The President has agreed to do just exactly that in his letter to the majority leader, and a vote to override his veto is, in my opinion, a vote to throw a million blacks out of work in addition.

I think this is important. But let me go a little bit further. If we are serious about helping blacks in South Africa, I suggest we do it most positively. Apartheid is a heinous practice. There is no question that all of the outshoots from apartheid are heinous and very detrimental to blacks.

I found it is almost impossible for blacks in certain provinces and areas in South Africa to own property or even to own their own small businesses. We should be doing things that will help blacks to be able to own property, own their small businesses, be able to compete in a more free market system.

That is one reason why I supported the doubling of certain funds to $40 billion to help with vocational education, development of free black trade unions, the development of small business and many, many other things that could be done.

I think the President would be well to push these types of programs and to help people along these lines.

Mr. KERRY. Mr. President, is the distinguished Senator willing to yield for a question?

Mr. HATCH. I am happy to yield on the Senator's time.

Mr. KERRY. I do not know how much time I have.

The PRESIDING OFFICER. The Senator has no time at this point.

Mr. PELL. Mr. President, I am glad to yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. PELL. I am willing to yield time.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield?

Mr. PELL. Yes.

Mr. KERRY. I ask my distinguished colleague from Utah.

The PRESIDING OFFICER. Is the Senator from Rhode Island yielding to the Senator from Massachusetts and, if so, how much time?

Mr. PELL. I yield to the Senator from Massachusetts. As I understand, he wanted a minute to phrase a question.

Mr. KERRY. I want to be able to ask a question, Mr. President.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 1 minute.

Mr. KERRY. Before I use that 1 minute on this point of victory, I would like to know whether or not the answer is supposed to come from the 1 minute.

Mr. PELL. No. I think the answer comes out of his time.

Mr. HATCH. It comes out of my time.

Mr. KERRY. I thank my distinguished colleague.

I listened with interest and I know the distinguished Senator is obviously heartfelt serious about what he is saying.

But is he aware that President Botha has himself said publicly that anything less than what the Senate has passed and the House has passed will be viewed as a victory and if we pass anything less than that, we will in fact be embracing Botha's regime as a consequence of their own statement that they view something less as a victory.

Mr. HATCH. That is, of course, not what he said. If the Senator wants to get the direct quote, I am happy to answer it.

Let me answer the Senator this way. I received a telegram. While I was over there, I met mainly with opposition people. I did meet Botha. I did meet with the President of South Africa. I did meet his Finance Minister and others. Since Botha was in Japan at the time I did meet his deputy, the man right under him in charge of the foreign ministry and I did meet a whole raft of other people mainly opposition people. I met with a lot of progressive party people, a lot of business people. I met with Chief Buthelezi. I met with business people. I met with people who enforce the Sullivan principles on American companies. I met with black small business people and blacks who work for American

companies. I went through Alexander Bay which is worse than Soweto, worse than anything, living up against the most wealthy city in the world, Seeheim, and I can go on and go on with the people we met within South Africa.

Most of them were people who were violently opposed to apartheid, as I am.

And hardly any, unless they were connected with the African National Congress, hardly any of them—I cannot think of one who wanted sanctions because they felt it would hurt blacks.

They do want pressure. They do want the United States to assert moral leadership and they do feel President Reagan is doing that.

Let me tell you what really bothers them. What really bothers them is the interference in Congress in insisting on sanctions so politicians can go home and brag about how they stood up for civil rights in this country in a battle that is not a civil rights battle. This is not Martin Luther King facing up to Bull Connors. It is a complex problem, and we have a tendency to make it uncomplex on the Senate floor in our zeal to let people know how strong we are for civil rights over here.

Almost every one of them said we have been making strides under the reform movement under P.W. Botha with all his faults, we have been making strides. Reform has been coming. Many laws are no longer in force. A number of them have been repealed. And he himself has said that he will get rid of apartheid.

The PRESIDING OFFICER. All time has expired, the time of the Senator from Massachusetts as well as the time of the Senator from Utah.

Mr. HATCH. I ask I be yielded 5 minutes.

Mr. DOLE. I yield 5 minutes,

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. What I am really trying to say is that their big argument, and by the way I also met with the head of the South African foundation which is a conglomerate of all the businesses, himself very much opposed to apartheid. And I can tell you that from him right on down through many of the other people that I met with, in fact almost all of them, except I can only think of one or two black small business people who said "We don't know whether sanctions will help, but if they will help, we are for them."

That is what their argument was.

□ 2150

Mr. KERRY. Would the Senator yield to me 30 seconds?

Mr. HATCH. I yield 30 seconds off my time.

Mr. KERRY. Each and every one of the laws in which the Senator refers that have been changed have in fact been replaced by another law. Where the pass law may have been changed they put in a uniform identity card. In each case, one block that was changed may be replaced by another block.

And my question to the distinguished Senator is: The Eminent Persons Group said that it was their conclusion that the Botha government is simply trying to put a less inhumane face on apartheid but has no fundamental commitment to the notion of change.

I wonder how you would address that finding of these distinguished personages who spent that time there and drew that conclusion.

Mr. HATCH. Even the opposition people have admitted there are laws that should be taken out. There are a number of them that no longer can be enforced. There have been reforms. Those reforms had been going on until the Congress of the United States reared its ugly head and injected itself into this.

I was part of that. I voted for sanctions. I did for a variety of reasons. I am against apartheid and I wanted to put pressure on South Africa and I wanted to give Senator LUGAR and Senator PELL some support so we would not have to have the punitive sanctions that my good friends, Senator KENNEDY, and STEPHEN SOLARZ and others were arguing for. And they lost.

But when the President is willing to give virtually all of the sanctions that we asked for except those that are going to directly harm blacks—in other words, tailor the sanctions to hit those who really should be hit—I think we ought to go with the President. I think we ought to let him conduct foreign policy. I do not think we, in our zeal to act like civil rights reformers in America, should intervene with that type of foreign policy.

Let me just end by making a point I was going to make before. I think it is important to read into the RECORD a pretty important telegram. This telegram came to me this week, as I recall.

This comes from Colin Eglin, who is a Member of Parliament, leader of the Progressive Party. He is opposed to apartheid. He is one of the leaders over there. I had lunch with him one day, and I told him I voted for the sanctions. He said:

> Having discussed the situation in South Africa with you during your recent visit I am gratified to learn that you have now decided to oppose the imposition of economic sanctions as I mentioned to you when we met, I believe that economic sanctions will be counterproductive. They will not assist in getting rid of apartheid. On the contrary, they will make it more difficult to do so. May I suggest that you consider making another visit to South Africa with a view to identifying practical measures which could assist in a positive way, the elimination of apartheid.
>
> Kind regards,
>
> COLIN EGLIN, M.P.
>
> *Leader of the Progressive Federal Party.*

On my time could I ask the distinguished Senator from Massachusetts if he has been to South Africa. But I only yield 10 seconds.

Mr. KERRY. I will take the 10 seconds to say that the distinguished Senator has not been to South Africa, but I do serve as the ranking member of the African Subcommittee and I have spent a considerable amount of time listening and talking to people and being with people.

Mr. HATCH. I do not mean to denigrate my distinguished colleague.

Mr. KERRY. As the Senator knows, my colleague from Massachusetts has had an involvement with this for over some 20 years and has been on what I thought was one of the more recent trips to South Africa.

I think all of us know that while it is valuable to be in these places firsthand, it is not the requisite by which we make our decisions as to how we vote.

The PRESIDING OFFICER. The time of the Senator from Utah has once again expired.

Mr. HATCH. Mr. President, I ask unanimous consent that I be given 3 additional minutes and then I will finish.

The PRESIDING OFFICER. Is there objection?

Mr. PELL. There is no objection, as long as the 3 minutes comes out of the time of the other side.

Mr. HATCH. The 3 minutes will come out of the majority leader's time.

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

Mr. HATCH. Well, let me just say this. I think it is pretty tough to understand that situation unless you have been there. I thought I did, too. I really studied it. But without going there, without really meeting with people on both sides of this issue, I think it is pretty difficult to understand.

Now, admittedly, I spent 8 days in that area and that is a limited time. But that is 8 more days than any other Member of the U.S. Senate has spent, except those who have gone there with their minds made up to begin with. And there have been a number of those.

Let me just finish, because I promised I would yield the time and give it to my distinguished colleague from Alabama.

I think when somebody like Colin Eglin, who has taken a lot of abuse—all of his life, he has stood up against apartheid, all of his life he has stood up and said this—I think Colin Eglin should be listened to.

Furthermore, I believe you ought to listen to the great church leaders,

black church leaders. I think we ought to listen to Chief Buthelezi, who heads the Kwa-Zulu nation, 7 million people. I think we ought to quit listening to the African National Congress, which is out in Zambia, and letting them make the decisions for us.

I would like to go on and on, because it is a really important issue. I think we have given it short shrift. I think the President ought to be backed. I think the President knows more about it than we do. Frankly, I think he will be able to keep the reform going if we give him a chance to do it. I think that he has had an effect on South Africa.

I just call to the attention of the distinguished Senator from Massachusetts and his senior colleague from Massachusetts, that you probably noticed where P.W. Botha has called for snap elections within the next 2 years. I can tell you, you will probably also notice that his party is continually moving to the right, to the Afrikaner's point of view. And they are being pushed there by none other than the Congress of the United States in its usual interference in foreign policy.

Now, the President tailored sanctions that will work. I think we ought to support him, and I am going to because they will work and they will benefit blacks all over South Africa. I think they will keep the pressure on for this Government to do what is right without being pushed into the arms of those who do not want to do what is right and never wanted to end apartheid.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I yield 7 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Chair and I thank my friend from Rhode Island.

Mr. President, we have given the administration policies 6 years to produce results in South Africa. They have not.

Just last year, when the Congress was finally ready to act, the President asked for additional time. Surely, he told us, constructive engagement will work—surely, he said, the South African Government will begin to respond—surely, he predicted, the situation will improve if we stay the course.

Well, we listened, and so did the Government of South Africa. They heard our President's plea for congressional restraint and understood it as acceptance of their policies. And those policies have continued. Since September 1985, 3,000 black South Africans have died at the hands of agents of the Government.

Now they are hearing the President's veto message and they are understanding it too. As the Christian Science Monitor suggested, that veto message is being received as "good news for President Pieter W. Botha's government" and a "foreign policy victory" for Pretoria.

The net result is that the President himself, in a letter to Senator DOLE and Speaker O'NEILL, was forced to acknowledge that his policies have not produced results. Indeed, he had to acknowledge that, "In the last several months, the South African Government, instead of moving further down the once promising path of reform and dialog, has turned to internal repression."

So our policies have failed. To the extent that Pretoria is moving, it is moving backward.

And that should come as no surprise to us. We know that there is no point in dealing with terrorists—they are irrational, beyond reason, immune from persuasion. Our policy is not to negotiate with terrorists. It is time we applied that policy to the terrorist government in Pretoria. And the South African Government is a terrorist government: They kill innocent civilians; they take hostages and, without benefit of trial or hearing, place them in prison; their concept of justice is colored by color—by a racist ideology which permeates their every decision and action.

No, we cannot reason with them, we cannot persuade them, we cannot assume that they will see the light and change their ways. They will not. Unless they are forced to. And the sanctions bill before us is a modest way to bring pressure to bear against them.

But, Mr. President even if sanctions were no more persuasive than the current policy, we should still impose them. While our ultimate goal is movement, our immediate need is for a clear statement of a fundamental moral position. Because, Mr. President, America's moral commitment to end apartheid is in question now and it will remain in doubt as long as we refuse to impose sanctions.

I am embarrassed to say that. More than embarrassed; I am ashamed.

That America—a nation founded on the concept that we are all created equal and endowed by our Creator with certain unalienable rights—that America's position on the fundamentally moral question of apartheid is less than clear and more than tragic.

□ 2200

Let us use sanctions, then, as a way to send a message of morality to the world and to those who impose and suffer under apartheid.

But, we are told, that message is more than symbolism. Those who oppose sanctions invoke this warning: Sanctions will hurt those we seek to help.

And that claim, at least, is right. Sanctions will hurt the black majority in South Africa. They know that and we know that—and while neither they nor we welcome the hurt, we each can accept it, because there is no alternative. The black majority is hurt everyday that apartheid continues—and they are willing to accept the hurt of sanctions as a way of protesting and perhaps ending the pain of apartheid.

Ask the black majority if they are willing to accept the hurt of sanctions. They will give you the answer—they have given you the answer. When they march in Soweto they give you the answer—they accept the hurt of the clubs and the bullets of the Government which represses them. When they protest in churches they give you their answer—they are willing to accept the jail that the Government puts them in. When they speak out, when they gather to bury their dead, when they engage in a strike, when they even dream—then they prove that they are willing to accept the hurt which comes from trying to end an evil, perfidious system.

Ask Bishop Tutu if he is willing to accept the hurt of sanctions. Ask Nelson Mandela if he is willing to accept the hurt of sanctions. Ask Allan Boesak if he is willing to accept the hurt of sanctions. You know their answer, the American people know their answer—and so do the 27 million blacks living in South Africa.

But if you want, if you need, a clearer statement of intent, consider this: In November 1985 there was a peaceful march in Mamelodi organized by the women of the township to protest a ban on weekend funerals, high rent, and the brutal action of the security forces toward their families. They are not fools. They knew the risk they were taking and they tried to minimize it. They carried signs: "Do not shoot," the signs said, "This is a peaceful march," the signs said. And still the shots were fired. And still 19 peaceful protestors were shot and killed by the South African security forces and hundreds of others were injured. Among the dead were two 10-week old babies.

You ask those people if they were willing to be hurt by sanctions. Ask them if they respect a U.S. Government which speaks against apartheid but does not act against it.

Or if we do not wish to ask those questions, some may try other arguments in support of the President's veto. They tell us to wait so that we can act with our allies. But we did not wait when we went after terrorism in Libya and ought not wait to confront terrorism in Pretoria. They tell us we ought to speak with one voice. But they ignore the millions of voices and the hundreds of years of history which tell us what that voice ought to be saying.

Enough, Mr. President, enough. This issue is neither complicated nor confusing. It is as clear as day and night. And our answer ought to be as simple as the problem. No more, no more. You can't explain it, you cannot justify it. We cannot in all decency sustain this veto.

Mr. President, I yield the floor.

Mr. DENTON and Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DENTON. I think the floor manager will yield me time.

The PRESIDING OFFICER. Who yields times?

Mr. HELMS. Mr. President, may I inquire what the time situation is?

The PRESIDING OFFICER. The Senator from Rhode Island has 16 minutes remaining, and the majority leader has 30 minutes remaining.

Mr. HELMS. Does Senator PRESSLER have time remaining?

The PRESIDING OFFICER. Senator PRESSLER has 26 minutes remaining.

Mr. HELMS. I thank the Chair. I yield to the Senator from Alabama such time as he may require.

The PRESIDING OFFICER. The Senator from Alabama, Mr. DENTON.

Mr. DENTON. I thank the distinguished Senator from North Carolina. I regret that the Senator from Michigan, who just spoke, left the floor because I wanted to ask him a question about his claim that this is a simple problem, and a simple question. In his statement he praised Nelson Mandela for his willingness to sacrifice for his country and so on. Had he not left so hastily I would have asked him if he is aware that Nelson Mandela was found by Amnesty International, not the most right wing crowd in the world, not to be a prisoner of conscience but simply to be, justifiably, a prisoner. He is not apologized for, nor is admired by Amnesty International. If the Senator from Michigan admires Nelson Mandela, I would ask him on what grounds and on what grounds, in more specific terms, he regards this as a simple question.

I am glad that the junior Senator from Massachusetts is on the floor. I wish the senior Senator were also. As I informed the senior Senator from Massachusetts, I intend to address his own point of view with my own, but to do so with respect for his. I will do so with respect to the junior Senator from Massachusetts, who knows that he changed my mind when we discussed at length on a very important issue. Senator BIDEN, on his side, made a very lengthy statement in the Judiciary Committee with respect to that.

In other words, I think that I can be objective, I think the junior Senator from Massachusetts can, and I had an experience with the senior Senator from Massachusetts to prove that he, too, can be objective because he yielded to a point of view I had in opposition to him on the occasion, which I shall not quote.

My point, Mr. President, is that this is a complex question. I agreed with the junior Senator from Kansas, when I saw her on television addressing the Press Club, when they asked, "Do you Senators feel that you have enough information to vote on a question as complex as South Africa?

She equivocated. She implied that perhaps we have not had. I believe that we do not have, as a body. I do not presume to present myself as one who is extremely knowledgeable, but I do wish to present a point of view based on some knowledge. I will define the parameters of the knowledge.

I know more about South Africa than I like because I happen to have inherited the job, the new job, as chairman of the Security and Terrorism Subcommittee of the Judiciary Committee. Terrorism is an issue, but the greatest issue—from the point of view of the United States I think we would agree—is on both sides of this issue. First, the improvement of the lot of the black people of South Africa. Second, the national interests of the United States. How are they affected by the events which take place respecting South Africa?

In both of those interests, the improvement of the lot of the black people in South Africa, the monitoring of the interests of the United States, my knowledge and point of view result in a firm conclusion that both of those interests will be served by backing the President of the United States with respect to this sanctions issue.

Let me give one example of the kind of knowledge from the Security and Terrorism Subcommittee perspective. The other night about a week ago in my son's home, within walking distance of here, we had a fundraiser for a man named Hlapane. He is one of the most admirable and perhaps the most courageous man I have ever met. I did not show his picture on the floor, his photograph, the last time I talked on the subject on the floor. I believe Senate rules preclude that.

But were I to show his picture, you would see a man with a black face, gray hair, who has all the evident character of George Washington, Thomas Jefferson, you name it, hero of U.S. history. That man was a member for two decades of the African National Congress. He was an enthusiastic member. He became very doubtful during the early fifties about the influx of Communist influence. He saw the African National Congress slowly permeated by Communists in key positions receiving their guidance from overseas. He fought it within the African National Congress for roughly 10 years.

□ 2210

He then broke with them, very expressly telling them why, and became an opponent of the African National Congress. He came to testify in 1982 before my subcommittee. Before he testified, a very interesting string of events occurred.

We gave him top security from John F. Kennedy Airport to Washington National; top security from that airport to the room where he agreed to remove the mask we had on him. He told me in the anteroom that he knew that I had done some things for my country that he had read about. He said that he loved his country and he loved his people.

He then said to me that he knew as the result of his testimony that day, he would be killed when he returned, he would be assassinated by the terrorists who are going to be so encouraged as to perhaps irreversibly be unleashed by the bill we might pass tomorrow.

Indeed, after he blew the whistle on the African National Congress, along with many other blacks who had much to lose, he returned to his nation and he was murdered, his wife was murdered, and his eldest daughter was crippled, maimed. The fundraiser that we had at my son's house was to raise money for the education of his two daughters who are doing very well at the college in Montevallo. That is my kind of participation in the South Africa issue.

There is a movie I will ask the distinguished junior Senator from Massachusetts to review sometime before the vote tomorrow, just to inject something of a condensation of my perspective on this. It will take 15 minutes. I will be happy to take 15 minutes if he suggests so. I invite all Senators to look at the movie in room S-207 from noon tomorrow until 4 p.m. Fifteen minutes is all I ask that you take to look at the movie.

I think it encapsulates the true vision we should have on South Africa.

My experience comes from Vietnam and my experience with international relations. I do not blow it up, but it is fairly considerable, considering the relativity.

My conclusions are that Vietnam was something we were not ready for as an establishment nor as the critics of the establishment, that is, the media and academia. We both broke down. That is also the point of view of a man named Fred Friendly whose program I participated in last Saturday in the Senate Caucus Room, which will be aired in January. I want to see a mending of that breakdown because the greatest harm being done to the United States and to the world is the disunity which was sowed during that period.

I implore my colleagues, particularly those like the junior Senator from Massachusetts who has seen evidence of my goodwill, to join in the effort to take a good look at this before we vote tomorrow and see what we are voting on without prejudice.

There are 535 Secretaries of State, if you count all 100 here and 435 over in the House. Nothing has crippled the U.S. interests or the world's interests in civilization greater than disunity.

Never has it been more plain, more repetitious, than when the chairman of the Foreign Relations Committee of the Senate openly breaks with the President of the United States and in a speech not too many days ago compared it to Senator Fulbright's break with President Johnson on Vietnam.

I do not say that President Johnson was right. I do not say that Senator Fulbright was right. Or wrong.

I say that the split between the two was a tragedy and remains a tragedy on this floor and in the other House today.

What I know about the situation is encapsulated by saying that if we take the vote tomorrow that we appear likely to take, we are going to feed the Communist-inspired terrorism in South African perhaps irreversibly. In doing so, we will condemn the black whose lot both sides are trying to improve and whose polls, on the black side, always show they oppose sanctions. We will lose that.

If you think you are receiving some political injection of economics by a threat to retaliate by not importing grain, wait until we contemplate what happens when that Government goes down and we are not able to get access to the metals and minerals without which this economy cannot exist.

Let us not be hypocritical about the issue of who is injecting domestic politics into this. The whole question has been soaked in domestic politics. That is why we have had such a vote as only 14 people for the President the last time. The domestic political perception is based on a false notion because I believe that the black people in the United States are going to identify with the black people in South Africa sooner or later because the truth will surface and the interests of those black people in South Africa will be properly identified not by Bishop Tutu who is a creature of the media. but men like Buthelezi and others who are leaders of black people, having identifiable constituents, and who are taking a stand opposed to that which this body has so far taken.

Nelson Mandela's wife says, "With our necklaces we will liberate our country."

Have you all seen what the necklaces are, filled with diesel fuel? Have you seen the way they shake matches to intimidate a whole crowd or an individual? When you see this film tomorrow you will see a man filmed picking up a knife off a table, going out in front of a crowd to a man who is being beaten up and then punching that knife into him about 30 times.

Mr. President, you do not like violence and I do not like violence. I ask you to look into this further, please, because we are going to vote tomorrow at 4 p.m. I say that because I am interested in nonviolence, I am interested in the lot of the black people in South Africa.

Bishop Tutu, you should know, made four demands about what should be done some time ago. He said if they were met he would not be in favor of invoking sanctions. The four demands have all been met. They were massive increases in expenditures in education, end of forced relocation, granting of citizenship, a process by which that is done, repeal of the influx control laws. All of those four have been done.

Bishop Tutu is luxuriating in his prominence. He does not have a constituency. Poll after poll among the black people say they do not agree with sanctions. They are intimidated. They are terrorized. The murder, torture, and intimidation are prevalent. I ask you to look into it.

I ask the junior Senator from Massachusetts if he will indeed look at the 15 minute film tomorrow. Will he do so?

Mr. KERRY. I thank my distinguished colleague.

Mr. DENTON. I am just asking a question.

Mr. KERRY. I wanted to say very respectfully that the earlier comments of the Senator were well-taken and I appreciated his reference to our discussion and the work we did together on that issue. It was very important. I know that he did change as a result of our conversation.

Out of respect for that, while I know my commitment on this is a firm one, out of respect for that I will indeed take the time to view that film. I will be happy to join the Senator.

Mr. DENTON. I thank the Senator from Massachusetts. I expected no other kind of response.

I ask the distinguished floor manager and he does not have to respond. I respectfully invite him. I listened to him with admiration when I was at the Navy College in Newport with him and the other Senator from his State. I respect them. I respect their point of view. I do add that, in spite of the firmness and depth of our position, we should take a look at this film.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. I yield the junior Senator from Massachusetts 10 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized.

Mr. KERRY. Mr. President, as I answered the distinguished Senator from Alabama, I am delighted to view the film tomorrow, notwithstanding that I have very strong feelings about this issue. It is my intention to vote for sanctions as I did vote for sanctions previously. I will vote to override the veto of the President.

□ 1020

Mr. President, indeed, I know where the Senator is from.

Mr. President, my reasons for urging my colleagues to vote to override the President's veto are not based on a partisan foundation at all. It is my perception of what I think is in the best interest of the foreign policy of the United States of America and the effort of the U.S. Senate to fulfill its obligation to appropriately set an example for the people of this country and the world about how we feel about human rights and the efforts to carry the revolution of democracy, if you will, beyond our shores.

While we debate this issue in the U.S. Senate, Mr. President, people are being killed in South Africa. Children are being shot, children are being lined up and shot. People are dying of starvation in death camps which the South African Government, in its arrogance, calls homelands.

As we speak here today, South Africans are suffering, right now, before sanctions. It is the kind of suffering that comes out of an oppression which this country has always said it stands against. It comes from the violation of basic human rights. Blacks in South Africa cannot live where they choose to live. They cannot move freely within their own country. They must carry a "Uniform Identity Document" at all times, and they must present it upon demand to the security police. And somehow, we are supposed to believe that time is going to heal the ignominy of that requirement.

While we discuss the economic impact of sanctions, hundreds of blacks are dying in the mines of South Africa because of a system which does not treat black people as human beings.

While we talk about whether sanctions will cause hardship, blacks in South Africa are getting on buses at 2:30 a.m. so that they can ride for hundreds of miles in the dark, to get to the factories in time to work at menial jobs.

While we listen to speeches about "democracy" in South Africa, the state of emergency continues, and thousands of black activists and union members are still being held in prison, even as we talk here about something less than we passed before. And while we talk about freedom, freedom of the press is being crushed in South Africa.

While we debate here, blacks are still being denied the right to vote in South Africa. They are being denied even the right to bury their dead with dignity in South Africa.

While we discuss the issue of a Presidential veto, blacks in South Africa are literally being enslaved by the system of apartheid. That is what we should be talking about here on the floor of the U.S. Senate—not future hardship but present hardship; not future indignity but present indignity; not future loss of life but present loss of life. Because that is what this vote is all about.

That is why I believe we ought to vote overwhelmingly to override the veto by the President of the United States, because this is a vote by the U.S. Senate to do whatever it can to try to end slavery in another country.

It has been suggested by this administration and its supporters that, if we vote to override the President on this issue, we will somehow send the wrong message before the summit meeting in Iceland. I suggest that the opposite is true. A vote to override will send the right message to the summit in Iceland. I believe it is the imperative message, that must be sent by the United States.

It will send a message to blacks in South Africa that we support their struggle against racism and oppression. It will send a message to the Botha regime in Pretoria that we are serious, and that there will be serious consequences for them if they do not enter into negotiations with the true black leadership in South Africa for a transition to majority rule. And it will send a message to the world that America still stands for the principles of freedom, equality, and democracy that America has always stood for in the world.

That is the real message.

That is the real message of the vote and I do not believe any efforts by the administration to transform it into a summit impact or any other kind of impact will work because I believe the U.S. Senate and the American people understand the nature of this message.

I regret to say, and I wish it were otherwise, but I believe that this administration, in its 6-year policy of constructive engagement—which, against all warning and against all requests by blacks, it has continued to pursue—has shown a moral insensitivity to the problem of apartheid.

While blacks suffer already because of apartheid, this administration has the audacity to try to suggest that blacks will suffer because of the effort to stop apartheid. They have failed to see that when we ally ourselves with the oppressors of black people in South Africa, that we weaken our commitment to human rights everywhere. We hurt the image of America in the eyes of the world. We hurt it in the eyes of Africa, of Asia, of Latin America, of Europe, and indeed, Mr. President, we hurt it in the eyes of black communities across this country and we hurt it before our own citizens of the United States.

We lessen, I think, what America represents, what it means. I think we undermine the achievements of our own civil rights movement in bringing about greater equality in the United States over the past 30 years, in a struggle which goes on even now.

That is not the course we should choose to follow in the U.S. Senate. We should, instead, seek the high moral ground in the struggle against the racist, apartheid system in South Africa. And we should heed the calls of black leaders within South Africa itself—moral leaders, leaders who have put their lives on the line, leaders who are in prison today because of their position. Those leaders say to us that while they understand it may require sacrifice by blacks, it is a sacrifice that is imperative because, without it, they will continue to make sacrifices that will be lost because they will not have gained their freedom as a consequence of those sacrifices.

Mr. President, there is an alternative to imposing sanctions. There is an alternative. That alternative was set forward by the Eminent Persons Group. They told us that greater violence, more destruction, and the possibility of the worst bloodbath since World War II will come if we do not impose sanctions. That is the alternative.

I just do not think that is an alternative, Mr. President. That is why we have a moral obligation to impose sanctions now in a last effort to avoid that bloodbath and bring about a peaceful resolution of the conflict.

Mr. President, I heard the distinguished Senator from Utah talk and others talk about trips to South Africa and about an understanding of South Africa. The Eminent Persons Group went to South Africa for a longer period of time than any United States Senator. The members of the Eminent Persons Group were people who, for years, have had a role in what has happened there because they have been part of the British Commonwealth. No less an individual than Sir Malcolm Fraser, the former Prime Minister of Australia; General Olusegun Obasanjo, proposed by the President of Zambia; Lord Barber Wentbridge, chairman of the Standard Chartered Bank; Nita Barrow, who was proposed by the Prime Minister of the Bahamas, a Barbadian national; Mr. John Malecela, proposed by the President of Zambia, the former Foreign Minister of Tanzania. Who could understand better what is happening there? Sardar Swaran Singh, proposed by the Prime Minister of India, who had been in public life since 1946, served as India's Minister of External Affairs.

□ 2230

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. KERRY. I request 3 more minutes.

Mr. PELL. Three more minutes.

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

Mr. KERRY. Let me read the conclusion because the conclusion, I think, is more important than the words of any U.S. Senators. They said:

> We draw the conclusion that while the Government claims to be ready to negotiate, it is in truth not yet prepared to negotiate fundamental change, nor to countenance the creation of genuine democratic structures, nor to face the prospect of the end of white domination and white power in the foreseeable future. Its programme of reform does not end apartheid, but seeks to give it a less inhuman face. Its quest is power-sharing, but without surrendering overall white control.

And finally they said:

> The question in front of Heads of Government is in our view clear. It is not whether such measures will compel change; it is already the case that their absence and Pretoria's belief that they need not be feared, defers change. Is the Commonwealth to stand by and allow the cycle of violence to spiral? Or will it take concerted action of an effective kind? Such action may offer the last opportunity to avert what could be the worst bloodbath since the Second World War.
>
> We hope that his Report will assist the Commonwealth—and the wider international community . . .

Mr. President, the United States has already acted by virtue of the Senate and the House, the Commonwealth has acted, the House of Representatives has acted, the nonaligned nations have acted. Only the President of the United States refuses to act and tomorrow we have an opportunity as the U.S. Senate to act finally and to make clear our determination that this country will not send a lesser message, not send a weakened message, not sending something less than our original intent, but will send the message that makes clear that apartheid must end and that the United States will not tolerate anything but the strongest efforts to make it end and end now. This is a vote to end slavery, Mr. President, and I hope the Senate will overwhelmingly reject the veto of the President.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes and 51 seconds remaining.

Mr. PELL. Mr. President, I yield myself such time as I need.

Mr. President, I regret that the President chose to veto the South Africa sanctions bill passed overwhelmingly by the Senate and the House. In so doing, he has confirmed the worst fears of many black South Africans—that the U.S. administration does not support their struggle against apartheid.

The President justified his veto on the grounds that the sanctions in the bill would hurt the very people that we are trying to help. Yet, this position ignores the call for sanctions among many South African blacks including Nobel Laureate Arch Bishop Tutu as well as the recommendation of the British Commonwealth's Eminent Persons Group, which concluded that sanctions "may offer the last opportunity to avert what could be the worst bloodbath since the Second World War."

As a nation committed to peace and justice, the United States has a moral and political obligation to help all of the people of South Africa avoid a racial conflagration. We can no longer rely on talk and diplomacy—the heart of the administration's failed policy of constructive engagement. Rather, we must take action that will put meaningful pressure on the South African Government and make it clear to South African blacks that we are on their side.

The bill which was sent to the President achieves these objectives. It leaves no doubt about our moral stand. We are against apartheid not only in words but also in deeds. Moreover, it puts the South African Government on notice that there is a price to pay in their relationship with us if they do not take genuine steps to dismantle their inhumane and unfair system of apartheid.

I believe this is a good bill. Some of the sanctions, such as the bans on the importation of iron and steel and on new investment, have been agreed to by the European Community while many others are measures adopted by the commonwealth nations. Thus, in a real sense, this bill is part of a multilateral approach. In addition, there is nothing in the bill, in my view, that prevents the American people from expressing their outrage over apartheid through the passage of State and local antiapartheid laws. Finally, the bill provides assistance to the victims of apartheid.

The President has just announced his intention to issue an expanded Executive order that would add a partial ban on new investments, a ban on the import of iron and steel from South Africa, a ban on bank accounts for the South African Government and its agencies, and a $25 million aid fund for the victims of apartheid to the measures imposed by Executive order last year. This order falls far short of the bill which was sent to the President. To accept this as a substitute for the sanctions bill passed in this body by a strong bipartisan vote of 84 to 14 and in the House by a vote of 308 to 77 would send the wrong signal to the South African Government to believe that it has been let off the hook.

I urge my colleagues to reject the forthcoming Executive order and to pass this bill over the President's veto. Only in this way can we make our opposition to apartheid clear and unequivocal.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I believe that there are no other Senators who wish to be heard. In closing, Mr. President, let me raise just two or three questions.

I have heard this evening, as we all have heard on so many occasions, that Bishop Tutu is a hero. Perhaps so. We have heard that Bishop Tutu speaks for the people of South Africa. Perhaps so. If that is true, however, Mr. President, why is it that Bishop Tutu's own church voted to reject the notion of economic sanctions?

The truth of the matter is that Bishop Tutu represents a minority of blacks in Africa. And the minority he represents happens to be the violent minority.

We also have heard repeated comments by those who favor the intrusion of the United States Government into the affairs of South Africa that Nelson Mandela is a hero. That fact is that Mr. Mandela pleaded guilty to conspiracy to murder. That is why he was jailed. The fact also is that Mrs. Mandela boasted that they had enough automobile tires and bicycle tires to create enough "necklaces" to impose their will upon those in the majority who have the courage to stand up and say "We don't want sanctions."

Now, what kind of heroes, Mr. President, are we going to have around this place? But all of this is reminiscent, I guess, of what happened some years ago in the country formerly known as Rhodesia. You may remember that a very fine black Methodist minister named Abel Muzorewa was elected Prime Minister of Zimbabwe. Prime Minister Muzorewa did not last long because there began an undermining process in which the U.S. State Department and others participated. Bishop Muzorewa was pro-United States, he was antiviolence, he insisted upon Christian principles. And so another election was forced in Zimbabwe.

Prime Minister Muzorewa was placed under house arrest following that election, and a Marxist named Robert Mugabe became the Prime Minister. There has been chaos ever since in Zimbabwe. The standard of living there has plummeted, the country which once was among the foremost countries in that part of the world in terms of production and trade now is in the greatest of difficulties. It is acknowledged by all who will look at the situation that from 10,000 to 20,000 of Robert Mugabe's political adversaries have been eliminated. Even CBS designed to have a report on that on one occasion, but it was like a ship passing in the night. It was a fleeting report.

□ 2240

Nobody talks any more about how a Marxist dictator just over the border in Zimbabwe operates. That is the way it is in this day and time, with the kind of "journalism" we have, the kind of "statesmanship" we see.

We hear virtually no complaints about a Communist country anywhere. With all due respect to various Senators, when have you heard them complain about Mugabe; when have you heard them complain about the atrocities committed by Communists anywhere? You do not hear it. It is as if it never happens.

You do not hear anything about Rumania. Hungary is long since forgotten. East Germany? You do not hear any complaints by Senators on this floor about the way Communist tyranny operates. No. It is sort of a boys-will-be-boys attitude.

It is only when a country such as South Africa and others presume to be two things—anti-Communist and pro United States—that you hear these voices raised.

If South Africa is so bad—and I do not claim that South Africa is perfect; nobody claims that—but to be honest about it, Mr. President, I do not know a perfect country on the face of this Earth. But if South Africa is so bad, why are tens of thousands of blacks from other countries pouring over the borders into South Africa every year, seeking work, seeking a higher standard of living, seeking to stay alive?

You do not hear about that. You do not hear about Ethiopia and what is going on there. Oh, maybe an occasional mention. But the focus is on South Africa. South Africa, warts and all, is head and shoulders above any other country on the continent of Africa.

Mr. President, it is this sort of thing that perplexes me, along with the fact that Senators stand up on this floor and, with a perfectly straight face, say that Ronald Reagan has done nothing at all to encourage South Africa to begin to rid itself of apartheid. That is simply not so; and with all due respect to Senators who say it, they know it is not so.

Mr. President, I do not know whether there is hope of sustaining the President's veto tomorrow. I pray that it will be sustained, because the very people who have encouraged the Presi-

dent of the United States to go and sit down with—who else?—the Soviet Union in Iceland are the very ones who are going to send him there with a defeat, if they possibly can do it. And they may succeed.

It makes me wonder what ever happened to the bipartisan policy in this country. There was a Senator named Arthur Vandenberg, a distinguished Member of this body, who was a Republican, and he was sort of an architect of the bipartisan nature of foreign policy. But we do not have it around this place anymore.

Anything and everything that Ronald Reagan does is wrong. They accuse him of duplicity. They accuse him of being ineffective. They accuse him of not really wanting to do anything about various situations when, as a matter of fact, he has done more than any President in recent years to move this country along.

I have not always agreed with President Reagan, but I respect him as an honest man who is doing the best he can under the most difficult circumstances and with almost no cooperation from his political adversaries.

Earlier this evening, Senator HATCH stated over and over again a self-evident truth—that being that this sanctions issue is domestic politics. Were this not an election year in the United States, we would not be here at 14 minutes to 11 o'clock debating an issue that ought not to have come up, in any case.

The President deserves the support of the Senate. He deserves to be given a chance to do his constitutional duty—that is, to conduct the foreign policy of this country—and it may be that he will be denied it tomorrow. If so, the RECORD will be clear as to who stood where. I stand with the President, and I do so proudly. He is right on the issue of South Africa, and he deserves to be supported.

Mr. President, does the Senator from Rhode Island desire to be heard?

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

The PRESIDING OFFICER. Twenty-four seconds.

Mr. PELL. Mr. President, I will close with a quotation, I believe, from Carl Schurz, when he said:

> My country, right or wrong. When right, to keep it right. When wrong, to try to put it right.

I think those of us who support the override tomorrow feel that this is the right direction to go.

Mr. PROXMIRE. Mr. President, I rise to urge my colleagues to override the President's veto of H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986. The House has already voted overwhelmingly to do so. The bipartisan vote in the House to override the President was 313 to 83. Previously the House voted to pass H.R. 4868 for a vote of 308 to 77. So the antiapartheid bill actually picked up new support on the override vote. Such a lopsided, bipartisan rejection of the President's decision shows how out of touch he is with the American people on this issue. He is left now with trying to persuade one-third of the Members of the Senate to back him up.

On August 15 the Senate voted to pass H.R. 4868 by a vote of 84 to 14. I hope we in the Senate will reject the President's efforts to split our bipartisan coalition on this bill. It is designed to express the opposition of the United States to the apartheid policies of the Government of South Africa and to encourage South Africa to abandon such policies. It is not a radical bill. It does not force United States companies to leave South Africa. It does not even ban all new bank loans to the South African Government. During our August debate the argument was often made that we should not make the bill too strong as we needed a moderate bill that a supermajority of the Senate could support in case there was a need to override a Presidental veto. So we passed a bill that was not as strong as many of us would have preferred. Senator LUGAR then persuaded the House to accept the Senate bill without any change whatsoever. Again it was argued that we might need to override a veto and the bill should not be strengthened in conference. The House reluctantly agreed as its Members realized the absolute need to have legislation on this matter this year. In fact supermajorities in both Houses realized the need for our country to go on record with legislation demonstrating American opposition to apartheid. The Congress was convinced that the time for talk was over, and the time for action was upon it. It is very unfortunate that the President has decided to veto this bill—but our task is clear. We must override that veto.

I have given several speeches in the past explaining why it is both morally right and in our national interest to put America firmly on record about the need to end apartheid in South Africa. I will not repeat those arguments now. I do wish to note, however, that apartheid is a heinous system of racial repression, that was instituted by the majority white population to maintain their privileged rule over the majority black population. It is absolutely wrong. There is a growing political crisis in South Africa because of the just struggle by the blacks to end that system. In July President Reagan himself noted that the "root cause of South Africa's disorder is apartheid and he stated that 'time is running out for moderates of all races in South Africa.'" We recognized that and the legislation we passed in August and which is before us again today is specifically designed to move the South African Government to negotiate with black leaders to institute government by the consent of the governed before it is too late. The bill provides that all of its sanctions will be terminated if the South African Government will only take steps to move that country to a system of government by the consent of the governed. The bill is not designed to punish the people of South Africa. It is not a punitive sanctions bill. Rather it is designed to send encouragement to all those people of good will in South Africa, both white and black, who are striving to put an end to an evil, racist system.

President Reagan claims that the solution to South Africa's racial problem "can only be found in lifting the present state of emergency, releasing political prisoners, and unbanning of political parties—necessary steps opening the way for negotiations aimed at creating a new, democratic order for all South Africans." These are precisely the steps that our antiapartheid bill provides the South African Government must take to end the sanctions it imposes. Thus our bill will help lead to an end of the present crisis.

The President tells us that he opposes the comprehensive Anti-Apartheid Act of 1986 because it harms the victims of apartheid. And yet black leaders in South Africa both political and religious call for the type of measures in this bill.

In April Archbishop Tutu called on the international community to pressure the Government by means of economic sanctions to move toward nonviolent change. In May the Southern African Catholic Bishops Conference called on the world community to put economic pressure on the apartheid government and to link such pressure with negotiations with accepted leaders of the people. The Protestant South African Council of Churches has long called for economic sanctions against the Government. Our country should respond to the moral voices of the South African people—both white and black. This bill is designed to do just that. It is also in America's interest to encourage nonviolent reform in South Africa, and that is the purpose and design of this bill before us today.

Before closing I want to address one other issue that came up with regard to this legislation, that is whether in passing it we meant to preempt actions being taken by State and local governments to indicate their own opposition to apartheid. We did not and do not. During our debate last year on the South African sanctions bill Senators made it absolutely clear on the floor that we had no intention of preempting State divestment laws—see the 1985 CONGRESSIONAL RECORD at 18824 to 18826. Although that matter was not formally addressed during our August debate on this bill, our intention on this issue is the same. Con-

gress has no intention of compelling sovereign States to invest in companies which their elected representatives have decided they should not invest in. If the Senate wanted to override such State laws it would have put a specific preemption provision in this bill. It did not and that is why I can state flatly that this bill is not meant to preempt any State or local action against apartheid that has occurred throughout this country.

Let me once again urge my colleagues to put America on record as being firmly against apartheid by passing the bill before us with an overwhelming vote. It is both morally right and in our national interest to do so.

ROUTINE MORNING BUSINESS

(During the day routine morning business was transacted and statements were submitted, as follows:)

PANAMA CANAL: FUTURE POLICY DETERMINATION

Mr. HELMS. Mr. President, the Panama Canal, opened to traffic in 1914, has long been recognized as one of the greatest works of man. It was made possible by the grant in 1903 by the Republic of Panama to the United States in perpetuity the "use, occupation and control" of the Canal Zone territory with "all the rights, powers and authority" it would possess "if it were sovereign" to the "entire exclusion" of their exercise by Panama. Its subsequent history until the giveaway of the Panama Canal under the 1977 treaties, which includes its "maintenance, operation, sanitation and protection" during both peace and war, completely establishes the wisdom of the action of President Theodore Roosevelt in acquiring the Canal Zone and launching the construction of the Panama Canal.

Because of the strategic location of the Central American Isthmus, its history tracing back almost to the age of discovery is long and involved. It includes recognition by leading U.S. naval strategists of the Monroe Doctrine as centered on it. Moreover, it serves as one of the major maritime crossroads of the world, especially to the countries of the free world. Its value has been set forth in an extensive literature, which includes the various RECORDS of the Congress.

Mr. President, in this connection, I would invite attention to three of my important addresses in the Senate as follows:

"Panama Canal: Evolution of a Plan." CONGRESSIONAL RECORD, vol. 124, pt. 21 (Aug. 24, 1978), pp. 5847-5854.

"U.S. Isthmian Canal Policy." CONGRESSIONAL RECORD, vol. 128 (March 30, 1982), pp. S3075-76 (temp.)

"The Panama Canal." CONGRESSIONAL RECORD, vol. 219 (March 17, 1983), pp. 5983-5986 (temp.)

These statements set forth the basic principles of improvements to the maintenance, operation, and sanitation of the canal, and discuss the considered opinions of experts with practical experience in canal matters.

For this reason, I have been disturbed by the recent publication of a report from the GAO on the canal which reveals that the State Department seems determined to ignore all of the sound work done by experts in this field. The publication is entitled:

"GAO Briefing Report to Honorable Webb Franklin, House of Representatives, on Panama Canal, Establishment of Commission to Study Sea Level Canal and Alternatives." (April 1986.)

Mr. President, I am sorry to say that the GAO establishes conclusively that the Department of State has seized the initiative to push forward on the sea level canal with actions going far beyond the scope proposed in the ill-fated Panama Canal Treaties. I opposed the treaties and I opposed the wrong-headed plans to build a sea level canal. The sea level proposals should have died a natural death. But the GAO shows that the State Department has assumed full responsibility for the sea level canal study, ignoring the Departments of Defense and Commerce, who represent the real U.S. interests. Ironically, the State Department pushed ahead even after its own conference on "Future Trans-Isthmian Transportation Alternatives," held by the Futures Group in October 1982, concluded that the main issue was whether a larger canal or enlarged transit capacity for the existing canal was needed, not whether a sea level canal was needed.

In reviewing the GAO report it is clear that the U.S. Government agencies consulted in its preparation voiced the long predetermined objective of certain special interests for a vast tidal lock, misnamed "sea level," canal. In addition, the report does not mention the views formally expressed by the Panama Canal Pilots Association, the members of which are charged with responsibility for the navigation and movement of vessels in canal waters, thoroughly understand its marine operational problems, and the solution to provide the best canal for navigation.

Mr. President, the Journal of Professional Issues in Engineering—the official journal of the American Society of Civil Engineers—recently carried a comprehensive analysis entitled "Panama Canal: Its Major Marine Operational Problems and Solutions" by Capt. Miles P. DuVal, Jr. Captain DuVal is internationally known as the great historian of the canal, as well as an experienced authority on its marine operations who, over the past 40 years, has done the most comprehensive studies on canal operating problems. Captain DuVal continues to give outstanding service and counsel to a large number of Senators and Congressman.

Mr. President, I wish to commend Captain DuVal on his latest important publications. Captain DuVal's article shows conclusively why improvements to the present canal make more sense than sea level schemes.

In addition to the April article by Captain DuVal we have a strong resolution by the Panama Canal Pilot Association quoted in 1978 hearings before the House Subcommittee on the Panama Canal which resolution was not mentioned in the GAO report.

Mr. President, because the three previously mentioned documents should be of great value to the Congress and the Nation at large, I ask unanimous consent for all three to be printed at this point in the RECORD as follows:

First. GAO Briefing Report to Honorable Webb Franklin, House of Representatives, on "Panama Canal, Establishment of Commission to Study Sea-Level Canal and Alternatives." (April 1986.)

Second. Capt. Miles P. DuVal, Jr., "Panama Canal: Its Major Marine Operational Problems and Solution." A.S.C.E. Journal of Professional Issues in Engineering, vol. 112, April 1986, which is well illustrated.

Third. Two items from the CONGRESSIONAL RECORD of November 5, 1973, with regard to statements of the Panama Canal Pilots Association.

[GAO Briefing Report to Hon. Webb Franklin, House of Representatives]

PANAMA CANAL: ESTABLISHMENT OF COMMISSION TO STUDY SEA-LEVEL CANAL AND ALTERNATIVES, APRIL 1986

GENERAL ACCOUNTING OFFICE,
Washington, DC, April 29, 1986.

B-114839.

Hon. WEBB FRANKLIN,
House of Representatives.

DEAR MR. FRANKLIN: In response to your request of December 10, 1985, and subsequent discussions with a representative of the House Merchant Marine and Fisheries Committee, this is our report on the establishment of the trilateral commission to study alternatives to the existing Panama Canal. The report describes why the State Department—instead of the Panama Canal Commission or the Department of Defense—led U.S. planning efforts for the study, how the study scope and U.S. financing arrangements were determined, and when these decisions were reached. Our findings and conclusions are summarized in this letter. A chronology of key events surrounding the study is presented in appendix I.

THE PROPOSED STUDY

The Republic of Panama and the United States formally agreed in September 1982 to establish a Preparatory Committee for the study of alternatives to the Panama Canal, including a sea-level canal, and to invite the

government of Japan to participate as a full member—an invitation which Japan accepted. The Committee developed terms of reference for a trilateral Study Commission, which were adopted by the three governments in September 1985. These terms included.

The study objectives, i.e., identification of potential transportation alternatives to the existing canal in Panama and detailed study and conceptual planning for the best alternative;

A description of the transportation alternatives to be analyzed in the study;

The organizational structure and operating guidelines for the study;

A proposed study budget of $20 million, with costs to be equally shared by three governments; and

An expected commencement of the study in January 1986 with a duration of approximately 5 years.

Through an exchange of diplomatic notes, dated September 26, 1985, the United States and Panama agreed that upon its completion, the study of alternatives will fulfill the parties' mutual treaty obligation to study the feasibility of a sea-level canal in Panama.

TREATY OBLIGATION

Article XII paragraph 1 of the Panama Canal Treaty between Panama and the United States, signed in Washington on September 7, 1977, states that, " . . . during the duration of this Treaty [which expires on December 31, 1999], both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama. . . . " The Panama Canal Act of 1979 (Public Law 96-70, Sept. 27, 1979) implements this treaty provision in section 1109(a) of the act, which states that "The President shall appoint the representatives of the United States to any joint committee or body with the Republic of Panama to study the possibility of a sea level canal in the Republic of Panama pursuant to Article XII of the Panama Canal Treaty of 1977."

Neither the treaty nor the act is definitive regarding which federal agency should coordinate and direct U.S. planning efforts for the study, how the study should be conducted and financed, or when during the treaty period it was to be conducted. By Executive Order 12215, dated May 27, 1980, the President delegated certain functions vested in him by the Panama Canal Act of 1979 to the heads of federal agencies. This delegation of Panama Canal functions did not address the sea-level canal feasibility study.

WHY STATE DEPARTMENT LED U.S. PLANNING EFFORTS

Since no specific legislative or executive authority was delegated to a particular agency, the Department of State assumed the lead in coordinating U.S. planning efforts for this study by virtue of its customary responsibility of treaty implementation, international negotiation, and conduct of U.S. foreign relations. During the late 1970's Japan and Panama independently discussed the possibility of a sea-level canal in Panama and sought a U.S. commitment to immediately undertake a joint feasibility study. State's lead role concerning this U.S. treaty commitment evolved out of preliminary discussions with the Panamanians and Japanese in 1980. This role was confirmed in April 1981 when, at the request of the President's National Security Adviser Richard Allen, the State Department agreed to chair a senior interagency group tasked with formulating administration policy to implement the Panama Canal treaty. Defense and Commission officials informed us that they did not object to State taking control of the study preparations.

HOW STUDY SCOPE WAS DETERMINED

The U.S. commitment to proceed, in coordination with Japan and Panama, with a new feasibility study of a sea-level canal in Panama emerged from President Reagan's meeting with Japanese Prime Minister Suzuki on May 8, 1981. A question has been raised concerning what this commitment encompassed. Documentation made available to us regarding this matter indicates that the President's commitment was for the United States to participate with Panama and Japan in a sea-level canal study. The administration had no adopted a position on the scope of the study at the time of the meeting between President Reagan and Prime Minister Suzuki. The previously mentioned interagency policy review group, led by the State Department, did not submit its recommendations on how to proceed with the study to the White House until September 1981.

During the year preceding the President's meeting with the Japanese Prime Minister, Panamanian and Japanese officials had expressed their interest in moving ahead with a canal study—one that would explore the feasibility of a sea-level canal to Panama and update a study (known as the Anderson Study) completed in 1970. The Anderson Study concluded that a sea-level canal was not economically justifiable.

President Carter had expressed his willingness to include Japan, a major user of the Panama Canal, in a few feasibility study of a sea-level canal by providing Japan with a copy of the Anderson Study in June 1980 and requesting their comments. Panama expressed continuing interest in pursuing a trilateral feasibility study. An interagency group was convened in July 1980 to formulate a coordinated U.S. position on how to proceed with a new study. In October 1980, the group identified specific areas of inquiry needed to complete a sea-level canal feasibility study and thus discharge the treaty commitment.

In March 1981, Panama formally suggested a broad feasibility study which would encompass economic, social, political, and environmental concerns of a sea-level canal and identify possible alternatives. In April 1981, preceding the President's May 1981 meeting with the Japanese Prime Minister, the Japanese reaffirmed their strong interest in participating in a new canal feasibility study. During this meeting with President Reagan, Prime Minister Suzuki said that Japan was willing to share in financing the study.

State Department briefing papers for the May 1981 meeting indicate that State was not persuaded that a study limited to the sea-level canal issue would have merit. However, State felt that pursuing an immediate study had advantages because it would allow the United States to

Address most effectively the feasibility of a sea-level canal versus less costly options,

Manage the canal better by examining capital improvement needs before U.S. tenure ended, and

Enhance its bilateral relations with Japan and Panama.

During the spring and summer of 1981, State chaired the interagency review of U.S. policy toward Panama, which included consideration of how to implement the May 1981 decision to proceed with the sea-level canal feasibility study. The review group comprised representatives from the Departments of State, Defense, Treasury, Transportation, Commerce, the Panama Canal Commission and other agencies. In August 1981, State responded to the Panama Ambassador's earlier suggestion that a broad feasibility study be performed by informing him that the United States envisioned a study ". . . which would not only examine the feasibility of a sea-level canal, but which would also examine possible alteratives to a sea-level canal." State's response, which indicated that the United States was interested in a broader study than that contemplated by the 1977 treaty, was cleared by the National Security Council. State sent copies of the August 1981 response to the Panama Canal Commission and the Defense Department.

In September 1981, the interagency group reported its policy recommendations to the President's National Security Adviser. The recommendations were promptly approved by the White House, including that work begin on the development of study parameters. Specifically, the group recommended that

The feasibility study should include a range of canal alternatives;

Japan should be invited to participate in the study;

A bilateral group established by the Panama Canal Treaty of 1977 (Panama Canal Consultative Committee) should develop recomendations on study parameters;

A trilateral committee, including Japan, shoiuld convene to focus on study scope, timing, financing, and organizational procedure; and

The Department of State should be designated as the U.S. lead agency.

The Panama Canal Consultative committee, a high-level diplomatic body established by the treaty to recommend policies concerning canal operations, began developing guidelines for the study in October 1981 and, in June 1982, recommended that Japan be invited as a full member of a trilateral Preparatory Committee, which was to develop terms of reference for the study. The Preparatory Committee was established by the United States and Panama in September 1982 and joined by Japan in October 1982. The committee commenced work in December 1982 and was made up in part by U.S. delegates from State, the Office of Secretary of Defense, the Army Corps of Engineers, the Panama Canal Commission, the Smithsonian Tropical Research Institute, and the Agency for International Development. This committee's work culminated in the September 1985 agreement to perform the presently contemplated study.

Following this agreement, the Panama Canal Commission and the Department of Defense expressed reservations to State concerning its handling of the study preparations. They were concerned whether State (1) was adequately equipped to lead a study of such broad magnitude, (2) would designate appropriately qualified deputy commissioners to conduct the study, and (3) would give due attention to ongoing efforts to provide for future traffic demands. In March 1986, the Panama Canal Commission and the Departments of State and Defense reached agreement on a procedure which will require consensus by the three agencies, or eventual resolution of differences at the Secretary level, of matters pertaining to key personnel appointments and policy determinations for the study. The U.S. commissioner and his deputies have not yet been named.

71-059 O-87-35 (Pt. 19)

HOW THE STUDY COST IS BEING FINANCED

The arrangement for funding the study is described in the final trilateral Preparatory Committee report, issued in June 1985. It reflects the principal of equal participation by the three member governments in cost-sharing and proportionate distribution of contract services. An estimated budget of $20 million has been established for the work of the trilateral Study Commission. Each member government will contribute, in cash and/or in kind, one-third of the budget.

The issue of which federal agency would fund the U.S. portion of the study budget was resolved early in the planning process. The 1970 Anderson study was funded from the White House budget. According to State Department officials, they felt the new Alternatives Study should also be funded from the White House budget. Following State's consultations with representatives from the Treasury Department and the Office of Management and Budget (OMB), it was decided that the needed funds would be included in the State Department's budget request.

The State Department began estimating a budget for the U.S. share of the cost of the Panama Canal Alternatives Study in 1982. In September 1982, a State Department-commissioned consultant estimated the total study cost in 1983 dollars to be $12 million. This $12 million figure was viewed by the State Department as a preliminary figure and not a definitive estimate. The Department of Transportation, the Army Corps of Engineers, and the Japanese predicted higher study costs, ranging from $13 to $30 million.

Based on the above estimates, the State Department submitted a budget request of $2 million for fiscal year 1984, with the understanding that two additional requests for $2 million each would follow. The budget request was denied by OMB as premature since the Preparatory Committee has not yet issued its report.

The State Department resubmitted its initial budget request for $2 million in fiscal year 1985. The request was included in the Department's salaries and expenses appropriation (Bureau of Inter-American Affairs) as "Other Program Increase." The justification stated "a feasibility study of alternatives to the Panama Canal. The study will fulfill our obligation under the Panama Canal Treaty of 1977 to conduct a feasibility study of a sea-level canal in Panama."

Congress approved the request as submitted. The money earmarked for study was not spent but carried over to fiscal year 1986. In fiscal year 1986, the State Department asked for and received an additional $2 million for the study, bringing the total amount intended for the study to $4 million.

The question has been raised as to why the U.S. share of the study cost should not be borne by the Panama Canal Commission from its toll revenues. According to the 1979 act (sec. 1602(b)), tolls are designed to cover canal operation and maintenance costs, including plant expansion and improvements. Although the proposed study will undoubtedly aid in planning future canal capital programs, it is now a tripartite effort which has a different focus and approach than would be the case if it were conducted solely by the Panama Canal Commission, the administrative agency. Furthermore, officials of the Departments of State and Defense and the Panama Canal Commission are of the view that using Commission funds might have a detrimental effect on how Panama and Japan would perceive U.S. participation since Commission toll revenues are derived from canal users, not from government receipts, which Panama and Japan will contribute.

CONCLUSIONS

The proposed study will examine transportation alternatives in addition to the feasibility of a sea-level canal in Panama, will discharge a 1977 U.S.-Panama treaty obligation to conduct a sea-level canal feasibility study. While the proposed study is of broader scope than that necessary to discharge the treaty obligation, it is in accord with administration policy established in 1981 on U.S.-Panama treaty implementation. The State Department, having customary responsibility for treaty implementation matters, was designated by the President's National Security Adviser to be the lead U.S. agency for carrying out the plans to comply with this treaty provision. The decision to proceed at this time with a study that will examine alternatives in addition to a sea-level canal was arrived at by interagency group consensus and approved by the White House. State agreed to finance the U.S. portion of the study cost through its budget following consultations with Treasury and OMB. State requested initial funds for a feasibility study of a sea-level canal and alternatives to the Panama Canal, and the Congress approved its request in fiscal year 1985.

In March 1986, the Departments of State and Defense and the Panama Canal Commission agreed on a procedure which requires consensus among these agencies for making key personnel appointments and deciding policy issues for the study. This should facilitate getting the study under way and promote effective U.S. representation on the Study Commission.

As requested, we did not obtain official agency comments on this report. We did, however, discuss its contents with State, Defense, and Panama Canal Commission officials, and their views were considered in preparing this final report. Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date it is issued. At that time, we will send copies to the Chairmen, House Merchant Marine and Fisheries Committee, House Foreign Affairs, Committee, Senate Armed Services and Foreign Relations Committees, House and Senate Committees on Appropriations, House Committee on Government Operations Senate Committee on Governmental Affairs; and to the Director, Office of Management and Budget; Secretaries of State and Defense; the Chairman of the Board of Directors, Panama Canal Commission; and other interested parties.

Sincerely yours,

FRANK C. CONAHAN,
Director.

APPENDIX I

CHRONOLOGY OF EVENTS

September 1977: The Panama Canal Treaty is signed by the governments of the United States and Panama. Under the treaty (article XII), they commit themselves to study—during the Treaty's duration (through December 31, 1999)—the feasibility of a sea-level canal in the Republic of Panama.

September 1979: The Panama Canal Act of 1979 is enacted. Section 1109(a) of the act implements article XII of the 1977 treaty by requiring that the President appoint the representatives of the United States to any joint committee or body with the Republic of Panama to study the possibility of a sea-level canal in the Republic of Panama.

March 1980: The Secretary of State told the Japanese Foreign Minister that the U.S. would be favorably disposed to join with Panama and Japan in a new study of the feasibility of sea-level canal in Panama.

May/June 1980: President Carter met with Japanese Prime Minister Ohira, again welcoming Japanese participation in the proposed study and gave Japan a copy of a comprehensive 1970 interoceanic canal study for its review and comment in planning the new study.

July 1980: The Panama Canal Consultative Committee, a U.S.-Panama diplomatic body established by the treaty, held its first meeting in Panama. Members of both governments indicated a continuing interest in pursuing a trilateral feasibility study for a new sea-level canal. Meeting discussions were limited to organizational and procedural matters.

A U.S. interagency group met to discuss the need for a U.S. coordinated position on how to proceed with a sea-level canal feasibility study in light of results already obtained through the 1970 interoceanic canal (Anderson) study.

October 1980: Preliminary U.S. review of 1970 Anderson Study is completed, identifying specific areas of inquiry needed to complete a sea-level canal feasibility study.

March 1981: Panama formally proposed that the United States join it and Japan in conducting a broad feasibility study of a sea-level canal, one which encompassed economic, political, social, and environmental effects and searched for better alternatives.

April 1981: The Department of State was tasked by the President's National Security Adviser to chair an interagency group effort to formulate administration policy for implementing the Panama Canal treaty. Japan informed the United States that it had completed its review of the 1970 study and had a "strong interest" in participating in the proposed feasibility study.

May 1981: In briefing papers for President Reagan's upcoming meeting with Japanese Prime Minister Suzuki, the State Department indicated it was not persuaded that a sea-level canal itself would be meritorious, but State saw several advantages in pursuing the study immediately. State felt an immediate study would allow the U.S. to

Address most effectively the feasibility of a sea-level canal versus less costly options,

Manage the canal better by addressing capital improvement issues before the U.S. tenure draws to an end, and

Enhance bilateral relations with Japan and Panama.

During their May 8 meeting, Prime Minister Suzuki expressed to President Reagan Japan's interest in participating in a feasibility study of a sea-level canal and contributing toward its cost. President Reagan responded by indicating that the United States would support proceeding with the study effort.

August 1981: By letter dated August 27, 1981, the Secretary of State informed the acting Panamanian Ambassador that the United States was "committed in principle" to participate with Panama and Japan in the proposed feasibility study, one "which would also examine possible alternatives to a sea-level canal." State coordinated the letter with the National Security Council and sent copies to the Defense Department and Panama Canal Commission.

September 1981: The State Department submits to National Security Adviser, and

the White House approves, a senior interagency group policy paper which recommended that work begin on the development of study parameters. Participating in the group or approving the submission were representatives from State, Defense, the Panama Canal Commission, Treasury, Transportation, Commerce, and other agencies.

October 1981: The Panama Canal Consultative Committee formed a subcommittee charged with developing guidelines for a tripartite study arrangement.

February 1982: In its fiscal year 1981 report to the Congress on the 1977 Panama Canal treaty, State reported progress toward development of study parameters and that the United States had made it clear that it envisioned a study which would include a range of possible alternatives to a sea-level canal.

June 1982: The Panama Canal Consultative Committee recommended that Japan be invited as a full member in the formation of a trilateral Preparatory Committee to develop the terms of reference for the study. Specifically, the Committee recommended that the participating governments agree to study the feasibility of a sea-level canal through the Republic of Panama and other alternatives to the Panama Canal. Representatives from State, Defense, and the Panama Canal Commission participated in this exercise.

The State Department, following a legal review and approval by the Under Secretary for Political Affairs to negotiate and conclude an agreement leading to the sea-level canal feasibility study, requested and received interagency personnel support to serve and provide guidance to U.S. representatives on the proposed Preparatory Committee.

In justifying moving ahead with a feasibility study at an early date which would look at alternatives to the existing canal, State used the rational that such a study would ". . . facilitate the management of capital improvements to the existing canal; lessen the overall cost to the United States because of Japanese participation; make dispassionate consideration of alternatives easier since it is removed from the time when Panama will assume full control of the canal; strengthen our ties with Japan and Panama; and reaffirm our commitment to maintain a long-term cooperative relationship concerning the existing canal, the Treaty, and any future canal."

September/October 1982: Through an exchange of diplomatic notes in September 1982, the United States and Panama agreed to establish a Preparatory Committee and to invite Japan as a member. Japan accepted the invitation to participate in the study and the trilateral Preparatory Committee was formally established in October 1982.

A consultant, commissioned by the State Department, presented budget estimate for a feasibility study of alternatives to the Panama Canal. State used the estimate as a basis to submit the first of three planned requests of $2 million each for the U.S. portion of the study cost.

October 1982: A conference on "Future Trans-Isthmian Transportation Alternatives" was held by The Futures Group (at a cost of approximately $60,000), under contract to the Department of State, in Washington, D.C. The purpose of the conference was to assess the viability of the Panama Canal over the next 30 years and to provide U.S. government representatives with conclusions and recommendations about the appropriateness of other trans-Isthmian transportation options. The conference included representatives from various government agencies, shipping companies that use the Panama Canal, transportation engineers, international economists, and private sector and World Bank financial consultants. The conference concluded that the main issue was whether a larger canal or enlarged transit capacity was needed, not whether a sea-level canal was needed.

December 1982: Preparatory Committee met (for the first of seven times) to draft terms of reference for the proposed study. The U.S. delegation to the Preparatory Committee comprised representatives from State, the Office of the Secretary of Defense, the Army Corps of Engineers, the Panama Canal Commission, the Smithsonian Tropical Research Institute, and the Agency for International Development.

Fiscal year 1985: The Department of State submitted, and the Congress approved, an appropriation for $2 million as the initial U.S. contribution to a feasibility study of alternatives to the Panama Canal. The request was included as "Other Program Increases" in the salaries and expenses of the Bureau of Inter-American Affairs. As part of the justification, State indicated that the study would (1) fulfill the U.S. obligation under the Panama Canal Treaty of 1977 to conduct a feasibility study of a sea-level canal in Panama and (2) look at various alternatives in addition to a sea-level canal, such as widening the present canal and the construction of a third lane of locks.

June 1985: Representatives of the three governments initialed the Final Report to the Preparatory Committee, establishing the terms of reference for the Canal Alternatives Study and recommendations for organizational structure; they also initialed draft diplomatic notes creating a Commission for the Study of Alternatives to the Panama Canal.

July 1985: The Panama Canal Commission and the Department of State begin active discussion over the composition of U.S. membership on the Canal Alternatives Study team. The Panama Canal Commission advocates participation of the Defense Department and the Panama Canal Commission at the deputy commissioner level.

September 1985: The agreement to establish the Canal Alternatives Study Commission is signed by the Secretary of State and the Foreign Ministers of Panama and Japan.

September/October 1985: The Panama Canal Commission and the Defense Department express concern to the State Department regarding the stature of suggested appointees to the Study Commission, arguing that the qualifications of such appointees would evaluate the study too high and create an unwieldy bureaucracy.

December 1985: Panama Canal Commission expresses concern that the State Department lacks knowledge and expertise to conduct the proposed study and requests Defense Department help in seeking balanced government and industry participation on the Study Commission in dictating the scope and conduct of the study.

January 1986: The first trilateral Study Commission meeting scheduled for January 19, 1986, is postponed until the United States names its members to the Commission.

March 1986: The Departments of State and Defense and the Panama Canal Commission reach agreement on procedure to appoint personnel to the U.S. study team and decide policy issues which may come before the Study Commission. At month-end, the U.S. members to the Study Commission had not been named.

APPENDIX II

OBJECTIVES, SCOPE, AND METHODOLOGY

At the request of Representative Webb Franklin, House Merchant Marine and Fisheries Committee, we are providing a chronological report on how the Department of State coordinated U.S. plans for a trilateral (U.S.-Panama-Japan) study of alternatives to the existing Panama Canal. Our review focused on the scope and financing of the study, which is designed to discharge a U.S.-Panama treaty obligation to conduct a sea-level canal feasibility study in Panama.

Our review was performed during January and February 1986 in Washington, D.C., in accordance with generally accepted government audit standards.

We interviewed State and Defense Department, Panama Canal Commission, and Army Corps of Engineers officials. We reviewed briefing papers, memorandums, cables, studies, and reports to observe the timing of events and to identify interagency and congressional coordination. We compared the public statements of State Department officials with supporting documentation and assessed the reasonableness of State's planning actions in light of the U.S. treaty obligation and the Department's assigned role and responsibilities.

We did not obtain official agency comments on information contained in this report. However, we discussed our observations with State and Defense Department and Panama Canal Commission officials, and their responses were considered in preparing this report.

[From the Journal of Professional Issues in Engineering, April 1986]

PANAMA CANAL: ITS MAJOR MARINE OPERATIONAL PROBLEMS AND SOLUTION

(By Miles P. DuVal, Jr.[1])

ABSTRACT: The purpose of this paper is to provide a valid solution for the major marine operational problems of the Panama Canal as derived from marine experience over many years. In so doing it gives parts of Isthmian canal history from the Age of Discovery, tells about some of the steps leading to its construction, presents parts of the story for the separation of the Pacific Locks by means of a small lake in contrast to the consolidated Atlantic Locks, and develops the solution aimed at providing the best canal for navigation at least cost.

PRESENT CANAL OPERATING PLAN

For any thoughtful mariner his first transit of the Panama Canal is always a memorable experience. Although few know its history and problems, people are always impressed by the magnitude of the undertaking and the quiet efficiency of its operations.

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NOTE.—Discussion open until September 1, 1986. To extend the closing date one month, a written request must be filed with the ASCE Manager of Journals. The manuscript for this paper was submitted for review and possible publication on October 11, 1985. This paper is part of the Journal of Professional Issues in Engineering, Vol. 112, No. 2, April, 1986. copyright ASCE, ISSN 0733-9380/86/0002-0119/$01.00, Paper No. 20567.

The vessel gets underway in the Limon Bay area with a canal pilot in charge of its navigation and movement (see Fig. 1). It enters the Atlantic sea-level channel, passes an approach channel to a new Gatun lock excavation and a part of a channel excavated by the French, and then makes its approach to the three-step Gatun Locks that are quietly entered.

[Figures referred to not printed in RECORD.]

Raised some 85 ft to the Gatun Lake summit-level, it is piloted through the wide lake channels to Gamboa, where it enters the 8-mile Gaillard (Culebra) Cut, an artifical extension of the lake through the continental divide.

While in the cut one can see the discontinuities in the banks, the famous slide areas, some ledges on Gold Hill left by the French, and a few relics of the Construction Era.

Then the vessel approaches and enters the single-step Pedro Miguel Locks and is lowered to the small intermediate-level Miraflores Lake, 54 ft mean elevation, passes through lake, enters the 2-step Miraflores Locks, and is lowered to the Pacific sea-level to complete the transit at Balboa or to the ocean.

Many observe the dissymmetry between the Atlantic and Pacific Locks (Figs. 2 and 3) requiring double handling of vessels at the latter. Some ask why the Pacific Locks are not consolidated as they are at Gatun.

To the solution of the planning problem involved I now address myself—a task requiring knowledge of both canal history and marine operational problems.

EARLY HISTORY OF PANAMA CANAL, 1502–1904

The advantageous geographical location of the Central American Isthmus has been recognized since the Age of Discovery. On his fourth voyage, Christopher Columbus sailed southward along the east coast of the isthmus, passed the mouth of the San Juan River in Nicaragua, also that of the Chagres River in Panama, and spent the Christmas of 1502 in Limon Bay, the Atlantic entrance to the Panama Canal. The Atlantic terminal cities of Cristobal and Colon were named in his honor.

In 1513, Vasco Nuñez de Balboa, from a peak in Darien, discovered the Pacific Ocean, then called the Southern Sea. That feat was memorialized in the naming of the Port of Balboa at the Pacific entrance to the canal.

Within an amazingly short time after 1502, the early Spanish explored many isthmian crossings and reduced their fields of investigation to four main areas: Tehuantepec; Nicaragua; Panama; and Darien-Atrato. The first plan for the Panama Canal was prepared in 1529 by the Spanish engineer, Alvaro Saavedra, but nothing was done there or elsewhere until the 19th century (DvVal, 1947b).

Because of the lower continental divides at Nicaragua and Panama and penetration of the jungles of both by navigable rivers, the early explorers developed important trade routes over these two natural avenues that for many years were the leading competitors for transisthmian transit.

The first specific step toward construction of the Panama Canal was construction by US interests of the Panama Railroad that was opened for traffic in 1855 (duVal, 1947a).

The second major step was the great French effort, 1880–89, under the leadership of Ferdinand de Lesseps, the hero of the Suez Canal, who had envisioned a round-the-world canal route—Suez, Panama, and Kra (DuVal, 1947a).

Though the de Lesseps effort at Panama ended in tragic failure, it did prepare the way for the United States under the dynamic leadership of President Theodore Roosevelt to acquire in perpetuity the exclusive "use, occupation, and control" of the Canal Zone with "all the rights, power, and authority" that it would possess "if it were sovereign" and to the "entire exclusion" of their exercise by Panama (DuVal, 1947b).

The problem of site for the first Isthmian Canal was decided by the Spooner Act of 1902 after scorching debates in the Congress, 1899–1902, known as the "Battle of the Routes" between proponents of the Nicaragua and Panama locations. The matter of type was decided in 1906 after more heated debates in the Congress, with decision for the high-level lake and lock type (DuVal, 1947a).

THIRD LOCKS PROJECT AUTHORIZED, 1939

Acting in accord with official recommendations, the Congress authorized the construction of a third set of larger locks for the Panama Canal at a cost not to exceed $277,000,000. This project practically committed the United States to the canal's "conversion" to tidal lock (sea-level).

The approach of major war in Europe and the desire to protect the canal from bombing led to a plan for placing the proposed new locks at a distance from the existing locks and connecting them with the existing channels by means of by-pass channels. This plan involved excessive channel curvatures, the largest being a bend of 46°17′ in the by-pass channel north of the proposed new locks at Pedro Miguel.

Construction started in 1940 and was pushed vigorously.

STUDY FOR INCREASED CAPACITY, 1929–30

The Panama Canal opened for traffic on August 15, 1914. After early slides were removed and traffic grew, canal engineer recognized that eventually the capacity of the canal would have to be increased, and that this would require years of study and planning. The first step was to secure more water; the second, to construct additional locks of larger size.

The great flood of 1923 that threatened to destroy the canal stimulated events leading to the construction of the Madden Dam project. Completed in 1935, this undertaking increased reserve water for maintaining channel depths in Gatun Lake, supplied additional power for canal operations, and reduced the danger of floods from the upper Chagres River.

The growing traffic in the early 1920s revived major isthmian canal issues, renewed agitations for a Nicaragua Canal, and resurrected the corpse for a tidal lock (sea-level) canal at Panama. In response to these pressures was created in 1929 the US Army Interoceanic Canal Board to delve into the problems involved.

This report estimated that a third set of larger locks for the Panama Canal would be required in about 1970, along with its eventual conversion to sea level (tidal lock).

WORLD WAR II EXPERIENCE, 1941–42

In early 1941, it was my good fortune to have been assigned as Captain of the Port of Balboa in the Canal Zone, with responsibility for marine operations in the Pacific half of the Panama Canal. This sector included the southern part of the summit-level Gatun Lake; the hazardous Gaillard (Culebra) Cut, 8 miles long; two sets of Pacific Locks; the small intermediate-level Miraflores Lake, separating those locks; and the Pacific sea-level part of the canal to deep water in the Pacific, including the Port of Balboa.

Soon after arrival on the isthmus, a series of serious marine accidents in the Pacific sector focused my attention on the crucial problems of marine operations (Fig. 4). The ensuring efforts included the examination of the records of hundreds of marine accident investigations since 1914, the plotting of their locations throughout the entire length of the canal, and the study of their proximate causes.

The results were quite revealing. The more serious accidents occurred in the narrow 8-mile rocky channels of the Gaillard (Culebra) Cut. Few occurred in Gatun Lake, where the channels are wide, or in the wide sea-level sections of the canal. Accidents in the lock chambers were of relatively minor character and proportional in numbers to the number of steps in the locks. The Pedro Miguel Locks, located squarely in the southern end of Gaillard Cut, had the highest number of accidents to vessels entering and leaving those locks, showing them to be the most hazardous of all the locks.

In May 1942, construction on the 1939 Third Locks Project was suspended because of more urgent war needs after the expenditure of some $76,000,000. The major parts that were completed, which should be useful in future major modernization, include huge lock site excavations at Gatun and Miraflores, a rail-vehicular bridge across the Miraflores Locks and a bed for relocating the Panama Railroad near Gatun. No excavation was started at Pedro Miguel, which was fortunate.

Those efforts required many visits to the tops of two mountains near the Pedro Miguel Locks to observe vessels in transit, frequent trips on vessels during transits, many discussions with experienced engineers and canal pilots, and examination of the terrain of the Pacific side of the Continental Divide.

MAJOR MARINE OPERATIONAL PROBLEMS, 1942–43

Extensive inquiries at that time, confirmed by later studies, showed that the canal had, and still has, the following major marine problems:

1. The dangerous bottleneck at the Pedro Locks. This characterization is established by the fact that it has the highest numbers of entering and leaving accidents of all locks. In addition, its location, squarely in the southern mouth of Gaillard (Culebra) Cut, forces southbound vessels to slow in a narrow rocky gorge and northbound vessels to leave the locks under adverse conditions.

2. The double handling of vessels at the Pacific Locks. The separation of the Pacific Locks forces two approaches and departures by vessels; double line handling causes an increased number of accidents and loss of time.

3. The adverse effect of night fogs on canal capacity and operations. Studies at the Panama Canal show that fogs are of the land radiation type, at times extending northward from Pedro Miguel as far as Bohio. During observations made from a mountaintop near Pedro Miguel over a period of one year there were 118 fog nights with only 8 occurring in the dry season. They usually formed after 9 P.M. but normally cleared by 8:30 A.M. Since they do not normally occur north of Bohio or over Miraflores Lake, the Atlantic Locks, using an-

chorages in Limon Bay and Gatun Lake, have 24-hr flexible operations. At the Pacific Terminal, the absence of a summit-level anchorage prevents the same flexible operations, facts caused by the location of the Pedro Miguel in the southern end of the cut.

4. The lockage surges in Gaillard (Culebra) Cut. The sudden withdrawal from the summit level of over 100,000 tons of water generates a wave-like surge of maximum altitude of 3 ft with a velocity of some 25 mph as far as Gatun Lake from which it is reflected toward Pedro Miguel with a period of 45 min, forcing lockage intervals to avoid cumulative effects. When these surges pass points or discontinuities in the banks, they cause local movements of water. More than one vessel has been sunk in the cut, presumably as a result of sheers caused by lockage surges.

5. The limited operating range of the summit water level of Gatun Lake. The designed highest lake level is 87 ft and the lowest is 82 ft, a range of 5 ft. Increased traffic near the end of the dry season, when the summit level is low, at times requires restrictions on the draft of vessels desiring transits.

6. The navigation hazards of Gaillard Cut. A plotting of marine accidents throughout the length of the canal discloses that Gaillard (Culebra) Cut has the heaviest concentration of accidents tending to occur near channel bends. Gatun Lake is generally accident free. Navigation in it is like navigating the Chesapeake Bay. Originally 300 ft in minimum width, the cut widening was completed in 1970 to 500 ft, and further enlargement is continuing.

7. The limited dimension of the present locks, 110 ft. by 1,000 ft. With the size of many merchant vessels increasing and the fact that the Panama Canal is one of the major crossroads of the world, the need for a set of larger locks for larger vessels is obvious.

SUMMIT LAKE-LEVEL EVALUATION, 1943

Before making positive recommendations, it was vitally important to determine the effect of changing the operating water level of the summit lake. When the marine operational factors such as hazardous channel length, effect of fog, transit speed, transit time, channel depths, and general navigability are listed and evaluated, the evidence is conclusive that lowering the lake level will impair navigation, and that raising the lake level will improve navigation.

In contrast with the acute marine problems caused by locating the Pedro Miguel Locks in the southern end of Gaillard (Culebra) Cut there were no such problems at its northern end where there are no locks but only the widening channels of Gatun Lake affording virtually unrestricted navigation. What was needed at the southern end of the cut was a summit-level lake between the narrow cut and Pacific Locks as an expansion chamber for traffic.

In line with my request, canal engineers drew the summit-level contour around the Miraflores Lake basis and found that a smaller lake at the same level as Gatun Lake, then 87 ft maximum, could be created with relatively small dike construction (see Fig. 5). Those associated in the study were thrilled by the discovery for they recognized its significance.

SOLUTION DERIVED FROM EXPERIENCE: TERMINAL LAKE—THIRD LOCKS PLAN

What are the solutions for the previously listed seven major marine problems?

1. For that of the dangerous bottleneck at the Pedro Miguel Locks, it is their complete physical removal.

2. For the double handling of vessels at the separated Pacific Locks, the remedy is their consolidation south of Miraflores at or near Aguadulce in continuous steps similar to the Gatun Locks, just as originally planned in 1906 by former Chief Engineer John F. Stevens.

3. For the adverse effects of fogs in Galliard (Culbera) Cut, the corrective is the elevated Miraflores Lake, which generally is fog free, for use as a traffic reservoir.

4. For the problems of lockage surges, the creation of the elevated Miraflores Lake will reduce them to negligible magnitude, probably less than an inch.

5. For the 5-ft operating range of Gatun Lake, the solution is raising its present maximum level of 87 ft to its optimum level of 92 ft, as recommended in the 1947 Report of the Investigation under Public Law 280, 79th Congress, thus doubling the reserve water supply and improving navigation.

6. For reducing the navigational hazards of Gaillard (Culebra) Cut the solution is its continued enlargement as shown to be necessary by marine experience.

7. For the transit of larger vessels, the remedy is one set of larger locks at both ends of the Canal.

The preceding remedial measures combined, known as the Terminal Lake—Third Locks Plan, or the Balanced Lake Plan, was approved in principle by two experienced governors of the Panama Canal: Glen E. Edgerton, who recommended its comprehensive investigation to the Secretary of War but warned him that advocates of the "sea-level" proposal would "oppose unjustifiably any major improvements of the existing Canal"; and Joseph C. Mehaffey who approved the plan "in general" as a modification of the original Third Locks Project.

In addition, Panama Canal pilots, who are its best informed professional group on marine operational requirements, after quoting the opinion of qualified experts in opposition to the sea-level proposal as "needlessly expensive, diplomatically hazardous, ecologically dangerous and less satisfactory than the existing canal," opposed its construction and strongly supported the Terminal Lake-Third Lock Plan (DuVal, 1978a).

Moreover, the Friends of the Earth International, at its Washington meeting, October 2-4, 1982, "opposed the construction of a sea-level canal in Central America" (Helms, 1982).

Most of the remedial measures so far taken are not basic solutions but mere symptomatic treatments that do not solve the real problems involved but only provide needed temporary relief pending authorization for major modernization.

PRINCIPAL ADVANTAGES OF TERMINAL LAKE—THIRD LOCKS PLAN

What are the principal benefits of the Terminal Lake—Third Locks Plan?

Its construction will eradicate the dangerous bottleneck at Pedro Miguel and provide an "expansion chamber" for southbound traffic emerging from Gaillard (Culebra) Cut.

It will provide uninterrupted lake-level navigation between the Atlantic and Pacific Locks and will enable northbound vessels to enter the cut under better control, thereby avoiding accidents.

It will decrease transit time about one hour, and will virtually eliminate lockage surges in Gaillard (Culebra) Cut. It will double the summit-level reserve water supply to between 82 and 92 ft.

It will mitigate the effect of fog on transit operations and will reduce the number of channel and lock accidents. It will provide the best navigational canal practicable of achievement at least cost.

Moreover, the Terminal Lake—Third Locks Plan has been tested since 1914 by the flexible operations of the generally fog-free Gatun Locks with convenient anchorages near both ends, and can be accomplished with full assurance of success. Also, it will enable the maximum utilization of all work so far accomplished on the Panama Canal not only during its construction but also since 1914, which is considerable.

HISTORICAL PERSPECTIVE

The Terminal Lake—Third Locks Plan is so obvious and simple that many have asked why it was not proposed earlier in the history of the Canal. It was.

In 1908, Col. William L. Sibert, an important canal builder, made strenuous efforts to change the approved plans for separating the Pacific Locks. He did not succeed because construction had started and a change in plans would have delayed the opening of the canal to traffic at a critical time in history, which was a controlling factor at that time.

In 1906, an able engineer, William Gerig, made the same proposal to Chief Engineer Stevens who let Gerig take full credit for the idea.

Earlier in 1906, prior to Gerig, Stevens made the same recommendation to the Congress. Unfortunately, his later investigations for lock foundations proved unsatisfactory and he was constrained by economic and political hazards that could not be ignored to proceed according to the approved plans for separating the Pacific Locks that he wished to consolidate as he had done for the Atlantic Locks.

Many have asked also why it was not considered by the French at the Paris Conference of 1879 called to decide upon the basic questions of site and type for an interoceanic canal. It was.

In that Congress of some 134 distinguished leaders from various countries, one engineer, who had studied the problems involved, when he saw how the gathering was being directed toward adopting the predetermined objective for a canal at Panama of sea-level design based on the success of the Suez Canal, rose in strong protest and stated that rather than have his name associated with what he knew would be a great disaster, he voted "No."

Then, with the insight of true genius based on his studies, he presented what he called a "practical plan" for constructing the Panama Canal: "Build a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permits. Let the waters rise to form two lakes about 80 feet high, join the lakes thus formed with a channel cut through the continental divide, and connect the lakes with the oceans by locks. This is not only the best plan for engineering, but also best for navigation."

In large measure, the 1879 plan was eventually adopted in 1906, mainly through the efforts of Chief Engineer Stevens, Secretary of War Taft, and President Theodore Roosevelt. But its originator was the notable French engineer Adolphe Godin de Lépinay who, by so speaking, won lasting fame as the "Precursor of the Panama Canal."

LATEST DEVELOPMENTS

The most recent event in the unfolding Isthmian Canal situation is a tripartite agreement in 1985 by the United States, Japan, and Panama to make a feasibility study, starting in 1986 and expected to require four years, to cover the improvement of the existing canal, construction of a new canal in Panama of tidal lock (sea-level) design to replace it, and alternatives, such as pipelines and highways (Figs. 6 and 7).

In addition, Soviet engineers are reportedly in Nicaragua making a feasibility study for a canal there, the historic rival of the Panama site (DuVal, 1947b).

These actions, if followed, may set the stage for another "Battle of the Routes" as to site, another "Battle of the Levels" as to type, and the Monroe Doctrine, with more heated debates in the Congress.

The control of the Panama Canal is a key element in the evolving Caribbean-Central American situation vital to the security of the United States and the entire free world. In view of its forthcoming surrender under the 1977 treaties any expressions of opinion at this time as to the consequences would be matters of conjecture, except to state that the "give-away" was accomplished in spite of the overwhelming opposition of the American people.

ACKNOWLEDGMENT

The opinions or assertions of the writer are those of a private individual and are not to be construed as official expressions of the Navy or other government agencies.

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PANAMA CANAL PILOTS ASSOCIATION,
Washington, DC, October 25, 1973.

Re Panama Canal—Third Locks-Terminal Lake Plan.

DEAR CONGRESSMAN: The Panama Canal Pilots Association strongly supports the Thurmond-Flood bills regarding major modernization of the Panama Canal.

We have given much thought and study to this matter. Furthermore, in our work of transiting vessels through the Canal we constantly observe the operations and are, of course, thoroughly familiar with the physical features of the Canal.

The original engineering and construction were magnificent. The engineers involved were very farseeing and the Canal has essentially met the needs of world shipping for over 60 years. However, time and progress are fast catching up with and will soon overwhelm the Panama Canal as now structured.

Attached hereto, is a copy of a Resolution which was passed unanimously at a very well attended General Meeting of our Association held on October 15, 1973.

We hope that you will be able to support the Thurmond-Flood bills.

Sincerely yours,

CAPT. W. H. VANTINE,
President.

PANAMA CANAL MAJOR MODERNIZATION—OCTOBER 15, 1973

Whereas, since 1914 the pilots of the Panama Canal have accumulated a vast knowledge concerning its marine operations through thousands of transits on all types of vessels; and

Whereas, during World War II extensive studies in the Canal organization of marine operations conclusively established the location of the bottleneck at Pedro Miguel Locks in the south end of Gaillard Cut as the fundamental operational error in constructing the Canal; and

Whereas, as a result of those World War II studies, there was developed in the Canal organization and approved by a committee of our most distinguished senior pilots what is now known as the Terminal Lake-Third Locks Plan; and

Whereas, this plan has been consistently recognized by various responsible independent navigation interests as providing the best operational canal practicable of achievement; and

Whereas, more than $171,000,000. has been expended toward the major modernization of the Canal, $76,357,405 on the suspended Third Locks Project and some $95,000,000 on the enlargement of Gallard Cut; and

Whereas, the several items in the 1969 Improvement Program for the Panama Canal, though important, are non-basic in character and no solution for the Canal's major marine operational problems; and

Whereas, the Thurmond-Flood bills for the major modernization of the Canal now before the Congress will provide increased lock capacity for larger vessels, greater transit capacity, and eliminate the Pedro Miguel bottleneck locks; and

Whereas, the plan provided for in these bills would preserve the existing fresh water barrier between the oceans and thus continue to protect them from the biological hazards feared by respected scientists in any sea level undertaking; and

Whereas, responsible organizations and informed experts oppose the construction of any sea level canal as needlessly expensive, diplomatically hazardous, ecologically dangerous and less satisfactory operationally than the existing canal; Now, therefore, be it

Resolved, by the Panama Canal Pilots Association that it supports the Terminal Lake-Third Lock solution as provided in the Thurmond-Flood bills; and

Resolved, that the Panama Canal Pilots Association urges the Governor of the Canal Zone to use the full force of his office to support prompt enactment of the pending legislation for major canal modernization; and

Resolved, that the Panama Canal Pilot Association opposes the construction of a new canal of so-called sea level design; and

Resolved, that the Panama Canal Pilot Association directs that copies of this resolution be sent to the following:

President of the United States.
Vice President of the United States.
Secretary of State.
Secretary of Defense.
Secretary of the Army.
Secretary of the Navy.
All Members of the Congress.
Leading Marine Organizations and Periodicals.
American Society of Civil Engineers.
Society of American Military Engineers.
American Legion.
Veterans of Foreign Wars.

CAPT. W.H. VANTINE,
President, Panama Canal Pilots Association.

[From the CONGRESSIONAL RECORD, Mar. 30, 1982]

U.S. ISTHMIAN CANAL POLICY

Mr. HELMS. Mr. President, in an address to the Nation on February 24, 1982, before the Organization of American States, President Reagan summarized crucial elements in the current situations in the Caribbean and Central American danger zones and outlined plans of action to meet these challenges.

In recognition of the strategic aspects of those areas, he stated that—"Nearly half of U.S. trade, two-thirds of our imported oil, and over half of our imported strategic min-

erals pass through the Panama Canal or the Gulf of Mexico." (Washington Post, February 25, 1982, p. A12).

But apparently, for reasons of limited time and space, he did not go into any details concerning the question of trans-Isthmian transit.

Having made a study of both the history and problems of interoceanic transportation over a period of years, I believe it is appropriate for me to comment at some length on these matters as well as to quote later as parts of my remarks two recent resolutions by important national civic organizations, one by the American Legion and the other by the Friends of the Earth.

Mr. President, the history of the U.S. Isthmian Canal policy is long and complicated, often beset with bewildering confusion over its two most crucial issues: First, that of site; and second, that of type. The solution, as decided in the early part of the 20th century, after extensive Army and Navy explorations and prolonged debates in the Congress, was for a canal at the Panama site of the high-level lake and lock type.

Although the wisdom of those decisions is completely established, the questions of site and type are still with us. Moreover, the ill-advised 1977 Panama Canal Treaty provided for a joint United States-Panamanian feasibility study now underway for the construction of a canal of the sea-level design in Panama—a vast project that would necessarily require some form of tidal locks or controls and would not be as safe and convenient either operationally or environmentally as the existing canal. Thus it seems that the stage is being set for more scorching debates in the Congress in another "battle of the routes" and another "battle of the levels," both at the same time.

For proper understanding, the following facts should be known about Panama Canal history:

First, in 1931, the U.S. Army Interoceanic Canal Board, when recommending the construction of a third set of locks for the Panama Canal, contemplated the converting of the existing lake-lock canal to one of sea-level design (House Document No. 139, 72d Congress, pp. 32-44.)

Second, in 1939, the Congress, on administrative recommendations, authorized the construction of the third locks project at a cost not to exceed $277,000,000. An undisclosed objective in that undertaking was conversion of the present high-level lake-lock canal to one of the so-called sea-level type—and objective not specifically authorized by the Congress (Public Law 391, 76th Congress.)

Third, construction on the third locks project started in 1940 but was suspended in May 1942 because of more urgent war needs for shipping, manpower, and materials afer the expenditure of more than $76,000,000 mainly on two huge lock-site excavations at Gatun and Miraflores, a bed for relocating the Panama Railroad near Gatun, and a rail-vehicular bridge across the Miraflores Locks.

Fourth, during 1942-43, there was developed in the Panama Canal organization after extensive studies of marine operations in both peace and war what is known as the terminal lake-third locks plan for the future canal, which received the approval of President Franklin D. Roosevelt as a postwar project and was later approved in principle by two experienced Governors of the Panama Canal as the preferred modification for the authorized third locks project. Moreover, it became the subect of an extensive literature in professional and lay publications winning wide support.

Fifth, in 1945, after the advent of the atomic bomb, the Congress, again on administrative reocmmendations, authorized the Governor of the Panama Canal to make a comprehensive investigation of the means for increasing the capacity and security of the canal to meet future needs of interoceanic commerce and national defense, the first time the terms "security" and "national" defense were used in an important canal law (Public Law 280, 79th Congress.) In the investigation that followed these two terms, "security" and "national defense," were interpreted as "paramount and controlling," and even as "dictating" the sea-level type—a far more serious interpretation than was intended by the Congress that enacted the statute.

Sixth, in 1947, the Governor of the Panama Canal in his report recommended only the construction of a canal of sea-level design in the Canal Zone (Report of the Governor of the Panama Canal under Public Law 280, 79th Congress) but this recommendation failed to receive Presidential approval and the Congress took no action.

Seventh, in 1960, the report by an independent inquiry of the House Committee on Merchant Marine and Fisheries, opposed the 1947 recommendation for constructing a sea-level type of canal in the Canal Zone (House Report No. 1960, 86th Congress, 1960, p. 5.)

Eighth, in 1964, the Congress, on administrative recommendations, authorized another investigation, this time only for a canal of sea-level design. (Public Law 88-609, 88th Congress approved Sept. 22, 1964, as amended.)

Ninth, in 1970, the report of the last investigation recommended the construction of a canal of the sea-level tidal-control type 10 miles west of the existing canal at a cost of $2.88 billion at 1970 price levels (Report of the Atlantic-Pacific Interoceanic Canal Study Commission, Dec. 1, 1970.)

Tenth, also in 1970, the enlargement of Gaillard Cut was completed at a cost of $95,000,000 making a total of $171,000,000 already expended toward major modernization of the existing canal—$76,000,000 plus $95,000,000—which is too large a sum to be swept under the rug.

As is well known, there are many questions involved in the problems of Trans-Isthmian transit, among them an oil pipeline in the western part of Panama scheduled for completion in early 1983, the matter of a modernized Tehuantepec Railway in Mexico to transport container ship cargoes between the oceans, and the environmental dangers of any saltwater sea-level canal anywhere on the Central American Isthmus.

In spite of the official reports recommending the old predetermined objective of a small professional group for a sea-leval design at Panama, there have long been many experienced independent engineers, geologists, economists, navigators including Panama Canal pilots, and other competent experts strongly opposed to such construction. Instead, they have urged the major modernization of the existing Panama Canal under the well-known terminal lake-third lock plan, which proposal cuts through current perplexing confusions like an infrared ray through a fog.

This plan to provide for a third lane of large locks is authorized not only under the maintenance factor in the 1903 treaty but also under the 1977 treaty. In addition to increased lock capacity, it would provide a high-level terminal lake at the Pacific end of the canal similar to the lock-dam arrangement at the Atlantic end to serve as a long-needed expansion chamber for traffic. This is not only the proper and economic solution but in addition would provide for the world the best canal for marine operations practicable of achievement at least cost with complete assurance of success and bring great distinction to those responsible for its authorization.

Mr. President, in these general connections in must be recognized that the Central American Isthmus is not only strategic as regards its advantageous geographical location but also a region of endemic revolution and endless political intrigue that recent events in Central America have repeatedly dramatized. For these and many other reasons must of the experienced authorities referred to have stressed that the proposed major modernization of the Panama Canal be undertaken only at no risk to the U.S. taxpayers and investors and only under the undiluted sovereign control of the United States over both the canal and its indispensable protective territorial frame.

Another important angle in the problem that has been the subject of an extensive literature, including congressional hearings, is the environmental question with practically all of the major national and international conservation and environmental organizations opposing the mixing of the Atlantic and Pacific Oceans by means of a saltwater channel anywhere on the Central American Isthmus as the challenge of the century.

The Panama Canal, opened for traffic in 1914, was constructed not only for interoceanic commerce but also for national defense, the last angle having been dramatized in 1898 by the dash of the U.S.S. *Oregon* From the Pacific coast of the United States around Cape Horn to join the Atlantic Fleet just in time to participate in the Battle of Santiago.

The recent change of policy as regards the deployment of the U.S. Armed Forces calling for U.S. naval world superiority again emphasizes the vital importance of the Panama Canal not only to the United States but also to the entire free world (Washington Post, Dec. 14, 1981, p. 1), and raises serious questions as to why U.S. sovereign control over that key transportation center should ever have been surrendered.

Mr. President, two major organizations, the American Legion at its 1981 annual convention in Honolulu and the Friends of the Earth International at its October 2-4, 1981, meeting in Washington, DC., adopted highly significant resolutions on the interoceanic canal problem. Because these two resolutions should be of unusual interest to the Congress as well as the Nation at large and other countries that could be adversely affected by what many fear would be the colossal error of any sea-level undertaking, I ask that they be printed in the RECORD.

The resolutions follow:

THE AMERICAN LEGION RESOLUTION 84.—PANAMA CANAL

Whereas, the Panama Canal and the security of transit are, and will remain, vital to U.S. and Free World interests as long as ships sail the seas; and

Whereas, oceangoing traffic through the Panama Canal continues to increase, involving periodic long delays in transits on peak days, reaching a high backlog of 116 vessels in mid-April 1981 and involving huge costs

to commercial shipping interests using the Canal; and

Whereas, experienced Panama Canal engineering and operational officials long ago foresaw the present situation and urged an increase of canal capacity for 1990; and

Whereas, as the result of World War II experience a valid plan for such major increase of capacity coupled with operational improvement was developed in the Panama Canal organization and received the approval of President Franklin D. Roosevelt as a post-war project; and

Whereas, in the sweep of history such notable naval authorities as admirals Alfred Thayer Mahan and Thomas H. Moorer have repeatedly called the Panama Canal the strategic center of the Americas, as well as the center for the Monroe Doctrine; and

Whereas, Panamanian officials, including Panama's President Aristides Royo, have issued statements expressing Panama's displeasure and taking exception to the two Panama Canal Treaties as modified and approved by the U.S. Senate in 1979; and

Whereas, the Panama Canal, under the post treaty management, has been wrongly used for the transit of illicit drugs contrary to the national interest of the United States and other nations; and

Whereas, the Republic of Panama has been used as a staging area for arms and men supporting left wing terrorists in Central America; now, therefore, be it

Resolved, by The American Legion in National Comvention assembled in Honolulu, Hawaii, September 1, 2, 3, 1981, that the U.S. Congress be urged to maintain the closest vigil on Panama Canal operations with a view to preserving and protecting U.S. national interests: and, be it further

Resolved. That urgently needed major modernization of the existing lake-lock Panama Canal for its major increase of capacity and operational improvement be resumed at the earliest practicable date; and, be it finally

Resolved, That such major modernization be authorized only when it can be achieved at no risk to U.S. investors and taxpayers and under undiluted U.S. sovereign control of both the Canal and its protective frame.

FRIENDS OF THE EARTH INTERNATIONAL RESOLUTION ON PANAMA-SEA-LEVEL CANAL PROJECT

Whereas, for four centuries, like a hardy perennial, the idea of a sea-level canal through the isthmus of Panama has been proposed; and

Whereas, the French, who began construction in Panama actually attempted a sea-level canal design, but the American engineers who took over the work in the early 1900's switched over to the locks and lakes system in existence today; and

Whereas, the fresh water Lake Gatun provides a biological barrier preventing any significant mixing of now separate species in the Atlantic and Pacific; and

Whereas, a sea-level canal would provide access on a continuing basis for several known predator Pacific species, including the crown-of-thorns starfish and the sea snake, as well as a host of unknown species; and

Whereas, the Panama Canal Treaties, ratified by Congress during the Carter Administration, committed the U.S. and Panama to study jointly the feasibility of a sea-level canal at some point during the life of the treaties; and

Whereas, because of the U.S. political climate in the U.S., there is reluctance by Congress to fund such a study with the result that Panama and other mega-project supporters have entered into negotiations with Japan to help finance such a study; and

Whereas, Friends of the Earth U.S., along with nearly every other major national and international environmental and conservation organization is on record opposing the construction of such a project; and

Whereas, Friends of the Earth International, assembled in Washington, D.C., October 2-4, 1981, now on 4 October 1981, therefore be it

Resolved, That Friends of the Earth International opposes the construction of a sea-level canal in Central America; and, be it further

Resolved, That Friends of the Earth International opposes any attempts to study nuclear construction of such a project; and, be it further

Resolved, That Friends of the Earth International supports the widest possible involvement of international environmental and conservation NGO's in preparation of and the actual carrying out of any sea-level canal study produced pursuant to the Panama Canal Treaties.

[From the Congressional Record, Mar. 17, 1983]

THE PANAMA CANAL

Mr. HELMS. Mr. President, among the gravely important policy questions that have faced the National Government of the United States since 1931 are those relating to the major increase of capacity and operational improvement of the Panama Canal.

A project for constructing a third set of larger locks was authorized in 1939, started in 1940 and, because of more urgent war needs, suspended in May 1942 after the expenditure of more than $76 million. The major parts completed included two huge lock site excavations at Gatun and Miraflores, a rail-vehicular bridge across the Miraflores locks, and a roadbed for relocating the Panama Railway near Gatun. In addition, some $95 million was spent on the enlargement of Gaillard Cut from 300 feet minimum width to 500 feet, making a total of more than $171 million already expended toward major modernization.

In these connections, Mr. President, attention is invited to two of my addresses: "Panama Canal: Evolution of a Plan" in the CONGRESSIONAL RECORD of August 25, 1978, pages 27878-27882, and "U.S. Isthmian Canal Policy" in the RECORD of March 30, 1982, page 5847-5849.

The second of those addresses, includes two important resolutions, one by the American Legion and the other by the Friends of the Earth International, which merit careful reading by serious students of the canal question.

The latest development in the evolving Ishmian situation was a notable program at the Noon Forum of the Cosmos Club in Washington, D.C., on January 18, 1983, before a distinguished gathering, which included Senate staff members, when the speaker was Capt. Miles P. DuVal, Jr., U.S. Navy, retired, former captain of the Port, Balboa, C.Z., who gave a highly informative illustrated address on this timely subject: "Panama Canal: Its Marine Operational Problems and the Solution."

On the same day of Captain DuVal's address, January 18, 1983, the U.S. Administration of the Panama Canal Commission, Lt. Gen. Dennis McAuliffe, U.S. Army, retired, was quoted in USA Today, page 9A, an important Washington newspaper, as favoring "two new and larger sets of locks at the Atlantic and Pacific Terminals" of the Panama Canal—an amazing and timely coincidence from knowledgeable sources as to the proper solution for increased canal capacity and operational improvement.

Mr. President, because the subject of the major modernization of the Panama Canal is one of global geopolitical importance and crucial for both interoceanic commerce and hemisphere security, I request that the full texts of the Cosmos Club Noon Forum Proceedings, including Captain DuVal's notable address, and the news story quoting General McAuliffe be printed in the RECORD.

The material follows:

PANAMA CANAL: ITS MAJOR MARINE OPERATIONAL PROBLEMS AND THE SOLUTION ILLUSTRATED, ADDRESS BEFORE THE COSMOS CLUB NOON FORUM BY CAPT. MILES P. DUVAL, JR., U.S. NAVY, RETIRED, JANUARY 18, 1983, WASHINGTON, D.C.

COSMOS CLUB NOON FORUM

Members of the Cosmos Club and guests, the Cosmos Club Noon Forum was started in 1971 for the purpose of providing an opportunity for club members and their guests to hear authoritative presentations on major issues, to analyze, and to discuss them. Its attendance has been gratifying as well as a measure of their success.

I now call upon our fellow club member, Fred Dyer, who was once a civilian assistant to the Secretary of the Navy and long familiar with the subject of today's program, to introduce our speaker, moderate the session, and adjourn at 1:55 p.m.

REMARKS OF FRED C. DYER, INTRODUCING CAPTAIN DUVAL

Good afternoon: As students of geopolitics realize, one of the major choke points for naval power and ocean commerce is the canal across the American Isthmus. Our speaker today, because of his long association with the problems of trans-Isthmian transit and contributions, has become recognized as a leading authority in that field.

A graduate of the Naval Academy, the Naval War College, the Naval Post Graduate School and Georgetown University, he was awarded at the last the degree of master of science in foreign service (M.F.S.). His career includes service on various types of vessels in many parts of the world.

During World War II while in charge of marine operations in the Pacific sector of the canal, 1941-44, he developed the widely acclaimed terminal lake—third locks plan for its major increase of capacity and operational improvement. In the opinion of some of the best informed Panama Canal engineers, that achievement will make him the architect of the future canal and eventually win the gratitude of navigators, both naval and commercial.

After returning from service in the Pacific, 1944-45, he was designated by Secretary of the Navy James Forrestal as the principal adviser of the Navy Department on Canal Policy Matters, 1946-49.

Since retirement from active duty, he has written extensively on the historical and marine operational aspects of the canal problem.

Books by him include a series on the canal:

I. "Cadiz to Cathay: The Story of the Long Diplomatic Struggle for the Panama Canal," 1502-1904;

II. "And the Mountains Will Move: The Story of the Building of the Panama Canal," 1904-14, both first published by Stanford University Press with later edi-

tions of both by the Greenwood Press of Westport, Conn.

III. "Let the Waters Rise," covering the period, 1914-79, is now ready for publication.

In addition to numerous articles and addresses, his writings include contributions on the canal question to professional magazines and the Encyclopaedia Britannica.

Incidentally, if any of you have books on seapower or Isthmian Canal matters you might consider contributing them to his collection on interoceanic canal and naval history at Georgetown University.

Members and guests, may I now present Capt. Miles DuVal who will address us on this timely subject: "Panama Canal: Its Major Marine Operational Problems and the Solution."

PANAMA CANAL: ITS MAJOR MARINE OPERATIONAL PROBLEMS AND THE SOLUTION BY CAPT. MILES P. DUVAL, JR., U.S. NAVY, RETIRED

Mr. Chairman, fellow members of the Cosmos Club and guests, at the outset, I dedicate my remarks to the great Americans largely responsible for the successful launching of the Panama Canal: Adm. John G. Walker, President of the U.S. Isthmian Canal Commission for Exploration, 1899-1902; President Theodore Roosevelt; Secretary of War William Howard Taft; and John F. Stevens who, as chief engineer of the Isthmian Canal Commission for Construction, 1905-07, was the basic architect of the Panama Canal.

The story of the Panama Canal is not new. It traces back in a vast literature to the age of discovery. On his fourth voyage of exploration, Christopher Columbus sailed southward along the east coast of the Central American Isthmus, passed the mouths of the San Juan River in Nicaragua and the Chagres River in Panama, and spent the Christmas of 1502 in Limon Bay at what is today the Atlantic entrance to the Panama Canal. The cities of Cristobal and Colon are named in his honor.

In 1513, Vasco Nunez de Balboa, from a peak in Darien, discovered the Pacific Ocean, then called the Southern Sea, thus completing the historical setting for what was to follow. That discovery is memorialized in the name of the Port of Balboa at the Pacific entrance of the canal.

Within a relatively short time after the voyage of Columbus, the Spanish colonizers, recognizing the strategic location of the Isthmus, explored it for transit routes all the way from Tehuantepec in Mexico to the Atrato River in Colombia. The first plan for the Panama Canal was prepared in 1529 by the Spanish engineer, Alvaro Saavedra.

Because of the lower continental divides at Nicaragua and Panama and penetration of the jungles of both by navigable rivers, the early Spanish developed important trade routes over these two natural avenues that for many years were the leading competitors for Trans-Isthmian Transit.

It was not until the 19th century, however, that serious explorations for canal sites were conducted, most notably by the U.S. Army and Navy.

The first specific step toward undertaking the Panama Canal was the construction by United States interests of the Panama Railroad—the first transcontinental railway in the Americas that was opened for traffic in 1855.

The second major step was the great French canal effort at Panama, 1880-89, under the leadership of Ferdinand de Lesseps, the hero of the Suez Canal. Though that attempt ended in tragic failure, it did prepare the way for the United States, under the dynamic leadership of President Theodore Roosevelt, to acquire control of the U.S. Canal Zone and launch the construction of the Panama Canal, which was opened to traffic in 1914, just in time to render vital services in World War I.

During the era of exploration by the United States, there evolved a definite pattern of investigation emphasizing two key issues: First, the question of site; and second, the matter of type. Their purposes were to secure the best site for the best type of canal, and this pattern has been repeated each time the canal issue has come up for major consideration.

The problem of site for the first canal across the Isthmus was decided in 1902 only after a searing struggle in the Congress, 1899-1902, known as the "Battle of the Routes" between the proponents of the Nicaragua and Panama location, which ended with the choice of the Panama site. The matter of type was decided in 1906 only after another scorching debate in the Congress, 1905-1906, known as the "Battle of the Levels" between supporters of a canal to be formed largely by fair-sized lakes and proponents of one of "sea-level" design, which resulted in victory for the high-level-lake and lock type. History has completely established the wisdom of those two great decisions: The Panama site for the lake-lock type.

Now let us look at some aerial views of the Panama Canal from the Atlantic to the Pacific to see it in operation.

In early 1941, it was my good fortune to have been ordered for duty at a critical period in history as captain of the Port of Balboa in the Canal Zone, with responsibility for marine operations in the Pacific half of the Panama Canal. This sector included the southern part of the summit level Gatun Lake: The hazardous Gaillard Cut, 8 milies long; Two sets of Pacific locks; the small intermediate level Miraflores Lake, separating those locks; and the Pacific sea-level section of the canal to deep water in the Pacific, including the Port of Balboa.

Soon after arrival of the Isthmus, a series of serious marine accidents in the Pacific sector focused my attention on the crucial problems of marine operations. The ensuring efforts included the examination of records of hundreds of investigations of marine accidents since 1914, the plotting of their locations throughout the entire length of the canal, and the study of their proximate causes.

The results were quite revealing. The more serious accidents occurred in the narrow rocky channels of Gaillard Cut. Few occured in Gatun Lake, where the channels are wide, or in the sea-level sections of the canal. Accidents in the lock chambers were of relatively minor character and proportional in numbers to the number of steps in the locks. The Pedro Miguel locks, located squarely in the southern end of Gaillard Cut, had the highest number of accidents to vessels entering and leaving those locks, making it the most dangerous of all the locks.

In May 1942, the 1939 project for the construction of a third set of larger locks then underway was suspended because of more urgent war needs after the expenditure of more than $76 million. The major parts completed, which will be used in future major modernization, included two huge lock site excavations at Gatun and Miraflores, a rail-vehicular bridge across the Miraflores locks, and a bed for relocating the Panama Railroad near Gatun.

Although stopping that tremendous work, which left the canal essentially as it was in 1914, appeared regrettable at the time, that action made it possible to make a deep study of the marine problems of ship transit for evolving a plan that would provide the best canal for navigation.

Those efforts included many visits to two mountain tops near the Pedro Miguel locks to observe vessels in transit, frequent trips on vessels during transits, discussions with experienced engineers and pilots, obtaining data on night fogs in Gaillard Cut, learning about lockage surges in Gaillard Cut, and an examination of the terrain of the Pacific side of the Continental Divide.

As shown by those inquiries and confirmed by later studies, the canal had, and still has, the following major marine operational problems:

(1) The dangerous bottleneck at the Pedro Miguel locks, at times causing southbound vessels to slow in a restricted channel, thereby losing steerage way and often forcing them to maneuver to avoid grounding.

(2) The double handling of vessels at the Pacific locks, with resulting inconvenience, increased numbers of accidents, and loss of time.

(3) The adverse effect of night fogs in Gaillard Cut on canal capacity and operations.

(4) The surges of 3 feet maximum amplitude in the Gaillard Cut water level caused by the operation of the locks at Pedro Miguel.

(5) The limited operating range of the summit water level of Gatun Lake from a high of 87 feet to a low of 82 feet.

(6) The navigation hazards in the rocky Gaillard Cut restricted channels, originally of 300 feet minimum bottom width but since 1970 of 500 feet.

(7) The limited dimensions of the present locks, 110 feet by 1,000 feet.

In contrast with the acute marine problems caused by the Pedro Miguel locks in the southern end of Gaillard Cut, there were no such problems at the northern end, where there were no locks but only the widening channels of Gatun Lake affording virtually unrestricted navigation. What was needed at the southern end of Gaillard Cut was a summit level lake between the narrow cut and the Pacific locks to serve as an expansion chamber for traffic.

In line with my request, canal engineers checked the impounding perimeter around the Miraflores Lake basin and found that a smaller Pacific terminal lake at the same level as Gatun Lake, then 87 feet maximum, could be created with relatively small dike construction. Those associated with the studies at the time were thrilled by that discovery, for they recognized its significance.

Before deciding what to do, it was necessary to determine, by careful evaluations, whether the maximum water level of Gatun Lake should be lowered or raised. That study conclusively established that lowering the Summit Lake water level by extending the length of Gaillard Cut would impair navigation and that raising the level would improve navigation.

What are the solutions for the previously listed seven major marine problems?

1. For that of the dangerous bottleneck at the Pedro Miguel locks, it is their complete physical removal.

2. For the problem of the double handling of vessels at the separated Pacific locks, the proper remedy is their consolidation south of Miraflores at Aguadulce in continuous

steps similar to the lock arrangement at Gatun.

3. For the adverse effect of night fogs in Gaillard Cut, the corrective is an elevated Miraflores Lake, which is fog free, for use as a traffic reservoir during fog periods.

4. For the problem of lockage surges, the creation of the elevated Pacific terminal lake will reduce them to negligible magnitudes, probably less than an inch.

5. For increasing the present 5 feet operating range of the Gatun Lake summit water level, the solution is to raise its maximum level of 87 feet to its optimum level of 92 feet, thus doubling the reserve water capacity for lockages and improving navigation.

6. For reducing the navigational hazards of Gaillard Cut, the corrective is its continued enlargement as shown to be needed by marine experience.

7. For the handling of larger vessels, the answer is construction of one set of larger locks.

The above remedial measures combined, known as the terminal lake-third locks plan, also as the balanced lake plan, were approved in principle by two experienced Governors of the Panama Canal for the major modification of the original third locks project and received strong support from the most knowledgeable Panama Canal engineers; and it is unanimously supported by Panama Canal pilots, who are the best informed professional group on the problems of the marine operational needs of the canal.

Most of the individual remedial measures so far taken are not basic solutions but mere symptomatic treatments that do not solve the major marine problems, but only provide needed temporary relief pending major modernization.

What will the terminal lake—third locks plan accomplish? It will eradicate the dangerous bottleneck at Pedro Miguel, create a summit level lake between Gaillard Cut and the Pacific locks thereby aiding vessels in the summit level when leaving or approaching them, provide uninterrupted summit level navigation from the Atlantic locks to the Pacific locks, reduce accidents, eliminate lockage surges, mitigate the effect of fog on operations, decrease transit time about 1 hour and simplify canal management thereby providing the best canal for operations practicable of achievement, and at least cost. Moreover, this plan has been tested for more than half a century of satisfactory operations at Gatun, and can be accomplished with full assurance of success. Such construction is authorized under both the 1903 and the 1977 canal treaties.

Most significantly, the terminal lake third locks solution will enable the maximum utilization of all work so far accomplished on the Panama Canal during its construction and since 1914, which is considerable. In addition the more than $76 million expended on the third locks project and some $95 million spent of the enlargement of Gaillard Cut from 300 feet to 500 feet minimum width, make a total of over $171 million already expended toward major modernization. In 1983 currency, all of the original cost estimates would be far greater.

The plan is so obvious and so simple that many have asked why it was not proposed earlier in the history of the canal. It was.

In 1908, Col. William L. Sibert, an important Panama Canal Builder, made determined efforts to change the approved plans so as to consolidate the Pacific locks in an arrangement similar to the Atlantic locks. He did not succeed, because construction had started and such a change would have delayed opening of the canal, which was a controlling factor at that time.

In 1906, an able canal engineer, William Gerig, made the same proposal to chief engineer, John F. Stevens, who let him take full credit for the idea.

Also, earlier in 1906, prior to Gerig, chief engineer, Stevens made the same recommendation to the Congress. Unfortunately, his later investigations for foundations proved unsatisfactory and he was constrained by economic and political hazards that could not be ignored to proceed according to the approved plans for separating the Pacific locks that he had sought to consolidate as he had done for the Atlantic locks.

Many have asked also why it was not considered by the French at the Paris Congress of 1879 called by Ferdinand de Lesseps to decide the questions of site and type for an Isthmian Canal. It was.

In that Congress of some 134 distinguished leaders from various countries, one engineer, when he saw the way the gathering was being directed toward adopting the predetermined objective for a canal at Panama of "sea-level" design based on the success of the Suez Canal, rose in strong protest and stated that rather than have his name associated with what he knew would be a great disaster, he voted no.

Then, showing the insight of true genius based on study of the key problems involved, he explained what he described as a "practical plan" for constructing the Panama Canal: "build a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permits. Let the waters rise to form two lakes about 80 feet high, join the lakes thus formed with a channel cut through the continental divide and connect the lakes with the oceans by locks. This is not only the best plan for engineering, but also the best for navigation."

In large measure, this 1879 plan was eventually adopted in 1906, mainly through the efforts of Chief Engineer Stevens, Secretary of War Taft, and President Roosevelt. But its originator was the notable French engineer. Adolphe Godin de Lepinay, who, by so speaking, won lasting fame as the precursor of the Panama Canal.

The terminal lake—third locks solution is not presented as a new idea for it is not. What is new is the fact that it is the first comprehensive plan for the future Panama Canal developed from actual marine experience.

The philosophy on which its evolution during those critical years of World War II was based is nowhere better expressed than by one of our country's most eminent builders of ports who, in 1915, stated "There is no profession in which experience is a greater factor than that of the engineer, especially as to the design of works affecting navigation; the adaptability of such works to the needs of the navigator, the chances of accidents and the necessary appliances to reduce such chances to a minimum are questions that experience largely determines." These words of power, so applicable to the planning of the future Panama Canal, are those of the great Army engineer who supervised the construction of the Gatun locks and dams, 1907-14. They are the words of Gen. William L. Sibert.

RECOMMENDED READINGS OF BOOKS

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[From the USA Today, Jan. 18, 1983]

BIG SHIPS, VOLUME DAM UP SEAWAY

(By Susan Morgan)

PANAMA CANAL.—The Panama Canal is in danger of becoming just a tourist and history book attraction unless it receives a major overhaul.

With last year's record $320 million in earnings and joint U.S.-Panamanian administration assured through the end of the century, it might be reasonable to assume Panama can sit back and watch the tolls roll in.

The chief problem, however is capacity. Most analysts believe the present canal can survive through the end of the century, but improvements will be vital after that.

The 51-mile-long canal's three main locks, which raise ships 85 feet above sea level, can only accommodate vessels of up to 67,000 tons.

Current energy costs mean it is cheaper for bulk cargo vessels of up to 250,000 tons to take the longer route around South America with some cargoes. The second problem concerns volume. In the 1970's as traffic increased, severe bottlenecks became common, with up to 180 ships sometimes waiting for a week.

As a result of what canal administrator Dennis McAuliffe calls "the chill that passed through the industry," capacity was raised to around 43 ships a day. At the same time, congestion is being relieved by the new trans-Panamanian oil pipeline.

Nevertheless. Panamanian analysts concede that new, long-term answers are needed.

One group, to which McAuliffe belongs, favors expanding the canal. This would require two new and larger sets of locks at the Altantic and Pacific terminals, and widening and straightening of the Gaillard Cut, often dubbed "the Snake."

The project, costing up to $3 billion, would open the canal to vessels of up to 170,000 tons, putting it on a par with the Suez Canal.

The more daring solution is to build an entirely new sea-level canal 10 miles west of the present one for up to $10 billion. The main advocate of this option is Japan, second to the United States in canal usage.

Panamanians are irked by the U.S. lack of interest in development. Even though less than 6 percent of U.S. maritime traffic passes through the canal, the total is 62 percent of all traffic. The 1977 Panama Canal Treaty, however, removed any serious stimulus for significant U.S. investment in the canal.

ANTIDRUG ABUSE LEGISLATION

MONEY LAUNDERING

Mr. MATHIAS. Mr. President, I would like to pose a question to the distinguished chairman of the Judiciary Committee [Mr. THURMOND]. My question concerns the drug legislation that was overwhelmingly approved by the Senate yesterday afternoon.

I am particularly interested in that portion of the drug bill that addresses money laundering and Bank Secrecy Act enforcement authority. One provision would empower the Secretary of the Treasury to issue a summons to a financial institution and order the production of "books, papers, or other data." That summons authority would also permit the Secretary to question under oath, "as may be relevant or material to an investigation," into enforcement of the Bank Secrecy Act.

While this tool might be helpful to the prosecution of money laundering offenses, the significance of that authority must not be taken for granted. I have every confidence that the Secretary of the Treasury would appreciate its significance. Have we included language that would ensure that the Secretary would not delegate this responsibility to someone less directly accountable to Congress?

Mr. THURMOND. Mr. President, under the new section 5318(a) (1) and (4), a summons may be issued only by the Secretary or, with his approval, by "an appropriate supervising agency" to which the Secretary has delegated Bank Secrecy Act enforcement authority. The Judiciary Committee recognized the significance of this delegation authority when it reviewed and reported S. 2683, a bill that is nearly identical to the money laundering portion of the drug bill. Accordingly, the committee discussed in its report one "appropriate supervising agency," the Internal Revenue Service. The report notes that it is the committee's intention that the delegation with respect to summons issued by the IRS will not extend to persons with responsibilities less than those currently exercised by the District Chief, Examination Division, or District Chief, Criminal Investigations Division.

The Judiciary Committee was sensitive to the significance of this summons authority and does not mean to establish a process where line officers are handing out these summonses as a matter of course.

Mr. MATHIAS. Mr. President, I thank the senior Senator from South Carolina, and appreciate the thoughtfulness with which he approached this matter. Can the chairman identify any other "appropriate supervising agency" that may be given this authority? If another agency were delegated the summons authority, could the summons authority be exercised by an officer entrusted with less responsibility than the District Chiefs that you have just identified?

Mr. THURMOND. The U.S. Customs Service, though not explicitly mentioned in the committee report, may be an appropriate supervising agency under certain circumstances. In the event that the Customs Service is granted that authority, the summons authority would not be exercised by an officer with less responsibility than those who may issue summonses for the Internal Revenue Service. It is my understanding that in the Customs Service, the summons authority would not be delegated to persons less senior than the District Director or the special agent in charge.

Mr. MATHIAS. I thank the chairman of the Judiciary Committee, and commend him for his stewardship of this legislation.

Mr. PELL. Mr. President, as one who has long been concerned with the drug abuse problem in our country, I voted for the omnibus antidrug abuse legislation adopted by the Senate yesterday. The United States is in the midst of a substance abuse crisis of massive proportions, but it is important to emphasize that this crisis did not arise overnight and will not recede without years of sustained effort.

For at least 20 years, Americans have been aware of a growing drug abuse problem. And yet at the outset of this administration the agencies on the front line of the war against drug abuse, the Drug Enforcement Administration, the Coast Guard, the Customs Service, and many others, found their budgets reduced and their ability to work effectively against drug traffickers diminished. The Coast Guard is a good example of an embattled agency whose resources have been taxed to the bone while its drug enforcement missions have been significantly expanded. I am pleased that H.R. 5484 belatedly addresses the needs of the Coast Guard and other agencies for more resources and equipment to get the job done in the war against drugs.

This legislation is not a panacea, however. Agencies like the Coast Guard have been underfunded for so many years that "a quick fix" such as this bill, will not succeed in enabling these agencies to "shut down" the drug trafficking industry. Moreover it should be pointed out present efforts are only interdicting about 10 to 15 percent of the illegal drugs entering the country. Perhaps the initiatives toward increased enforcement contained in H.R. 5484 will succeed in permitting our law enforcement agencies to stop 30 or even 40 percent of the illegal drugs flowing into the country. That will still leave a very flourishing and dangerous drug trafficking industry operating in the United States.

Without effective programs designed to reduce the domestic demand for illegal drugs I believe the war against drugs is doomed to failure. Troops standing shoulder to shoulder along the Mexican border will not succeed in preventing drug abuse in America as long as the demand for illegal drugs remains unabated.

Clearly, a massive assault on drug abuse must be launched in our schools. As urgent as this situation is, however, I must submit that I have severe reservations about the approach we are taking in this legislation. Quite simply, we do not have enough information on the education aspects of this problem. We do not know, for example, where the incidence of drug abuse is greatest.

We therefore do not know how—or where—to effectively target the use of education funds. Beyond that, we cannot adequately identify model education and prevention programs. I am of the mind that we should have this important information before we act so precipitously. At the same time, however, I recognize that we are faced with an emergency situation—one which requires immediate and direct attention in our schools. I do believe, therefore, that subsequent to the passage of this legislation, we must have a very careful examination of what we have done.

Concerning the international section of H.R. 5484, the legislation would cut off all foreign assistance to any major producer nation that fails to cooperate with the United States in the fight against drugs. It toughens the standards we use to measure progress in both the eradication and the interdiction aspects of this fight and it requires regular monitoring of a country's efforts by both the President, and the Congress. Funds for the International Narcotics Bureau at the Department of State are increased significantly, and for the first time funds for drug education programs are earmarked for both the Agency for International Development and USIA.

As Senator BIDEN, a key player in this entire legislative effort, stated in his remarks last week, H.R. 5484 provides both a carrot and a stick. It says to those nations that are either major producing nations or major transhipment countries for the international transport of illegal narcotics, "here is some help to curb the cultivation, production, processing and transhipment of these drugs." However, it also says "if you won't help us in this effort, the penalties will be sure, and strong. Assistance will be cut off, and even your loans at the multilateral institutions will be in jeopardy narcotics control is now a priority across the board for the United States of America."

Mr. President, the omnibus drug legislation unifies the international and the domestic aspects of this fight. It helps provide a unified policy for all of the Federal agencies which have a role to play in this endeavor. In the international section of this legislation it makes clear that narcotics control must be raised to the highest priority in our bilateral and multilateral relations. As producer nations get the message, we can look forward to some genuine progress in reducing marijuana, cocaine, and opium production. I think it is important to note that diplomacy will play and must play a key role here as well. Only when we succeed in persuading other nations that it is primarily in their own interest to curb drug traffic—because these traffickers, with their money and power to corrupt pose a grave threat to their own internal sovereignty—will we achieve the cooperation we truly need to win this battle.

In summary, Mr. President, I believe H.R. 5484 represents a long overdue beginning to a greater national commitment to eradicate drug abuse and narcotics trafficking. It is not a panacea. I hope my colleagues, once the national preoccupation with this issue has faded away, will continue to demonstrate the same level of interest and commitment represented by this bill. For only a long term and sustained commitment will have a chance to succeed in eliminating the drug abuse problem that imperils America today.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 11:54 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 1246. An act to establish a federally declared Floodway for the Colorado River below Davis Dam; and

H.J. Res. 743. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

The enrolled bill and joint resolution were subsequently signed by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following bills, previously received from the House of Representatives, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4059. An act to recognize the organization known as the Red River Valley Fighter Pilots Association; to the Committee on the Judiciary.

H.R. 5459. An act to direct the release, on behalf of the United States, of certain conditions and reservations contained in a conveyance of land to the State of Utah, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 5490. An act to amend title 11 of the United States Code to clarify the current meaning of section 1113 relating to the rejection of collective-bargaining agreements by debtors in bankruptcy; to the Committee on the Judiciary.

H.R. 5496. An act to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5508. An act to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the esthetic and recreational benefit of future generations of Alabamians, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 384. Concurrent resolution expressing the sense of the Congress concerning the Soviet Union's continued interference with postal communications between the United States and the Soviet Union; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bills, received from the House on September 30, 1986, were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2484. An act to amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States;

H.R. 4961. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes;

H.R. 5389. An act to withdraw certain public lands in the State of Alaska for military purposes, and for other purposes;

MEASURES HELD AT THE DESK

The following bills were ordered held at the desk by unanimous consent pending further disposition:

H.R. 4823. An act to amend the Immigration and Nationality Act to improve the administration of the immigration and nationality laws, and for other purposes;

H.R. 4917. An act to improve the quality of examinations of depository institutions, and for other purposes;

H.R. 5488. An act to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes;

H.R. 5554. An act to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the Fund;

H.R. 5558. An act to amend title III of the Immigration and Naturalization Act to provide for administrative naturalization, and for other purposes.

H.R. 5564. An act to amend the National Housing Act to provide for the eligibility of

certain property for single family mortgage insurance;

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 1, 1986, she had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 202. Joint resolution designating October 1986 as "American Liver Foundation Liver Awareness Month."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment:

S. 485: A bill to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation (Rept. No. 99-507).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 1617: A bill to provide for more effective management of lands of the Untied States which are subject to conflicting claims or disputes, and to require the Secretary of the Interior to report annually thereon (Rept. No. 99-508).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2204: A bill to amend the Land and Water Conservation Fund Act of 1965, as amended, to permit the use of park entrance, admission, and recreation use fees for the operation of the National Park System, and for other purposes (Rept. No. 99-509).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2351: A bill to revise the boundaries of Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes (Rept. No. 99-510).

By Mr. MATHIAS, from the Senate Impeachment Trial Committee:

Report of the Senate Impeachment Trial Committee regarding the matter of the impeachment of U.S. District Judge Harry E. Claiborne (Rept. No. 99-511).

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 482: A resolution authorizing the printing of the report entitled "Highway Bridge Replacement and Rehabilitation Program, Seventh Annual Report to Congress" as a Senate document (Rept. No. 99-512).

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 498: An original resolution to amend rule XXV of the standing Rules of the Senate (Rept. No. 99-513).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with amendments:

S. 2412: A bill to withdraw and reserve certain public lands (Rept. No. 99-514).

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

H.R. 4545: A bill to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, and 1989, and for other purposes.

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 496: An original resolution to pay a gratuity to Eugene A. Bundy.

S. Res. 497: An original resolution to pay a gratuity to David K. Stokely.

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 2529: A bill to amend title 28 of the United States Code to provide for retired magistrates to be recalled to service and to provide a retirement system for U.S. magistrates equal to the retirement system for bankruptcy judges.

Mr. THURMOND. Mr. President, I rise today in support of S. 2529, which provides Federal magistrates with retirement benefits equal to those currently received by bankruptcy judges and allows the recall of retired magistrates when a substantial need exists. I believe that it is appropriate that Congress pass legislation to ensure that benefits for magistrates are sufficient to make certain that we continue to attract high-caliber candidates for magistrate positions. The Judiciary Committee passed this legislation by unanimous consent, and I hope that it will receive similar, expeditious consideration and approval by the full Senate.

Magistrates have been entrusted with a steady increase in responsibility since creation of the U.S. magistrate system in 1968. The district courts appoint and oversee the Federal magistrates, and district courts have experimented with expanding the role of magistrates in Federal court system with great success. U.S. District Judge Spencer Williams, president of the Federal Judges Association, recently stated, in a letter submitted to the Courts Subcommittee of the Judiciary Committee the following:

> The ability of the judiciary to recruit and retain highly-qualified people is a key element in permitting us to provide a high level of justice to the people of the United States. The availability of an adequate retirement system is, of course, an important factor in the decision making process of every person considering accepting an appointment as either a Magistrate or a Bankruptcy Judge. * * * The Federal Judges Association believes that [Magistrate retirement benefits] should be improved to, at least, the level of other important team members, the Bankruptcy judges.

S. 2529 contains many important features which will ensure that we continue to recruit and maintain the quality of judicial officers which Congress envisioned in enacting and expanding the magistrate system. What follows is a section-by-section analysis of the legislation passed by the Judiciary Committee.

Section 1 allows magistrates to serve past the age of 70 when the retired magistrate is recalled upon the majority vote of the judges of the Federal judicial district. Section 2 provides for the recall of magistrates to serve for particular assignments by the judicial council for the circuit in which the magistrate is needed. Sections 3 and 4 make technical changes. Section 5 amends the schedule of deductions and contributions in the civil service retirement laws to increase the percentage to be deducted from their salary and contributed to their retirement from 7 to 8 percent.

Section 6 amends the criteria for bankruptcy judges' eligibility to receive an annuity under the civil service retirement laws to include magistrates and claims court judges. Section 7 expands the provisions for computing the annuity of a bankruptcy judge to include magistrates and claims court judges. Section 8 provides treatment for bankruptcy judges, magistrates, and claims court judges equivalent to that bankruptcy judges now have under the civil service retirement laws. Section 9 adds a new section to title 28 which permits the recall of these judicial officers for a 5-year period upon certification by the judicial council of the circuit in which the officer was serving at the time of retirement. Sections 10, 11, and 12 provide further necessary technical amendments.

The expansion of the powers and jurisdiction of magistrates has reflected the recognition of Congress that magistrates are necessary and capable officers at the "front line of Federal justice." If the Federal district courts are to continue to utilize magistrates to the extent which Congress intends, we should adopt measures to ensure the continued high quality of these judicial officers. I urge my colleagues to support this legislation.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. MATHIAS, from the Commission on Rules and Administration:

Thomas John Josefiak, of Virginia, to be a Member of the Federal Election Commission for a term expiring April 30, 1991; and

Scott E. Thomas, of the District of Columbia, to be a Member of the Federal Election Commission for a term expiring April 30, 1991.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SYMMS (for himself, Mr. GRASSLEY, Mr. MCCLURE, and Mr. ABDNOR):

S. 2899. A bill to amend the Farm Credit Act of 1971 to provide assistance to institutions and borrowers of the Farm Credit System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 2900. A bill to provide a temporary extension of the Interstate Transfer deadline for the H-3 Highway; considered and passed.

By Mr. HECHT:

S. 2901. A bill to provide special rules for purposes of the Internal Revenue Code of 1954 for the accrual of, and carryback of losses from, deductions for asbestos product liabilities in order to protect asbestos workers, and for other purposes; to the Committee on Finance.

By Mr. WALLOP (for himself, Mr. HECHT and Mr. BAUCUS):

S. 2902. A bill entitled the "Federal Land Exchange Facilitation Act of 1986"; to the Committee on Energy and Natural Resources.

By Mr. ZORINSKY:

S. 2903. A bill to require the Secretary of Agriculture to proclaim national marketing quotas for the 1988 through 1990 crops of wheat and to hold a marketing quota referendum by wheat producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MATHIAS:

S. 2904. A bill to amend title 17 of the United States Code to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes; to the Committee on the Judiciary.

By Mr. HATFIELD (for himself, Mr. STAFFORD, Mr. HEINZ, and Mr. CRANSTON):

S. 2905. A bill to establish a national population policy, and improve methods for collecting, analyzing, and employing natural resources, environmental, and demographic data; to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SIMPLE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MATHIAS, from the Committee on Rules and Administration:

S. Res. 496. An original resolution to pay a gratuity to Eugene A. Bundy; placed on the calendar.

S. Res. 497. An original resolution to pay a gratuity to David K. Stokely; placed on the calendar.

S. Res. 498. An original resolution to amend rule XXV of the Standing Rules of the Senate; placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SYMMS (for himself, Mr. GRASSLEY, Mr. MCCLURE, and Mr. ABDNOR):

S. 2899. A bill to amend the Farm Credit Act of 1971 to provide assistance to institutions and borrowers of the Farm Credit System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FARM CREDIT SYSTEM INTEREST REDUCTION ACT

Mr. SYMMS. Mr. President, our Nation is at a crossroads in its policy toward American agriculture. For years now, government intervention in the farm sector has achieved none of its goals. It has not preserved family farms, nor has it stabilized farm income. If anything, it has only contributed to the decline of what was America's first and is today one of our greatest industries.

I do not believe, Mr. President, that any one piece of legislation alone will save the family farm. Save the family farm bills are usually followed by save your local grocer and save the American consumer bills. The sum of all these pieces of legislation is usually an overall worse economy. Instead of looking for a one-shot-cure-all for farmers, Congress needs to adopt an attitude of true concern for the farm economy. This means scrutinizing every piece of legislation to see what its effects on farmers will be. Every bill passed by Congress should be a pro-farmer bill.

Unfortunately, this has not been Congress' policy in the past. Look, for example, at the way in which Congress has devastated the economy by refusing to show fiscal constraint. What is the sense of passing save the family farm legislation when it is followed right behind by out-of-control spending resulting in higher interest rates for those same farmers.

President Reagan's efforts have restored some confidence to the economy, resulting in currently lower interest rates. But I'm not sure that confidence is founded in anything more than a mere hope for better fiscal constraint in the future. Congress has done little to bring substance to that hope.

One hapless victim of uncontrolled spending is the Farm Credit System, the largest single credit source for American farmers. Interest rates currently being offered by the banks of the Farm Credit System are still 12 to 14 percent. This is because $18 billion of the System's capital is in bonds with interest rates from 12 to 17 percent. These bonds came into the System's books during the era of skyrocketing inflation and superinterest that resulted from the last administration's fiscal policies. The American farmer is now paying for those policies.

It is high time for Congress to undo the harm it has done in the past. Today, therefore, several of my colleagues and I are introducing legislation to restore Farm Credit System interest rates to a more competitive market level. We call the bill, the Farm Credit System Interest Reduction Act. Here is a summary of it:

ASSISTANCE FROM THE TREASURY

Lends to institutions of the Farm Credit System $2 billion, interest beginning in the fifth year after the loan, repaid from a percentage of System profits.

Requires the money to be applied according to a plan developed by the Farm Credit Administration, approved by the Secretary of the Treasury, which accomplishes one or both of the following:

The removal of high-cost bonds—12 percent or greater—from the System's bond portfolio through the means of direct Treasury assumption of such bonds, unhinged and extended refinancing, exchange of lending terms; that is, short-term variable for long-term fixed, repurchase, or other means.

The retirement or restructuring of nonaccrual loans held by the System.

BORROWER INTEREST RELIEF

Directs the Farm Credit Administration [FCA] to insure that the assistance is accompanied by a proportionate—in dollar cost to the System—reduction in borrower interest rates, and that all borrowers receive equal benefits of the reduction.

Amortizes the $2 billion of lower interest over a time determined to maximize the System's lending volume, without threatening System solvency such that the financial assistance of the 1985 FCA amendments is invoked.

BORROWER/STOCKHOLDER RIGHTS

Guarantees FCS stockholders access to all documents in their loan files; lists of their fellow stockholders for System business; copies of the bylaws, forbearance policies, and a statement of rights.

Requires stockholders be given ample time and information prior to merger or consolidations of FCS institutions. Allows farmers to call for approval of such mergers at a district level by direct vote.

Allows stockholders to call for direct election of all FCS Board members except those appointed by FCA under law. Opens nominations for such positions to all qualified persons.

Requires financial disclosure of top district and national FCS officials to the FCA—similar to FEC disclosure.

Mandates a GAO study into the possibility of returning the FCS to local control.

INDEPENDENT RATESETTING AUTHORITY

Defines FCS goals to include the availability of competitive interest.

Removes FCA rate-setting authority.

Prevents System institutions from setting rates that threaten the safety and soundness of the institution.

FUNDING

Funds the capital infusion by offsetting reductions elsewhere in the budget: $292 million from Legal Services Corporation; $1,117 million from

U.S. Export-Import Bank; $50 million from AID population planning; $118 milion from 50 percent in U.N. voluntary contribution; and $423 million from foreign aid to non-Camp David countries.

Mr. President, there are some aspects of this bill which should be pointed out. First, it gets interest rates down for farmers—every dollar going in must come out in the form of lower interest rates applied evenly to all Farm Credit System borrowers. Second, it cleans out the financial situation of the Farm Credit System so that it can continue to offer competitive interest rates even after the capital infusion is used up. And third, it is more than budget neutral. The bill reduces areas of the budget that are of dubious benefit to the United States. After fiscal 1987, even though foreign aid programs are restored to their previous levels, the bill results in permanent savings of over a billion per year. Starting in 1992, the Farm Credit System will begin to pay back the loan from a percentage of System profits.

And one final point about this bill. Some of my colleagues may question why this Senator is introducing a $2 billion capital infusion of the Farm Credit System, when he has hitherto voted consistently against Government spending across the board. It's a good question which deserves an answer.

There is legislation currently before the Senate Committee on Agriculture which also hopes to lower Farm Credit System interest rates. This legislation has gathered broad support both in this Chamber, and among our colleagues in the other body. That bill releases the Federal Government from regulatory responsibility to prevent System banks from lowering rates below levels justified by their income and reserves.

While I support such lessening of Federal regulation, considering the financial condition of the Farm Credit System, that bill cannot provide any real reduction in interest rates without leaving the System near, if not ultimately, bankrupt. Furthermore, I feel that pressure to reduce interest rates will be more than the Farm Credit banks can bear, and that, given the opportunity, they will use the rope granted by the legislation before the Senate Agriculture Committee to hang themselves.

Mr. President, I ask the question, "Is it likely that Congress will allow the Farm Credit System to go bankrupt and thus eliminate the largest supplier of farm credit in the Nation?" Not on your life. If there is anything that this Congress is good at, it is respond to crisis with an abundance of Government solutions, rescues, and bailouts.

Why do I support loaning a capital infusion to the Farm Credit System now? Because without such an infusion, any lowering of interest rates will result in a crisis that: First, requires even more Federal funds; second, accomplishes less toward the long-term stability of the Farm Credit System; and third, sends a poor message to investors, making farm credit all the more difficult to obtain in the future.

If not for the sake of American farmers who have suffered from the spendaholism of this Congress, then for the sake of good public policy, I urge my colleagues to give this legislation their full support. I invite any and all to add their name as a cosponsor.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at the appropriate place.

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

S. 2899

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Farm Credit System Interest Reduction Act of 1986".

TITLE I—FARM CREDIT ASSISTANCE AND INTEREST REDUCTION

SEC. 101. DEFINITIONS.

As used in this title:

(1) CHAIRMAN.—The term "Chairman" means the Chairman of the Farm Credit Administration Board.

(2) INSTITUTION.—The term "institution" means an institution of the System.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(4) SYSTEM.—The term "System" means the Farm Credit System established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SEC. 102. LOANS TO FARM CREDIT INSTITUTIONS.

(a) IN GENERAL.—The Secretary shall make loans to institutions in a total amount of $2,000,000,000, to be expended in accordance with sections 103 and 104.

(b) INTEREST.—

(1) RATE.—The interest rate on a loan made under this section shall be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans.

(2) ACCRUAL.—Interest on the loan shall begin to accrue 5 years after the date of making the loan.

(c) SCHEDULE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the repayment schedule for loans made under this section shall be determined by the Secretary, in consultation with the Chairman, on the basis of a percentage of System profits.

(2) INITIAL PAYMENT.—The initial payment on a loan shall be made 5 years after the date of making the loan.

(2) SYSTEM SOLVENCY.—The repayment schedule shall be established in a manner that does not adversely affect the financial solvency of the System.

SEC. 103. PLAN FOR FARM CREDIT ASSISTANCE.

(a) DEVELOPMENT.—Not later than 90 days after the date of enactment of this Act, the Chairman shall develop a plan, that meets with the approval of the Secretary, to use loan proceeds provided under section 102 to accomplish one or both of the following purposes:

(1) The removal of high-cost bonds with rates of interest of 12 percent or more from the portfolio of the System through direct assumption of the bonds by the Secretary, unhinged and extended refinancing, exchange of lending terms, repurchase of the bonds, or other means.

(2) The retirement or restructuring of non-accruing loans held by institutions.

(b) EXPENDITURE.—Loan proceeds provided under section 102 shall be expended in accordance with the plan developed under subsection (a).

SEC. 104. INTEREST RATE REDUCTION FOR BORROWERS.

(a) IN GENERAL.—As a condition of obtaining assistance under this title, the Farm Credit Administration shall assure that such assistance be accompanied by a proportionate reduction (in dollar cost to the System) in interest rates charged to borrowers on loans made by institutions.

(b) EQUAL BENEFITS.—Any interest rate reduction derived under this title shall be applied equally to all System borrowers.

(c) AMORTIZATION PERIOD.—The amortization period used under subsection (a) shall be determined by the Farm Credit Administration in a manner that will provide the maximum number of eligible borrowers of the loans without allowing the financial condition of the System to reach a level that would authorize assistance under section 4.28J(a) of the Farm Credit Act of 1971 (12 U.S.C. 2216i(a)).

TITLE II—RIGHTS OF BORROWERS

SEC. 201. ACCESS TO DOCUMENTS AND INFORMATION.

Section 4.13A of the Farm Credit Act of 1971 (12 U.S.C. 2200) is amended to read as follows:

"SEC. 413A. ACCESS TO DOCUMENTS AND INFORMATION.—(a) In accordance with regulations of the Farm Credit Administration, System institutions shall provide their borrowers—

"(1) at the time of execution of loans—

"(A) copies of all documents in the loan file of the borrower; and

"(B) a statement of the rights and responsibilities of the borrower under this Act and the bylaws of the institution;

"(2) at any time thereafter, on the request of a borrower, copies of all documents in the loan file of the borrower; and

"(3) at any time, on request—

"(A) a copy of the institution's articles of incorporation or charter and bylaws; and

"(B) a list of the stockholders of the institution, subject to subsection (b).

"(b) To be eligible to obtain a list of stockholders from an institution under subsection (a)(3)(B), a borrower must sign a statement certifying that the list will be used only in connection with the business of the institution.".

SEC. 202. MERGER OF SIMILAR BANKS.

Section 410 of the Farm Credit Act of 1971 (12 U.S.C. 2181) is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, on a petition signed by at least 50 stockholders of associations of the banks that are proposing to merge under the preceding sentence, such banks may merge only on the vote of a majority of their stockholders present and voting or voting by written proxy at duly authorized meetings, and with the approval of the Farm Credit Administration.".

SEC. 203. ELECTION OF DISTRICT BOARDS OF DIRECTORS.

Section 5.2(c) of the Farm Credit Act of 1971 (12 U.S.C. 2223(c)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) In the case of the election of a director by the Federal land bank associations or the production credit associations, on a petition signed by at least 50 stockholders of the Federal land bank associations or the production credit associations, respectively, such director shall be elected only on the vote of a majority of their stockholders present and voting or voting by written proxy at duly authorized meetings.".

SEC. 204. FINANCIAL DISCLOSURE BY FARM CREDIT OFFICIALS.

(a) PERSONS REQUIRED TO FILE.—Section 204(f) of the Ethics in Government Act of 1978 (5 U.S.C. App. 4) is amended—

(1) by striking out "and" at the end of paragraph (6);

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(8) each executive officer of the Farm Credit Administration, and the chief executive officer of each district of the Farm Credit System, established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).".

(b) FILING OF REPORTS.—Section 203 of such Act is amended by adding at the end thereof the following new subsection:

"(h) Each individual identified in section 204(f)(8) shall file the reports required by this title with the Farm Credit Administration.".

SEC. 205. STUDY OF LOCAL CONTROL OF FARM CREDIT SYSTEM.

(a) IN GENERAL.—The Comptroller General shall conduct a study of the feasibility and desirability of providing control of the Farm Credit System established by the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) to local institutions and stockholders of the System.

(b) ISSUES.—The Comptroller General shall include in the study an evaluation of—

(1) the steps necessary to implement the policy described in subsection (a);

(2) the increased responsiveness of the System to local stockholders from implementing the policy;

(3) the cost effectiveness of the policy in terms of reducing the level of District personnel and operations;

(4) the benefits the policy would create by having diversified decisions between banks and associations;

(5) the effect the policy would have on lowering the turnover rate of local personnel;

(6) the effect the policy would have on restoring stockholder confidence in the System; and

(7) the benefits of the policy towards fulfilling the mission of the System to be a locally controlled and operated system serving the needs of farmers and ranchers.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study conducted under this section, together with any appropriate recommendations.

TITLE III—INDEPENDENT INTEREST RATE-SETTING AUTHORITY

SEC. 301. POLICY.

Section 1.1 of the Farm Credit Act of 1971 (12 U.S.C. 2001) is amended by adding at the end thereof the following new subsection:

"(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives will be served if the Farm Credit System institutions provides credit to eligible borrowers at competitive interest rates that maximize System lending volume, based on the cost of funds and operating costs of the institution, taking into account the creditworthiness of borrowers.".

SEC. 302. ELIMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED BY SYSTEM INSTITUTIONS.

(a) FEDERAL LAND BANKS.—The first sentence of section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(b) FEDERAL INTERMEDIATE CREDIT BANKS.—The second sentence of section 2.4 of such Act (12 U.S.C. 2075) is amended by striking out "with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(c) BANKS FOR COOPERATIVES.—The first sentence of section 3.10(a) of such Act (12 U.S.C. 2131(a)) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(d) FARM CREDIT SYSTEM INSTITUTIONS.—Section 5.17(a)(5)(A) of such Act (12 U.S.C. 2252(a)(5)(A)) is amended by striking out "and on loans made or discounted by such institutions".

SEC. 303. DETERMINATION OF INTEREST RATES.

Section 4.17 of the Farm Credit Act of 1971 (12 U.S.C. 2205) is amended by striking out the first sentence and inserting in lieu thereof the following new sentences: "In establishing interest rates on loans, no Farm Credit System institution shall establish a rate that will threaten the safety and soundness of the institution, increase the need of the institution for assistance from other Farm Credit System institutions, or reduce the ability of the institution to contribute as needed by other System institutions. Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other law. Such limitations are preempted for purposes of this Act.".

TITLE IV—FUNDING FOR FARM CREDIT ASSISTANCE

SEC. 401. LEGAL SERVICES CORPORATION.

(a) REPEAL.—The Legal Services Corporation Act (42 U.S.C. 2996 et seq.) is repealed.

(b) TRANSITION.—Except to the extent required to fulfill obligations entered into prior to the date of enactment of this Act—

(1) all unexpended balances of funds available to the Legal Services Corporation shall be covered into the Treasury; and

(2) the Legal Services Corporation shall wind up its affairs in accordance with such regulations as the Director of the Office of Management and Budget may prescribe.

SEC. 402. EXPORT-IMPORT BANK.

(a) REPEAL.—The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is repealed.

(b) TRANSITION.—Except to the extent required to fulfill obligations entered into prior to the date of enactment of this Act—

(1) all unexpended balances of funds available to the Export-Import Bank of the United States shall be covered into the Treasury; and

(2) the Export-Import Bank of the United States shall wind up its affairs in accordance with such regulations as the Director of the Office of Management and Budget may prescribe.

SEC. 403. AGENCY FOR INTERNATIONAL DEVELOPMENT.

Notwithstanding any other provision of law, $50,000,000 of the funds made available for the fiscal year 1987 to carry out section 104(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(b)) (relating to population planning assistance) shall be withheld from obligation and expenditure.

SEC. 404. VOLUNTARY CONTRIBUTIONS TO THE UNITED NATIONS.

Notwithstanding any other provision of law, $118,000,000 of the funds appropriated for the fiscal year 1987 to carry out section 302 of the Foreign Assistance Act of 1961 (22 U.S.C. 2222) with respect to the United Nations and its specialized agencies shall be withheld from obligation and expenditure.

SEC. 405. FOREIGN AID FUNCTION.

Notwithstanding any other provision of law, $423,091,000 of the funds appropriated for United States assistance, as defined by section 481(i)(4) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(4)), shall be withheld from obligation and expenditure, except that no funds allocated for any country that is a party of the Camp David Accords may be withheld from obligation or expenditure.

● Mr. McCLURE. Mr. President, I rise in support of the bill just introduced by my good friend and colleague Senator SYMMS. This bill is necessary, it is timely, and I support it wholeheartedly.

The Farm Credit System is in need of help. Interest rates are higher than farmers in Idaho can afford. It is through no fault of the farmers themselves that this has happened. In the 1970's and early 1980's directives from the highest levels of the FCS pushed for loan volume instead of loan quality. The System changed its policy of lending based upon repayment capabilities of the land to lending based upon the assets of the farm. The Farm Credit System built in high interest rates through past sales of high cost bonds and past lending policies and now these high interest rate bonds haunt the system.

I am concerned about the future of the Farm Credit System. The System's financial condition deteriorated significantly during 1985. Last year, the System incurred an operating loss of $2.8 billion. Last year operating losses were absorbed by surpluses that were built up from prior years' earnings. This loss and certain other accounting adjustments required by law resulted in a reduction of the combined surplus of the System from $6.2 billion at the end of 1984 to $3.2 billion at the end of 1985. If these difficulties continue it is projected that the System could incur an operating loss between $1.7 to $2.9 billion in 1986. This would essen-

tially deplete the System's remaining surplus.

During 1985, nonaccrual loans in the System increased from $1.8 billion to $5.1 billion. By June of 1986 nonaccruals had grown to $7.6 billion and other high-risk loans amounted to $4.7 billion. The allowance for loan losses increased from $1.3 billion at year end 1984 to $3.7 billion at year end 1985. It is clear that there are serious problems in rural America when loan losses and nonaccruals have increased at such alarming rates over such a short period of time.

I am concerned that the competitiveness of the System as an agricultural lender has weakened. The combined Federal Land Bank and Production Credit Association market share of farm debt declined from 32.6 percent at the end of 1984 to 29.4 percent at the end of 1985. During 1985, gross loans outstanding declined by 13 percent. During the first half of 1986 gross loans declined from $72.7 billion to $65 billion. Some of this is normal paydown of debt—some is the flight of good solid borrowers from the Farm Credit System. I have been told by my constituents and by FCS loan officers themselves that the more creditworthy borrowers are leaving the System because other agricultural lenders are offering more favorable lending rates. I know myself that this is happening. Farmers in the Magic Valley of Idaho who have borrowed from the Farm Credit System for 40 years are leaving because they have been offered better rates and terms than the Farm Credit System can offer.

The System's problems are twofold: First, it has problems with its loan portfolio and second the high cost of its debt that has resulted from funding variable rate loans with long-term, fixed-rate bonds. Triggered by weakness in the agricultural economy and falling land values, the System's loan portfolio contains a recordbreaking volume of problem loans. Many of these loans are not being repaid according to terms, and in many cases won't be paid at all. Many of these loans are not adequately collateralized and will result in losses when the loans are liquidated. Because the System's loan portfolio is essentially related to the depressed agricultural economy, there is little hope for relief in the short term for the System's loan portfolio problems.

The System has exposed itself to fluctuations in interest rates by funding variable rate loans with long-term fixed-rate bonds. The System reprices its loans on the basis of its average cost of borrowing. Because of this, when interest rates are rising, rates on its loans are lower than current interest rates and when interest rates are falling, rates on its loans are higher. During the past 8 years, long-term market interest rates rose from about 9 percent in 1978 to about 15 percent in 1981. In the 1980-82 period, the System adopted a strategy of growth, which it achieved by charging relatively low rates for variable rate loans during periods of rising interest rates. This growth was financed in part by long-term fixed rate bonds. This exposed the System to losses in the event that interest rates should decline, if its average borrowing costs could not be passed through to borrowers in a lower interest rate environment. While a funding strategy that resulted in pricing at current rates during the 1980-82 period might have increased repayment problems for existing borrowers, such a practice might also have discouraged many of the System's current borrowers from borrowing funds which they find difficult—if not impossible—to repay.

The combined effects of problem loans and high borrowing costs and the probability that these conditions will continue to raise serious questions about the viability of the Farm Credit System. I traveled through Idaho in August and heard first hand what the high interest rate structure of the 21st district Farm Credit System was doing to the farmers and ranchers in Idaho. They are crying for interest rate relief. They need this relief now, not in 1987 or 1988. That is why I support Senator SYMMS' bill to provide relief to the System now. Farmers on the Camas Prairie and in the Palouse cannot wait until next year to get interest rate relief. Their loans are being called today. Many farmers told me that they could pay thir debts if their interest rates were lowered. They need interest rates of 8 to 10 percent to survive.

This bill lends to the institutions of the Farm Credit System $2 billion to be used to remove the high interest rate bonds—12 percent or greater—from the System's bond portfolio through the assumption of these bonds by the Treasury. It also will be used for the retirement or restructuring of nonaccrual loans held by the System.

It will provide direct interest rate relief, relief that is sorely needed by farmers and ranchers of this country. It insures that the Farm Credit Administration, in receiving this assistance will provide for an equal interest rate reduction across the System. It does not threaten the solvency of the System, as it amortizes the $2 billion of lower interest rates over a time determined to maximize the System's lending volume.

In addition this bill guarantees Farm Credit System stockholders access to their own unsigned loan documents, it provides for lists of fellow stockholders which can be used only for System business, copies of the by-laws, forbearance policies, and statements of rights. It requires stockholders be given ample time and information prior to mergers or consolidations of FCS institutions. It allows stockholders to call for approval of such mergers by direct vote. These changes are needed to involve the stockholders in the workings of their own association. It also allows stockholders to call for direct election of all FCS board members except those appointed by FCA under current law. Most importantly, it opens nominations for such positions to all qualified persons.

To fund this proposal, Senator SYMMS has found offsetting reductions elsewhere in the budget. This complies with the requirements of the Gramm-Rudman-Hollings Deficit Reduction Act. We can no longer allow funds to go to other countries, such as funds to the World Bank, which go to countries for development of their agriculture which eventually compete against our farmers, while our farmers continue to stagger under debt loads that are unbearable.

Farmers in Idaho are not asking for a handout. They are only asking for what the Federal Government, what Congress has given to farmers in other times, a loan to recapitalize parts of the Farm Credit System. Back in the 1930's the Federal Government capitalized the Farm Credit System with a loan. This loan was paid back in full.

The Federal Government invested in the agricultural future of America once before. It was paid back handsomely over many years. It can be done again, if we will only look and find a way to reinvest in American agriculture. I believe that STEVE SYMMS has found a way to address this critical problem and I ask your support for his efforts to find a solution—I urge you to support this bill.●

By Mr. HECHT:

S. 2901. A bill to provide special rules for purposes of the Internal Revenue Code of 1954 for the accrual of a carryback of losses from deductions for asbestos product liabilities in order to protect asbestos workers, and for other purposes; to the Committee on Finance.

SPECIAL TAX TREATMENT OF ASBESTOS LIABILITY LOSSES

● Mr. HECHT. Mr. President, at a time when the very life of our Nation was at risk in World War II thousands of American workers performing vital functions in producing ships for military use were subjected to risks of asbestos injury by their Government under wartime conditions which would not have been tolerated in times of peace.

There were no substitutes for asbestos during World War II. The Federal Government took absolute control of all asbestos from manufacture to final application as high-temperature insu-

lation material in cargo and naval ships vital to the World War II effort.

Inhalation or ingestion of asbestos dust or particles sometimes causes pulmonary and other disabilities. However, these ailments may not manifest themselves for 20 to 30 years after exposure.

The vital need to construct ships in the greatest numbers in the shortest possible time caused the Federal Government, which controlled all World War II shipyard workplaces and employment conditions, to ignore its own safety standards, in what was understandably believed to be in the national interest.

Long after the end of World War II some wartime shipyard workers began to suffer lung illnesses as a result of breathing asbestos dust during the time they built ships for military use.

However, when World War II workers suffering asbestos injuries have sued the U.S. Government, the Government has evaded responsibility for the injuries it caused by claiming sovereign immunity.

These injured workers are now suing the companies that produced high-temperature asbestos insulation even though they had nothing to do with either application of their products or the safety standards applied by the U.S. Navy in the shipyards it controlled.

Many of these companies have shouldered the Government's responsibility and paid asbestos injury claims. However, these claims exceed the ability of some companies to pay. This could result in the loss of thousands of jobs and erode our national taxpayer base and will be contrary to the national interest. Moreover, thousands of just claims of injured workers may well be defeated because the companies who are willing to settle and pay these claims do not have available funds to meet these thousands of claims.

It has been suggested that a self-insurance program might be the solution, because it will be more or less revenue neutral in that instead of deducting asbestos injury costs from present and future income, the taxpayer can deduct these costs from income at the time of injury. This will protect the taxpayer from possible additional toxic product liability Superfund costs, and will fit within well-established and fundamental tax policies of matching income and expenses, product liability loss carrybacks and accrual tax accounting.

In order to protect the rights of workers suffering World War II asbestos injuries as well as protecting the jobs of thousands of skilled workers for the various companies involved in asbestos injury claims, I am introducing today the Asbestos Workers Protection Act.

It can be a vehicle for generating discussion of the options and alternatives Congress is obligated to consider in assuring that our wartime industrial workers as well as the skilled artisans in our present work force are protected from economic calamity caused by war conditions over which they have had no control.●

By Mr. WALLOP (for himself, Mr. HECHT, and Mr. BAUCUS):

S. 2902. A bill entitled the "Federal Land Exchange Act of 1986"; to the Committee on Energy and Natural Resources.

FEDERAL LAND EXCHANGE ACT

● Mr. WALLOP. Mr. President, as a result of Federal budget cuts, the two largest Federal land management agencies are increasingly acquiring new Federal lands through land exchanges rather than outright purchases. The Department of the Interior's Bureau of Land Management [BLM] and the Department of Agriculture's Forest Service, from fiscal year 1982 through March 1985, completed 706 land exchanges involving over 1.1 million non-Federal and 900,000 Federal acres—a total land surface over two and one-half times the area of the State of Rhode Island. The Federal and non-Federal lands exchanged were each valued at over $370 million.

As chairman of the Subcommittee on Public Lands, Reserved Water and Resource Conservation, Senate Committee on Energy and Natural Resources, I asked GAO to review BLM's and the Forest Service's land exchange processes in order to provide information on the steps in the exchange process and to look at ways the process can be improved.

Land exchanges are the trading of Federal lands for non-Federal lands. They are frequently used by the two agencies to obtain needed land and to dispose of Federal tracts that are hard to manage because they are isolated and scattered. The process followed by BLM and the Forest Service for processing exchange proposals is guided by several Federal laws, regulations, and agency policies. As a result, the exchange process incorporates diverse steps that are designed to protect the public interest by:

Ensuring that exchange proposals conform with Federal land-use plans to promote the effective, efficient, and orderly management and use of public lands;

Addressing environmental concerns;

Ensuring that the concerns of State and local governments and other interested parties are addressed; and

Setting land values to ensure that the Government obtains equal value in its exchanges.

The laws authorizing BLM and Forest Service exchanges require that the agencies obtain equal value for the lands being exchanged. If the lands are not equal in value, the values must be equalized through cash payments not exceeding 25 percent of the value of the Federal lands. It is also permissible to adjust the number of acres being exchanged so that values are made equal or to decrease the amount of cash that must be paid to equalize values. In addition, lands to be exchanged must meet criteria specified in land-use plans for the disposal of Federal lands and acquisition of non-Federal lands.

ROLE OF BLM AND THE FOREST SERVICE IN LAND MANAGEMENT

Together, BLM and the Forest Service manage about 70 percent of all Federal lands. BLM, through its 11 State offices, 55 districts, and 155 resource area offices manages more than 342 million acres. In fiscal year 1986, BLM had a total budget of about $796 million; an estimated $2.8 million was allocated for land exchanges. The Forest Service, through its 9 regions and 155 national forests, manages about 191 million acres. In fiscal year 1986, the Forest Service's budget totaled about $2 billion; about $6.5 million was budgeted for land exchanges.

BLM and the Forest Service are both charged with managing public lands for multiple use. For BLM, this requirement is contained in the Federal Land Policy and Management Act of 1976 (FLPMA, 16 U.S.C. 1701 et seq.), and for the Forest Service, it is contained in the Multiple Use-Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.). The multiple uses to be accommodated include recreation, rangeland, timber, minerals, watershed, fish, and wildlife. Natural, scenic, scientific, and historical values must also be taken into consideration.

ROLE OF LAND EXCHANGES

The land exchange process begins when either the Federal or the non-Federal party (the exchange proponent) present an exchange proposal. Federal laws and regulations and agency policies guide the exchange process. In order to protect the public interest, environmental, mineral resource, and other studies are conducted. The normal procedures associated with real estate transactions, such as appraisals and title searches, are also required. After legal and procedural requirements have been met, and if no obstacles have been encountered, the proposal is accepted and the process is completed.

Since 1981, the Departments of Agriculture and the Interior have both endorsed land exchanges as a preferred land management tool over land purchases. In October 1981, Agriculture's Assistant Secretary for Natural Resources and the Environment advised the Senate Committee on Energy and Natural Resources that the Forest Service could reduce its inefficient

fragmented or "checkerboard" land ownership patterns, despite the reduction in funds to purchase lands, by using land exchanges. Checkerboard land patterns resulted from land grants in the 19th century that conveyed alternate tracts of public land to railroads. The purpose of these grants was to encourage the development of the West.

In February 1985 at my urging, the Interior Task Force on Large Land Exchanges was established to expedite the processing of potential land exchanges. This task force, initially chaired by BLM's Assistant Director for Land Resources, identified and ranked over 530 land exchange opportunities throughout Interior's landholdings. About 1.86 million acres were identified for potential acquisition, and about 1.7 milion acres were identified for potential disposal.

Interior's effort to expedite exchanges was augmented in September 1985, when Interior's Assistant Secretary for Fish, Wildlife and Parks was appointed task force chairman, thus increasing the task force's authority. In March 1986, the chairman stated that the task force was ranking proposed exchanges and would be recommending how they should be accomplished. The chairman further stated that the task force would recommend ranking potential exchanges because larger, more complex exchanges need more agency resources and effort to process than small, less complex exchanges. He said a congressional mandate would be sought for the high priority exchanges, which could not be easily processed using the normal exchange process. According to the chairman, the second highest priority class of exchanges would be closely monitored by Interior headquarters personnel to assure expeditious processing, while the lowest priority exchanges would continue to be administered by the Interior agencies field offices. The Assistant Secretary's office was reviewing the task force's draft report as of August 1, 1986. A report issuance date had not been set.

On April 2, 1985, I specifically requested that GAO provide information on the process used by BLM and the Forest Service to administer exchange proposals and to look at ways in which this process can be improved. As part of this review, I asked GAO to look at: First, the use of monetary credits in exchanges; second, the use of General Services Administration [GSA] surplus property in exchanges; third the terms of exchanges; fourth, the effect of exchanges on local governments' concerns that exchanges have a negative impact on their revenues; fifth, the administrative costs of processing exchanges and who should pay them; sixth, the process used to plan and control exchanges; seventh, the application of FLPMA's equal value and cash equalization provisions; and eight, ways of making the exchange process more expeditious within the framework of FLPMA's public interest provision. I also asked that GAO provide information on exchanges that convey known Federal mineral interests and those that separate the ownership of the surface and subsurface estates (create split estates) or that unify surface and subsurface estates that, prior to the exchange, had been owned by different parties.

GAO has sent the draft report to the agencies for comment. The report with comments is expected in November of this year.

Mr. President, on another front The National Parks and Conservation Association hosted a 2 day land exchange conference on March 24 and 25, 1986. I was privileged to address that group of experts from industry, Government and financial and nonprofit institutions.

A potpourri of ideas for legislation concerning Federal land legislation emerged, to wit:

Utilize "comparable value" when determining the value of lands in the exchange process—weight net benefits, tangible and intangible, to the acquiring agency with more emphasis on economics of exchange—keep equal value in the "ballpark" but not definite—look at the contributions being made by the acquired land.

Reevaluate interstate exchange prohibitions—possible use of revenue from the sale of lands in one State for the purchase of lands in another—market inventoried land and place the proceeds in a trust fund for future purchases.

Inventory all Federal lands on the basis of what should be retained for Federal purposes and what should be included in exchange stock.

Negotiate details before beginning the actual exchange process.

Establish a trust fund to pay exchange costs and to allow for emergency budgeting for proposals that develop during the fiscal year—negotiate exchange costs at the beginning of an exchange proposal and place greater burden on the proponent who is benefitting the most—establish the total cost of the exchange prior to initiating in event that added costs make the proposal economically impractical.

Consolidate all Federal lands available for exchange purposes in a pool—require the General Services Administration to pass surplus land through a review period where the lands may be utilized by other agencies in exchanges.

Allow a tax credit to private exchange proponent to help cover the costs of an exchange.

Establish interagency exchange teams to allow expertise to be shared among the Federal land agencies and to assure continued monitoring of exchange proposals—attract and keep experienced real estate specialists.

Keep from developing split estates in the exchange process.

Allow for public involvement in the exchange process.

Streamline congressional oversight of exchanges to allow for annual review of agency actions instead of oversight of individual exchanges on a piecemeal basis.

Close inventoried exchange lands from mineral entry—streamline process by which land can be withdrawn from entry after being identified as exchange land.

Utilize "safety net" formula where exact mineral values cannot be determined—i.e., divide future mineral royalties on a 50/50 basis to mollify concerns that valuable minerals may eventually be discovered on lands exchanged by the Federal Government.

Allow appraisal review prior to inception of exchange.

Evaluate use of Outer Continental Shelf as exchange stock; and

Improve appraisal process to allow for negotiation and arbitration of differences in value perception.

Mr. President, on February 10, 1986, the U.S. District Court for the District of Columbia issued an order pertaining to the National Wildlife Federation versus Robert F. Burford, et al., suit that in my estimation has severe adverse impacts upon individuals, States, counties, municipalities, and other Federal agencies.

The order directs that the:

First, defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them are hereby enjoined from:

Modifying, terminating or revoking, in full or in part, under the Federal Land Policy and Management Act [FLPMA] any withdrawal or classification that was in effect on January 1, 1981; or

Taking any action inconsistent with the specific restrictions of any withdrawal or classification in effect on January 1, 1981, including, but not limited to, the issuance of leases, the sale, exchange or disposal of land or interests in land, the grant of rights-of-way, or the approval of any plan of operations;

Second, terminations or modifications under the FLPMA of classifications and revocations or modifications under the FLPMA of withdrawals occurring since January 1, 1981, are hereby suspended until further action by this court.

Mr. President, over 260 agricultural entries cannot be consummated, over 430 sales cannot go forward, nearly 70 exchanges have been stopped, and nearly 1,000 leases and over 7,200 mining locations are potentially im-

pacted. Nearly 70 exchanges were pending before the Department when the court's February 10, 1986, order was issued; exchanges that involved lands covered by the order. They cannot now go forward. The size and scope of these exchanges range from actions involving hundreds of thousands of acres to only a few acres. The exchange recipients include States, counties, environmental and conservation organizations, and private individuals. The vast majority of the exchanges were proposed for actions normally considered in the public interest and/or environmentally enhancing.

Mr. President, the lengthy dissertation on exchange is necessary prior to the introduction of the companion bill which has passed the House of Representatives, H.R. 4814, an act entitled the "Federal Land Exchange Act of 1986." This bill passed the House on August 11, 1986.

I am fully aware many issues relating to land exchanges cannot be completely addressed until the GAO report is finalized and NWF versus Burford is resolved. The legislation I am introducing today is not intended to be a complete cure, but rather a step toward perfecting a process I have long endorsed.

The purpose of this bill is not to change the basic principles and ground rules of existing law governing land exchanges, but rather to streamline current procedures. Specifically, it provides a mechanism for the arbitration or negotiation of disputes involving land appraisals or parcels to be exchanged. It permits the Forest Service to perform land surveys on its own lands, although the surveys must be in accordance with the Department of the Interior's survey standards. Moreover, the legislation will permit discretionary adjustments in land values to compensate for the costs of preparing lands for exchange. I want to make clear, however, that any decision by the Secretary of the Interior on using land as compensation must be in compliance with FLPMA's current requirements that the land exchange agreement be in the "public's interest." Further, the bill requires the promulgation of new regulations governing exchanges which will be more uniform from agency to agency and it permits the use of "short form" appraisals and other procedures to eliminate unnecessary red tape for land exchanges involving small tracts of land.

Mr. President, before I conclude, I wish to add that in my home State the land exchange process has been most useful. It has been particularly helpful in the protection of the scenic and wildlife values in areas like Jackson Hole and Grand Teton National Park, in the acquisition of key inholdings in the National Forests, and in blocking "checkerboard" lands for purposes of promoting logical units for coal mining and agriculture.

Most currently, a Wyoming energy boomtown found the land exchange process useful in resolving their "landlock" problem. Kemmerer, like many Western communities, face problems associated with fragmented land ownership patterns resulting from land grants in the 19th century that conveyed alternate tracts. Because of a successful land exchange, this community last month held ground breaking ceremonies for a new housing development project.

This legislation enjoys the formal endorsement of many diverse groups and organizations, both on the national and State level, such as the National Parks and Conservation Association, the Trust for Public Lands, the Nature Conservancy, the National Forest Products Association, the Sierra Club, the American Ski Federation, and the CSX Corp., the Jackson Hole Land Trust, the Wyoming Outdoor Council, the Teton County Commissioners, the Greater Yellowstone Coalition, the Jackson Hole Alliance for Responsible Planning.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2902

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 2. (a) The Congress finds and declares that—

(1) land exchanges are a very important tool for Federal and State land managers and private landowners to consolidate Federal, State and private holdings of land or interests in land for purposes of more efficient management and to secure important objectives including the protection of fish and wildlife habitat and aesthetic values; the enhancement of recreation opportunities; the consolidation of mineral and timber holdings for more logical and efficient development; the expansion of communities; the promotion of multiple-use values; and fulfillment of public needs.

(2) needs for land ownership adjustments and consolidation consistently outpace available funding for land purchases by the Federal Government and thereby make land exchanges an increasingly important method of land acquisition and consolidation for both Federal and State land managers and

(3) the Federal Land Policy and Management Act of 1976 and other laws provide a basic framework and authority for land exchanges involving lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture; but

(4) such existing laws are in need of certain revisions to streamline and facilitate land exchange procedures and expedite exchange timetables.

(b) The purposes of this Act are to:

(1) facilitate and expedite land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving the Secretaries of the Departments of the Interior and Agriculture by:

(A) providing more uniform rules and regulations pertaining to land appraisals which reflect nationally recognized appraisal standards but which also reflect any differences between appraisals of lands and interests being considered for acquisiton by the Federal Government and appraisals of lands and interests being considered for transfer out of Federal ownership;

(B) establishing procedures and timetables for the arbitration of appraisal disputes; and

(C) providing to the Secretary having jurisdiction over the Federal land involved unified surveying and other authority for land exchanges; and

(2) provide sufficient resources to the Secretaries of the Interior and Agriculture to insure that land exchange activities can proceed consistent with the public interest.

LAND EXCHANGES AND APPRAISALS

SEC. 3. (a) Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) is hereby amended by adding the following new subsections:

"(d)(1) The Secretary of the Interior and the Secretary of Agriculture shall promulgate regulations providing that unless it is mutually agreed otherwise prior to the expiration of ninety days after entering an agreement to initiate an exchange of land or interest therein pursuant to this Act or other applicable law, no later than ninety days after entering an agreement the Secretary concerned and the other party or parties therein involved in the exchange shall arrange for an appraisal of the lands or interests therein involved in the exchange in accordance with subsection (g) of this section.

"(2) If within one hundred and eighty days after the submission of an appraisal for review and approval by the Secretary concerned, the Secretary concerned and the party or parties involved cannot agree to accept the findings of the appraisal, the appraisal shall be submitted to an arbitration to be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. Such arbitration shall be binding on the Secretary concerned and the other party or parties involved in the exchange insofar as concerns the value of the lands which were the subject of the appraisal.

"(3) Within thirty days after the completion of the arbitration, the Secretary concerned and the party or parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or to terminate the exchange. A decision to terminate the exchange may be made by either the Secretary of the other party or parties involved.

"(4) After submission of an appraisal for review by the Secretary concerned but prior to submission of an appraisal to arbitration pursuant to paragraph (2) of this subsection, if both the Secretary concerned and the other party or parties involved in an exchange determine it is in the best interest of consummating an exchange pursuant to this Act or other applicable law, they may mutually agree to employ a process of bargaining or some other process (instead of arbitration) to determine the values of the properties involved in the exchange, or they may mutually agree to suspend or modify any of the following:

"(A) The arbitration requirements of this subsection.

"(B) The deadlines for submission of an appraisal to arbitration.

"(C) The deadline for determinations subsequent to completion of an arbitration.

"(e) Notwithstanding any other provision of law, and unless the Secretary or Secretaries involved in an exchange of land or interests therein pursuant to this Act or other applicable law agree otherwise, the Secretary having jurisdiction over Federal land which would be included in such exchange is henceforth authorized to and shall have the responsibility to perform all necessary land surveys. All surveys shall be in accordance with the manual of surveying instruction of the Secretary of the Interior in effect at the time of survey and shall be filed with the Secretary of the Interior.

"(f) Unless mutually agreed otherwise by the Secretary concerned and the other party or parties involved in an exchange pursuant to this Act or other applicable law, all patents or titles to be issued for land or interests therein to be acquired by the Federal Government and lands or interests therein to be transferred out of Federal ownership shall be issued simultaneously.

"(g)(1) Within one year of the enactment of subsections (d) through (i) of this section, the Secretaries of the Interior and Agricultural shall promulgate new and comprehensive rules and regulations governing exchanges of land and interests therein pursuant to this Act and other applicable law. Such rules and regulations shall fully reflect the changes in law made by subsections (d) through (i) of this section and shall include provisions pertaining to appraisals of lands and interest therein involved in such exchanges.

"(2) The provisions of the rules and regulations issued pursuant to paragraph (1) of this subsection governing appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, The Uniform Appraisal Standards for Federal Land Acquisition: Provided, however, that the provisions of such rules and regulations shall—

"(A) Insure that appraisal standards henceforth cover both the acquisition and disposal of land by the Federal Government and adequately reflect any differences involved between appraising lands or interests therein being acquired by the Federal government and appraising lands or interests therein being transferred out of Federal ownership; and

"(B) Permit the Secretary to make adjustments to the relative values assigned to properties involved in an exchange in order to reflect the costs (including, but not limited to, such costs as land surveys and salvage, removal of encumbrances, arbitration pursuant to subsection (d) of this section, curing deficiencies preventing highest and best use, and other costs to comply with laws, regulations and policies applicable to exchange transactions), time and other factors necessary to bring the Federal and non-Federal lands or interests therein involved to their highest and best use for the appraisal and exchange purposes.

"(h) Until such time as new and comprehensive rules and regulations governing exchange of land and interests therein are promulgated pursuant to subsection (g) of this section, land exchanges may proceed in accordance with existing laws and regulations, and nothing in this Act shall be construed to require any delay in, or otherwise hinder, the processing and consummation of land exchanges pending the promulgation of such new and comprehensive rules and regulations. Where the Secretary concerned and the party or parties involved in an exchange of land or interests therein prior to the date of enactment of this Act, the time deadlines and other provisions of subsections (d) through (i) of this section shall not apply to such exchanges unless the Secretary concerned and the party or parties involved in the exchange mutually agree otherwise.

"(i)(1) Notwithstanding the provisions of this Act and other applicable laws which require that exchange of lands or interests therein be for equal value, where the Secretary concerned determines it is in the public interest and that the consummation of a particular exchange will be expedited thereby, the Secretary concerned may exchange lands or interest therein which are of approximately equal value in cases where:

"(A) the combined value of the lands or interests therein to be transferred from federal ownership by the Secretary concerned in such exchange is not more than $150,000.00; and

"(B) the Secretary concerned finds in accordance with the regulations to be promulgated pursuant to subsection (g) of this section that a determination of approximately equal value can be made without formal appraisals, as based on a certification by a qualified appraiser; and

"(C) the definition of and procedure for determining "approximately equal value" has been set forth in regulations by the Secretary concerned and the Secretary concerned documents how such determination was made in the case of the particular exchange involved.

(2) As used in this subsection, the term "approximately equal value" shall have the same meaning as it does in the Act of January 22, 1983 (commonly known as the "Small Tracts Act")."

(b) The first sentence of section 206(b) (43 U.S.C. 1716(b)) of the Federal Land Policy and Management Act of 1976 is hereby amended by inserting the words "the Secretary".

LAND EXCHANGE FUNDING

SEC. 4. In order to ensure that there are increased funds and personnel available to the Secretaries of the Interior and Agriculture to consider, process, and consummate land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, there are hereby authorized to be appointed for fiscal years 1988 through 1997 an annual amount not to exceed $4,000,000.00 which shall be used jointly or divided among the Secretaries as they determine appropriate for the consideration, processing, and consummation of land exchanges pursuant to the Federal Land Policy and Management Act of 1976, and as amended, and other applicable law. Such moneys are expressly intended by Congress to be an addition to, and not offset against, moneys otherwise annually requested by the Secretaries, and appropriated by Congress for land exchange purposes.

SEC. 5. (a) Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715(c)) is amended in the first sentence of subsection (c) by striking out "Lands and interests" and inserting in lieu thereof "Except as provided in subsection (e), lands and interests".

(b) Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715(c)) is further amended by adding at the end thereof the following new subsection:

"(e) Lands acquired by the Secretary pursuant to this section of section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchange for the lands acquired by the Secretary.".

SEC. 6. Nothing in this Act shall be construed as amending the Alaska Native Claim Settlement Act (P.L. 92-203), as amended) or the Alaska National Interest Lands Conservation Act (P.L. 96-487, as amended) or as enlarging or diminishing the authority with regard to exchanges conferred upon either the Secretary of the Interior or the Secretary of the Agriculture by either such Acts.●

By Mr. ZORINSKY:

S. 2903. A bill to require the Secretary of Agriculture to proclaim national marketing quotas for the 1988 through 1990 crops of wheat and to hold a marketing quota referendum by wheat producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

WHEAT MARKETING ACT

● Mr. ZORINSKY. Mr. President, this past summer, the Department of Agriculture conducted a nonbinding poll of wheat producers, asking them if they favored mandatory controls on production in exchange for prices in excess of 125 percent of the cost of production for a bushel of wheat. The results were certainly enlightening.

Among commercial-sized wheat producers responding to the poll, over 57 percent favored mandatory controls. Of poll respondents whose principal crop is wheat, over 60 percent voted in the affirmative. Within the 11 Central Plains States, which produce over two-thirds of all U.S. wheat, more than 64 percent of all respondents, a margin of almost 2 to 1, voted in favor of mandatory controls.

Some support for an affirmative vote in the poll was lost due to understandable uncertainty over what an actual mandatory supply management program would look like. I am offering legislation at this time that will address that uncertainty.

The Mandatory Supply Management Program for wheat I am presenting today is similar to the program contained in the Food Security Act of 1985, the implementation of which is discretionary with the Secretary of Agriculture.

In addition to mandated implementation, changes include a delay in implementation until crop year 1988, the establishment of a nonrecourse loan rate of $4.65 per bushel, and the elimination of target prices and deficiency payments.

The program would work as follows:

The Secretary of Agriculture will announce no later than June 1, 1987, a national marketing quota for wheat.

The quantity of the national quota will be the amount of wheat the Secretary estimates is necessary to meet anticipated annual demand, taking into account domestic consumption, export requirements, emergency food aid needs, and sufficient carryover stocks. I want to emphasize that the Secretary's estimate of export requirements should be maintained at least at current levels, for reasons I will discuss later.

The national marketing quota will then be apportioned among wheat farmers based on historic plantings during the base period of 1981 to 1985.

Not later than August 1, 1987, the Secretary will conduct a national referendum by mail ballot. To be eligible to vote, a producer must have produced a crop of wheat during at least one of the 1981 to 1985 crop years for wheat on a farm with a wheat acreage base of at least 40 acres.

If at least 60 percent of the eligible producers vote in the affirmative, the Secretary must implement marketing quotas.

If the Secretary fails to limit quotas sufficiently to increase market prices above the established loan rate of $4.65, the producer may forfeit his grain as repayment on the loan.

Opponents have claimed that mandatory supply management programs would relinquish our export markets. In reality, we are relinquishing our export markets under current programs.

The volume of annual wheat exports, for example, has declined by almost 50 percent from marketing year 1981-82, despite a continual decline in price over this same period. More critically, the value has declined by an astonishing 58 percent. Where we have traditionally exported 60 percent of our wheat, we now export only 44 percent, based on the 1985-86 marketing year.

Although the absence of a competitive price has often been blamed for the decline in exports, other factors, such as the strength of the dollar, grain quality problems, and past embargoes have contributed, as well.

Nonetheless, the failure of the Soviet Union to take advantage of our recent discounted tender of wheat underscores the obvious fact that foreign purchasers are not going to buy from us when they can buy higher quality wheat elsewhere for a lower price.

If we are to compete on the basis of price in the international market, we must acknowledge that, as long as the international market price is below our domestic cost of production, we can be price-competitive only to the extent that we are willing to subsidize our exported grain.

Opponents of mandatory supply management have also resorted to claims that the imposition of a mandatory program would result in set-asides of 55 percent or more. Such statements reflect a misunderstanding of how the type of program I have long advocated can and should work.

First of all, my program does not place strict limits on production; it does limit the number of bushels of wheat a farmer can market per year. Thus, it would be possible for a producer who wishes to create his own reserve to produce over and above his marketing quota in year 1, and then adjust his production in later years as protection against unforeseen disasters, thereby reducing or even eliminating the need for expensive crop insurance and disaster payments. Of course, it would be the Secretary's duty to adopt rules and regulations to prevent the unauthorized marketing of wheat.

Second, since there would no longer be incentives for today's intensive farming practices that are designed to produce higher yields on limited acreage, planted acreage could in fact increase while per-unit costs of production decline.

Third, estimated production of wheat for crop year 1986 was 2.166 billion bushels, while estimated total disappearance for marketing year 1986 was 2.175 billion bushels. Thus, for 1986, supply and demand were already in balance. By bringing into the Government program those acres that are not currently enrolled, the percentage of idled acres under the program could actually decline.

Of course, Government must dispose of the vast carryover stocks that the Government has accumulated over the years. These surpluses suppress the natural value that a balance of supply and demand establishes for the commodity.

With that in mind, the following actions should accompany the implementation of a mandatory supply management program:

First, the Secretary of Agriculture should use his discretionary authority to implement an across-the-board, long-term export enhancement program using surplus Government commodities in such a manner as will ensure that U.S. wheat will remain competitive in international markets.

Second, as either a complement or an alternative to export enhancement, consideration should be given to the use of a marketing loan in conjunction with a mandatory program.

Either mechanism effectively establishes a two-price system for our wheat, whereby domestic prices are sustained at a level that will afford a reasonable return to the producer, and export prices are reduced to a level that is internationally competitive.

The cost of such an export program would be more than offset by the reduction in current Federal farm program outlays that adoption of a mandatory program would achieve.

Third, Government surpluses could be further reduced by the continued use of payments in kind, where such payments do not adversely affect the market.

Fourth, surplus stocks could be used to a greater extent for ethanol and other alternative uses.

Finally, the long-term retirement of marginal land, much of which is wheat ground, could and should be continued through the conservation reserve program.

Again, speculative statements concerning the level of set-aside acres in a mandatory program that uses a bushel-based marketing quota system are irrelevant.

Opponents express concern also that mandatory programs will dramatically increase the consumer's cost of food.

The 14 percent of disposable income that Americans spend on food is the lowest in the world. Nonetheless, increasing the price a farmer receives for a bushel of wheat would increase the cost of a loaf of bread by less than 2 cents. In fact, the wrapper on that loaf of bread costs more than the wheat used to make the bread.

I have been asked why my program proposal includes only wheat. Let me emphasize that I support mandatory supply management programs for any commodity for which an excessive surplus exists, and have cosponsored legislation to that effect.

However, there are a number of factors that compel me to pursue a separate program for wheat at this time, not the least of which is the recently conducted nonbinding wheat poll in which wheat growers expressed their clear support for such a program.

In addition, wheat, unlike feed grains and soybeans, is consumed directly by humans. Therefore, increases in the price of a bushel of wheat are more directly—and more equitably—passed on to consumers.

Feed grains and soybeans, on the other hand, pass through a more complex food chain, and the consumer is more price sensitive with regard to the meat end product. This results in the increased costs being absorbed by middlemen, some of whom, such as livestock feeders, may be in as weak a financial position as the farmer.

Also, wheat-growing operations tend to be less diversified than feed grain or soybean operations, leaving wheat producers more vulnerable to market fluctuations and less able to weather low grain prices for extended periods of time.

Furthermore, due to low prices, over 300 million bushels of wheat are being fed annually to livestock. Increased

prices will eliminate the use of wheat as livestock feed, thereby increasing the consumption of feed grains.

Mr. President, we are simply producing more wheat than we can consume or dispose. This has led to the accumulation of massive Government surpluses, accompanied by plummeting market prices and skyrocketing Government expenditures. The need for an effective, predictable supply management program is overwhelming.

Conceptually, supply management merely entails bringing production into balance with demand. It is the most fundamental tenet of the marketplace. As a former businessman, I can assure you that the absence of effective supply management would bankrupt any business, just as it is bankrupting our Nation's farmers and adding to the burden of our Nation's taxpayers.

I urge my colleagues to support this legislation.●

By Mr. MATHIAS:

S. 2904. A bill to amend title 17 of the United States Code to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes; to the Committee on the Judiciary.

BERNE CONVENTION IMPLEMENTATION ACT OF 1986

● Mr. MATHIAS. Mr. President, last month marked the 100th anniversary of one of the world's oldest multilateral agreements. On September 9, 1886, the International Convention for the Protection of Literary and Artistic Works, better known as the Berne Convention, was signed.

What 10 European nations began in Switzerland 100 years ago has become the world standard for copyright protection. The Berne Convention has proven to be a dynamic agreement that has adapted to a dramatically changing world environment while remaining faithful to established principles that ensure high levels of copyright protection. As chairman of the Senate's Subcommittee on Patents, Copyrights and Trademarks, I am pleased to mark this centennial anniversary by introducing legislation that would bring U.S. copyright law in compliance with the Berne Convention.

On June 18, 1986, the President sent the Berne Convention to the Senate for its ratification. The bill I introduce today is the implementing legislation. I agree with the President that 100 years on the sidelines is long enough. It is time for the United States to join the rest of the world copyright community by adhering to the Berne Convention.

The influence of copyright law is sometimes invisible, but increasingly pervasive. Words, images, music, and movement are the media through which thought and imagination take on expressive forms that can be shared by all humanity. Copyright recognizes that these expressions of our culture are also products that can be exchanged in the market. Copyright not only sustains the work of the individual author and artist, but also supports a system that enhances diversity in the marketplace. In today's "information age," the commerce in copyrighted materials has mushroomed and is measured in the tens of billions of dollars.

In addition, the growing importance of world trade to our domestic economy has underscored the role of copyright in maintaining American competitiveness. The United States is the world's largest exporter of copyrighted materials. The trade in books, sound recordings, motion pictures, computer software, and other copyrighted works is one of the few bright spots in a trade picture that is overshadowed by record trade deficits.

However, if the United States is to maintain its competitive edge, it must confront the emerging issues in copyright: problems of striking the right balance between the proprietor and user, and of curbing rampant copyright piracy. Explosive changes in technology have recast these questions not only for our country, but for the entire international community as well.

Currently, the United States conducts its multilateral copyright relations primarily through the Universal Copyright Convention [UCC]. But the UCC's low standards of copyright protection diminish our effectiveness in the international copyright arena. Furthermore, our withdrawal from Unesco, the administrative body of the UCC, has cast a cloud over our continued participation there. Clearly, if the United States is to be a leader in copyright, it needs another forum.

That forum is the Berne Convention. Its 78 members comprise not only our major trading partners, but also a sizable number of developing countries. These countries have embraced a standard that includes not only national treatment—that is, equal treatment for domestic and foreign copyright claimants—but also clear formulation of exclusive rights as a minimum for copyright protection. These standards are set out in the kind of detail commensurate with today's global communications environment.

In addition, U.S. adherence to Berne would be a major step forward for our efforts to develop a dispute settlement mechanism to redress the trade-distorting consequences of inadequate intellectual property protection. The recent trade talks in Uruguay concluded that intellectual property should be on the agenda of the General Agreement on Tariffs and Trade. GATT requires a mature standard of copyright principles as a yardstick for evaluating trade barriers. The Berne Convention provides that yardstick. It would be in our best interests to measure up.

The United States has considered joining Berne before. Indeed, in the 1930's we nearly did so. In the past the differences between our laws and the Berne Convention standards have made the short-term costs of adherence appear too high for the long-term gains. However, with the adoption of the 1976 revision of the Copyright Act, these differences are now minimal. As the President indicated in his transmission to the Senate, now is the time to join. The economic and trade stakes for U.S. industry are too high to begin confronting the broad range of copyright issues except upon the basis of a strong and widely shared set of existing copyright principles. Those principles are in the Berne Convention and nowhere else.

GUIDELINES

The bill I introduce today is a product of 2 days of hearings in May 1985 and April 1986, at which testimony was received from both Government and private sector witnesses. The hearings revealed a broad consensus of support for U.S. adherence to the Berne Convention. In addition, this bill builds on the valuable work of both the report of the Ad Hoc Working Group on U.S. Adherence to the Berne Convention, convened by the State Department, and the Copyright Office draft legislation.

In building on this substantial record, this bill is guided by two principles. First, it seeks to make the minimal changes to existing law required to ensure compliance with Berne obligations. Other changes that may be useful or desirable can be considered on their merits after our entry into the Berne union. Adherence to Berne would strengthen the basis of our international copyright relations. That paramount goal can be achieved by making only those changes that the record reveals are necessary.

Second, this bill does not make distinctions—which the convention permits—between works of foreign and domestic origin. Read literally, Berne only requires that works of foreign origin from Berne states need be accorded minimum rights. This bill seeks to maintain uniformity in the treatment of domestic and qualifying foreign works. Suggestions for a two-tiered approach that discriminates against works of U.S. authors, while compatible with Berne, have been rejected.

SECTIONAL ANALYSIS

With these guidelines in mind I will now turn to the legislation itself and explain what this bill does and does not do.

One of the central features of the bill concerns the application of the Berne Convention to U.S. copyright

law. While the Ad Hoc Working Group, the Copyright Office, and the President in his message to Congress, were all of the view that the Berne Convention is not self-executing under U.S. law, nevertheless the bill includes provisions to help to dispel any lingering doubts in this area.

Section 2 is intended to preclude the direct legal application of the Berne Convention in U.S. courts as the controlling law in copyright cases. While some of the witnesses during the hearings felt that Berne had some provisions that might be self-executing, I agree with the President that Berne ought not to be self-executing. To this end, section 2 of the bill declares that Berne obligations are performed exclusively through legislation and that the amendments adopted, along with the existing law, completely implement our obligations under the Berne Convention.

Intimately bound up with this question of self-execution are two features which this legislation intentionally does not address. These aspects are the moral rights of authors and retroactive application of the convention.

Article 6 bis of the Berne Convention establishes the moral rights of authors, above and beyond the economic rights with which we are all familiar. The convention includes among moral rights the right to claim authorship of one's works and to object to distortion, mutilation, modification or other derogatory action with respect to the work which would be prejudicial to the author's honor of reputation.

The record of our hearings and the views of most specialists in copyright is that moral rights are substantially available under U.S. law, although not integrated in the Copyright Act. Contract law, trademark, unfair competition and defamation provide means to redress invasions of rights akin to moral rights. In addition, the present right of authors under title 17 to authorize the creation of derivative works provides a potential source of protection for certain moral rights.

The record of our hearings and submissions subsequent to them also disclosed sharp controversies over the wisdom of absorbing into the copyright statute the diverse threads of U.S. law touching moral rights. These threads reach into the common law of the 50 States as well as Federal laws outside copyright. This bill, therefore, does not include a provision on moral rights. The provision rejecting self-execution of the convention should preclude resort to article 6 bis as a basis for asserting entitlement to moral rights in any litigation, based upon any statute or rule of common law, to the extent that it is claimed that the Berne Convention confers greater rights that the statute or rule of law involved.

Although this bill does not have a moral rights provision, it is not intended to influence the independent development of moral rights in U.S. law. Under the language of section 2, courts and legislatures can continue the process of elaborating legal protections in the nature of moral rights. In particular, Congress would be free to reexamine moral rights issues, and I would urge that it do so once the United States has joined the Berne union. But adherence to Berne will not by itself create a new set of legal obligations.

Section 3 of the bill provides that the implementing legislation will have no retroactive effect. Thus, works still protected in other Berne union countries which had fallen into the public domain in this country prior to U.S. adherence to Berne would not be protected anew after U.S. adherence.

Retroactive application of the convention to foreign works which have fallen into the public domain due to noncompliance with formalities is clearly contemplated by article 18(1) of the convention. It is also clear that the withdrawal of works from the public domain is fraught with practical, philosophical and legal difficulties. It is not to be favored; to the extent it may be required, it should be minimized.

While Berne contemplates retroactive protection for some foreign works that are in the public domain, the convention gives entering members a certain amount of discretion as to how to apply that retroactive protection. Indeed, retroactivity under Berne appears to establish a "principle" whose application can be dealt with after a country's adherence to the convention.

However, the legal dimensions of retroactive application of Berne requires careful analysis, including a sensitivity to constitutional considerations. Arguments have been advanced which would relieve us of any obligation to accord retroactive application to foreign works in the public domain. They should be reassessed. If retroactivity is needed, the means to establish it could be developed on a case-by-case basis.

Section 102 of the Copyright Act would be amended to add architectural works to the subject matter now expressly protected by copyright. Additionally, section 113 would be amended to deal with remedies available in an infringement case concerning architectural works.

There is a broad consensus that protection of architectural works under U.S. law requires adjustment for compatibility with Berne. But it is far from clear how extensive that adjustment has to be, both in terms of rights or subject matter.

Next, this legislation would eliminate the present section 116 of the Copyright Act, with an appropriate transition period. Section 116 establishes the compulsory license for the public performance of works by jukeboxes. There is no doubt from the record that the present jukebox compulsory license is incompatible with the Berne Convention, although some have suggested that its economic impact is minor to the point of insignificance.

Affected parties need to hammer out a private, voluntary agreement to resolve dissatisfaction with the existing jukebox compulsory license—with rate adjustments, with the demonstrated expense and complexity of the licensing system. The proposed deletion of this section is an invitation for such negotiations to occur where they ought to—in the marketplace.

Section 7 of this bill would amend the formalities of notice, registration and recordation. Pursuant to the clear requirement of article 5(2) of the Berne Convention, this bill would repeal those sections of our copyright law requiring notice of copyright as a condition of copyright, or which relate to the consequences of failure to comply with the notice requirement.

There is no doubt that Berne requires this fundamental change in our law. Yet, surprisingly, there appears to be little controversy over the proposed demise of the notice formality. Perhaps the international utility of notice of copyright is so well accepted that elimination of compulsory notice will not mean disappearance of the practice.

The bill would eliminate the requirements for registration and recordation of assignments (where applicable) as preconditions for the bringing of an infringement suit. The bill retains provisions of title 17 which make prompt registration a prerequisite for the extraordinary remedies of statutory damages and attorney's fees.

While there is general agreement that this approach brings U.S. law into compliance with the Berne union, some feel that it goes too far, eliminating the favorable incentives that ensure registration and the public benefits derived from it. Others, as might be expected, believe the proposal does not go far enough in eliminating the need for registration. This is clearly an area that deserves more congressional examination in its own right. We should examine whether and to what extent public policy requires maintaining strong incentives for timely and comprehensive registrations of works protected under title 17.

Removing the requirement of registration as a precondition to the bringing of an infringement suit would diminish the Copyright Office's role of examination of claims to copyright prior to any judicial action. The approach of the bill is to maintain incentives to registration. The prime facie

evidentiary value of the registration certificate, along with the availability of statutory damages and attorney's fees, can be adequate to sustain a comprehensive national data base of copyright claims, including their scope, ownership, and exercise.

However, any changes in registration should take account that the collections of the Library of Congress are, to a large extent, built on access to copies of works which accompany registration applications. If registrations were to decline, or become untimely, it could be very costly for the Library of Congress to acquire such copies through enforcement of deposit requirements under section 407 of the law or through purchase.

This proposal is predicated upon the assumption that it is possible to eliminate one sort of incentive to register without drastically upsetting the system of public information and access to works for the Library. Further study of the proposal is needed, and further amendments may be in order. The task is to find the right combination of incentives that retains these advantages but meets obligations under the Berne Convention.

A brief mention should be made regarding the manufacturing clause. Although it is clearly incompatible with the Berne Convention, its expiration at midnight on June 30, 1986, removes it as an obstacle to adherence. Any resurrection of the clause would be a setback for the goal of Berne adherence, as well as an act of defiance toward our obligations under the General Agreement on Tariffs and Trade.

Mr. President, like most other legislation, all copyright laws are compromises. The high level of protection mandated by Berne does not in any way require us to rethink the balanced and limited exceptions in our law that favor education and research. Our law of "fair use," generally applicable to reasonable commercial and noncommercial uses of copyrighted works, is fully compatible with the results reached in the laws of other Berne union countries. Finally, our cable television license appears compatible with the convention—although a number of Berne countries have not taken the same approach. The same is true for the limited license for noncommercial broadcasting under section 118.

Mr. President, I introduce this bill at the end of a Congress that coincides with the end of my service as a Member of the Senate. It may seem peculiar that, as we conclude our deliberations for this year, I offer this legislation as a starting point. But Congresses, like parents, leave legacies in the form of challenges and projects to be taken up by their successors. This month marks the centennial anniversary of the Berne Convention. How fitting it would be if this bill were a point of departure for the One Hundredth Congress to take action on U.S. adherence to the world's oldest copyright convention.

Mr. President, I ask unanimous consent that the bill and the President's message to the Senate on the Berne Convention be printed in the RECORD.

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

S. 2904

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 "Berne Convention Implementation Act of 1986".

SEC. 2. (a) The Congress finds and declares that—

(1) United States adherence to the International Convention for the Protection of Literary and Artistic Works (better known as the "Berne Convention") would enhance copyright protection for the works of American authors, artists, and other creators; would strengthen relations with other nations in the field of copyright, and would serve the national interest;

(2) the Berne Convention is not self-executing under the Constitution and laws of the United States;

(3) the obligations of the United States as a Berne Union member may be performed only pursuant to appropriate legislation; and

(4) title 17 of the United States Code does not provide copyright protection for any work that is in the public domain in the United States.

(b) It is the intent of the Congress that the amendments made by this Act, together with existing law, will enable the United States to meet all of its obligations as a Berne Union member and that no further legislation will be necessary for that purpose. It is the further intent of the Congress that the provisions of the Berne Convention shall be given effect under title 17 of the United States Code, as amended by this Act, and any other relevant provision of Federal or State law, including common law, and shall not be directly enforceable in any action brought on the basis of the Berne Convention itself.

SEC. 3. The instrument of accession by the United States to the Berne Convention shall specify January 1, 1988, as the date of entry into force of the Berne Convention with respect to the United States.

SEC. 4. Chapter 1 of title 17 of the United States Code is amended—

(1) in the table of sections, by amending the title of section 113 to read as follows: "Scope of exclusive rights in pictorial, graphic, and sculptural works; scope of exclusive rights in architectural works.";

(2) in section 101, by—

(A) inserting between the definition of "anonymous work" and "audiovisual works", the following:

"'Architectural works' include three-dimensional works in the form of buildings, monuments, and other structures, as well as two-dimensional and three-dimensional works in the form of plans, sketches, technical drawings, diagrams, and models relating to such buildings, monuments, or structures.";

(B) inserting between the definition of "audiovisual works" and "best edition", the following:

"The 'Berne Convention' is the Convention for the protection of Literary and Artistic Works signed at Berne on September 9, 1886, together with its later additional acts, protocols, and revisions, up to and including the Paris revision of 1971.

"A work is a 'Berne Convention work' if—

"(1) in the case of an unpublished work, one or more of the authors is a national of a Berne Union member, or in the case of a published work, one or more of the authors is a national of a Berne Union member on the date of first publication, and for these purposes authors who are domiciled or have their habitual residence in a Berne Union member are considered nationals of that member;

"(2) the work was first published in a Berne Union member, or was simultaneously published in a Berne Union member and in a foreign nation that is outside the Berne Union, and for these purposes a work is considered as having been published simultaneously in two or more nations if it has been published in one nation within thirty days of its publication in the other nation;

"(3) in the case of an audiovisual work: (A) if one or more of the authors is a legal entity, said author has its headquarters in a Berne Union member; or (B) if one or more of the authors is an individual, said author has his or her habitual residence or domicile in a Berne Union member;

"(4) in the case of an architectural work, the work was erected in a Berne Union member; and

"(5) in the case of a pictorial, graphic, or sculptural work, the work is incorporated in a building or other structure located in a Berne Union member.

"A 'Berne Union member' is a country or nation that is bound by any one of the texts of the Berne Convention."; and

(C) amending the definition of "pictorial, graphic, and sculptural works" by inserting before the period at the end of the first sentence the following: ", but do not include architectural works";

(3) in section 102(a), by—

(A) striking out "and" at the end of clause (6);

(B) striking out the period at the end of clause (7) and inserting in lieu thereof "; and"; and

(C) adding at the end thereof a new clause as follows:

"(8) architectural works.";

(4) in section 104, by—

(A) renumbering paragraph (4) of subsection (b) as paragraph (5); and

(B) adding between paragraph (3) and paragraph (5), as redesignated herein, a new clause as follows:

"(4) the work is a Berne Convention work; or";

(5) in section 108(a), by—

(A) striking out paragraph (3);

(B) adding "and" after the end of paragraph (1); and

(C) striking out "; and" at the end of paragraph (2) and inserting in lieu thereof a period;

(6) in section 113, by—

(A) amending the section heading to read as follows:

"§ 113. Scope of exclusive rights in pictorial, graphic, and sculptural works; scope of exclusive rights in architectural works"; and

(B) adding at the end thereof the following:

"(d) In any action for infringement of an architectural work by construction of a structure incorporating the architectural work, the court shall have discretion to enjoin construction of the infringing structure or order its demolition or seizure, and

in exercising its discretion the court shall consider whether construction of the structure has been substantially begun, whether the infringement was willful, and whether monetary recovery would be wholly inadequate as a remedy for the infringement."; and

(7) in the table of sections by amending the item relating to section 113 to read as follows:

"Sec. 113. Scope of exclusive rights in pictorial, graphic, and sculptural works; scope of exclusive rights in architectural works.".

(8) in section 116 by adding at the end thereof the following:

"(f) The provisions of subsections (a) through (d) of this section shall remain in effect until January 1, 1988. Thereafter, the exclusive right, under section 106(4), to publicly perform a nondramatic musical work embodied in a phonorecord by means of a coin-operated phonorecord player shall not be limited by subsections (a) through (d) of this section and, unless authorized by the copyright owner, such performance shall be actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.".

SEC. 5. Section 205 of chapter 2 of title 17 of the United States Code is amended by—

(1) repealing subsection (d); and

(2) redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 6. (a) Chapter 4 of title 17 of the United States Code is amended—

(1) by repealing sections 401 through 406;

(2) in section 407(a), by striking out "with notice of copyright";

(3) in section 408(a), by striking out "Subject to the provisions of section 405(a), such" at the beginning of the second sentence, and inserting in lieu thereof "Such";

(4) in section 408(c)(2), by—

(A) striking out "under all of" and inserting in lieu thereof "under";

(B) repealing subparagraph (A); and

(C) redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(5) in section 409, by adding "and" at the end of clause (9), and by repealing clause (10); and

(6) by amending section 411 to read as follows:

"§ 411. Registration and infringement actions

"(a) Registration is not a prerequisite to the institution of an action for infringement of copyright.

"(b) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, before such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner serves notice upon the infringer, not less than ten or more than thirty days before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to enforce copyright protection in the work.".

(b) Title 17, United States Code, is amended in the table of chapters by amending the item relating to chapter 4 to read as follows:

"4. DEPOSIT AND REGISTRATION ..... 401".

(c) The table of sections for chapter 4 of title 17, United States Code, is amended to read as follows:

"CHAPTER 4—DEPOSIT AND REGISTRATION

"Sec.
"401. Repealed.
"402. Repealed.
"403. Repealed.
"404. Repealed.
"405. Repealed.
"406. Repealed.
"407. Deposit of copies or phonorecords for Library of Congress.
"408. Copyright registration in general.
"409. Application for copyright registration.
"410. Registration of claim and issuance of certificate.
"411. Registration and infringement actions.
"412. Registration as prerequisite to certain remedies for infringement.".

SEC. 7. Chapter 5 of title 17 of the United States Code is amended in section 501(b), by striking out "sections 205(d) and 411" and inserting in lieu thereof "section 411(b)".

SEC. 8. Chapter 8 of title 17 of the United States Code is amended—

(1) in the table of sections, by adding after the item relating to section 810, the following:

"811. Public performances of nondramatic musical works by means of coin-operated phonorecord players: Transitional provision."; and

(2) by adding at the end thereof the following:

"§ 811. Public performances of nondramatic musical works by means of coin-operated phonorecord players: Transitional provision

"In accordance with subsection (f) of section 116, the Copyright Royalty Tribunal shall, after January 1, 1988, institute no further proceedings and make no further determinations with respect to the copyright royalty rates applicable under section 116. However, the Tribunal shall institute and conclude all necessary proceedings and take all necessary actions to carry out its duties under section 801(b)(3) with respect to the distribution of royalty fees paid under section 116 prior to such date.".

SEC. 9. This Act, and the amendments made by this Act shall become effective on January 1, 1988.

SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SEC. 11. If any provision of this Act, or of title 17 of the United States Code, as amended by this Act, is declared unconstitutional, the remainder of this Act, and of title 17, and their application are not affected thereby.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 18, 1986.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to accession, I transmit herewith the Berne Convention for the Protection of Literary and Artistic Works. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Convention.

The Convention obligates States party to the Convention to maintain high levels of protection for artistic works. The extent of protected works is broad, ranging from conventional works—such as blacks, motion pictures, and music—to new technological works including audio and video cassettes, and computer-related works. The Convention contains detailed provisions that specify minimum levels of protection to be provided by member countries.

Adherence to the Convention by the United States will demonstrate our commitment to improving international protection afforded intellectual property. When we are urging other countries to enhance copyright protection, the United States can no longer remain outside the Berne Union. It is, therefore, a matter of some urgency that the United States finally join the Berne Convention.

As indicated in the report of the Department of State, implementation of the Convention will require legislation. Until this legislation is enacted, the United States instrument of accession will not be deposited with the Director General of the World Intelectual Property Organization.

I recommend that the Senate give early and favorable consideration to the Convention and give its advice and consent to accession.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 4, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to accession, the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, and revised at Rome on June 2, 1928, at Brussels on June 26, 1948, at Stockholm on July 14, 1967, and at Paris on July 24, 1971 and amended in 1979 (hereinafter "the Convention"). As of January 1986, seventy-six nations were party to the Convention. Upon the recommendation of the former Cabinet Council on Commerce and Trade, you endorsed adherence to the Convention in 1985.

The Convention is administered by the World Intellectual Property Organization (WIPO)(and is the oldest and most important multilateral copyright treaty. The Convention's member pledge to maintain high levels of protection for the rights of authors in their literary and artistic works. The extent of protected works is broad, ranging from conventional works—such as books, motion pictures, and music—to new technological works including video cassettes and computer-related works. The Convention contains detailed provisions that specify minimum levels of protection to be provided by member countries.

Because of differences of certain copyright principles, the United States has not adhered to the Berne Convention. These differences include United States requirements for copyright formalities such as notice and registration, and requirements for domestic manufacture to obtain protection. The United States, the Soviet Union and China are the only major countries that are not parties to the Convention.

The fundamental principle of the Berne Convention is protection based upon national treatment. Works entitled to the benefits of the Convention enjoy in each country of the Berne Union the advantages accorded to the works of nationals of the country where protection is sought. Because the Convention minima are explicit and substantial, the level of assured protection is higher than

that afforded by the Universal Copyright Convention.

Some of the Convention minima are:

—protection of unpublished and published works of nationals of Berne Union countries; and, of all works first published in any member country, even when authored by nationals of non-Union countries;

—term of protection is generally life of the author plus 50 years;

—exclusive right to make and authorize translations and other adaptions;

—right to perform publicly dramatic and musical works;

—right of reproduction by any means of process;

—right to authorize communication of a work to the public (original broadcasting and secondary retransmission);

—exclusive right of authorizing the first recording of musical works;

—moral rights of the author—right to claim authorship and to object to any distortion, mutilation, or other alteration that would be prejudicial to the author's honor or reputation.

The latest version of the Berne Convention is the text agreed to on January 24, 1971 at Paris, when the Berne Convention was revised. This version contains special provisions in favor of developing countries regarding translation and reproduction for educational purposes. Following is a summary of the 1971 text of the Berne Convention to which the United States would adhere.

Article 1 of the Convention establishes that the countries to which it applies form a single Union.

Article 2 defines the subject matter of protection: "literary and artistic works". These include all productions in the literary, scientific and artistic domain, without limitation by reason of the mode or form of their expression. The value merit or intended purpose of a work is irrelevant to protection under the Convention. Further, the list of protected works in Article 2 is intended to be merely illustrative rather than exhaustive. A State party to the Berne Convention remains free to maintain legal standards which determine whether particular examples of the kinds of works listed in Article 2 are to be protected; that they involve some minimum of creative expression; that they be original in their creation (that is, done without copying); and that protection for a work not extend to the underlying ideas, systems, formats or utilitarian aspects of a work which would fall into the realm of industrial rather than literary and artistic property.

Article 2(2) of the Convention authorizes States to require as a condition of proetction of a work that works be "fixed in some material form", thus permitting the exclusion from protection of ephemeral performances not reduced to a medium of tangible expression.

Article 2(3) of the Convention establishes the principle of the protection of derivative works independently of the original works upon which they are based and without prejudice to the copyright status of the underlying original.

Article 2(4) and (5) deal with protection of so-called official texts and collective works. Protection of the former is left entirely to national discretion. In the latter case, such collections of pre-existing materials which evidence intellectual creativity by reason of the "selection and arrangements of their contents" are to be protected as original works, apart from the copyright status of the particular contents.

Article 2(6) establishes the central principle that works mentioned in Article 2(2) enjoy protection in all countries of the Union and that such protection "shall operate for the benefit of the author and his successors in title."

Article 2(7) constitutes an important exception to the general obligation derived from Article 2(2) to protect works of "applied art," and industrial designs and models. The Convention permits States to set the extent of application of their copyright laws to such works as well as to prescribe conditions for their protection. This discreion is limited with respect to the term of protection which is set at a minimum of 25 years from the making of the work.

Article 2(8) provides that protection of works under the Convention shall not require the protection of "news of the day" or to "miscellaneous facts having the character of mere items of press information". This provision is in general accordance with well-accepted copyright principles which protect the creative expression of an author, but not the underlying factual information which such expression relates.

Article 2bis of the Convention provides that the scope of protection accorded political speeches and speeches delivered in the course of legal proceedings and of lectures and addresses is subject to national discretion. The Convention requires only that the right of the author of such oral works to make or authorize the making of a collection of such speeches or lectures be recognized.

Article 3 contains the first of a number of provisions the object of which is to lay down the points of attachment of the Convention, i.e., the conditions to be fulfilled if protection is to be enjoyed under it. The Convention protects the works of authors who are nationals of the countries of the Union (or have their habitual residence in one of them), whether published or not and wherever first published—either in a Union country or elsewhere, as well as works of any national first published in a Union country.

Article 4 provides special points of attachment for motion pictures and architectural works which do not have "nationality" in ordinary sense of Article 3 of the Convention. Article 4 deals with this problem by establishing that the Convention's protection extends to films, the maker of which "has his headquarters or habitual residence in one of the countries of the Union;" and, to architectural works "incorporated in a building or other structure located in country of the Union."

Article 5 sets out the fundamental principles on which the Convention is based: national treatment; automatic protection; and the independence of copyright protection as between the country of origin of a work and the other countries of the Union. It assures, first of all, to protected works national treatment; that is, works which originated in a Berne Union country obtain in all other Berne Union countries the same protection as the latter give to the works of their own nationals as well as the rights specially granted by the Convention.

Article 5(2) requires automatic protection, that is, the enjoyment and exercise of rights may not be conditioned on the observance of any formality whatsoever. The same Article establishes the principles of the independence of protection. This means that, apart from the specific provisions of the Convention (the Convention minima), the extent of protection is governed by the laws of the country where protection is claimed, and not dependent upon protection anywhere else, nor upon reciprocity.

Further, Article 5 establishes the rule that protection within the country of origin of a work (the place of first publication for published works) is a matter exclusively for the domestic law of that country and is outside the scope of Convention obligations. This is true whether the author is a national of that country or not.

Article 6 allows Union countries the possibility of restricting protection in the case of works of nationals of certain non-Union countries which fail to protect in an adequate manner the works of nationals of Union countries. This provision was introduced into the Convention in order to permit limited retaliation against non-Union member countries wohse nationals secured protection within the countries of the Union by the device of first publishing their work in a Union State. Although it was never invoked for that purpose, the provision was desigend for use against the United States, which had at the time a copyright law less generous than those found in States party to the Berne Convention, and whose publishers had regularly published their works in Canada in order to claim, through the so-called "backdoor", protection under the Berne Convention.

Article 6bis provides that, in addition to economic rights, copyright under the Convention also encompasses so-called moral rights. These rights including the author's prerogatives to claim the paternity of his or her work (to be correctly credited as the author) and to object to any distortion, mutilation or other modification of the work which would be prejudicial to the author's honor or reputation.

The Convention further establishes that moral rights shall generally extend for the term of economic rights; that is, even after the death of the author. Nonetheless, Article 6bis(2) of the Convention permits Union States to determine by whom such right may be exercised *after* the author's death; and, States which have not at the time of accession to the Convention, extended moral rights into the post-mortem term of copyright, may limit rights during this period. In general, the precise means by which authors and their successors to moral rights may exercise and obtain redress for violations of moral rights are left to national discretion.

Article 7 sets out the minimum term of copyright duration binding on all countries of the Union. The general rule is for a term of life of the author and fifty years after his death. However, for certain works for which calculation of term based upon the life of a natural person is impractical, or out of step with the laws of many countries, Article 7 provides special terms. Thus, Article 7(2) provides a minimum term of copyright in motion pictures of 50 years from public availability of the work, or, in the absence of release, 50 years from the making of the work. Under Article 7(3) anonymous and pseudonymous works are assured a term of 50 years from the death of the author, should his or her identify become known. Works of applied art and photographs are given the minimum term of protection of 25 years from the making of such works by virue of Article 7(4).

These are, of course, minimum terms of protection. Article 7(6) provides that Berne members may grant protection for a longer period than provided for in Articles 7(1)-(4). Of particular importance is Article 7(8) concerning reconciliation between the laws of

States whose terms of copyright differ as to specified works. The term of copyrights in a work is determined by the law of the country where protection is sought; however, the term of protection need not exceed that established in the country of origin of the work. Countries of the Union, may, of course, choose by legislation to grant strict national treatment as to term, regardless of the period of protection established for a work in the country of origin. This so-called "rule of the shorter term" in Article 7(8) is an exception to the national treatment obligation.

Article 8 allows the author the exclusive right to translate the work or to authorize the translation of his or her work. The Berne Convention traditionally limited the obligation of States in the Union to respect translation rights fully, during the normal duration of copyright protection. Earlier texts of Berne authorized Union States to limit the period of authors' control over translations of their works to a period of 10 years from first publication. As now written, Berne has established a complete translation right, normally effective during the full term of copyright in a work, life plus 50 years post mortem.

Article 9 gives the author of a literary and artistic work the exclusive right of authorizing the reproduction of the work, in any manner or form. It should be noted here that the Convention does not establish the exclusive right of the author to control the public distribution of copies of his or her work. It is considered by many states that the right of the author to first publish his or her work was an aspect of moral rights; and, further, effective control over the rights to distribute copies to the public was assured through the establishment of the right of reproduction in Article 9.

Article 9 (2) and (3) permit countries of the Union to make exceptions to the exclusive right of reproduction "in certain special cases", so long as an exception does not "conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author." This general formulation of the power to exempt incidental or commercially insignificant uses of works from the right of reproduction leaves States with a considerable degree of discretion in connection with "fair uses" of copyrighted materials and similar non-infringing reproductions of protected works. Exceptions to the reproduction right may be related to sound or visual recordings as well as the traditional reprographic reproduction of printed materials.

The various subsections of Article 10 concern the free use of copyrighted works in a variety of contexts, some of which are quite familar to United States law and practice. Thus, Article 10(1) permits quotations from published works so long as it is "compatible with fair practice" and justified by the purpose of the quote.

Article 10(2) concerns the utilization of copyrighted works in teaching activities. It provides that national legislation and special agreements among Union countries may determined the terms under which literary and artistic works may be used for teaching purposes. Such uses are, again, subject to the limitations of "fair practice" and justifiable given the purpose in a teaching context. These exceptions to copyright extend to the utilization of works in publications, broadcasts or sound or visual recordings. The Convention requires, however, that uses of works under the formula of Article 10(2) require crediting the source of the material and the name of the author if it appears on the copy of the work utilized.

Article 10bis establishes special exceptions in connection with the use of protected works in newspapers or broadcasts and in the reporting of current events, generally. Article 10bis(1) allows reproduction by the press—electronic or otherwise—of "articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character". The Convention provides, however, that such an exception can be established only with respect to works where the right to such reproduction, broadcasting or other communication thereof "is not expressly reserved."

Article 10bis(2) permits legislative exceptions to the incidental reproduction of protected works during the course of coverage of current events or other newsworthy activities.

Article 11, 11bis and 11ter concern important contemporary rights under copyright: public performance, recitations and broadcasting activities. Although quite detailed, the provisions of these articles appear to reflect the basic elements of copyright law common to industrialized countries including the United States. Thus, Article 11(1) provides that authors of dramatic, dramatic-musical and musical works have the exclusive right to control the public performance of their works by any means or process and the communication to the public of performances of their works. These rights extend to works in their original or translated forms.

The rights of public performance provided for in Article 11 extend to all sorts of performances with the exception of broadcasting. Thus, the performance of a work in live concert, in a public place by means of phonorecords, or a controlled transmission of a performance to a paying audience, would come within the scope of the exclusive rights established under Article 11. This is of importance in view of the fact that the Convention does not appear to authorize specific, permissible, limitations on the right of authors over these sorts of public performances, but clearly does so with respect to performances through broadcasting.

Article 11bis(1) deals with the right of authorizing the broadcasting of a work, the communication to the public of broadcasts by wire or rebroadcasting "when this communication is made by an organization other than the original one", or the communication of broadcasts to the public by loudspeaker.

Article 11bis(2) authorizes national legislation to determine "the conditions under which the rights" broadcasting, rebroadcasting and the public communication of broadcasts in Article 11bis(1) may be exercised. In the absence of agreement among the parties (and without prejudice to moral rights), equitable remuneration may be set by a "competent authority" to the State.

Article 11bis(3) concerns so-called "ephemeral recordings", the subject of Section 112 of the United States Copyright Law. This provision of Berne allows States to enact legislation permitting authorized broadcasters of a work to make ephemeral recordings of works for the purpose of carrying out their own broadcasting activities.

Finally, Article 11ter establsihes the right of the author of a literary work to authorize the public recitation of his or her work "by any means or process" and to authorize any communication to the public of the recitation of the work. These rights extend to literary works in their original form or in translation.

Article 12 of the Convention concerns so-called derivative works; that is, independently copyrightable transformations or adaptations of pre-existing works, such as the making of a novel into a film, or the arrangement of a piece of music for a particular instrument or group of instruments. Translations of works, dealt with as a separate activity and work are, in fact, a form of derivative work. This Article establishes the rule that authors enjoy the exclusive right to authorize the creation of derivative works based upon their copyright original. (Article 2(3) of the Convention established the principle that adaptations are protectable independently from the original works upon which they are based.)

Article 13 allows member countries to limit the exclusive right to contract the further recording of musical works after the first authorized recording and distribution of copies of such recordings. Essentially, this Article permits the compulsory licensing of the right to make sound recordings of protected musical compositions in much the same fashion as has long been provided for in United States Copyright Law.

Article 13(3) reinforces the territorial basis of Article 13 compulsory licensing by requiring Union States to establish provisions for the seizure of recordings produced in one country under a compulsory license and imported into another country without the permission of the concerned parties.

Article 14 sets out special rules governing rights and copyright ownership in cinematographic works. These provisions are of particular importance to the United States film industry. They were included in the Berne Convention at the Stockholm Revision Conference (1967) and have as their aim the harmonious reconciliation of the laws of Berne States which have important differences in approaching the question of authorship, ownership of rights and their exercise in the film area.

Article 14(1) sets down the right of authors of literary and artistic works to authorize the making of their works into films and their reproduction in film form, as well as to authorize the distribution of such films. Further, authors of literary and artistic works are accorded the right to control the public performance and communication to the public by wire of their works which are reproduced or adapted to film.

Article 14(2) provides that the author of an original work made into a film retains control over the further adaptation of his or her work from such an authorized film. Essentially, this means that when a novel is made into a film, a party who wishes to make the film into a musical version will require authorization from the novelist and, in accordance with Article 14bis(1), the filmmaker.

Article 14(3) provides that the compulsory license for the use of musical works in sound recordings, established in Article 13(1), is not applicable to films.

Article 14bis deals with the rights of artistic contributors to films. Article 14bis(1) begins by affirming the copyrightability of films as independent works, apart from the original work upon which such film may have been based. Article 14bis(2) provides that ownership of copyright in a film is a matter for the legislation of the country where protection is sought. Succeeding articles create a system of limited presumptions, modifiable by express contract, under

which the "authors who have brought contributions to the making of the work" may be held to have consented by their participation in the making of the film to the reproduction, distribution, public performance, communication to the public by various means, subtitling or dubbing of the film embodying their various constributions. States with protection is sought for films may, however, require that the undertakings to contributors to films be in writing for such a presumption to apply. Finally, if such presumptions are to apply to the contributions to a film made by the principal director, scenarist or composer of music works created for the film, national legislation must expressely so provide.

Article 14ter of the Convention concerns a realm of copyright known as the "droit de suite". This system of law concerns original works of art and original manuscripts of writers and composers. It permits the authors of such material embodiments of their creativity to enjoy the enhanced value of unique copies of their works which accure with time and subsequent sales and resales. The most classic example of the application of "droit de suite" is the case of the fine art painting, sold for little at first, but acquiring considerable value as the reputation of the artist increases over time. "Droit de suite" would permit the creator, or after his or her death, such persons authorized by legislation, to "enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work." The Convention does not mandate that "droit de suite" be established in countries of the Union; it regulates, instead, the application of the system among countries of the Union which have established the system. In general, "droit de suite" may be claimed for works originating in a country of the Union only in such countries which have the system in their copyright laws and, further, only where the country of origin of such works also recognizes "droit de suite". In short, the benefits depend upon reciprocity.

Article 15 of the Convention deals with presumptions as to the authorship of works. In general, copyright enforcement actions may be brought by the author of a work and Article 15(1) provides that, in the absence of proof to the contrary, the person whose name appears in the normal fashion on the work shall be presumed to be the author and entitled to institute infringement proceedings in Union countries. This rule is extended to the persons or corporate bodies whose name appears on films, "in the usual manner." Article 15(3) authorizes the publisher of an anonymous or pseudonymous work to represent the author and enforce his or her rights. Finally, Article 15(4) authorizes States to designate authorities to protect and enforce in other States party to the Convention the rights of authors of unpublished works where the identity of the author is unknown but "there is every ground to presume that he is a national of a country of the Union".

Article 16 allows the author (or his successor in title) to take steps to seize infringing copies of his work. Each country may choose its own conditions, and the provision only applies if the work in question is protected in the country concerned.

Article 17 provides that the provisions of the Convention cannot affect in any way the right of governments of each State party "to permit, to control or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right."

Article 18(2) deals with the way in which the Convention applies to works already in existence when their country of origin first joins the Union. There is no obligation to protect works which, when their country of origin first becomes a Union country, are already in the public domain there. If, in the country where protection is claimed, a work was once protected but that protection has lapsed because its term has come to an end, there is no obligation to protect it anew.

Article 19 states that the minimum rights prescribed by the Convention form the basis of the Union but if, under the national laws of member countries, Convention nationals and their successors in title can claim better copyright treatment, nothing stops their doing so.

Article 20 deals with special agreements between the member countries such as bilateral treaties which go further in protecting authors than the Convention itself. It makes clear that there is nothing the Convention which prevents the continuation of such treaties.

Article 21 introduces the Appendix containing special provisions for developing countries.

Articles 22 to 26 are administrative clauses that were added to the Berne Convention at the Stockholm Conference in 1967. They relate to such matters as the administrative bodies of the Berne Union (Assembly and the Executive Committee), the Secretariat called the International Bureau, finances, and the manner of amending Articles 22 to 26.

Article 27 relates to the revision of all other articles (excepting Articles 22 to 26) of the Convention provides that such revision shall be by unanimity.

Article 28 concerns the acceptance and entry into force of the Paris Act (1971) of the Berne Convention by Berne Union countries (i.e. member States).

Article 29 deals with accession and entry into force for nonmember States of the Berne Convention.

Article 29bis concerns a technical point as to the relationship between the Paris Act (1971) of the Berne Convention and the Convention Establishing the World Intellectual Property Organization (1967).

Article 30 regulates reservations to the Convention by newly adhering States.

Article 31 sets out the conditions under which the Berne Convention can be applied to territories whose external relations are the responsibility of another country.

Article 32 regulates the relations between member countries of the Berne Convention bound by different texts of the Convention .

Article 33(1) provides that any dispute between two or more member countries over the interpretation or application of the Convention, not settled by negotiation, may, by any one of the countries concerned be brought before the International Court of Justice. However, Article 33(2) permits a country to declare, at the time it accedes to the Convention, that it will not bound by Article 33(1).

Article 34 provides that no country may ratify or accede to any Act prior to the Paris Act (1971) once the substantive provisions of this Act entered into force (i.e. October 10, 1974).

Article 35 states that the Convention remains in force indefinitely and that a country may not denounce the Convention earlier than five years from the date of its adherence.

Article 36 states explicitly that a member State must adopt the measures necessary to ensure the application of the Convention and that when a country becomes bound by the Convention, it must be in a position under its domestic law to give effect to the various provisions of the Convention.

Article 37 contains clauses on such matters as authentic texts of the Convention (English and French), official texts of the Convention, and notifications of ratification or accession to the Director General of WIPO.

Article 38 pertains to transitional provisions which provided for a changeover from the earlier United International Bureau for the Protection of Intellectual Property to the new World Intellectual Property Organization which came into being in April 1970. This Article would have no effect on the United States upon adherence to the Berne Convention.

The Appendix to the Convention, made up of six articles, allows Union countries classified as developing countries, more latitude regarding the rights of translation and of reproduction than is normally permitted by the Convention proper.

A developing country may provide for a regime of non-exclusive, non-assignable compulsory licenses carrying an obligation to make fair payments to the copyright owner, to translate and/or reproduce works protected by the Convention, exclusively for systematic instructional activities (or in some cases for teaching, scholarship or research).

The copyright owner enjoys a period in which to exercise his exclusive rights. If he does so, no compulsory license can be granted in the country in which he has exercised it for the use in question. If a license is granted, it covers only the country in question and export of copies made under it is forbidden.

The payment to be made by the complusory licensee must be consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned and must be transmissible to the copyright owner.

United States adherence to the Convention will require some adjustments to U.S. law to make it compatible, although the 1976 revision to the United States Copyright Law removed some of the important problems (e.g., term of protection). Among the areas requiring amendment are those dealing with jukebox licensing, the domestic manufacturing clause, and notice and registration requirements.

Even if the Senate gives its advice and consent to accession, prior to enactment of the implementing legislation, the instrument of accession will not be deposited with the World Intellectual Property Organization until such legislation has been enacted.

United States adherence to the Convention is supported by other interested agencies including the Copyright Office, the Patent and Trademark Office and the Office of the U.S. Trade Representative.

I recommend that you forward this Convention to the Senate for early advice and consent to accession.

Respectfully submitted,

GEORGE P. SHULTZ.●

By Mr. HATFIELD (for himself, Mr. STAFFORD, Mr. HEINZ, and Mr. CRANSTON):

S. 2905. A bill to establish a national population policy, and improve meth-

ods for collecting, analyzing, and employing natural resources, environmental, and demographic data; to the Committee on Governmental Affairs.

GLOBAL RESOURCES, ENVIRONMENT, AND POPULATION ACT

● Mr. HATFIELD. Mr. President, today I am introducing legislation designed to help our Government anticipate and respond to a number of important demographic trends that dramatially affect this country and the world. I welcome the cosponsorship of Senators CRANSTON, HEINZ, and STAFFORD, all of whom were sponsors of a similiar bill last Congress. The bill calls for coordination among Federal agencies, under the leadership of the President's Council on Environmental Quality, to assure that policymakers use consistent, up-to-date demographic, resources and environmental information in planning and decision making. The legislation also declares that there are economic, social and environmental advantages to the stabilizing of the population of the United States.

This legislation is not new. For three consecutive Congresses, I have introduced measures to provide for improved global foresight in the U.S. Government. The Global 2000 Report was issued, yet no comprehensive analysis has been proposed to update the study's findings. In the face of enormous budget deficits, new research in long-term issues is either dwindling, or being totally eliminated.

The Global Resources, Environmental and Population Act would require that the President issue a triannual report that evaluates the short-term and long-term impact national and global changes in population size and age structure will have on the availability of natural resources and environmental changes.

We can ignore no longer the relentless pace of population growth. The world's population is increasing by 85 million people a year and is expected to soar to over 6 billion by the year 2000. In many regions of the globe staggering population growth has created environmental problems of nightmarish proportion and has led to great human suffering and political instability.

The strains from population growth colliding with limited resources are also visible in America. We see them in the water-short sprawl of cities in the Southwest and West, in the annual conversion of a million acres of prime farming land to residential and commercial use, and in the overflowing dumpsites and tainted water supplies.

In the context of these pressing human concerns, we see Federal policy too often being set in the absence of reliable, timely information. It should come as no surprise that the institutional framework for providing policymakers with consistent, accurate data is sorely deficient. Far too often we in Congress are forced to manage a crisis rather than looking for ways to anticipate change and head off conflict. This legislation will help us to avoid shortsighted action and govern with an eye to the future.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2905

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Global Resources, Environmental, and Population Act of 1986".

DEFINITIONS

SEC. 2. For purposes of this Act, the term—

(1) "agency" shall have the same meaning provided in section 551(1) of title 5, United States Code;

(2) "global population stabilization" means that which occurs when the number of human births approximately equal the number of human deaths;

(3) "long-term", when used with respect to trends or impacts, means a period of thirty or more years;

(4) "national population stabilization" means that which occurs when the sum of the number of human births and the number of individuals immigrating approximately equals the sum of the number of human deaths and the number of individuals emigrating;

(5) "person" shall have the same meaning provided in section 551(2) of title 5, United States Code; and

(6) "short-term", when used with respect to trends or impacts, means a period of less than thirty years.

FINDINGS AND POLICY

SEC. 3. (a) The Congress finds and declares that—

(1) continued population growth in the United States directly affects the Nation's environmental quality, the availability of natural resources, economic development, and national security;

(2) continued unanticipated changes in population size and age structure affect the ability of localities and the Nation—

(A) to fulfill the needs of the people for education, training, jobs, health care, housing, and transportation;

(B) to protect the environment;

(C) to control expenditures at the local, State, and Federal levels of government;

(D) to provide income maintenance for dependent individuals, such as infants, the unemployed, the retired, and the disabled;

(E) to produce food and agricultural products; and

(F) to maintain adequate energy supplies;

(3) there are economic, social, governmental, and environmental advantages to the stabilization of the population of the United States, which will allow a sustainable balance among population size, consumption patterns, natural resources, and the environment;

(4) Federal action can affect State, local, and individual decisions and actions that promote population stabilization;

(5) the Federal Government is the logical entity for collecting and analyzing data that affects the Nation's quality of life; and

(6) the Federal Government is presently unable to derive internally consistent projections of the availability of natural resources and the quality of the environment under different assumed population and consumption trends, to analyze the effects of population, resource, and environmental trends on Federal policies and programs, and to consider such trends in making and modifying Federal policies and programs.

(b) It is the public policy of the United States that—

(1) all actions, policies, and programs of the Federal Government that affect fertility be consistent with United States constitutional rights of privacy, and with the attainment of population stabilization in the United States as soon as practicable in a manner in accordance with the Mexico City Declaration on Population and Development in 1984 supported by the United States which provides in part that "all couples, and individuals can exercise their human rights to decide freely, responsibly, and without coercion the number and spacing of their children and to have the information, education, and means to do so; in exercising this right, the best interests of their living and future children, as well as the responsibility toward the community should be taken into account";

(2) all actions, policies, and programs of the Federal Government that affect immigration and emigration shall encourage the attainment of population stabilization in the United States as soon as practicable;

(3) the Federal Government cooperate with State and local governments and other persons to promote national population stabilization in the United States;

(4) in declaring the national policy of population stabilization, the Federal Government can encourage the nations of the world to achieve national population stabilization and a sustainable balance among population size and age structure, natural resources, and environmental quality; and

(5) the Federal Government develop and maintain the capability to derive internally consistent projections of the availability of natural resources and the quality of the environment under different assumed population and consumption trends, to analyze the effects of population, resources, and environmental trends on Federal policy and programs, and to consider such trends in making and modifying Federal policies and programs.

INTERPRETATION AND ADMINISTRATION OF POLICIES, REGULATIONS, AND PUBLIC LAWS

SEC. 4. The Congress authorizes and directs that, to the fullest extent possible—

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act; and

(2) all agencies of the Federal Government shall—

(A) use reliable demographic, natural resource, and environmental information in planning and decisionmaking, and, under the leadership of the President's Council on Environmental Quality, coordinate these findings to provide for consistency; and

(B) make available to State and local governments and to other persons research and projections that may be useful to the States and localities in efforts to balance population, resources, and environmental quality in their areas.

POLICY REVIEW

SEC. 5. The head of each agency shall review the statutory authority, administrative regulations, and policies and procedures of the agency to determine whether there are any deficiencies or inconsistencies which limit or prevent compliance with the purpose, policies, and provisions of this Act. The head of each agency shall, within one year after the date of enactment of this Act, act to eliminate any deficiencies or inconsistencies and recommend to the President and to the Congress any administrative or legislative actions deemed necessary to eliminate any deficiencies or inconsistencies.

REPORT

SEC. 6. Within three years after the date of enactment of this Act, and every three years thereafter, the President shall prepare and transmit to the Congress a global resources, environment, and population report which shall include—

(1) the current and foreseeable trends in national and global population size and age structure;

(2) an evaluation of the adequacy of available natural resources for fulfilliing the human and economic requirements of the United States and the world based on such current and foreseeable trends;

(3) an evaluation of the short-term and long-term impact which national and global trends in population size and age structure, availability of natural resources, and environmental change will have on the economy and national security of the United States;

(4) a review of the effects of the laws, regulations, programs, and activities of the Federal Government and State and local governments and of the activities of other persons on the attainment of national and global population stabilization; and

(5) such recommendation for legislative actions as the President considers necessary to carry out the purposes and policies of this Act.●

ADDITIONAL COSPONSORS

S. 1456

At the request of Mr. LAUTENBERG, the names of the Senator from Maine [Mr. COHEN], the Senator from New Hampshire [Mr. RUDMAN], the Senator from North Carolina [Mr. HELMS], the Senator from Kentucky [Mr. FORD], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. LEAHY], the Senator from Colorado [Mr. HART], the Senator from Tennessee [Mr. SASSER], the Senator from Illinois [Mr. DIXON], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Virginia [Mr. WARNER], the Senator from Maryland [Mr. MATHIAS], the Senator from Georgia [Mr. NUNN], the Senator from North Dakota [Mr. BURDICK], the Senator from Hawaii [Mr. INOUYE], the Senator from Arizona [Mr. DECONCINI], the Senator from Iowa [Mr. HARKIN], the Senator from Arkansas [Mr. PRYOR], the Senator from Indiana [Mr. LUGAR], the Senator from Kansas [Mr. DOLE], the Senator from South Dakota [Mr. PRESSLER], the Senator from North Carolina [Mr. BROYHILL], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

S. 1940

At the request of Mr. NICKLES, his name was added as a cosponsor of S. 1940, a bill to protect the security of the United States by creating the offense of international terrorism, and for other purposes.

S. 2134

At the request of Mr. NICKLES, his name was added as a cosponsor of S. 2134, a bill to amend title 39, United States Code, to extend to certain officers and employees of the Postal Service the same procedural and appeal rights with respect to certain adverse personnel actions as are to Federal employees under title 5, United States Code.

S. 2314

At the request of Mr. NICKLES, his name was added as a cosponsor of S. 2314, a bill to amend the Newspaper Preservation Act.

S. 2379

At the request of Mr. NICKLES, his name was added as a cosponsor of S. 2379, a bill to repeal the application of Revenue Ruling 86-63, relating to the deductibility of contributions to university athletic funds.

S. 2545

At the request of Mr. CRANSTON, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2545, a bill to place a moratorium on the relocation of Navajo and Hopi Indians under Public Law 93-531, and for other purposes.

S. 2835

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 2835, a bill to establish literacy programs for individuals of limited English proficiency.

S. 2878

At the request of Mr. NICKLES, his name was added as a cosponsor of S. 2878, a bill to strengthen the laws against illegal drugs, and for other purposes.

SENATE JOINT RESOLUTION 112

At the request of Mr. PELL, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE JOINT RESOLUTION 260

At the request of Mr. NICKLES, his name was added as a cosponsor of Senate Joint Resolution 260, a joint resolution designating the first Sunday of October as "National Stepparents Day."

SENATE JOINT RESOLUTION 311

At the request of Mr. CRANSTON, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of Senate Joint Resolution 311, a joint resolution designating the week beginning November 9, 1986, as "National Women Veterans Recognition Week".

SENATE JOINT RESOLUTION 313

At the request of Mr. HOLLINGS, the name of the Senator from Florida [Mr. CHILES] was added as a cosponsor of Senate Joint Resolution 313, a joint resolution proposing an amendment to the Constitution of the United States with respect to limiting expenditures in Congressional elections.

SENATE JOINT RESOLUTION 348

At the request of Mr. GLENN, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of Senate Joint Resolution 348, a joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week".

SENATE JOINT RESOLUTION 359

At the request of Mr. NICKLES, the name of the Senator from Alabama [Mr. DENTON] was added as a cosponsor of Senate Joint Resolution 359, a joint resolution to designate March 17, 1987, as "National China-Burma-India Veterans Association Day".

SENATE JOINT RESOLUTION 375

At the request of Mr. NICKLES, his name was added as a cosponsor of Senate Joint Resolution 375, a joint resolution designating the week beginning September 21, 1986, as "National Adult Day Care Center Week".

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Tennessee [Mr. GORE], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Mississippi [Mr. STENNIS], the Senator from New York [Mr. MOYNIHAN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Nebraska [Mr. ZORINSKY], and the Senator from Vermont [Mr. STAFFORD] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship with Finland".

SENATE JOINT RESOLUTION 404

At the request of Mr. SIMON, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of Senate Joint Resolution 404, a joint resolution to designate October 1986 as "Polish American Heritage Month".

SENATE JOINT RESOLUTION 419

At the request of Mr. MOYNIHAN, the names of the Senator from Ohio [Mr. GLENN], the Senator from Arkansas [Mr. PRYOR], the Senator from Florida [Mrs. HAWKINS], the Senator from Oklahoma [Mr. NICKLES], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Illinois [Mr. SIMON], the Senator from Virginia [Mr. TRIBLE], the Senator from Okla-

homa [Mr. BOREN], the Senator from Missouri [Mr. EAGLETON], and the Senator from California [Mr. WILSON] were added as cosponsors of Senate Joint Resolution 419, a joint resolution to designate December 11, 1986 as "National SEEK and College Discovery Day".

SENATE JOINT RESOLUTION 422

At the request of Mr. BOSCHWITZ, the names of the Senator from Indiana [Mr. LUGAR], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of Senate Joint Resolution 422, an original joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

SENATE CONCURRENT RESOLUTION 130

At the request of Mr. HOLLINGS, the names of the Senator from North Carolina [Mr. BROYHILL], and the Senator from Florida [Mr. CHILES] were added as cosponsors of Senate Concurrent Resolution 130, a concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, SC, to Neufchatel, Switzerland, in October 1986 as an international gesture of goodwill.

SENATE RESOLUTION 390

At the request of Mr. NICKLES, his name was added as a cosponsor of Senate Resolution 390, a resolution relating to the nuclear accident at Chernobyl in the Union of Soviet Socialist Republics.

SENATE RESOLUTION 412

At the request of Mr. NICKLES, his name was added as a cosponsor of Senate Resolution 412, a resolution to thank the Honorable Margaret Thatcher.

SENATE RESOLUTION 455

At the request of Mr. DIXON, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of Senate Resolution 455, a resolution to call for the creation of an early notification system for nuclear accidents.

SENATE RESOLUTION 492

At the request of Mr. NICKLES, his name was added as a cosponsor of Senate Resolution 492, a resolution to express the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in the voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use so that parents can make an informed choice about the movies their children attend.

AMENDMENT NO. 3087

At the request of Mr. DIXON, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of Amendment No. 3087 proposed to House Joint Resolution 738, a joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

SENATE RESOLUTION 496—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO EUGENE A. BUNDY

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. RES. 496

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Eugene A. Bundy, widower of Carolyn E. Bundy, an employee of the Senate at the time of her death, a sum equal to seven months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 497—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO DAVID K. STOKELY

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. RES. 497

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to David K. Stokely, son of Wilma K. Stokely, an employee of the Senate at the time of her death, a sum equal to eight months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 498—ORIGINAL RESOLUTION REPORTED TO AMEND THE STANDING RULES OF THE SENATE

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. RES. 498

Resolved, That the last sentence of paragraph 4(b) of rule XXXV of the Standing Rules of the Senate is amended by striking out "Prior to the beginning of any such program, the" and inserting in lieu thereof "The".

AMENDMENTS SUBMITTED

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

BOREN (AND OTHERS) AMENDMENT NO. 3100

Mr. BOREN (for himself, Mr. BUMPERS, Mr. LEVIN, Mr. PRYOR, and Mr. HEFLIN) proposed an amendment to the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes; as follows:

At the end of the resolution, add the following new titles:

TITLE—PAYMENTS TO CATTLE PRODUCERS

SEC. . SHORT TITLE.

This title may be cited as the "Cattle Restitution and Indemnity Payments Act of 1986".

SEC. . RESTITUTION PAYMENTS TO CATTLE PRODUCERS.

(a) With funds or commodities held by the Commodity Credit Corporation, the Secretary shall pay to each producer who owned one or more cattle prior to March 28, 1986 and who sold one or more cattle in the period beginning on March 28, 1986, and ending on June 30, 1986, for any purpose other than breeding, an amount equal to the product of $6.00 per hundredweight and the live weight (measured in hundredweights) of such cattle at the time of such sale.

(b) SUBMISSION OF CLAIMS FOR PAYMENT.—(1) A producer shall be ineligible to receive a payment under this Act if such producer fails to submit a claim for such payment to the Secretary before July 1, 1987.

(2) Claims for payment under section 2 shall be submitted to the Secretary in such form, and with such evidence, as the Secretary may require by rule, including—

(A) a bill of sale for cattle, or

(B) a brand inspection document issued by a State or the United States showing evidence of sale of cattle, or

(C) other documentation showing evidence of sale of cattle.

(3) Not later than October 1, 1987, the Secretary shall inform each producer who submits a claim for such payment whether the Secretary will pay or dispute the claim of such producer.

(c) DETERMINATION OF DISPUTED CLAIMS.—If any producer who submits a claim for payment under section (a) objects to—

(1) the amount paid with respect to such claim, or

(2) the denial of such claim,

by the Secretary, then such producer shall give written notice of such objection to the Secretary not later than 60 days after such producer receives such payment or the Secretary informs such producer of the denial of such claim as the case may be. Not later than 60 days after receiving such notice, the Secretary shall determine the validity of such claim after a hearing on the record.

(d)(1) JUDICIAL REVIEW.—Any producer aggrieved by a determination under subsection (c) made by the Secretary may obtain review of such determination by filing a civil action in an appropriate district court of the United States not later than 30 days after such producer receives notice of such determination. As part of the Secretary's answer, the Secretary shall file in such court a certified copy of the record upon which the determination complained of is based.

(2) The district courts of the United States shall have jurisdiction to review any determination made under subection (c) by the Secretary.

(e) For purposes of this section—

(1) the term "cattle" includes steers, bulls, cows, heifers, and calves,

(2) the term "producer" means any person, or group of persons, that owns or acquires ownership of any cattle, except that

a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of such cattle is a sales commission, handling fee, or other service fee,

(3) the term "Secretary" means the Secretary of Agriculture, and

(4) the term "sold" means exchanged for value, in cash or in kind, for slaughter or otherwise.

(f) This section shall be effective on October 1, 1986.

SEC. . PAYMENT OF INDEMNITY FOR CATTLE CONTAMINATED BY HEPTACHLOR.

(a) PAYMENT OF INDEMNITY FOR CERTAIN LOSSES.—With funds and commodities held by the Commodity Credit Corporation, the Secretary of Agriculture shall indemnify a producer for economic loss resulting from—

(1) a quarantine imposed by the Department of Agriculture on cattle owned by such producer, or

(2) slaughter of cattle owned by such producer carried out because such cattle were contaminated by heptachlor in the period beginning on January 1, 1986, and ending on March 31, 1986, in the State of Oklahoma, the State of Arkansas, or the State of Missouri.

(b) ADMINISTRATIVE PROVISIONS.—

(1) SUBMISSION OF CLAIMS FOR INDEMNITY.—(A) A producer shall be ineligible to receive indemnity under subsection (a) if such producer fails to submit a claim for such indemnity to the Secretary before July 1, 1987.

(B) Claims for indemnity under subsection (a) shall be submitted to the Secretary in such form, and with such evidence, as the Secretary may require by rule.

(C) Not later than October 1, 1987, the Secretary shall inform each producer who submits a claim for such indemnity whether the Secretary will pay or dispute the claim of such producer.

(2) DETERMINATION OF DISPUTED CLAIMS.—If any producer who submits a claim for indemnity under subsection (a) objects to—

(A) the amount paid with respect to such claim, or

(B) the denial of such claim,

by the Secretary, then such producer shall give written notice of such objection to the Secretary not later than 60 days after such producer receives such indemnity or the Secretary informs such producer of the denial of such claim, as the case may be. Not later than 60 days after receiving such notice, the Secretary shall determine the validity of such claim after a hearing on the record.

(3) JUDICIAL REVIEW.—Any producer aggrieved by a determination under paragraph (2) made by the Secretary may obtain review of such determination by filing a civil action in an appropriate district court of the United States not later than 30 days after such producer receives notice of such determination. As part of the Secretary's answer, the Secretary shall file in such court a certified copy of the record upon which the determination complained of is based.

(4) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States shall have jurisdiction to review any determination made under paragraph (2) by the Secretary.

(c) DEFINITIONS.—For purposes of this Act—

(1) the term "cattle" includes steers, bulls, cows, heifers, and calves,

(2) the term "producer" means any person, or group of persons, that owns or acquires ownership of any cattle, and

(3) the term "Secretary" means the Secretary of Agriculture.

(d) EFFECTIVE DATE.—This section shall take effect on October 1, 1986.

TITLE —AMENDMENTS TO PRICE SUPPORT PROGRAMS FOR CERTAIN CROPS

SEC. . COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "the first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

SEC. . LOANS AND PURCHASES FOR THE 1986 CROP OF SUNFLOWERS.

Effective only for the 1986 crop of sunflowers, section 201 of the Agricultural Act of 1949 is amended—

(1) in the first sentence, by inserting "sunflowers," after "soybeans,"; and

(2) by adding at the end thereof the following new subsection:

"(l)(1) The Secretary shall support the price of sunflowers through loans and purchases in the marketing year for the 1986 crop of sunflowers as provided in this subsection. The support price for such crop shall be at such level as the Secretary determines will take into account the historical oil content of sunflowers and soybeans and not result in excessive total stocks of sunflowers taking into consideration the cost of producing sunflowers, supply and demand conditions, and world prices for sunflowers, except that such level may not be less than 9 cents per pound.

"(2)(A) The Secretary shall permit a producer to repay a loan made under paragraph (1) for the 1986 crop of sunflowers at a level that is the lesser of—

"(i) the loan level determined for such crop; or

"(ii) the prevailing world market price for sunflowers, as determined by the Secretary.

"(B) The Secretary shall prescribe by regulation—

"(i) a formula to define the prevailing world market price for sunflowers; and

"(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for sunflowers.

"(3) For the purposes of this subsection, the marketing year of sunflowers shall be prescribed by the Secretary by regulation.

"(4) Notwithstanding any other provision of law, the Secretary shall not require participation in any production adjustment program for sunflowers or any other commodity as a condition of eligibility for price support for sunflowers.".

SEC. . SUPPORT PRICE AND MARKETING LOANS FOR 1986 CROP OF SOYBEANS.

(a) SUPPORT PRICE.—Effective only for the 1986 crop of soybeans, section 201(i)(2) of the Agricultural Act of 1949 (7 U.S.C. 1446 (i)(2)) is amended by inserting "(other than the marketing year for the 1986 crop of soybeans)" after "a marketing year".

(b) MARKETING LOANS.—Effective only for the 1986 crop of soybeans, section 201(i) of such Act is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7);

(2) by inserting after paragraph (2) the following new paragraph:

"(3)(A) In the case of the 1986 crop of soybeans, the Secretary shall implement the provisions of Plan A or Plan B in accordance with this paragraph.

"(B)(i) If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made under this subsection for a crop at a level that is the lesser of—

"(I) the loan level determined for such crop; or

"(II) the prevailing world market price for soybeans, as determined by the Secretary.

"(ii) If the Secretary elects to implement Plan A, the Secretary shall prescribe by regulation—

"(I) a formula to define the prevailing world market price for soybeans; and

"(II) a mechanism by which the Secretary shall periodically announce the prevailing world market price for soybeans.

"(C)(i) If the Secretary elects to implement Plan B, the Secretary shall, for the 1986 crop of soybeans, make payments available to—

"(I) producers who, although eligible to obtain a loan or purchase agreement under this subsection, agree to forgo obtaining such loan or agreement in return for such payments; and

"(II) in the case of producers who have placed their soybeans under such loan or agreement, producers who agree to redeem such loan or agreement and to forgo obtaining such loan or agreement in return for such payments.

"(ii) A payment under this subparagraph shall be computed by multiplying—

"(I) an amount equal to 20 percent of the loan payment rate; by

"(II) the quantity of soybeans the producer is eligible to place under loan."; and

"(3) in paragraph (4)(A) (as redesignated by paragraph (2)), by striking out "If" and inserting in lieu thereof "In the case of each of the 1987 through 1990 crops of soybeans, if".

(c) OTHER OILSEEDS.—The Secretary shall consider the impact of this section on other oil seeds that do not participate in price support program, and shall consult with producers of such oil seeds.

TITLE—NATURAL DISASTERS EMERGENCY ASSISTANCE FOR FARMERS AND RANCHERS

SEC. **1. EMERGENCY DISASTER ASSISTANCE.

The President and the Secretary of Agriculture shall make emergency disaster assistance available, as provided in this Title to farmers and ranchers in natural disaster areas.

SEC. **2. DEFINITIONS.

For the purposes of this title—

(1) the term "natural disaster areas" includes any area in the United States in which farming and ranching operations have been adversely affected by a drought or excessively hot weather disaster, or a flood disaster, occurring in calendar year 1986, as determined by the Secretary of Agriculture, such that assistance is available in the area under subtitle C of the Consolidated Farm and Rural Development Act for such disaster; and

(2) the term "livestock" includes all classes of beef and dairy cattle, sheep, goats, and swine.

EMERGENCY FEED DONATIONS

SEC. **3. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make available to farmers and ranchers in each natural disaster area, at no cost, surplus stocks of commodities held by the Commodity Credit Corporation (in the area, in the State in which the area is located or an

adjoining State, or in a storage deficient area (as described in section **9(b) of this title)), for the purpose of, and under the conditions set out in, subsection (b) of this section.

(b)(1) The Secretary shall make such commodities available, in any natural disaster area in which the Secretary determines there is a critical need for livestock or poultry feed, in amounts necessary to preserve livestock herds and poultry flocks in the area. For purposes of this section, the phrase "critical need for livestock or poultry feed" means that (A) the total supply of feed grains and forage available to livestock and poultry producers in the area involved is insufficient to cover the combined feed needs of such producers for more than seventy-two hours or such other period, determined by the Secretary, reasonably needed for supplies of feed to arrive in the area for commercial use from feed surplus areas, whichever is a longer period; and (B) as a result of such deficient supply levels, it reasonably can be expected that, without the assistance made available under this section, farmers and ranchers in the area will suffer significant losses of livestock or poultry due to mortality.

(2) Subject to section **9(c), the Secretary shall cover any costs involved in transporting such surplus commodities to the natural disaster area, using the funds, facilities, and authorities of the Commodity Credit Corporation for such purposes.

(3) The Secretary shall continue to make commodities available under this section until there no longer is a critical need for livestock or poultry feed, as determined by the Secretary.

(4) In determining the feed needs of producers in an area and the amount of commodities to be made available in the area under this section, the Secretary shall use the regulations issued under section 1105 of the Food and Agriculture Act of 1977 (7 C.F.R. 1475.52(n) and 1475.55(f)(1) (1986) and comparable rules for poultry.

(5) Donations under this section shall be made available during the period beginning three days after the date of enactment of this title and ending March 31, 1987, or the date, as determined by the Secretary, on which the emergency created by the drought, excessively hot weather, or flood no longer exists, whichever is earlier.

EMERGENCY LIVESTOCK FEED ASSISTANCE

SEC. **4. Notwithstanding any other provision of law:

(a)(1) The Secretary of Agriculture shall make emergency livestock and poultry feed assistance under section 1105 of the Food and Agriculture Act of 1977 to farmers and ranchers in natural disaster areas. Reimbursement for purchased feed provided to such farmers and ranchers under section 1105 shall be made in kind, as provided in section 9(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation. Whenever, under any export development program conducted by the Secretary of Agriculture, a feed grain or other commodity used for animal feed is made available to foreign purchasers at prices less than the average domestic market price for the commodity, as determined by the Secretary, reimbursement under this paragraph for purchases of such commodity shall be made at a level in excess of 50 per centum of the cost of the purchased commodity if necessary to ensure that the net cost to the producer for such commodity (taking into account the * * *) price at which the commodity is made available to foreign purchasers under such export development program.

(2) The Secretary of Agriculture shall permit any producer of the 1986 crop of wheat, feed grains, upland cotton, or rice (A) who is participating in the program under the Agricultural Act of 1949 for such crop, and (B) whose farm is located in a natural disaster area, to devote acreage on the farm diverted from the production of the crop under such program to hay or grazing without regard to limitations on when haying or grazing may take place otherwise imposed under the Agricultural Act of 1949.

(3)(A) In carrying out any emergency assistance program, for farmers and ranchers in a natural disaster area under the Disaster Relief Act of 1974, subject to subparagraph (B), the President shall direct the Secretary of Agriculture to implement an emergency hay program to assist such farmers and ranchers in obtaining hay to feed their livestock. Under such program, the Secretary, subject to section **9(c), shall pay 80 per centum of the cost of transporting hay from areas in which hay is in plentiful supply to the area in which the farmers and ranchers are located.

(B) The President shall take the action required under subparagraph (A) only if the Secretary of Agriculture reports to the President that—

(i) as a result of the drought, excessively hot weather, or flood disaster, the amount of hay readily available to such farmers and ranchers at reasonable prices to feed their livestock is substantially below the amount normally available; and

(ii) the assistance to be made available under paragraph (1) and haying or grazing permitted under paragraph (2) together will be insufficient to prevent substantial losses of livestock or liquidation of herds by such farmers and ranchers in such area.

(C) The Secretary of Agriculture shall determine whether the conditions described in clauses (i) and (ii) of subparagraph (B) exist for each natural disaster area, and if such conditions exist so report to the President, within thirty days after the date of enactment of this Act and at reasonable intervals of time thereafter.

(D) Prior to making any determination under subparagraph (B), the Secretary of Agriculture shall consult with the Governor and the Secretary of Agriculture (or comparable official) of the State involved, and give due consideration to the views of such persons.

(4) Paragraphs (1) and (3) shall become effective fifteen days after the date of enactment; and assistance under such paragraphs shall be available until March 31, 1987, or the date, as determined by the Secretary of Agriculture, on which the emergency created by the drought, excessively hot weather, or flood no longer exists, whichever is earlier.

(b) Effective October 1, 1986, section 1105 of the Food and Agriculture Act of 1977 (7 U.S.C. 2267) is amended by adding at the end thereof the following:

"(h) If—

"(1) the Secretary of Agriculture makes emergency livestock or poultry feed assistance available to producers in a county under section 407 of the Agricultural Act of 1949; but

"(2) surplus commodities of adequate nutritive value are not made available under such authority for distribution to such producers within ten days after the announcement of the program under such authority for such county,

the Secretary shall make assistance available to such producers under this section until such time as surplus commodities are made available under the announced program.".

DISASTER PAYMENT PROGRAM

SEC. **5. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make disaster payments available, at the request of the producer, on the 1986 crops of wheat, feed grains, upland cotton, rice, and soybeans, sugar beets and peanuts under sections 107D(c)(2)(D), 105C(c)(2)(D), 103A(c)(2)(D), 101A(c)(2)(D), and 201(k) of the Agricultural Act of 1949, respectively, to producers located in natural disaster areas.

(b) For the purposes of this section, the conditions set out in sections 107D(c)(2)(D)(i), 105C(c)(2)(D)(i), 103A(c)(2)(D)(i), and 101A(c)(2)(D)(i) of the Agricultural Act of 1949 shall be considered as having been met.

(c) Payments under this section shall be made in kind, as provided in section **9(a) of this Act, using surplus stocks held by the Commodity Credit Corporation.

(d) The total amount of in kind payments that a person shall be entitled to receive for the producer's crops of wheat, feed grains, upland cotton, rice, peanuts, sugar beets, and soybeans under this section shall not exceed an amount of commodities of a combined value of more than $100,000.

(e) In making payments to persons for a crop under this section, the Secretary of Agriculture shall ensure that each person that has entered into a crop insurance contract covering such crop under the Federal Crop Insurance Act receives payment under this section without any reduction in the amount of the payment to take into account the indemnity received by the person under the crop insurance contract for the crop, except that no such person shall receive a payment under this section on a portion of the person's normal production that combined with the indemnity under the person's crop insurance contract will cause such person to receive payments under both on more than 100 per centum of the person's normal production, as determined by the Secretary.

MILK PROGRAM PRODUCER ASSESSMENTS

SEC. **6. Notwithstanding any other provision of law:

(a) At the option of the producer, no reductions in the price received by producers for milk marketed for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 shall be made on milk produced by producers in natural disaster areas and marketed for commercial use during the period beginning October 1, 1986, and ending December 31, 1986.

(b) The Secretary of Agriculture shall increase the amount of the reduction in the price received by each producer in a natural disaster area, if the producer exercises the option for a suspension of reductions under subsection (a), for milk produced and marketed by such producer for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 during the period beginning January 1, 1987, and ending September 30, 1987, by an amount that will ensure that, to the extent practicable, the aggregate amount of reductions applicable to milk of such producer for the period beginning October 1, 1986, and ending September 30, 1987, will be the same aggregate amount of reductions that would have been made if the suspension of reductions under subsec-

tion (a) had not been in force for such producer.

ASSISTANCE FOR QUOTA AND ALLOTMENT HOLDERS

SEC. **7.(a) Effective only for the 1986 crop of peanuts, section 358a(k)(1) of the Agricultural Adjustment Act of 1938, as added effective for the 1986 through 1990 crops of peanuts, is amended by adding at the end thereof the following:

"Notwithstanding the foregoing provisions of this paragraph, because of the severe drought conditions in many 1986 peanut production areas and because producers of the 1986 crop were not timely notified of their farm poundage quotas, including any increase therein for undermarketings of quota peanuts from previous years, the Secretary shall waive the requirement, with respect to any 1986 farm poundage quota, that a lease of the quota may be entered into during the fall or after the normal planting season only if the quota has been planted on the farm from which the quota is leased, as provided in the following two sentences. The Secretary shall waive such requirement at the request of the owner, or the operator with permission of the owner, of the farm if the county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act determines and certifies that such owner or operator made a good faith effort to plant and produce the 1986 quota on such farm. For the purpose of the preceding sentence, a person may establish that the person made a good faith effort to plant the crop by showing that the person did not intentionally fail to plant or that the person was not provided with timely information as to the amount of the 1986 quota for the farm.".

(b) Section 316(a)(1)(A)(ii) of the Agricultural Adjustment Act of 1938 is amended by striking out the period at the end of the last sentence and inserting in lieu thereof a colon and the following: "*Provided*, That because of the severe drought conditions in many 1986 production areas, such prohibition on lease and transfer shall become effective beginning with the 1988 crop if the holder of record of the allotment or quota to be leased or transferred—

"(1) is age 55 or older and receives at least one-half the person's income from the allotment or quota; or

"(2) is blind or disabled; or

"(3) is a single head of household and receives at least one-half of the person's income from the allotment or quota.

For the purposes of the proviso to the preceding sentence, when there are more than one holder of record of the allotment or quota, if one-half or more of such holders meet one or more of the criteria under such proviso, such proviso shall apply to the allotment or quota.".

COST-SHARING FOR SOIL CONSERVATION MEASURES AND TIMBER STAND RESEEDING EXPENSES

SEC. **8.

(a) The Secretary of Agriculture shall make available—

(1) cost-sharing payments under the agricultural conservation program to producers in natural disaster areas for conservation measures designed to prevent anticipated soil erosion due to loss of vegetative cover; and

(2) cost-share payments under the forestry incentives program to forest landowners in natural disaster areas for the reestablishment of stands of pine trees lost to drought conditions.

(b) The Secretary shall share not less than 50 per centum of the cost of such measures or reestablishment of timber stands; and such cost-share payments shall be made in kind, as provided in section **9 (a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation.

(c) Payments made under this section shall be in addition to, and not in lieu of, payments made under the Soil Conservation and Domestic Allotment Act or the Corporative Forestry Assistance Act of 1978 using funds appropriated for such purposes.

(d) Assistance under this section shall be made available to persons in natural disaster areas during the period beginning 15 days after the date of enactment of this Act and ending March 30, 1987.

PAYMENTS

SEC. **9. Notwithstanding any other provisions of law:

(a)(1) In making in-kind payments under section **4(a)(1), **5, or **8,

or subsection (c) of this section, the Secretary of Agriculture may—

(A) acquire and use commodities that have been pledged to the Commodity Credit Corporation as security for price support loans under the Agricultural Act of 1949, including loans made to producers under section 110 of such Act; and

(B) use other commodities owned by the Commodity Credit Corporation.

(2) The Secretary may make in-kind payments by—

(A) if requested by the producer, delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; or

(B)(i) the transfer of negotiable warehouse receipts;

(ii) the issuance of negotiable certificates that the Commodity Credit Corporation shall redeem for a commodity in accordance with regulations prescribed by the Secretary; or

(iii) such other methods as the Secretary determines appropriate to enable the producer to receive such payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

(b) In carrying out this section and section **3, the Secretary, to the maximum extent practicable, shall use Commodity Credit Corporation commodities stored in storage deficient areas such as the midwestern United States.

(c) Transportation cost payments made under section **3(b)(2) or **4(a)(3) of this Act may be made in kind, as provided in subsection (a), using surplus stocks of commodities held by the Commodity Credit Corporation, or in cash.

(d) The Secretary of Agriculture shall assist recipients of in-kind payments in marketing warehouse receipts, certificates, or other documents representing such in-kind payments.

CREDIT FORBEARANCE

SEC. **10. It is the sense of Congress that, with respect to farm borrowers who are adversely affected by natural disaster conditions in calendar year 1986—

(1) the Secretary of Agriculture should exercise the authority provided under section 331A of the Consolidated Farm and Rural Development Act and instruct the Farmers Home Administration to defer loan repayments and forgo foreclosures in cases where such farm borrowers are unable to make loan payments in * * *.

(2) the lending institutions of the Farm Credit System and commercial lending institutions are encouraged, insofar as practicable, to adopt lenient lending, forbearance, and foreclosure policies, and to the maximum extent possible participate and cooperate with Federal and State lenders in assistance programs, with respect to such borrowers who are under financial stress due to no fault of their own.

COORDINATION OF ASSISTANCE EFFORTS

SEC. **11. It is the sense of Congress that, with respect to the provision of Federal assistance to farmers and ranchers in natural disaster areas, the Secretary of Agriculture should take steps immediately to—

(1) establish an overall coordinating mechanism within the Department of Agriculture to ensure that the assistance provided by each agency within the Executive Branch is coordinated with, and complements, the assistance provided by other agencies;

(2) ensure that Government and voluntary agencies, and the farmers and ranchers, in each natural disaster area are provided a single contact person or unit for Federal assistance, and that a similar such Federal contact person or unit is provided for Government and voluntary agencies, farmers and ranchers, and other persons outside natural disaster areas who wish to contribute additional assistance to natural disaster areas; and

(3) consult with the Governor, Secretary of Agriculture (or comparable official), and the State disaster relief agency in each State in which a natural disaster area is located, on the disaster assistance needs of farmers and ranchers located in the State.

TITLE—RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS LOANS.

SEC. -. PREPAYMENT OF FEDERAL FINANCIAL BANK LOANS

In the case of a borrower of a loan made by the Federal Financing Bank, and guanteed by the Administrator of the Rural Electrification Administration, under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936) that is outstanding on the date of enactment of this Act, the borrower may prepay any loan advance by payment of the outstanding principal balance due on the loan advance using private capital, at repayment terms agreeable to the REA borrower, with the existing loan guarantee, which shall be fully transferable and assignable without condition and remain available for the remainder of the term originally agreed to by REA. No sums in addition to payment of such balance shall be charged as the result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund established under section 301 of such Act (7 U.S.C. 931), or the Rural Electrification Administration. To qualify for prepayment, the board of directors of the borrower shall certify that prepayment savings will be passed on to its customers, or be used to make debt service or other payments in cases of financial hardship, or to aviod future rate increases. Regulations under this provision shall be issued and become effective within 30 days of enactment of this Act and shall implement the intention of Congress to: (1) facilitate prepayment: (2) provide for full processing of each prepayment request within 30 days of its submission to REA: and (3) impose no restrictions, except as specifically provided for in this Act, which increase the cost to borrowers of obtaining private capital for prepayment, or which inhibit the ability of the borrower to

enter into prepayment arrangements pursuant to this Act.

TITLE —RESEARCH ON EXTERNAL COMBUSTION ENGINES

SEC.—. Section 4 (m) of the Commodity Credit Corporation Act is amended at the end thereof by adding a new sentence as follows: "During fiscal year 1987, the Corporation shall use not more than 10,000,000 worth of surplus agricultural commodities owned by the Corporation in establishing and carrying out a research and development program on external combustion engines under this subsection: *Provided*, That to the extent that funding is made available from private sources to finance such program, the Corporation shall provide not less than twice that value in the form of Corporation-owned commodities.".

TITLE * * a—AGRICULTURAL LOAN INTEREST SUBSIDY PROGRAM

SEC. 101. DEFINITIONS.

As used in this title:

(1) BORROWER.—The term "borrower" means a person who meets the eligibility criteria prescribed in section 103.

(2) LENDER.—The term "lender" means a commercial bank, savings and loan association, credit union, insurance company, or institution, including a subsidiary or affiliate thereof, that—

(A) has agreed to participate in the interest subsidy program; and

(B) has been approved for participation in the interest subsidy program by the appropriate State agency.

SEC. 102. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a Federal-State-Lender cooperative agricultural loan interest subsidy program under which, at the request of a State, borrowers and lenders within the State may participate in the interest subsidy program in accordance with this title.

(b) CONSULTATION.—The Secretary shall establish the interest subsidy program in consultation and cooperation with the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Federal Reserve Board, the Chairman of the Farm Credit Administration, the Chairman of the Federal Deposit Insurance Corporation, and each State agency.

SEC. 103. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by a lender for agricultural purposes that is outstanding on April 1, 1986;

(3) during the period beginning on the date of the approval of a State plan under section 106 and ending September 30, 1987—

(A) be delinquent in the payment of principal or interest, or both, on the loan; or

(B) demonstrate to the lender that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower will be temporarily unable, without assistance provided under this Act, to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years;

(6) have a debt ot asset ratio of at least 40 percent;

(7) have an ability to repay the loan, based on past performance as a capable producer and assistance to be provided under this Act; and

(8) not produce an agricultural commodity on highly erodible land or converted wetland in violation of section 1211 or 1221 of the Food Security Act of 1985 (16 U.S.C. 3811 or 3821).

SEC. 104. INTEREST SUBSIDIES.

(a) APPLICATIONS.—During the period beginning on the date of the approval of a State plan by the Secretary under section 106 and ending September 30, 1987, a borrower may apply to a lender for an interest subsidy for any agricultural loan made by the lender to the borrower that is outstanding on April 1, 1986.

(b) INTEREST SUBSIDIES.—If a borrower of a loan applies to a lender for an interest subsidy in accordance with subsection (a), the lender determines that the borrower meets the eligibility criteria prescribed in section 103, and the lender agrees to participate in the interest subsidy program, subject to this section, not later than 90 days after receipt of the application, the loan shall be restructed in such a manner that the interest rate payable by the borrower shall be fixed for a period of 3 years or the remaining term of the loan, whichever is less, at a rate equal to the interest rate of the loan on April 1, 1986, less up to 5 percentage points.

(c) PAYMENT OF SUBSIDIES.—If an interest subsidy is provided for a loan made by a lender to a borrower in a State—

(1) the Secretary shall pay 2 percentage points of the subsidy by making payments through the State agency to the lender;

(2) if the State elects to make such payments, the State may pay not less than 1 percentage point and not more than 2 percentage points of the subsidy by making payments to the lender; and

(3) the lender shall—

(A) pay 1 percentage point of the subsidy; or

(B) cancel at least 15 percent of the principal due on the loan.

(d) TERM OF LOAN.—The term of any loan for which an interest subsidy is provided under this section shall not be less than the term of the loan outstanding before the subsidy is provided.

(e) SCHEDULE OF PAYMENTS.—The schedule of payments on a restructured loan shall be established in accordance with the ability of the borrower to repay the loan.

(f) ACCRUED INTEREST.—Interest accrued on a restructured loan prior to restructuring shall not be capitalized but shall be paid by the borrower to the lender prior to any retirement of principal under the loan as restructured in accordance with this title.

(g) REPAYMENT.—Any balance of principal and interest outstanding on any restructured loan shall be repaid at a rate that is agreed on by the lender and borrower, except that the rate of interest on the loan may not exceed the standard rate charged by the lender on loans with comparable maturities for similar purposes at the time the loan is restructured.

(h) MAXIMUM AMOUNT OF ASSISTANCE.—The aggregate outstanding amount of loan principal for which an interest subsidy may be provided under this title may not exceed—

(1) in the case of a loan made to an individual, $400,000; and

(2) in the case of a loan made to a family corporation or family partnership, $600,000.

SEC. 105. PAYMENTS TO STATES.

(a) IN GENERAL.—From sums available pursuant to section 403 and subject to subsection (b) and section 106, the Secretary shall pay to each State for each of the fiscal years ending September 30, 1987, through September 30, 1990, an amount equal to the sum of—

(1) the amount necessary to finance the share of interest subsidies provided to borrowers residing in the State that is required to be paid by the Secretary under section 104(c)(1); and

(2) 100 percent of the administrative expenses that are incurred by the State agency in carrying out this title and are approved by the Secretary.

(b) MAXIMUM AMOUNT OF PAYMENTS.—The aggregate amount payment paid by the Secretary of States under subsection (a) for a fiscal year may not exceed $600,000,000.

SEC. 106. STATE PLANS.

(a) IN GENERAL.—To be eligible to participate in the interest subsidy program during a fiscal year, a State must—

(1) submit a plan to the Secretary for the fiscal year; and

(2) receive the approval the Secretary for the plan.

(b) PLAN REQUIREMENTS.—To receive the approval of the Secretary for a plan, a State must submit a plan that—

(1) designates a single agency that shall be responsible for the administration, or the supervision of the administration, of the interest subsidy program in the State;

(2) assesses the interest subsidy needs of borrowers residing in the State;

(3) describes the interest subsidy program established in the State (including any agencies designated to provide a subsidy under such program), which program must meet such requirements as the Secretary may prescribe;

(4) estimates the amount of funds necessary to provide interest subsidies under the program and related administrative expenses, except that such amount may not exceed the amount allocated by the Secretary for payment to the State out of the total amount available for payment under section 105;

(5) requires any lender participating in the interest subsidy program to provide to any borrower who is delinquent in the payment of principal or interest, or both, due on a loan during the period referred to in section 104(a) prompt written notice that describes the assistance available under this title and any deadlines for application for the assistance; and

(6) includes such other information as the Secretary may require.

(c) APPROVAL OF PLANS.—(1) The Secretary shall approve or disapprove a plan submitted by a State under subsection (b) not later than 45 days after the State submits the plan.

(2) The Secretary shall approve any plan that complies with subseciton (b).

(d) AUDITS.—(1) Each State agency shall—

(A) provide for an annual audit of expenditures made by the State agency in carrying out the interest subsidy program, not later than 60 days after the end of each year in which the program is conducted; and

(B) promptly report to the Secretary the findings of such audit.

(2) Not later than 60 days after the end of each year in which a State agency participates in the interest subsidy program, a State agency shall provide the Secretary with a statement that provides—

(A) a description of whether (and, if so, by how much) the payments received under section 105 for such year exceeded the expenditures by the State agency during such year; and

(B) such other information as the Secretary may require.

(e) DENIAL OR WITHHOLDING OF PAYMENTS.—(1) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, except as provided in paragraph (2), the Secretary shall—

(A) notify the appropriate State agency that payments will not be made to the State agency under section 105 for the year until the Secretary is satisfied that the State is complying with such subsection; and

(B) make no payments under section 105 until the Secretary is satisfied that the State is complying with such subsection.

(2) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, the Secretary may—

(A) suspend the denial of payments under paragraph (1) for such period as the Secretary determines is appropriate; and

(B) withhold payments of approved State administrative expenses incurred in providing assistance under the plan, in whole or in part, for the year,

until the Secretary is satisfied that the State is complying with such subsection, at which time such withheld payments shall be paid.

(3) If the Secretary finds that a State has substantially failed to comply with subsection (b) or (d), the Secretary may, in addition to or in lieu of any action taken under paragraph (1) or (2), refer the matter to the Attorney General with a request that the Attorney General seek injunctive relief to require compliance by the State. If the Attorney General brings a suit in an appropriate district court of the United States and makes a showing of substantial noncompliance, appropriate injunctive relief shall issue.

SEC. 107. REVIEW BY SECRETARY AND STATE AGENCIES.

(a) REVIEW AND TECHNICAL ASSISTANCE BY SECRETARY.—The Secretary—

(1) shall provide for review, and may provide for an audit, of the manner in which the interest subsidy program is carried out in a State; and

(2) may provide to States technical assistance in carrying out the program.

(b) REVIEW BY STATE AGENCIES.—A State agency may monitor the compliance of a lender with this title. Any lender that violates this title shall be ineligible to receive further payments under this title.

SEC. 108. NOTICE AND DETERMINATIONS OF ASSISTANCE.

A lender in a State participating in the interest subsidy program may not take any action as the result of a borrower defaulting on an outstanding loan made by such lender to a borrower unless the lender has—

(1) provided the borrower with the notice required under section 106(b)(5); and

(2) in the case of a borrower who has applied for assistance under this title, determined that the borrower does not meet the eligibility criteria prescribed in section 103.

SEC. 109. ASSISTANCE OF FEDERAL AND STATE AGENCIES.

(a) IN GENERAL.—To make assistance under this title available expeditiously and in a consistent and uninterrupted manner, the Secretary shall—

(1) use such funds, personnel, and facilities of the Department of Agriculture (including the Commodity Credit Corporation) as the Secretary considers necessary to carry out this title; and

(2) request other Federal or State agency to provide such funds, personnel, and facilities as the Secretary considers necessary to carry out this title.

(b) REIMBURSEMENT.—Any agency that provides advanced funds, personnel, or facilities under subsection (a) shall be fully reimbursed for such assistance as soon as is practicable from subsequent appropriations.

SEC. 110. PROGRAM INELIGIBILITY FOR PRODUCTION ON HIGHLY ERODIBLE LAND OR CONVERTED WETLAND.

(a) HIGHLY ERODIBLE LAND CONSERVATION.—Section 1211 of the Food Security Act of 1985 (16 U.S.C. 3811) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Farm Credit Assistance Act of 1986.".

(b) WETLAND CONSERVATION.—Section 1221 of the Food Security Act of 1985 (16 U.S.C. 3821) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Farm Credit Assistance Act of 1986.".

TITLE **B—FARM CREDIT SYSTEM INSTITUTION BORROWERS

Subtitle A—Farm Credit System Loan Restructuring Program

SEC. 201. DEFINITIONS.

As used in this subtitle:

(1) BORROWER.—The term "borrower" means a borrower of a loan made by an institution.

(2) CAPITAL CORPORATION.—The term "Capital Corporation" means the Farm Credit System Capital Corporation established under section 4.28A of the Farm Credit Act of 1971 (12 U.S.C. 2216).

(3) CHAIRMAN.—The term "Chairman" means the Chairman of the Farm Credit Administration Board designated under section 5.8(a) of the Farm Credit Act of 1971 (12 U.S.C. 2242(a)).

(4) COMMITTEE.—The term "committee" means a credit review committee selected from and by—

(A) the local board of directors of the institution from which a loan originated; or

(B) in the case of consolidated or merged institutions, members of a local advisory board elected by the stockholders served by the merged or consolidated institutions from which a loan originated.

(5) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan made by an institution and the value of collateral used to secure the loan, taking into consideration the lien position of the institution;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of institutions;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(6) LOAN.—The term "loan" means a loan made by an institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SEC. 202. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this subtitle, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by, and and a stockholder of, an institution who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the institution that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 203. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, an institution must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this subtitle.

SEC. 402. LOAN FORECLOSURE AND RESTRUCTURING.

If an institution determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this subtitle, in lieu of foreclosure, the institution shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 205. ADDITIONAL COLLATERAL.

An institution may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of principal or interest on the loan; or

(2) bring any action to foreclose on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of principal or interest on the loan at the time the additional collateral was required.

SEC. 206. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If an institution determines that a person does not meet the eligibility criteria prescribed in section 202, not later than 15 days after such determination, the institution shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If an institution determines that the cost of restructuring a loan in accordance with this subtitle exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the institution to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by an institution makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this subtitle; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(b) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by an institution to a borrower and the cost of restructuring the loan in accordance with this subtitle, the cost of the appraisal shall be borne by—

(A) the institution if the appraised cost of restructuring the loan in accordance with this subtitle is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this subtitle is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.—(1) If an institution determines that a borrower of a loan meets the eligibility criteria prescribed in section 202 and that the cost of restructuring the loan in accordance with this subtitle is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the institution determines is adequate to enable the borrower to make payments in accordance with section 204; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by an institution shall have the right to appear before a committee to contest a determination, amount, or action under this subtitle if—

(1) the institution and the borrower enter into an agreement under which the institution agrees to restructure the loan in accordance with this subtitle and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the institution does not restructure the loan in accordance with this subtitle; and

(3) THE BORROWER MAKES A WRITTEN REQUEST TO THE COMMITTEE TO CONTEST THE DETERMINATION, AMOUNT, OR action, as the case may be, not later than 30 days after the date by which the institution agreed to restructure the loan in accordance with this subtitle.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 207. REIMBURSEMENT FOR PRINCIPAL REDUCTION.

The Capital Corporation shall reimburse an institution for the amount of principal due on loans that is reduced by the institution under section 204 if the Chairman determines that such action is necessary to avoid the liquidation or insolvency of the institution.

SEC. 208. REPORT

Not later than 270 days after the date of enactment of this Act, the Chairman shall submit a report to Congress on the operation of this subtitle, including—

(1) an analysis of the impact of actions taken under this subtitle on losses suffered by institutions;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by institutions under this subtitle;

(4) the number and amount of loans restructured in accordance with this subtitle;

(5) the number of current and estimated future delinquencies before and after the expiration of this subtitle on loans made to borrowers; and

(6) the recommendations of the Chairman concerning reauthorization of this subtitle.

SUBTITLE B—FARM CREDIT SYSTEM REFORM

SEC. 211. ACCESS TO APPRAISALS.

Section 4.13A of the Farm Credit Act of 1971 (12 U.S.C. 2200) is amended to read as follows:

"SEC. 4.13A. ACCESS TO DOCUMENTS AND INFORMATION.—In accordance with regulations of the Farm Credit Administration, a System institution shall provide to each borrower of such institution—

"(1) at the time of execution of a loan, a copy of each document signed by the borrower;

"(2) at any time thereafter, on request, a copy of each document signed or delivered by the borrower;

"(3) at any time, on request, a copy of the articles of incorporation or charter and bylaws of the institution; and

"(4) at the time of execution of a loan and at any time thereafter, on request, a copy of each appraisal of the assets of the borrower.".

SEC. 212. HOMESTEAD PROTECTION.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.20 (12 U.S.C. 2208) the following new section:

"SEC. 4.21. HOMESTEAD PROTECTION.—If an institution forecloses a loan made by the institution or a borrower of a loan made by the institution declares bankruptcy or goes into voluntary liquidation to avoid foreclosure or bankruptcy, the institution is encouraged to permit the borrower to retain possession and occupancy of the principal residence of the borrower, and a reasonable amount of adjoining land, to maintain the family of the borrower.".

SEC. 213. INTEREST RATES ON CLASSIFIED LOANS.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.22 (as added by section 212) the following new section:

"SEC. 4.22. An institution of the Farm Credit System may not increase the interest rate on a loan made to a borrower that is outstanding on the date of enactment of the Farm Credit Assistance Act of 1986 as the result of the loan been classified as a risk or problem loan.".

SEC. 214. CERTIFICATION OF NEED FOR FINANCIAL ASSISTANCE.

Section 4.28J of the Farm Credit Act of 1971 (12 U.S.C. 2216i) is amended by inserting after "TREASURY.—" the following new sentence: "Not later than 60 days after the date of enactment of the Farm Credit Assistance Act of 1986, and each 90 days thereafter, the Farm Credit Administration shall determine whether the Farm Credit System is in need of financial assistance to address financial stress of System institutions.".

SEC. 215. OPERATING EXPENSES OF INSTITUTIONS.

Part D1 of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.28L (12 U.S.C. 2216k) the following new section:

"SEC. 4.28M. OPERATING EXPENSES OF INSTITUTIONS.—During the period beginning on date of enactment of the Farm Credit Assistance Act of 1986 and ending the later of September 30, 1990, or such time as the Secretary of the Treasury no longer holds any obligations issued by the Capital Corporation, the operating expenses of an institution of the Farm Credit System may not exceed the average cost of bonds issued by the System, plus 1 percent.".

SEC. 216. DISPOSITION AND LEASING OF FARMLAND.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.36 (12 U.S.C. 2219a) the following new section:

"SEC. 4.37. DISPOSITION AND LEASING OF FARMLAND.—(a) The Farm Credit Administration shall issue regulations for the disposition and leasing of farmland acquired by any institution of the Farm Credit System, including the Capital Corporation, (hereafter in this section referred to as an 'institution') in accordance with this section.

"(b) An institution shall to the extent practicable sell or lease farmland acquired under this Act in the following order of priority:

"(1) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

"(2) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.

"(c)(1) An institution shall not offer for sale or sell any such farmland if the placing of such farmland on the market will have a detrimental effect on the value of farmland in the area.

"(2) In selling such land, the institution shall give special consideration to a previous owner or operator of such land.

"(d)(1) An institution shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with subsection (e), a lease with an option to purchase farmland acquired under this act.

"(2) The Farm Credit Administration shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

"(3) In leasing such land, the institution shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the institution determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

"(4) To the extent an institution may lease or operate real property under this section, the institution shall, if the institution determines to administer such property through management contracts, offer the contracts on a competitive bid basis, giving preference to persons who will live in, and own and operate qualified small businesses in, the area where the property is located.

"(e)(1) An institution shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

"(2) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the local board of the institution shall, by majority vote, select the operator who may purchase such land.

"(f) If farmland is available for disposition under this section, the institution shall—

"(1) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; and

"(2) post an announcement of the availability of such farmland in a prominent place in the local office of the institution that serves the county in which the farmland is located.".

SEC. 217. STOCK PURCHASE REQUIREMENTS.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.37 (as added by section 216) the following new section:

"SEC. 4.38. STOCK PURCHASE REQUIREMENT.—A borrower must purchase stock in the Farm Credit System, in accordance with regulations issued by the Farm Credit Administration, to be eligible—

"(1) to obtain a loan from an institution of the Farm Credit System; or

"(2) to enter into an installment contract for the purchase of farmland acquired by the Farm Credit System.".

TITLE ** C—FARMERS HOME ADMINISTRATION BORROWERS

SEC. 301. DEFINITIONS.

As used in this title

(1) BORROWER.—The term "borrower" means a borrower of a loan who meets the eligibility criteria prescribed in the section 302.

(2) COMMITTEE.—The term "committee" means the appropriate county committee established under section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982).

(3) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan and the value of collateral used to secure the loan, taking into consideration the lien position of the Secretary;

(B) the estimated cost of maintaining a loan as a nonperformance asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of the Secretary;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and the ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(4) LOAN.—The term "loan" means a loan made by the Secretary under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

SEC. 302. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the Secretary that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 303. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, the Secretary must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this title.

SEC. 304. LOAN FORECLOSURE AND RESTRUCTURING.

If the Secretary determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this title, in lieu of foreclosure, the Secretary shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 305. ADDITIONAL COLLATERAL.

The Secretary may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of interest on the loan; or

(2) bring any action to foreclosure on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of interest on the loan at the time the additional collateral was required.

SEC. 306. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If the Secretary determines that a person does not meet the eligibility criteria prescribed in section 302, not later than 15 days after such determination, the Secretary shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If the Secretary determines that the cost of restructuring a loan in accordance with this title exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the Secretary to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by the Secretary makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructur-

ing the loan in accordance with this title; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(B) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by the Secretary to a borrower and the cost of restructuring the loan in accordance with this title, the cost of the appraisal shall be borne by—

(A) the Secretary if the appraised cost of restructuring the loan in accordance with this title is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this title is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.— (1) If the Secretary determines that a borrower of a loan meets the eligibility criteria prescribed in section 302 and that the cost of restructuring the loan in accordance with this title is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the Secretary determines is adequate to enable the borrower to make payments in accordance with section 304; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or the method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by the Secretary shall have the right to appear before a committee to contest a determination, amount, or action under this title if—

(1) the Secretary and the borrower enter into an agreement under which the Secretary agrees to restructure the loan in accordance with this title and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the Secretary does not restructure the loan in accordance with this title; and

(3) the borrower makes a written request to the committee to contest the determination, amount, or action, as the case may be, not later than 30 days after the date by which the Secretary agreed to restructure the loan in accordance with this title.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 307. REPORT.

Not later than 270 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the operation of this title, including—

(1) an analysis of the impact of actions taken under this title on losses suffered by the Secretary;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by the Secretary under this title;

(4) the number and amount of loans restructured in accordance with this title;

(5) the number of current and estimated future delinquencies before and after the expiration of this title on loans made to borrowers; and

(6) the recommendations of the Secretary concerning reauthorization of this title.

SEC. 308. ALTERNATIVE CROP LOAN PROGRAM.

The Consolidated Farm and Rural Development Act is amended by inserting after section 352 (7 U.S.C. 2000) the following new section:

"SEC. 353. (a) For purposes of this section, the term 'alternative crop' means any agricultural operation (including acquaculture and livestock production) conducted by an applicant if—

"(1) there is no substantial history of such operation in the area in which the applicant resides; and

"(2) the applicant has derived from such operation not more than 20 percent of the gross annual income of the applicant during any of the 5 preceding taxable years.

"(b) In addition to the purposes prescribed in sections 303 and 312, the Secretary may make and insure, or guarantee, real estate and operating loans under subtitles A and B, respectively, to farmers and ranchers in the United States for the production of alternative crops.

"(c)(1) Subject to paragraph (2), to be eligible to obtain a loan or loan guarantee for a real estate or operating loan for the production of an alternative crop, a person must—

"(A) meet the eligibility requirements prescribed for a real estate loan under section 302 or an operating loan under section 311, respectively; and

"(B) submit to, and receive the approval of, the Secretary for a 5-year plan of projected production and income from the proposed alternative crop.

"(2) In determining eligiblity for a loan or loan guarantee under this section, the Secretary shall consider training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operation, whether or not such training or experience is in the production of an alternative crop.

"(d) The Secretary may enter into a multiyear commitment to provide a loan or loan guarantee under this section for a term, of not to exceed 3 years, that is consistent with the nature of the alternative crop operation.".

TITLE **D—MISCELLANEOUS PROVISIONS

SEC. 401. INTER-AGENCY AGRCULTURAL TASK FORCE.

"(a) ESTABLISHMENT.—In light of the severe economic problems confronted by many agricultural banks and the regulatory responsibilities of bank regulatory agencies, not later than 30 days after the date of enactment of this Act, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Reserve System shall develop an Inter-Agency Agricultural Task Force to assist commercial agricultural banks and the borrowers of the banks to resolve present economic problems and to facilitate commercial bank lending to agriculture in the future.

"(b) DUTIES.—The Inter-Agency Task Force shall—

(1) review existing regulations and policies to facilitate agricultural lending;

"(2) cooperate with field office personnel to avoid conflicts and inconsistencies between the agencies; and

"(3) consider meaningful alternatives to assist commercial banks in providing agricultural financing through regulatory or statutory changes, including accounting changes, interest rate buy-downs, or other similar methods for assisting banks.

"(c) REPORTS.—Not later than 6 months after the date of enactment of this Act, and semiannually thereafter, the Inter-Agency Task Force shall report its findings and recommendations in carrying out this section to—

"(1) the Committee on Agriculture of the House of Representatives;

"(2) the Committee on Agriculture, Nutrition, and Forestry of the Senate;

"(3) the Committee on Banking, Finance and Urban Affairs of the House of Representatives; and

"(4) the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 402. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Secretary and the Farm Credit Administration shall issue such regulations as are necessary to carry out provisions of this Act under their jurisdiction.

SEC. 403. GENERAL DEFINITIONS.

As used in titles **a through **d of this Act—

(1) INSTITUTION.—The term "institution" means an institution of the Farm Credit System described in section 1.2 of the Farm Credit Act of 1971 (12 U.S.C. 2002).

(2) INTEREST SUBSIDY PROGRAM—The term "interest subsidy program" means the Federal-State-Lender cooperative agricultural loan interest subsidy program established under title **a.

(3) FCS LOAN RESTRUCTURING PROGRAM—The term "FCS loan restructuring program" means the restructuring program established under subtitle A of title **b for loans made by institutions if the Farm Credit System.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(5) STATE—The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or (to extent the Secretary determines it is feasible and appropriate) the Trust Territory of the Pacific Islands.

(6) STATE AGENCY.—The term "State agency" means the agency designated by a State under section 106(b)(1) of this Act to carry out the interest subsidy program in the State.

(7) The term "this Act" means titles **a through **d of this resolution.

SEC. 404. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to out this Act.

SEC. 105. TERMINATION DATE.

Except as otherwise provided in this Act, the authority granted by this Act shall terminate 3 years after the date of enactment of this Act.

SEC. 106. SHORT TITLE.

Titles **a through **d of this resolution may be cited as the "Farm Credit Assistance Act of 1986".

TITLE .—FARM CREDIT SYSTEM

SEC. . TREATMENT OF CERTAIN FARM CREDIT ASSOCIATIONS.

Section 5.17(a)(2) of the Farm Credit Act of 1971 is amended by striking out in line 2 "; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this Act at a rate higher than that charged like associations in the district or (ii) discriminated against in the provision of any financial service and assistance" and insert in lieu thereof the following: ". The Farm Credit Administration shall ensure that disapproving associations (i) shall not be charged any assessment under this Act at a rate higher than that charged other like associations in the district and (ii) shall be provided, on the same basis as like associations in the district, financial services and assistance".

TITLE .—SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS OF 1986

Subtitle I—Reauthorization of Child Nutrition Programs

SEC. 101. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

Section 13(p) of the National School Lunch Act (42 U.S.C. 1761(p)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 102. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 103. STATE ADMINISTRATIVE EXPENSES.

Section 7(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 104. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (c)(2), by striking out "Subject to" and all that follows through "1984" and inserting in lieu thereof "Subject to amounts appropriated to carry out this section under subsection (g)";

(2) in subsection (g)—

(A) by designating the first and second sentences as paragraphs (1) and (3), respectively; and

(B) by amending paragraph (1) (as so designated) to read as follows:

"(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for each of the fiscal years ending September 30, 1987, and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989."; and

(3) in subsection (h)(2), by striking out "1984" and inserting in lieu thereof "1989".

SEC. 105. NUTRITION EDUCATION AND TRAINING PROGRAM.

The first sentence of section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SUBTITLE II—School Lunch and Breakfast Programs

SEC. 201. BASIS OF COMMODITY ASSISTANCE.

Section 6(b) of the National School Lunch Act (42 U.S.C. 1755(b)) is amended—

(1) in the first sentence, by striking out "May 15" and inserting in lieu thereof "June 1"; and

(2) in the second sentence, by striking out "June 15" and inserting in lieu thereof "July 1".

SEC. 202. INCLUSION OF WHOLE MILK AS A SCHOOL LUNCH BEVERAGE.

Effective July 1, 1986, section 9(a) of the National School Lunch Act (42 U.S.C. 1758(a)) is amended—

(1) by designating the first, second, and third sentences as paragraphs (1), (3), and (4), respectively; and

(2) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.".

SEC. 203. AUTOMATIC ELIGIBILITY FOR CERTAIN PROGRAMS.

Effective July 1, 1986, section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is a member of—

"(i) a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

"(ii) an AFDC assistance unit (under the aid to families with dependent children program authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)), in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))).

"(B) Proof of receipt of food stamps or aid to families with dependent children shall be sufficient to satisfy any verification requirement imposed under paragraph (2)(C).".

SEC. 204. LIMITATION ON MEAL CONTRACTING.

Effective July 1, 1986, section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end thereof the following new subsection:

"(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced-price, and full-price reimbursable meals to all eligible children.".

SEC. 205. CHANGE IN TUITION LIMITATION FOR PRIVATE SCHOOLS.

(a) SCHOOL LUNCH PROGRAMS.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(b) SCHOOL BREAKFAST PROGRAMS.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(c) APPLICATION.—(1) The amendments made by subsections (a)(1) and (b)(1) shall apply for the fiscal year beginning on October 1, 1986, and each school year thereafter.

(2) The amendments made by subsections (a)(2) and (b)(2) shall apply for the school year beginning on July 1, 1988, and each school year thereafter.

SEC. 206. USE OF SCHOOL LUNCH FACILITIES FOR ELDERLY PROGRAMS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end thereof the following new subsection:

"(i) Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).".

SEC. 207. PILOT PROJECTS FOR ADMINISTRATION OF CHILD NUTRITION PROGRAMS BY CONTRACT OR DIRECT DISBURSEMENT

(a) PILOT PROJECTS.—Section 20 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for schools, institutions, or service institutions referred to in section 10 of this Act and section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774).".

(b) CONFORMING AMENDMENT.—The first sentence of section 20(c) of the National School Lunch Act is amended by striking out "except for the pilot projects conducted under subsection (d) of this section,".

SEC. 208. DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS.

(a) SCHOOL LUNCHES.—Section 22(d) of the National School Lunch Act (42 U.S.C. 1769b(d)) (as added by section 1408(a) of the Education Amendments of 1978 (92 Stat. 2368)) is amended by striking out "and for" and all that follows through "reduced-price lunch".

(b) SCHOOL BREAKFASTS.—Section 20(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1789) is amended by striking out "and for" and all that follows through "reduced-price breakfast".

SEC. 209. RESTORATION OF CERTAIN KINDERGARTENS TO THE SPECIAL MILK PROGRAM.

Effective October 1, 1986, section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after the subsection designation;

(B) by redesignating clauses (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) in subparagraph (A) (as so redesignated), by inserting "except as provided in paragraph (2)," after "and under,";

(2) by designating the second though eighth sentences as paragraphs (3) through (9), respectively; and

(3) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized uner this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.).".

SEC. 210. IMPROVEMENT OF BREAKFAST PROGRAM MEAL PATTERN.

(a) ADDITIONAL ASSISTANCE.—Effective October 1, 1986, section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended by adding at the end thereof the following new paragraphs:

"(3) The Secretary shall increase by 3 cents the annually adjusted payment for each breakfast served under this Act and section 17 of the National School Lunch Act (42 U.S.C. 1766). These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

"(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the National School Lunch Act.

"(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).".

(b) NUTRITION REQUIREMENTS.—(1) The Secretary of Agriculture shall review and revise the nutrition requirements for meals served under the breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and section 17 of the National School Lunch Act (42 U.S.C. 1766) to improve the nutritional quality of the meals, taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local food authorities.

(2) Not later than 180 days after the date of enactment of this title, the Secretary of Agriculture shall promulgate regulations to implement the revisions.

SEC. 211. EXTENSION OF OFFER VERSUS SERVE PROVISION TO THE SCHOOL BREAKFAST PROGRAM.

Section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.".

SEC. 212. STAFFING STANDARDS.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as amended by section 103) is further amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively.

Subtitle III—Special Supplemental Food Program for Women, Infants, and Children

SEC. 301. COSTS FOR NUTRITION SERVICES AND ADMINISTRATION.

(a) DEFINITIONS.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(3) by inserting after paragraph (3) (as so redesignated) the following new paragraph:

"(4) 'Costs for nutrition services and administration' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.".

(b) CONFORMING AMENDMENTS.—Section 17 of such Act is amended—

(1) by striking out "administrative funds" each place it appears in subsections (f)(11), (h)(2), (h)(3), and (h)(4) and inserting in lieu thereof "funds for nutrition services and administration"; and

(2) by striking out "administrative costs" each place it appears in subsection (h) and inserting in lieu thereof "costs for nutrition services and administration".

SEC. 302. STATE ELIGIBILITY FOR WIC FUNDS.

(a) ELIGIBILITY.—Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)) is amended by adding at the end thereof the following new paragraph:

"(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this title.

SEC. 303. PARTICIPATION REPORT.

(a) BIENNIAL REPORT.—Section 17(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)) is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary shall report biennially to Congress on—

"(A) the income and nutritional risk characteristics of participants in the program;

"(B) participation in the program by members of families of migrant farmworkers; and

"(C) such other matters relating to participation in the program as the Secretary considers appropriate.".

(b) USE OF EVALUATION FUNDS FOR REPORT.—Section 17(g)(3) of such Act (as amended by section 104(2)(A)) is further amended by inserting "preparing the report required under subsection (d)(4)," after "health benefits,".

SEC. 304. PLAN OF OPERATION AND ADMINISTRATION.

(a) PLAN.—Paragraph (1) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)) is amended to read as follows:

"(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

"(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

"(C) The plan shall include—

"(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

"(ii) a description of the financial management system of the State agency;

"(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, and maternal and child health care programs;

"(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

"(v) a plan to expend funds to carry out the program during the relevant fiscal year;

"(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

"(vii) a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

"(viii) such other information as the Secretary may require.

"(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

"(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note)."

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1987, and each fiscal year thereafter.

SEC. 305. PUBLIC COMMENT.

Paragraph (2) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(2)) is amended to read as follows:

"(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.".

SEC. 306. AVAILABILITY OF PROGRAM BENEFITS.

Paragraph (8) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(8)) is amended to read as follows:

"(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas).

"(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

"(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.".

SEC. 307. REPAYMENT OF CERTAIN BENEFITS BY RECIPIENTS.

Effective October 1, 1986, section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end thereof the following new paragraph:

"(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.".

SEC. 308. PRIORITY FUNDS FOR WIC MIGRANT PROGRAMS.

(a) PRIORITY FUNDING.—Effective October 1, 1986, section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) (as amended by section 104(2)(A)) is further amended by inserting after paragraph (1) the following new paragraph:

"(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.".

(b) ACCOUNTABILITY.—To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 (as added by Subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this title.

SEC. 309. IMPROVING STATE AGENCY ADMINISTRATIVE SYSTEMS.

Section 17(g)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(3)) (as amended by sections 104(2)(A) and 303(b)) is further amended by inserting "providing technical assistance to improve State agency administrative systems," after "subsection (d)(4),".

SEC. 310. PAPERWORK REDUCTION.

Section 17(h)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall limit to a minimal level any documentation required under the preceding sentence.".

SEC. 311. ALLOCATION STANDARDS.

Section 17(h)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(3)) is amended—

(1) in the second sentence, by striking out ", which satisfy allocation guidelines established by the Secretary"; and

(2) by striking out the last sentence.

SEC. 312. ADVANCE PAYMENTS.

Effective October 1, 1986, section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended by striking out "shall" and inserting in lieu thereof "may".

SEC. 313. AVAILABILITY OF FUNDS.

(a) AVAILABILITY.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) (as so designated) the following new paragraph:

"(3)(A) Notwithstanding paragraph (2)—

"(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; or

"(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

"(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.".

(b) APPLICATION.—Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this title.

Subtitle IV—Other Nutrition Programs

SEC. 401. HEARINGS ON FEDERAL AUDIT ACTIONS UNDER THE CHILD CARE FOOD PROGRAM.

Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraph (2), the"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

"(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.".

SEC. 402. BASIS FOR NUTRITION EDUCATION GRANTS.

Section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "$75,000" each place it appears and inserting in lieu thereof "$50,000".

SEC. 403. EXTENSION OF ALTERNATIVE MEANS OF ASSISTANCE.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end thereof the following new subsection:

"(g)(1) As used in this subsection, the term 'eligible school district' has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

"(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

"(3)(A) On request of a participating school district (and after consultation with the Comptroller General of the United States with respect to accounting procedures used to determine any losses) and subject to the availability of funds, the Secretary shall provide cash compensation to an eligible school district for losses sustained by the district as a result of the alteration of the methodology used to conduct the study referred to in section 1581(a) of such Act during the school year ending June 30, 1983.

"(B) There are authorized to be appropriated $50,000 to carry out this paragraph, to be available without fiscal year limitation.".

SEC. 404. NATIONAL DONATED COMMODITY PROCESSING PROGRAMS.

In accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.

Subtitle V—Technical Corrections

SEC. 501. OBSOLETE PROVISIONS.

(a) NUTRITION PROGRAM STAFF STUDY; TRUST TERRITORY APPROPRIATIONS.—(1) Sections 18 and 19 of the National School Lunch Act (42 U.S.C. 1767 and 1768) are repealed.

(2) The first sentence of section 3 of such Act (42 U.S.C. 1752) is amended by striking out "sections 13, 17, and 19" and inserting in lieu thereof "sections 13 and 17".

(b) STUDY OF MENU CHOICE.—Section 22 of such Act (42 U.S.C. 1769c) (as added by section 9 of the Child Nutrition Amendments of 1978 (92 Stat. 3623)) is repealed.

(c) CONFORMING AMENDMENTS.—(1) The National School Lunch Act (as amended by sections 207 and 208(a) and subsection (b)) is further amended by redesignating sections 20, 21, and 22 (42 U.S.C. 1769, 1769a, and 1769b) as sections 18, 19, and 20, respectively.

(2) Clause (3) of the first sentence of section 6(a) of such Act (42 U.S.C. 1755(a)) is amended by striking out "section 20" and inserting in lieu thereof "section 18".

SEC. 502. OBSOLETE REFERENCES TO HEALTH, EDUCATION, AND WELFARE.

(a) REFERENCES IN NATIONAL SCHOOL LUNCH ACT.—Clause (1) of the sixth sentence of section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(b) REFERENCES IN CHILD NUTRITION ACT OF 1966.—(1) The Child Nutrition Act of 1966 is amended by striking out "Health, Education, and Welfare" each place it appears in section 4(a) (42 U.S.C. 1773(a)), subsections (b)(6), (b)(13), (e)(2), (k)(1), and (k)(2) of section 17 (42 U.S.C. 1786), and subsections (d)(2) and (d)(3) of section 19 (42 U.S.C. 1788) and inserting in lieu thereof "Health and Human Services".

(2) Section 19(j)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(3)) is amended by striking out "Office of Education of the Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Education".

SEC. 503. CONFORMING AMENDMENTS.

(a) DEFINITION OF SECRETARY.—Section 12(d) of the National School Lunch Act (42 U.S.C. 1760(d)) is amended by adding at the end thereof the following new paragraph:

"(8) 'Secretary' means the Secretary of Agriculture.".

(b) REDESIGNATION OF SUBSECTION.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) (as amended by sections 105, 402, and 502(b)(2)) is further amended by redesignating subsection (j) as subsection (i).

BOREN (AND OTHERS) AMENDMENT NO. 3101

Mr. BOREN (for himself, Mr. BUMPERS, Mr. LEVIN, Mr. PRYOR, and Mr. HEFLIN) proposed an amendment to amendment No. 3100 proposed by Mr. BOREN (and others) to the joint resolution (H.J. Res. 738), supra, as follows:

Beginning with line 4 on page 2 of the pending amendment, strike out everything down through the end of the amendment, and insert in lieu thereof the following:

SEC. . RESTITUTION PAYMENTS TO CATTLE PRODUCERS.

(a) With funds or commodities held by the Commodity Credit Corporation, the Secretary shall pay to each producer who owned one or more cattle prior to March 28, 1986 and who sold one or more cattle in the period beginning on March 28, 1986, and ending on June 30, 1986, for any purpose other than breeding, an amount equal to the product of $6.00 per hundredweight and the live weight (measured in hundredweights) of such cattle at the time of such sale.

(b) SUBMISSION OF CLAIMS FOR PAYMENT.—(1) A producer shall be ineligible to receive a payment under this Act if such producer fails to submit a claim for such payment to the Secretary before April 1, 1987.

(2) Claims for payment under section 2 shall be submitted to the Secretary in such form, and with such evidence, as the Secretary may require by rule, including—

(A) a bill of sale for cattle or

(B) a brand inspection document issued by a State or the United States showing evidence of sale of cattle, or

(C) other documentation showing evidence of sale of cattle.

(3) Not later than July 1, 1987, the Secretary shall inform each producer who submits a claim for such payment whether the Secretary will pay or dispute the claim of such producer.

(c) DETERMINATION OF DISPUTED CLAIMS.—If any producer who submits a claim for payment under section (a) objects to—

(1) the amount paid with respect to such claim, or

(2) the denial of such claim,

by the Secretary, then such producer shall give written notice of such objection to the Secretary not later than 60 days after such producer receives such payment or the Secretary informs such producer of the denial of such claim, as the case may be. Not later than 60 days after receiving such notice, the Secretary shall determine the validity of such claim after a hearing on the record.

(d) JUDICIAL REVIEW.—Any producer aggrieved by a determination under subsection (c) made by the Secretary may obtain review of such determination by filing a civil action in an appropriate district court of the United States not later than 30 days after such producer receives notice of such determination. As part of the Secretary's answer, the Secretary shall file in such court a certified copy of the record upon which the determination complained of is based.

(2) The district courts of the United States shall have jurisdiction to review any determination made under subsection (c) by the Secretary.

(e) For purposes of this section—

(1) the term "cattle" includes steers, bulls, cows, heifers, and calves,

(2) the term "producer" means any person, or group of persons, that owns or acquires ownership of any cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of such cattle is a sales commission, handling fee, or other service fee,

(3) the term "Secretary" means the Secretary of Agriculture, and

(4) the term "sold" means exchanged for value, in cash or in kind, for slaughter or otherwise.

(f) This section shall be effective on October 10, 1986.

SEC. . PAYMENT OF INDEMNITY FOR CATTLE CONTAMINATED BY HEPTACHLOR.

(a) PAYMENT OF INDEMNITY FOR CERTAIN LOSSES.—With funds and commodities held by the Commodity Credit Corporation, the Secretary of Agriculture shall indemnify a producer for economic loss resulting from—

(1) a quarantine imposed by the Department of Agriculture on cattle owned by such producer, or

(2) slaughter of cattle owned by such producer, carried out because such cattle were contaminated by heptachlor in the period beginning on January 1, 1986, and ending on March 31, 1986, in the State of Oklahoma, the State of Arkansas, or the State of Missouri.

(b) ADMINISTRATIVE PROVISIONS.—

(1) SUBMISSION OF CLAIMS FOR INDEMNITY.—(A) A producer shall be ineligible to receive indemnity under subsection (a) if such producer fails to submit a claim for such indemnity to the Secretary before April 1, 1987.

(B) Claims for indemnity under subsection (a) shall be submitted to the Secretary in such form, and with such evidence, as the Secretary may require by rule.

(C) Not later than July 1, 1987, the Secretary shall inform each producer who submits a claim for such indemnity whether the Secretary will pay or dispute the claim of such producer.

(2) DETERMINATION OF DISPUTED CLAIMS.—If any producer who submits a claim for indemnity under subsection (a) objects to—

(A) the amount paid with respect to such claim, or

(B) the denial of such claim,

by the Secretary, then such producer shall give written notice of such objection to the Secretary not later than 60 days after such producer receives such indemnity or the Secretary informs such producer of the denial of such claim, as the case may be. Not later than 60 days after receiving such notice, the Secretary shall determine the validity of such claim after a hearing on the record.

(3) JUDICIAL REVIEW.—Any producer aggrieved by a determination under paragraph (2) made by the Secretary may obtain review of such determination by filing a civil action in an appropriate district court of the United States not later than 30 days after such producer receives notice of such determination. As part of the Secretary's answer, the Secretary shall file in such court a certified copy of the record upon which the determination complained of is based.

(4) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States shall have jurisdiction to review any determination made under paragraph (2) by the Secretary.

(c) DEFINITIONS.—For purposes of this Act—

(1) the term "cattle" includes steers, bulls, cows, heifers, and calves,

(2) the term "producer" means any person, or group of persons, that owns or acquires ownership of any cattle, and

(3) the term "Secretary" means the Secretary of Agriculture.

(d) EFFECTIVE DATE.—This section shall take effect on October 10, 1986.

TITLE —AMENDMENTS TO PRICE SUPPORT PROGRAMS FOR CERTAIN CROPS

SEC. . COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "the first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

SEC. . LOANS AND PURCHASES FOR THE 1986 CROP OF SUNFLOWERS.

Effective only for the 1986 crop of sunflowers, section 201 of the Agricultural Act of 1949 is amended—

(1) in the first sentence, by inserting "sunflowers," after "soybeans,"; and

(2) by adding at the end thereof the following new subsection:

"(1)(1) The Secretary shall support the price of sunflowers through loans and purchases in the marketing year for the 1986 crop of sunflowers as provided in this subsection. The support price for such crop shall be at such level as the Secretary determines will take into account the historical oil content of sunflowers and soybeans and not result in excessive total stocks of sunflowers taking into consideration the cost of producing sunflowers, supply and demand conditions, and world prices for sunflowers, except that such level may not be less than 9 cent per pound.

"(2)(A) The Secretary shall permit a producer to repay a loan made under para-

graph (1) for the 1986 crop of sunflowers at a level that is the lesser of—

"(i) the loan level determined for such crop; or

"(ii) the prevailing world market price for sunflowers, as determined by the Secretary.

"(B) The Secretary shall prescribe by regulations—

"(i) a formula to define the prevailing world market price for sunflowers; and

"(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for sunflowers.

"(3) For the purposes of this subsection, the marketing year of sunflowers shall be prescribed by the Secretary by regulations.

"(4) Notwithstanding any other provision of law, the Secretary shall not require participation in any production adjustment program for sunflowers or any other commodity as a condition of eligibility for price support for sunflowers.".

SEC. . SUPPORT PRICE AND MARKETING LOANS FOR 1986 CROP OF SOYBEANS.

(a) SUPPORT PRICE.—Effective only for the 1986 crop of soybeans, section 201(i)(2) of the Agricultural Act of 1949 (7 U.S.C. 1446(i)(2)) is amended by inserting "(other than the marketing year for the 1986 crop of soybeans)" after "a marketing year".

(b) MARKETING LOANS.—Effective only for the 1986 crop of soybeans, section 201(i) of such Act is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7);

(2) by inserting after paragraph (2) the following new paragraph:

"(3)(A) In the case of the 1986 crop of soybeans, the Secretary shall implement the provisions of Plan A or Plan B in accordance with this paragraph.

"(B)(i) If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made under this subsection for a crop at a level that is the lesser of—

"(I) the loan level determined for such crop; or

"(II) the prevailing world market price for soybeans, as determined by the Secretary.

"(ii) If the Secretary elects to implement Plan A, the Secretary shall prescribe by regulation—

"(I) a formula to define the prevailing world market price for soybeans; and

"(II) a mechanism by which the Secretary shall periodically announce the prevailing world market price for soybeans.

"(C)(i) If the Secretary elects to implement Plan B, the Secretary shall, for the 1986 crop of soybeans, make payments available to—

"(I) producers who, although eligible to obtain a loan or purchase agreement under this subsection, agree to forgo obtaining such loan or agreement in return for such payments; and

"(II) in the case of producers who have placed their soybeans under such loan or agreement, producers who agree to redeem such loan or agreement and to forgo obtaining such loan or agreement in return for such payments.

"(ii) A payment under this subparagraph shall be computed by multiplying—

"(I) an amount equal to 20 percent of the loan payment rate; by

"(II) the quantity of soybeans the producer is eligible to place under loan"; and

(3) in paragraph (4)(A) (as redesignated by paragraph (2)), by striking out "If" and inserting in lieu thereof "In the case of each of the 1987 through 1990 crops of soybeans, if".

(c) OTHER OILSEEDS.—The Secretary shall consider the impact of this section on other oil seeds that do not participate in price support program, and shall consult with producers of such oil seeds.

TITLE —NATURAL DISASTERS EMERGENCY ASSISTANCE FOR FARMERS AND RANCHERS

SEC. **1. EMERGENCY DISASTER ASSISTANCE.

The President and the Secretary of Agriculture shall make emergency disaster assistance available, as provided in this Title, to farmers and ranchers in natural disaster areas.

SEC. **2. DEFINITIONS.

For the purposes of this title—

(1) the term "natural disaster areas" includes any area in the United States in which farming and ranching operations have been adversely affected by a drought or excessively hot weather disaster, or a flood disaster, occurring in calendar year 1986, as determined by the Secretary of Agriculture, such that assistance is available in the area under subtitle C of the Consolidated Farm and Rural Development Act for such disaster; and

(2) the term "livestock" includes all classes of beef and dairy cattle, sheep, goats, and swine.

EMERGENCY FEED DONATIONS

SEC. **3 Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make available to farmers and ranchers in each natural disaster area, at no cost, surplus stocks of commodities held by the Commodity Credit Corporation (in the area, in the State in which the area is located or an adjoining State, or in a storage deficient area (as described in section **9(b) of this title)), for the purpose of, and under the conditions set out in, subsection (b) of this section.

(b)(1) The Secretary shall make such commodities available, in any natural disaster area in which the Secretary determines there is a critical need for livestock or poultry feed, in amounts necessary to preserve livestock herds and poultry flocks in the area. For purposes of this section, the phrase "critical need for livestock or poultry feed" means that (A) the total supply of feed grains and forage available to livestock and poultry producers in the area involved is insufficient to cover the combined feed needs of such producers for more than seventy-two hours or such other period, determined by the Secretary, reasonably needed for supplies of feed to arrive in the area for commercial use for feed surplus areas, whichever is a longer period; and (B) as a result of such deficient supply levels, it reasonably can be expected that, without the assistance made available under this section, farmers and ranchers in the area will suffer significant losses of livestock or poultry due to mortality.

(2) Subject to section **9(c), the Secretary shall cover any costs involved in transporting such surplus commodities to the natural disaster area, using the funds, facilities, and authorities of the Commodity Credit Corporation for such purposes.

(3) The Secretary shall continue to make commodities available under this section until there no longer is a critical need for livestock or poultry feed, as determined by the Secretary.

(4) In determining the feed needs of producers in an area and the amount of commodities to be made available in the area under this section, the Secretary shall use the regulations issued under section 1105 of the Food and Agriculture Act of 1977 (7 C.F.R. 1475.52(n) and 1475.55(f)(1) (1986)) and comparable rules for poultry.

(5) Donations under this section shall be made available during the period beginning three days after the date of enactment of this title and ending March 31, 1987, or the date, as determined by the Secretary, on which the emergency created by the drought, excessively hot weather, or flood no longer exists, whichever is earlier.

EMERGENCY LIVESTOCK FEED ASSISTANCE

SEC. **4. Notwithstanding any other provision of law:

(a)(1) The Secretary of Agriculture shall make emergency livestock and poultry feed assistance under section 1105 of the Food and Agriculture Act of 1977 to farmers and ranchers in natural disaster areas. Reimbursement for purchased feed provided to such farmers and ranchers under section 1105 shall be made in kind, as provided in section 9(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation. Whenever, under any export development program conducted by the Secretary of Agriculture, a feed grain or other commodity used for animal feed is made available to foreign purchasers at prices less than the average domestic market price for the commodity, as determined by the Secretary, reimbursement under this paragraph for purchases of such commodity shall be made at a level in excess of 50 per centum of the cost of the purchased commodity if necessary to ensure that the net cost to the producer for such commodity (taking into account the reimburse: * * * price at which the commodity is made available to foreign purchasers under such export development program.

(2) The Secretary of Agriculture shall permit any producer of the 1986 crop of wheat, feed grains, upland cotton, or rice (A) who is participating in the program under the Agricultural Act of 1949 for such crop, and (B) whose farm is located in a natural disaster area, to devote acreage on the farm diverted from the production of the crop under such program to hay or grazing without regard to limitations on when haying or grazing may take place otherwise imposed under the Agricultural Act of 1949.

(3)(A) In carrying out any emergency assistance program, for farmers and ranchers in a natural disaster area under the Disaster Relief Act of 1974, subject to subparagraph (B), the President shall direct the Secretary of Agriculture to implement an emergency hay program to assist such farmers and ranchers in obtaining hay to feed their livestock. Under such program, the Secretary, subject to section **9(c), shall pay 80 per centum of the cost of transporting hay from areas in which hay is in plentiful supply to the area in which the farmers and ranchers are located.

(B) The President shall take the action required under subparagraph (A) only if the Secretary of Agriculture reports to the President that—

(i) as a result of the drought, excessively hot weather, or flood disaster, the amount of hay readily available to such farmers and ranchers at reasonable prices to feed their livestock is substantially below the amount normally available; and

(ii) the assistance to be made available under paragraph (1) and haying or grazing permitted under paragraph (2) together will be insufficient to prevent substantial losses

of livestock or liquidation of herds by such farmers and ranchers in such area.

(C) The Secretary of Agriculture shall determine whether the conditions described in clauses (i) and (ii) of subparagraph (B) exist for each natural disaster area, and if such conditions exist so report to the President, within thrity days after the date of enactment of this Act and at reasonable intervals of time thereafter.

(D) Prior to making any determination under subparagraph (B), the Secretary of Agriculture shall consult with the Governor and the Secretary of Agriculture (or comparable official) of the State involved, and give due consideration to the views of such persons.

(4) Paragraphs (1) and (3) shall become effective fifteen days after the date of enactment; and assistance under such paragraphs shall be available until March 31, 1987, or the date, as determined by the Secretary of Agriculture, on which the emergency created by the drought, excessively hot weather, or flood no longer exists, whichever is earlier.

(b) Effective October 1, 1986, section 1105 of the Food and Agriculture Act of 1977 (7 U.S.C. 2267) is amended by adding at the end thereof the following:

"(h) If—

"(1) the Secretary of Agriculture makes emergency livestock or poultry feed assistance available to producers in a county under section 407 of the Agricultural Act of 1949; but

"(2) surplus commodities of adequate nutritive value are not made available under such authority for distribution to such producers within ten days after the announcement of the program under such authority for such county,

the Secretary shall make assistance available to such producers under this section until such time as surplus commodities are made available under the announced program.".

DISASTER PAYMENT PROGRAM

SEC. **5. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make disaster payments available, at the request of the producer, on the 1986 crops of wheat, feed grains, upland cotton, rice, and soybeans, sugar beets and peanuts under sections 107D(c)(2)(D), 105C(c)(2)(D), 103A(c)(2)(D), 101A(c)(2)(D), and 201(k) of the Agricultural Act of 1949, respectively, to producers located in natural disaster areas.

(b) For the purposes of this section, the conditions set out in sections 107D(c)(2)(D)(i), 105C(c)(2)(D)(i), 103A(c)(2) (D)(i), and 101A(c)(2)(D)(i) of the Agricultural Act of 1949 shall be considered as having been met.

(c) Payments under this section shall be made in kind, as provided in section **9(a) of this Act, using surplus stocks held by the Commodity Credit Corporation.

(d) The total amount of in kind payments that a person shall be entitled to receive for the producer's crops of wheat, feed grains, upland cotton, rice, peanuts, sugar beets, and soybeans under this section shall not exceed an amount of commodities of a combined value of more than $100,000.

(e) In making payments to persons for a crop under this section, the Secretary of Agriculture shall ensure that each person that has entered into a crop insurance contract covering such crop under the Federal Crop Insurance Act receives payment under this section without any reduction in the amount of the payment to take into account the indemnity received by the person under the crop insurance contract for the crop, except that no such person shall receive a payment under this section on a portion of the person's normal production that combined with the indemnity under the person's crop insurance contract will cause such person to receive payments under both on more than 100 per centum of the person's normal production, as determined by the Secretary.

MILK PROGRAM PRODUCER ASSESSMENTS

SEC. **6. Notwithstanding any other provision of law;

(a) At the option of the producer, no reductions in the price received by producers for milk marketed for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 shall be made on milk produced by producers in natural disaster areas and marketed for commercial use during the period beginning October 1, 1986, and ending December 31, 1986.

(b) The Secretary of Agriculture shall increase the amount of the reduction in the price received by each producer in a natural disaster area, if the producer exercises the option for a suspension of reductions under subsection (a), for milk produced and marketed by such producer for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 during the period beginning January 1, 1987, and ending September 30, 1987, by an amount that will ensure that, to the extent practicable, the aggregate amount of reductions applicable to milk of such producer for the period beginning October 1, 1986, and ending September 30, 1987, will be the same aggregate amount of reductions that would have been made if the suspension of reductions under subsection (a) had not been in force for such producer.

ASSISTANCE FOR QUOTA AND ALLOTMENT HOLDERS

SEC. **7. (a) Effective only for the 1986 crop of peanuts, section 358a(k)(1) of the Agricultural Adjustment Act of 1938, as added effective for the 1986 through 1990 crops of peanuts, is amended by adding at the end thereof the following:

"Notwithstanding the foregoing provisions of this paragraph, because of the severe drought conditions in many 1986 peanut production areas and because producers of the 1986 crop were not timely notified of their farm poundage quotas, including any increase therein for undermarketings of quota peanuts from previous years, the Secretary shall waive the requirement, with respect to any 1986 farm poundage quota, that a lease of the quota may be entered into during the fall or after the normal planting season only if the quota has been planted on the farm from which the quota is leased, as provided in the following two sentences. The Secretary shall waive such requirement at the request of the owner, or the operator with permission of the owner, of the farm if the county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act determines and certifies that such owner or operator made a good faith effort to plant and produce the 1986 quota on such farm. For the purpose of the preceding sentence, a person may establish that the person made a good faith effort to plant the crop by showing that person did not intentionally fail to plant or that the person was not provided with timely information as to the amount of the 1986 quota for the farm.".

(b) Section 316(a)(1)(A)(ii) of the Agricultural Adjustment Act of 1938 is amended by striking out the period at the end of the last sentence and inserting in lieu thereof a colon and the following: "*Provided*, That because of the severe drought conditions in many 1986 production areas, such prohibition on lease and transfer shall become effective beginning with the 1988 crop if the holder of record of the allotment or quota to be leased or transferred—

"(1) is age 55 or older and receives at least one-half the person's income from the allotment or quota; or

"(2) is blind or disabled; or

"(3) is a single head of household and receives at least one-half of the person's income from the allotment or quota.

For the purposes of the proviso to the proceeding sentence, when there are more than one holder of record of the allotment or quota, if one-half or more of such holders meet one or more of the criteria under such proviso, such proviso shall apply to the allotment or quota.".

COST-SHARING FOR SOIL CONSERVATION MEASURES AND TIMBER STAND RESEEDING EXPENSES

(a) The Secretary of Agriculture shall make available—

(1) cost-sharing payments under the agricultural conservation program to producers in natural disaster areas for conservation measures designed to prevent anticipated soil erosion due to loss of vegetative cover; and

(2) cost-share payments under the forestry incentive program to forest landowners in natural disaster areas for the reestablishment of stands of pine trees lost to drought conditions.

(b) The Secretary shall share not less than 50 per centum of the cost of such measures or reestablishment of timber stands; and such cost-share payments shall be made in kind, as provided in section **9(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation.

(c) Payments made under this section shall be in addition to, and not in lieu of, payments made under the Soil Conservation and Domestic Allotment Act or the Cooperative Forestry Assistance Act of 1978 using funds appropriated for such purposes.

(d) Assistance under this section shall be made available to persons in natural disaster areas during the period beginning 15 days after the date of enactment of this Act and ending March 30, 1987.

PAYMENTS

SEC. **9. Notwithstanding any other provision of law:

(a)(1) In making in-kind payments under section **4(a)(1), **5, or **8, or subsection (c) of this section, the Secretary of Agriculture may—

(A) acquire and use commodities that have been pledged to the Commodity Credit Corporation as security for price support loans under the Agricultural Act of 1949, including loans made to producers under section 110 of such Act; and

(B) use other commodities owned by the Commodity Credit Corporation.

(2) The Secretary may make in-kind payments by—

(A) if requested by the producer, delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; or

(B)(i) the transfer of negotiable warehouse receipts;

(ii) the issuance of negotiable certificates that the Commodity Credit Corporation shall redeem for a commodity in accordance with regulations prescribed by the Secretary; or

(iii) such other methods as the Secretary determines appropriate to enable the producer to receive such payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

(b) In carrying out this section and section **3, the Secretary, to the maximum extent practicable, shall use Commodity Credit Corporation commodities stored in storage deficient areas such as the midwestern United States.

(c) Transportation cost payments made under section **3(b)(2) or **4(a)(3) of this Act may be made in kind, as provided in subsection (a), using surplus stocks of commodities held by the Commodity Credit Corporation, or in cash.

(d) The Secretary of Agriculture shall assist recipients of in-kind payments in marketing warehouse receipts, certificates, or other documents representing such in-kind payments.

CREDIT FOREBEARANCE

SEC. **10. It is the sense of Congress that, with respect to farm borrowers who are adversely affected by natural disaster conditions in calendar year 1986—

(1) the Secretary of Agriculture should exercise the authority provided under section 331A of the Consolidated Farm and Rural Development Act and instruct the Farmers Home Administration to defer loan repayments and forgo foreclosures in cases where such farm borrowers are unable to make loan payments in

(2) the lending institutions of the Farm Credit System and commercial lending institutions are encouraged, insofar as practicable, to adopt lenient lending, forbearance, and foreclosure policies, and to the maximum extent possible participate and cooperate with Federal and State lenders in assistance programs, with respect to such borrowers who are under financial stress due to no fault of their own.

COORDINATION OF ASSISTANCE EFFORTS

SEC. **11. It is the sense of Congress that, with respect to the provision of Federal assistance to farmers and ranchers in natural disaster areas, the Secretary of Agriculture should take steps immediately to—

(1) establish an overall coordinating mechanism within the Department of Agriculture to ensure that the assistance provided by each agency within the Executive Branch is coordinated with, and complements, the assistance provided by other agencies;

(2) ensure that Government and voluntary agencies, and the farmers and ranchers, in each natural disaster area are provided a single contact person or unit for Federal assistance, and that a similar such Federal contact person or unit is provided for Government and voluntary agencies, farmers and ranchers, and other persons outside natural disaster areas who wish to contribute additional assistance to natural disaster areas; and

(3) consult with the Governor, Secretary of Agriculture (or comparable official), and the State disaster relief agency in each State in which a natural disaster area is located, on the disaster assistance needs of farmers and ranchers located in the State.

TITLE —RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS LOANS

SEC. . PREPAYMENT OF FEDERAL FINANCIAL BANK LOANS.

In the case of a borrower of a loan made by the Federal Financing Bank, and guaranteed by the Administrator of the Rural Electrification Administration, under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936) that is outstanding on the date of enactment of this Act, the borrower may prepay any loan advance by payment of the outstanding principal balance due on the loan advance using private capital, at repayment terms agreeable to the REA borrower, with the existing loan guarantee, which shall be fully transferable and assignable without condition and remain available for the remainder of the term originally agreed to by REA. No sums in addition to payment of such balance shall be charged as the result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund established under section 301 of such Act (7 U.S.C. 931), or the Rural Electrification Administration. To qualify for prepayment, the board of directors of the borrower shall certify that prepayment savings will be passed on to its customers, or be used to make debt service or other payments in cases of financial hardship, or to avoid future rate increases. Regulations under this provision shall be issued and become effective within 30 days of enactment of this Act and shall implement the intention of Congress to: (1) facilitate prepayment: (2) provide for full processing of each prepayment request within 30 days of its submission to REA: and (3) impose no restrictions, except as specifically provided for in this Act, which increase the cost to borrowers of obtaining private capital for prepayment, or which inhibit the ability of the borrower to enter into prepayment arrangements pursuant to this Act.

TITLE —RESEARCH ON EXTERNAL COMBUSTION ENGINES

SEC. . Section 4(m) of the Commodity Credit Corporation Act is amended at the end thereof by adding a new sentence as follows: "During fiscal year 1987, the Corporation shall use not more than 10,000,000 worth of surplus agricultural commodities owned by the Corporation in establishing and carrying out a research and development program on external combustion engines under this subsection: *Provided*, That to the extent that funding is made available from private sources to finance such program, the Corporation shall provide not less than twice that value in the form of Corporation-owned commodities.".

TITLE **a—AGRICULTURAL LOAN INTEREST SUBSIDY PROGRAM

SEC. 101. DEFINITIONS.

As used in this title:

(1) BORROWER.—The term "borrower" means a person who meets the eligibility criteria prescribed in section 103.

(2) LENDER.—The term "lender" means a commercial bank, savings and loan association, credit union, insurance company, or institution, including a subsidiary or affiliate thereof, that—

(A) has agreed to participate in the interest subsidy program; and

(B) has been approved for participation in the interest subsidy program by the appropriate State agency.

SEC. 102. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a Federal-State-Lender cooperative agricultural loan interest subsidy program under which, at the request of a State, borrowers and lenders within the State may participate in the interest subsidy program in accordance with this title.

(b) CONSULTATION.—The Secretary shall establish the interest subsidy program in consultation and cooperation with the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Federal Reserve Board, the Chairman of the Farm Credit Administration, the Chairman of the Federal Deposit Insurance Corporation, and each State agency.

SEC. 103. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by a lender for agricultural purposes that is outstanding on April 1, 1986;

(3) during the period beginning on the date of the approval of a State plan under section 106 and ending September 30, 1987—

(A) be delinquent in the payment of principal or interest, or both, on the loan; or

(B) demonstrate to the lender that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower will be temporarily unable, without assistance provided under this Act, to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years;

(6) have a debt to asset ratio of at least 40 percent;

(7) have an ability to repay the loan, based on past performance as a capable producer and assistance to be provided under this Act; and

(8) not produce an agricultural commodity on highly erodible land or converted wetland in violation of section 1211 or 1221 of the Food Security Act of 1985 (16 U.S.C. 3811 or 3821).

SEC. 104. INTEREST SUBSIDIES.

(a) APPLICATIONS.—During the period beginning on the date of the approval of a State plan by the Secretary under section 106 and ending September 30, 1987, a borrower may apply to a lender for an interest subsidy for any agricultural loan made by the lender to the borrower that is outstanding on April 1, 1986.

(b) INTEREST SUBSIDIES.—If a borrower of a loan applies to a lender for an interest subsidy in accordance with subsection (a), the lender determines that the borrower meets the eligibility criteria prescribed in section 103, and the lender agrees to participate in the interest subsidy program, subject to this section, not later than 90 days after receipt of the application, the loan shall be restructured in such a manner that the interest rate payable by the borrower shall be fixed for a period of 3 years or the remaining term of the loan, whichever is less, at a rate equal to the interest rate of the loan on April 1, 1986, less up to 5 percentage points.

(c) PAYMENT OF SUBSIDIES.—If an interest subsidy is provided for a loan made by a lender to a borrower in a State—

(1) the Secretary shall pay 2 percentage points of the subsidy by making payments through the State agency to the lender;

(2) if the State elects to make such payments, the State may pay not less than 1 percentage point and not more than 2 percentage points of the subsidy by making payments to the lender; and

(3) the lender shall—

(A) pay 1 percentage point of the subsidy; or

(B) cancel at least 15 percent of the principal due on the loan.

(d) TERM OF LOAN.—The term of any loan for which an interest subsidy is provided under this section shall not be less than the term of the loan outstanding before the subsidy is provided.

(e) SCHEDULE OF PAYMENTS.—The schedule of payments on a restructured loan shall be established in accordance with the ability of the borrower to repay the loan.

(f) ACCRUED INTEREST.—Interest accrued on a restructured loan prior to restructuring shall not be capitalized but shall be paid by the borrower to the lender prior to any retirement of principal under the loan as restructured in accordance with this title.

(g) REPAYMENT.—Any balance of principal and interest outstanding on any restructured loan shall be repaid at a rate that is agreed on by the lender and borrower, except that the rate of interest on the loan may not exceed the standard rate charged by the lender on loans with comparable maturities for similar purposes at the time the loan is restructured.

(h) MAXIMUM AMOUNT OF ASSISTANCE.—The aggregate outstanding amount of loan principal for which an interest subsidy may be provided under this title may not exceed—

(1) in the case of a loan made to an individual, $400,000; and

(2) in the case of a loan made to a family corporation or family partnership, $600,000.

SEC. 105. PAYMENTS TO STATES.

(a) IN GENERAL.—From sums available pursuant to section 403 and subject to subsection (b) and section 106, the Secretary shall pay to each State for each of the fiscal years ending September 30, 1987, through September 30, 1990, an amount equal to the sum of—

(1) the amount necessary to finance the share of interest subsidies provided to borrowers residing in the State that is required to be paid by the Secretary under section 104(c)(1); and

(2) 100 percent of the administrative expenses that are incurred by the State agency in carrying out this title and are approved by the Secretary.

(b) MAXIMUM AMOUNT OF PAYMENTS.—The aggregate amount of payments paid by the Secretary to States under subsection (a) for a fiscal year may not exceed $600,000,000.

SEC. 106. STATE PLANS.

(a) IN GENERAL.—To be eligible to participate in the interest subsidy program during a fiscal year, a State must—

(1) submit a plan to the Secretary for the fiscal year; and

(2) receive the approval of the Secretary for the plan.

(b) PLAN REQUIREMENTS.—To receive the approval of the Secretary for a plan, a State must submit a plan that—

(1) designates a single agency that shall be responsible for the administration, or the supervision of the administration, of the interest subsidy program in the State;

(2) assesses the interest subsidy needs of borrowers residing in the State;

(3) describes the interest subsidy program established in the State (including any agency designated to provide a subsidy under such program), which program must meet such requirements as the Secretary may prescribe;

(4) estimates the amount of funds necessary to provide interest subsidies under the program and related administrative expenses, except that such amount may not exceed the amount allocated by the Secretary for payment to the State out of the total amount available for payment under section 105;

(5) requires any lender participating in the interest subsidy program to provide to any borrower who is delinquent in the payment of principal or interest, or both, due on a loan during the period referred to in section 104(a) prompt written notice that describes the assistance available under this title and any deadlines for application for the assistance; and

(6) includes such other information as the Secretary may require.

(c) APPROVAL OF PLANS.—(1) The Secretary shall approve or disapprove a plan submitted by a State under subsection (b) not later than 45 days after the State submits the plan.

(2) The Secretary shall approve any plan that complies with subsection (b).

(d) AUDITS.—(1) Each State agency shall—

(A) provide for an annual audit of expenditures made by the State agency in carrying out the interest subsidy program, not later than 60 days after the end of each year in which the program is conducted; and

(B) promptly report to the Secretary the findings of such audit.

(2) Not later than 60 days after the end of each year in which a State agency participates in the interest subsidy program, a State agency shall provide the Secretary with a statement that provides—

(A) a description of whether (and, if so, by how much) the payments received under section 105 for such year exceeded the expenditures by the State agency during such year; and

(B) such other information as the Secretary may require.

(e) DENIAL OR WITHHOLDING OF PAYMENTS.—(1) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, except as provided in paragraph (2), the Secretary shall—

(A) notify the appropriate State agency that payments will not be made to the State agency under section 105 for the year until the Secretary is satisfied that the State is complying with such subsection; and

(B) make no payments under section 105 until the Secretary is satisfied that the State is complying with such subsection.

(2) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, the Secretary may—

(A) suspend the denial of payments under paragraph (1) for such period as the Secretary determines is appropriate; and

(B) withhold payments of approved State administrative expenses incurred in providing assistance under the plan, in whole or in part, for the year,

until the Secretary is satisfied that the State is complying with such subsection, at which time such withheld payments shall be paid.

(3) If the Secretary finds that a State has substantially failed to comply with subsection (b) or (d), the Secretary may, in addition to or in lieu of any action taken under paragraph (1) or (2), refer the matter to the Attorney General with a request that the Attorney General seek injunctive relief to require compliance by the State. If the Attorney General brings a suit in an appropriate district court of the United States and makes a showing of substantial noncompliance appropriate injunctive relief shall issue.

SEC. 107. REVIEW BY SECRETARY AND STATE AGENCIES.

(a) REVIEW AND TECHNICAL ASSISTANCE BY SECRETARY.—The Secretary—

(1) shall provide for review, and may provide for an audit, of the manner in which the interest subsidy program is carried out in a State; and

(2) may provide to States technical assistance in carrying out the program.

(b) REVIEW BY STATE AGENCIES.—A State agency may monitor the compliance of a lender with this title. Any lender that violates this title shall be ineligible to receive further payments under this title.

SEC. 108. NOTICE AND DETERMINATIONS OF ASSISTANCE.

A lender in a State participating in the interest subsidy program may not take any action as the result of a borrower defaulting on an outstanding loan made by such lender to a borrower unless the lender has—

(1) provided the borrower with the notice required under section 106(b)(5); and

(2) in the case of a borrower who has applied for assistance under this title, determined that the borrower does not meet the eligibility criteria prescribed in section 103.

SEC. 109. ASSISTANCE OF FEDERAL AND STATE AGENCIES.

(a) IN GENERAL.—To make assistance under this title available expeditiously and in a consistent and uninterrupted manner, the Secretary shall—

(1) use such funds, personnel, and facilities of the Department of Agriculture (including the Commodity Credit Corporation) as the Secretary considers necessary to carry out this title; and

(2) request other Federal or State agency to provide such funds, personnel, and facilities as the Secretary considers necessary to carry out this title.

(b) REIMBURSEMENT.—Any agency that provides advanced funds, personnel, or facilities under subsection (a) shall be fully reimbursed for such assistance as soon as is practicable from subsequent appropriations.

SEC. 110. PROGRAM INELIGIBILITY FOR PRODUCTION ON HIGHLY ERODIBLE LAND OR CONVERTED WETLAND.

(a) HIGHLY ERODIBLE LAND CONSERVATION.—Section 1211 of the Food Security Act of 1985 (16 U.S.C. 3811) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Farm Credit Assistance Act of 1986.".

(b) WETLAND CONSERVATION.—Section 1221 of the Food Security Act of 1985 (16 U.S.C. 3821) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Farm Credit Assistance Act of 1986.".

TITLE 6—FARM CREDIT SYSTEM INSTITUTION BORROWERS

SUBTITLE A—FARM CREDIT SYSTEM LOAN RESTRUCTURING PROGRAM

SEC. 201. DEFINITIONS.

As used in this subtitle:

(1) BORROWER.—The term "borrower" means a borrower of a loan made by an institution.

(2) CAPITAL CORPORATION.—The term "Capital Corporation" means the Farm Credit System Capital Corporation established under section 4.28A of the Farm Credit Act of 1971 (12 U.S.C. 2216).

(3) CHAIRMAN.—The term "Chairman" means the Chairman of the Farm Credit Administration Board designated under section 5.8(a) of the Farm Credit Act of 1971 (12 U.S.C. 2242(a)).

(4) COMMITTEE.—The term "committee" means a credit review committee selected from and by—

(A) the local board of directors of the institution from which a loan originated; or

(B) in the case of consolidated or merged institutions, members of a local advisory board elected by the stockholders served by the merged or consolidated institutions from which a loan originated.

(5) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan made by an institution and the value of collateral used to secure the loan, taking into consideration the lien position of the institution;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of institutions;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(6) LOAN.—The term "loan" means a loan made by an institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SEC. 202. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this subtitle, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by, and a stockholder of, an institution who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the institution that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 203. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, an institution must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this subtitle.

SEC. 204. LOAN FORECLOSURE AND RESTRUCTURING.

If an institution determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this subtitle, in lieu of foreclosure, the institution shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 205. ADDITIONAL COLLATERAL.

An institution may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of principal or interest on the loan; or

(2) bring any action to foreclose on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of principal or interest on the loan at the time the additional collateral was required.

SEC. 206. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If an institution determines that a person does not meet the eligibility criteria prescribed in section 202, not later than 15 days after such determination, the institution shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If an institution determines that the cost of restructuring a loan in accordance with this subtitle exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the institution to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by an institution makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this subtitle; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(B) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by an institution to a borrower and the cost of restructuring the loan in accordance with this subtitle, the cost of the appraisal shall be borne by—

(A) the institution if the appraised cost of restructuring the loan in accordance with this subtitle is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this subtitle is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.—(1) If an institution determines that a borrower of a loan meets the eligibility criteria prescribed in section 202 and that the cost of restructuring the loan in accordance with this subtitle is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the institution determines is adequate to enable the borrower to make payments in accordance with section 204; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by an institution shall have the right to appear before a committee to contest a determination, amount, or action under this subtitle if—

(1) the institution and the borrower enter into an agreement under which the institution agrees to restructure the loan in accordance with the subtitle and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the institution does not restructure the loan in accordance with this subtitle; and

(3) the borrower makes a written request to the committee to contest the determina-

tion, amount, or action, as the case may be, not later than 30 days after the date by which the institution agreed to restructure the loan in accordance with this subtitle.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 207. REIMBURSEMENT FOR PRINCIPAL REDUCTION.

The Capital Corporation shall reimburse an institution for the amount of principal due on loans that is reduced by the institution under section 204 if the Chairman determines that such action is necessary to avoid the liquidation or insolvency of the institution.

SEC. 208. REPORT.

Not later than 270 days after the date of enactment of this Act, the Chairman shall submit a report to Congress on the operation of this subtitle, including—

(1) an analysis of the impact of actions taken under this subtitle on losses suffered by institutions;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by institutions under this subtitle;

(4) the number and amount of loans restructured in accordance with the subtitle;

(5) the number of current and estimated future delinquencies before and after the expiration of this subtitle on loans made to borrowers; and

(6) the recommendations of the Chairman concerning reauthorization of this subtitle.

SUBTITLE B—FARM CREDIT SYSTEM REFORM

SEC. 211. ACCESS TO APPRAISALS.

Section 4.13A of the Farm Credit Act of 1971 (12 U.S.C. 2200) is amended to read as follows:

"SEC. 4.13A. ACCESS TO DOCUMENTS AND INFORMATION.—In accordance with regulations of the Farm Credit Administration, a System institution shall provide to each borrower of such institution—

"(1) at the time of execution of a loan, a copy of each document signed by the borrower;

"(2) at any time thereafter, on request, a copy of each document signed or delivered by the borrower;

"(3) at any time, on request, a copy of the articles of incorporation or charter and bylaws of the institution; and

"(4) at the time of execution of a loan and at any time thereafter, on request, a copy of each appraisal of the assets of the borrower.".

SEC. 212. HOMESTEAD PROTECTION.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.20 (12 U.S.C. 2208) the following new section:

"SEC. 4.21. HOMESTEAD PROTECTION.—If an institution forecloses a loan made by the institution or a borrower of a loan made by the institution declares bankruptcy or goes into voluntary liquidation to avoid foreclosure or bankruptcy, the institution is encouraged to permit the borrower to retain possession and occupancy of the principal residence of the borrower, and a reasonable amount of adjoining land, to maintain the family of the borrower.".

SEC. 213. INTEREST RATES ON CLASSIFIED LOANS.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.22 (as added by section 212) the following new section:

"SEC. 4.22. An institution of the Farm Credit System may not increase the interest rate on a loan made to a borrower that is outstanding on the date of enactment of the Farm Credit Assistance Act of 1986 as the result of the loan having been classified as a risk or problem loan.".

SEC. 214. CERTIFICATION OF NEED FOR FINANCIAL ASSISTANCE.

Section 4.28J of the Farm Credit Act of 1971 (12 U.S.C. 2216i) is amended by inserting after "TREASURY.—" the following new sentence: "Not later than 60 days after the date of enactment of the Farm Credit Assistance Act of 1986, and each 90 days thereafter, the Farm Credit Administration shall determine whether the Farm Credit System is in need of financial assistance to address financial stress of System institutions.".

SEC. 215. OPERATING EXPENSES OF INSTITUTIONS.

Part D1 of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.28L (12 U.S.C. 2216k) the following new section:

"SEC. 4.28M. OPERATING EXPENSES OF INSTITUTIONS.—During the period beginning on the date of enactment of the Farm Credit Assistance Act of 1986 and ending the later of September 30, 1990, or such time as the Secretary of the Treasury no longer holds any obligations issued by the Capital Corporation, the operating expenses of an institution of the Farm Credit System may not exceed the average cost of bonds issued by the System, plus 1 percent.".

SEC. 216. DISPOSITION AND LEASING OF FARMLAND.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.36 (12 U.S.C. 2219a) the following new section:

"SEC. 4.37. DISPOSITION AND LEASING OF FARMLAND.—(a) The Farm Credit Administration shall issue regulations for the disposition and leasing of farmland acquired by any institution of the Farm Credit System, including the Capital Corporation, (hereafter in this section referred to as an 'institution') in accordance with this section.

"(b) An institution shall to the extent practicable sell or lease farmland acquired under this Act in the following order of priority:

"(1) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

"(2) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.

"(c)(1) An institution shall not offer for sale or sell any such farmland if the placing of such farmland on the market will have a detrimental effect on the value of farmland in the area.

"(2) In selling such land, the institution shall give special consideration to a previous owner or operator of such land.

"(d)(1) An institution shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with subsection (e), a lease with an option to purchase farmland acquired under this Act.

"(2) The Farm Credit Administration shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

"(3) In leasing such land, the institution shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the institution determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

"(4) To the extent an institution may lease or operate real property under this section, the institution shall, if the institution determines to administer such property through management contracts, offer the contracts on a competitive bid basis, giving preference to persons who will live in, and own and operate qualified small businesses in, the area where the property is located.

"(e)(1) An institution shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

"(2) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the local board of the institution shall, by majority vote, select the operator who may purchase such land.

"(f) Of farmland is available for disposition under this section, the institution shall—

"(1) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; and

"(2) post an announcement of the availability of such farmland in a prominent place in the local office of the institution that serves the county in which the farmland is located.".

SEC. 217. STOCK PURCHASE REQUIREMENT.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.37 (as added by section 216) the following new section:

"SEC. 4.38. STOCK PURCHASE REQUIREMENT.—A borrower must purchase stock in the Farm Credit System, in accordance with regulations issued by the Farm Credit Administration, to be eligible—

"(i) to obtain a loan from an institution of the Farm Credit System; or

"(2) to enter into an installment contract for the purchase of farmland acquired by the Farm Credit System.".

TITLE **C—FARMERS HOME ADMINISTRATION BORROWERS

SEC. 301. DEFINITIONS.

As used in this title

(1) BORROWER.—The term "borrower" means a borrower of a loan who meets the eligibility criteria prescribed in section 302.

(2) COMMITTEE.—The term "committee" means the appropriate county committee established under section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982).

(3) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan and the value of collateral used to secure the loan, taking into consideration the lien position of the Secretary;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of the Secretary;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period begining on the date of the initiation of action to foreclose or liquidate the loan and the ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(4) LOAN.—the term "loan" means a loan made by the Secretary under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

SEC. 302. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the Secretary that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 303. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, the Secretary must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this title.

SEC. 304. LOAN FORECLOSURE AND RESTRUCTURING.

If the Secretary determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this title, in lieu of foreclosure, the Secretary shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 305. ADDITIONAL COLLATERAL.

The Secretary may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of interest on the loan; or

(2) bring any action to foreclose on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of interest on the loan at the time the additional collateral was required.

SEC. 306. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If the Secretary determines that a person does not meet the eligibility criteria prescribed in section 302, not later than 15 days after such determinaiton, the Secretary shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If the Secretary determines that the cost of restructuring a loan in accordance with this title exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the Secretary to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by the Secretary makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this title; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(B) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by the Secretary to a borrower and the cost of restructuring the loan in accordance with this title, the cost of the appraisal shall be borne by—

(A) the Secretary if the appraised cost of restructuring the loan in accordance with this title is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this title is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.—(1) If the Secretary determines that a borrower of a loan meets the eligibility criteria prescribed in section 302 and that the cost of restructuring the loan in accordance with this title is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the Secretary determines is adequate to enable the borrower to make payments in accordance with section 304; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or the method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by the Secretary shall have the right to appear before a committee to contest a determination, amount, or action under this title if—

(1) the Secretary and the borrower enter into an agreement under which the Secretary agrees to restructure the loan in accordance with this title and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the Secretary does not restructure the loan in accordance with this title; and

(3) the borrower makes a written request to the committee to contest the determination, amount, or action, as the case may be, not later than 30 days after the date by which the Secretary agreed to restructure the loan in accordance with this title.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 307. REPORT.

Not later than 270 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the operation of this title, including—

(1) an analysis of the impact of actions taken under this title on losses suffered by the Secretary;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by the Secretary under this title;

(4) the number and amount of loans restructured in accordance with this title;

(5) the number of current and estimated future delinquencies before and after the expiration of this title on loans made to borrowers; and

(6) the recommendations of the Secretary concerning reauthorization of this title.

SEC. 308. ALTERNATIVE CROP LOAN PROGRAM.

The Consolidated Farm and Rural Development Act is amended by inserting after section 352 (7 U.S.C. 2000) the following new section:

"SEC. 353. (a) For purposes of this section, the term 'alternative crop' means any agricultural operation (including aquaculture and livestock production) conducted by an applicant if—

"(1) there is no substantial history of such operation in the area in which the applicant resides; and

"(2) the applicant has derived from such operation not more than 20 percent of the gross annual income of the applicant during any of the 5 preceding taxable years.

"(b) In addition to the purposes prescribed in sections 303 and 312, the Secretary may make and insure, or guarantee, real estate and operating loans under subtitles A and B, respectively, to farmers and ranchers in the United States for the production of alternative crops.

"(c)(1) Subject to paragraph (2), to be eligible to obtain a loan or loan guarantee for

a real estate or operating loan for the production of an alternative crop, a person must—

"(A) meet the eligibility requirements prescribed for a real estate loan under section 302 or an operating loan under section 311, respectively; and

"(B) submit to, and receive the approval of, the Secretary for a 5-year plan of projected production and income from the proposed alternative crop.

"(2) In determining eligibility for a loan or loan guarantee under this section, the Secretary shall consider training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operation, whether or not such training or experience is in the production of an alternative crop.

"(d) The Secretary may enter into a multiyear commitment to provide a loan or loan guarantee under this section for a term, of not to exceed 3 years, that is consistent with the nature of the alternative crop operation.".

TITLE **d—MISCELLANEOUS PROVISIONS

SEC. 401. INTER-AGENCY AGRICULTURAL TASK FORCE.

(a) ESTABLISHMENT.—In light of the severe economic problems confronted by many agricultural banks and the regulatory responsibilities of bank regulatory agencies, not later than 30 days after the date of enactment of this Act, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Reserve System shall develop an Inter-Agency Agricultural Task Force to assist commercial agricultural banks and the borrowers of the banks to resolve present economic problems and to facilitate commercial bank lending to agriculture in the future.

(b) DUTIES.—The Inter-Agency Task Force shall—

(1) review existing regulations and policies to facilitate agricultural lending;

(2) cooperate with field office personnel to avoid conflicts and inconsistencies between the agencies; and

(3) consider meaningful alternatives to assist commercial banks in providing agricultural financing through regulatory or statutory changes, including accounting changes, interest rate buy-downs, or other similar methods for assisting banks.

(c) REPORTS.—Not later than 6 months after the date of enactment of this Act, and semiannually thereafter, the Inter-Agency Task Force shall report its findings and recommendations in carrying out this section to—

(1) the Committee on Agriculture to the House of Representatives;

(2) the Committee on Agriculture, Nutrition, and Forestry of the Senate;

(3) the Committee on Banking, Finance and Urban Affairs of the House of Representatives; and

(4) the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 402. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Secretary and the Farm Credit Administration shall issue such regulations as are necessary to carry out provisions of this Act under their jurisdiction.

SEC. 403. GENERAL DEFINITIONS.

As used in titles **a through **d of this Act—

(1) INSTITUTION.—The term "institution" means an institution of the Farm Credit System described in section 1.2 of the Farm Credit Act of 1971 (12 U.S.C. 2002).

(2) INTEREST SUBSIDY PROGRAM.—The term "interest subsidy program" means the Federal-State-Lender cooperative agricultural loan interest subsidy program established under title **a.

(3) FCS LOAN RESTRUCTURING PROGRAM.—The term "FCS loan restructuring program" means the restructuring program established under subtitle A of title **b for loans made by institutions of the Farm Credit System.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(5) STATE.—The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or (to extent the Secretary determines it is feasible and appropriate) the Trust Territory of the Pacific Islands.

(6) STATE AGENCY.—The term "State agency" means the agency designated by a State under section 106(b)(1) of this Act to carry out the interest subsidy program in the State.

(7) The term "this Act" means titles **a through **d of this resolution.

SEC. 404. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated such sums as may be necessary to out this Act.

SEC. 405. TERMINATION DATE. Except as otherwise provided in this Act, the authority granted by this Act shall terminate 3 years after the date of enactment of this Act.

SEC. 406. SHORT TITLE. Titles **a through **d of this resolution may be cited as the "Farm Credit Assistance Act of 1986".

TITLE —FARM CREDIT SYSTEM

SEC. . TREATMENT OF CERTAIN FARM CREDIT ASSOCIATIONS.

Section 5.17(a)(2) of the Farm Credit Act of 1971 is amended by striking out in line 2 "; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this Act at a rate higher than that charged like associations in the district or (ii) discriminated against in the provision of any financial service and assistance" and insert in lieu thereof the following: ". The Farm Credit Administration shall ensure that disapproving associations (i) shall not be charged any assessment under this Act at a rate higher than that charged other like associations in the district and (ii) shall be provided, on the same basis as like associations in the district, financial services and assistance".

TITLE —SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS OF 1986

Subtitle I—Reauthorization of Child Nutrition Programs

SEC. 101. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

Section 13(p) of the National School Lunch Act (42 U.S.C. 1761(p)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 102. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 103. STATE ADMINISTRATIVE EXPENSES.

Section 7(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 104. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (c)(2), by striking out "Subject to" and all that follows through "1984" and inserting in lieu thereof "Subject to amounts appropriated to carry out this section under subsection (g)";

(2) in subsection (g)—

(A) by designating the first and second sentences as paragraphs (1) and (3), respectively; and

(B) by amending paragraph (1) (as so designated) to read as follows:

"(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for each of the fiscal years ending September 30, 1987, and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989."; and

(3) in subsection (h)(2), by striking out "1984" and inserting in lieu thereof "1989".

SEC. 105. NUTRITION EDUCATION AND TRAINING PROGRAM.

The first sentence of section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "1984" and inserting in lieu thereof "1989".

Subtitle II—School Lunch and Breakfast Programs

SEC. 201. BASIS OF COMMODITY ASSISTANCE.

Section 6(b) of the National School Lunch Act (42 U.S.C. 1755(b)) is amended—

(1) in the first sentence, by striking out "May 15" and inserting in lieu thereof "June 1"; and

(2) in the second sentence, by striking out "June 15" and inserting in lieu thereof "July 1".

SEC. 202. INCLUSION OF WHOLE MILK AS A SCHOOL LUNCH BEVERAGE.

Effective July 1, 1986, section 9(a) of the National School Lunch Act (42 U.S.C. 1758(a)) is amended—

(1) by designating the first, second, and third sentence as paragraphs (1), (3), and (4), respectively; and

(2) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.".

SEC. 203. AUTOMATIC ELIGIBILITY FOR CERTAIN PROGRAMS.

Effective July 1, 1986, section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is a member of—

"(i) a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

"(ii) an AFDC assistance unit (under the aid to families with dependent children program authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et

seq.)), in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

"(B) Proof of receipt of food stamps or aid to families with dependent children shall be sufficient to satisfy any verification requirement imposed under paragraph (2)(C).".

SEC. 204. LIMITATION ON MEAL CONTRACTING.

Effective July 1, 1986, section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end thereof the following new subsection:

"(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced-price, and full-price reimbursable meals to all eligible children.".

SEC. 205. CHANGE IN TUITION LIMITATION FOR PRIVATE SCHOOLS.

(a) SCHOOL LUNCH PROGRAMS.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(b) SCHOOL BREAKFAST PROGRAMS.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(c) APPLICATION.—(1) The amendments made by subsections (a)(1) and (b)(1) shall apply for the fiscal year beginning on October 1, 1986, and each school year thereafter.

(2) The amendments made by subsections (a)(2) and (b)(2) shall apply for the school year beginning on July 1, 1988, and each school year thereafter.

SEC. 206. USE OF SCHOOL LUNCH FACILITIES FOR ELDERLY PROGRAMS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end thereof the following new subsection:

"(i) Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C 1771 et seq.) may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).".

SEC. 207. PILOT PROJECTS FOR ADMINISTRATION OF CHILD NUTRITION PROGRAMS BY CONTRACT OR DIRECT DISBURSEMENT.

(a) PILOT PROJECTS.—Section 20 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for schools, institutions, or service institutions referred to in section 10 of this Act and section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774).".

(b) CONFORMING AMENDMENT.—The first sentence of section 20(c) of the National School Lunch Act is amended by striking out "except for the pilot projects conducted under subsection (d) of this section,".

SEC. 208. DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS.

(a) SCHOOL LUNCHES.—Section 22(d) of the National School Lunch Act (42 U.S.C. 1769b(d)) (as added by section 1408(a) of the Education Amendments of 1978 (92 Stat. 2368)) is amended by striking out "and for" and all that follows through "reduced-price lunch".

(b) SCHOOL BREAKFASTS.—Section 20(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1789) is amended by striking out "and for" and all that follows through "reduced-price breakfast.".

SEC. 209. RESTORATION OF CERTAIN KINDERGARTENS TO THE SPECIAL MILK PROGRAM

Effective October 1, 1986, section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after the subsection designation;

(B) by redesignating clauses (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) in subparagraph (A) (as so redesignated), by inserting "except as provided in paragraph (2)," after "and under,";

(2) by designating the second through eighth sentences as paragraphs (3) through (9), respectively; and

(3) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.).".

SEC. 210. IMPROVEMENT OF BREAKFAST PROGRAM MEAL PATTERN.

(a) ADDITIONAL ASSISTANCE.—Effective October 1, 1986, section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended by adding at the end thereof the following new paragraphs:

"(3) The Secretary shall increase by 3 cents the annually adjusted payment for each breakfast served under this Act and section 17 of the National School Lunch Act (42 U.S.C. 1766). These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

"(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the National School Lunch Act.

"(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).".

(b) NUTRITION REQUIREMENTS.—(1) The Secretary of Agriculture shall review and revise the nutrition requirements for meals served under the breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and section 17 of the National School Lunch Act (42 U.S.C. 1766) to improve the nutritional quality of the meals, taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local food authorities.

(2) Not later than 180 days after the date of enactment of this title, the Secretary of Agriculture shall promulgate regulations to implement the revisions.

SEC. 211. EXTENSION OF OFFER VERSUS SERVE PROVISION TO THE SCHOOL BREAKFAST PROGRAM.

Section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.".

SEC. 212. STAFFING STANDARDS.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as amended by section 103) is further amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively.

Subtitle III—Special Supplemental Food Program for Women, Infants, and Children

SEC. 301. COSTS FOR NUTRITION SERVICES AND ADMINISTRATION.

(a) DEFINITIONS.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(3) by inserting after paragraph (3) (as so redesignated) the following new paragraph:

"(4) 'Costs for nutrition services and administration' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the pro-

gram under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.".

(b) CONFORMING AMENDMENTS.—Section 17 of such Act is amended—

(1) by striking out "administrative funds" each place it appears in subsections (f)(11), (h)(2), (h)(3), and (h)(4) and inserting in lieu thereof "funds for nutrition services and administration"; and

(2) by striking out "administrative costs" each place it appears in subsection (h) and inserting in lieu thereof "costs for nutrition services and administration".

SEC. 302. STATE ELIGIBILITY FOR WIC FUNDS.

(a) ELIGIBILITY.—Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)) is amended by adding at the end thereof the following new paragraph:

"(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this title.

SEC. 303. PARTICIPATION REPORT.

(a) BIENNIAL REPORT.—Section 17(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)) is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary shall report biennially to Congress on—

"(A) the income and nutritional risk characteristics of participants in the program;

"(B) participation in the program by members of families of migrant farmworkers; and

"(C) such other matters relating to participation in the program as the Secretary considers appropriate.".

(b) USE OF EVALUATION FUNDS FOR REPORT.—Section 17(g)(3) of such Act (as amended by section 104(2)(A)) is further amended by inserting "preparing the report required under subsection (d)(4)," after "health benefits,".

SEC. 304. PLAN OF OPERATION AND ADMINISTRATION.

(a) PLAN.—Paragraph (1) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)) is amended to read as follows:

"(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

"(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

"(C) The plan shall include—

"(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

"(ii) a description of the financial management system of the State agency;

"(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, and maternal and child health care programs;

"(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

"(v) a plan to expend funds to carry out the program during the relevant fiscal year;

"(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

"(vii) a plan to provide program benefits under this section to eligible persons most in need for the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

(viii) such other information as the Secretary may require.

"(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

"(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1987, and each fiscal year thereafter.

SEC. 305. PUBLIC COMMENT.

Paragraph (2) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(2)) is amended to read as follows:

"(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.".

SEC. 306. AVAILABILITY OF PROGRAM BENEFITS.

Paragraph (8) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(8)) is amended to read as follows:

"(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas).

"(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

"(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.".

SEC. 307. REPAYMENT OF CERTAIN BENEFITS BY RECIPIENTS.

Effective October 1, 1986, section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end thereof the following new paragraph:

"(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.".

SEC. 308. PRIORITY FUNDS FOR WIC MIGRANT PROGRAMS.

(a) PRIORITY FUNDING.—Effective October 1, 1986, section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) (as amended by section 104(2)(A)) is further amended by inserting after paragraph (1) the following new paragraph:

"(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.".

(b) ACCOUNTABILITY.—To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this title.

SEC. 309. IMPROVE STATE AGENCY ADMINISTRATIVE SYSTEMS.

Section 17(g)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(3)) (as amended by sections 104(2)(A) and 303(b)) is further amended by inserting "providing technical assistance to improve State agency administrative systems," after "subsection (d)(4),".

SEC. 310. PAPERWORK REDUCTION.

Section 17(h)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall limit to a minimal level any documentation required under the preceding sentence.".

SEC. 311. ALLOCATION STANDARDS.

Section 17(h)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(3)) is amended—

(1) in the second sentence, by striking out ", which satisfy allocation guidelines established by the Secretary"; and

(2) by striking out the last sentence.

SEC. 312. ADVANCE PAYMENTS.

Effective October 1, 1986, section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended by striking out "shall" and inserting in lieu thereof "may".

SEC. 313. AVAILABILITY OF FUNDS.

(a) AVAILABILITY.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) (as so designated) the following new paragraph:

"(3)(A) Notwithstanding paragraph (2)—

"(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year;

or

"(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be

expended by the State agency during the subsequent fiscal year.

"(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.".

(b) APPLICATION.—Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this title.

Subtitle IV—Other Nutrition Programs

SEC. 401. HEARINGS ON FEDERAL AUDIT ACTIONS UNDER THE CHILD CARE FOOD PROGRAM.

Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraph (2), the"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

"(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.".

SEC. 402. BASIS FOR NUTRITION EDUCATION GRANTS.

Section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "$75,000" each place it appears and inserting in lieu thereof "$50,000".

SEC. 403. EXTENSION OF ALTERNATIVE MEANS OF ASSISTANCE.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end thereof the following new subsection:

"(g)(1) As used in this subsection, the term 'eligible school district' has the same meaning given such term in section 1581(A) of the Food Security Act of 1985.

"(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

"(3)(A) On request of a participating school district (and after consultation with the Comptroller General of the United States with respect to accounting procedures used to determine any losses) and subject to the availability of funds, the Secretary shall provide cash compensation to an eligible school district for losses sustained by the district as a result of the alteration of the methodology used to conduct the study referred to in section 1581(a) of such Act during the school year ending June 30, 1983.

"(B) There are authorized to be appropriated $50,000 to carry out this paragraph, to be available without fiscal year limitation.".

SEC. 404. NATIONAL DONATED COMMODITY PROCESSING PROGRAMS.

In accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.

Subtitle V—Technical Corrections

SEC. 501. OBSOLETE PROVISIONS.

(a) NUTRITION PROGRAM STAFF STUDY; TRUST TERRITORY APPROPRIATIONS.—(1) Sections 18 and 19 of the National School Lunch Act (42 U.S.C. 1767 and 1768) are repealed.

(2) The first sentence of section 3 of such Act (42 U.S.C. 1752) is amended by striking out "sections 13, 17, and 19" and inserting in lieu thereof "sections 13 and 17".

(b) STUDY OF MENU CHOICE.—Section 22 of such Act (42 U.S.C. 1769c) (as added by section 9 of the Child Nutrition Amendments of 1978 (92 Stat. 3623)) is repealed.

(c) CONFORMING AMENDMENTS.—(1) The National School Lunch Act (as amended by sections 207 and 208(a) and subsection (b)) is further amended by redesignating sections 20, 21, and 22 (42 U.S.C. 1769, 1769a, and 1769b) as sections 18, 19, and 20, respectively.

(2) Clause (3) of the first sentence of section 6(a) of such Act (42 U.S.C. 1755(a)) is amended by striking out "section 20" and inserting in lieu thereof "section 18".

SEC. 502. OBSOLETE REFERENCES TO HEALTH, EDUCATION, AND WELFARE.

(a) REFERENCES IN NATIONAL SCHOOL LUNCH ACT.—Clause (1) of the sixth sentence of section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(b) REFERENCES IN CHILD NUTRITION ACT OF 1966.—(1) The Child Nutrition Act of 1966 is amended by striking out "Health, Education, and Welfare" each place it appears in section 4(a) (42 U.S.C. 1773(a)), subsections (b)(6), (b)(13), (e)(2), (k)(1), and (k)(2) of section 17 (42 U.S.C. 1786), and subsections (d)(2) and (d)(3) of section 19 (42 U.S.C. 1788) and inserting in lieu thereof "Health and Human Services".

(2) Section 19(j)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(3)) is amended by striking out "Office of Education of the Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Education".

SEC. 503. CONFORMING AMENDMENTS.

(a) DEFINITION OF SECRETARY.—Section 12(d) of the National School Lunch Act (42 U.S.C. 1760(d)) is amended by adding at the end thereof the following new paragraph:

"(8) 'Secretary' means the Secretary of Agriculture.".

(b) REDESIGNATION OF SUBSECTION.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) (as amended by sections 105, 402, and 502(b)(2)) is further amended by redesignating subsection (j) as subsection (i).

GOLDWATER AMENDMENT NO. 3102

Mr. GOLDWATER proposed an amendment to the joint resolution, (H.J. Res. 738), supra; as follows:

At the appropriate place, insert the following: None of the funds appropriated for fiscal year 1987 for the Department of Defense may be obligated or expended for the procurement, modification or research, development, test, and evaluation of T-46 trainer aircraft.

DANFORTH (AND OTHERS) AMENDMENT NO. 3103

Mr. DANFORTH (for himself, Mr. EAGLETON, and Mrs. KASSEBAUM) proposed an amendment to the joint resolution, (H.J. Res. 738), supra; as follows:

At the appropriate place, insert the following:

SEC. . (a) Section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) is amended by adding at the end the following new subsection:

"EMPLOYEE SENIORITY RIGHTS

"(g)(1) In any case which results in the operational integration or partial operational integration of the affected carriers, the acquiring carrier, and the designated representatives of employees of the acquiring carrier (if any) and the designated representatives of employees of any acquired carriers (if any), shall provide for the development, in a fair and equitable manner, of integrated seniority ranking lists for all affected employee groups.

"(2)(A) If any dispute or controversy arises regarding integration of seniority lists under paragraph (1) of this subsection and such dispute or controversy cannot be resolved by the parties, any party may refer such dispute or controversy to an arbitrator for consideration and determination.

"(B) If a contract which is applicable to such dispute or controversy and which has been entered into between or among any of the parties provides for referral of such dispute or controversy to an arbitrator, such referral shall be in accordance with the terms of such contract.

"(C) If referral of such dispute or controversy to an arbitrator is not provided for by such a contract, the referral of such dispute or controversy to an arbitrator, and the appointment of an arbitrator, shall be made in a manner acceptable to all parties. If the parties are unable to agree on the appointment of an arbitrator, any party which is seeking to make such referral may request assistance from the National Mediation Board. If such a request is made, the National Mediation Board shall furnish to such parties a panel of seven names of individuals with expertise in aviation labor issues. The parties shall select such arbitrator by the deletion of names from such panel in turn until one name remains, and such person shall serve as arbitrator. The arbitrator may conduct hearings regarding such dispute or controversy, but any such hearings shall be conducted in an expedited manner.

"(D) In making a determination under this subsection regarding such a dispute or controversy, the arbitrator shall consider such factors as the arbitrator considers appropriate, including the economic viability of the acquiring carrier and the promotion of any economic efficiencies sought through the transaction. The determination of such arbitrator shall be binding on all such parties.

"(E) The salary and expenses of the arbitrator shall be borne equally by the parties.".

(b) The amendment made by subsection (a) of this section shall apply with respect to any transaction approved by the Secretary of Transportation under section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) on September 12, 1986, and with respect to any transaction for which an original application is filed after the date of

enactment of this Act, except that such amendment shall not apply with respect to any transaction in which the parties invoke and are able to satisfy the requirements of the failing company doctrine.

(c) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 408 is amended by adding at the end the following:

"(g) Fair treatment of employees.".

(d) The amendments made by subsections (a) and (c) of this section and the provisions of subsection (b) of this section shall cease to be in effect on January 1, 1989.

DIXON AMENDMENT NO. 3104

Mr. DIXON proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . For activities authorized by title II, part B of the Job Training Partnership Act, $100,000,000, in addition to amounts otherwise provided for these purposes, to be allocated to states so that each service delivery area receives, as nearly as possible, an amount equal to its program year 1985 allocation for this program, to be available for obligation for the period July 1, 1986 through June 30, 1987.

SIMON (AND OTHERS) AMENDMENT NO. 3105

Mr. SIMON (for himself, Mr. PELL, Mr. MOYNIHAN, Mr. MATSUNAGA, and Mr. HARKIN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following new section:

SEC. . Notwithstanding any other provision of this joint resolution, not more than $248,200,000 may be appropriated for the account entitled "Department of State Acquisition and Maintenace of Buildings Abroad." There is $800,000 appropriated in addition to funds otherwise appropriated in this joint resolution for the purpose of carrying out the Department of State Soviet-East European Research and Training Program. There is $24,000,000 appropriated in addition to funds otherwise appropriated in this joint resolution for the purpose of carrying out the United States Information Agency Educational and Cultural Exchanges Programs, which shall be available only for the purposes of providing expenses of Fulbright, International Visitor, Humphrey Fellowship and Congress-Bundestag Exchange Programs, as authorized by Reorganization Plan No. 2 of 1977 and the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2451 et seq.).

HARKIN (AND GRASSLEY) AMENDMENT NO. 3106

Mr. HARKIN (for himself and Mr. GRASSLEY) proposed an amendment to the joint resolution (H.J. Res. 738) supra; as follows:

At the end of the resolution, add the following new title:

TITLE —

SEC. . This title may be cited as the "Agricultural Program Payment Limitation Act of 1986".

SEC. . (a) Effective with respect to each of the 1987 through 1990 crops, section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended—

(1) by striking out paragraphs (1), (2), and (3) and inserting in lieu thereof the following new paragraphs:

"(1) For each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any deficiency payments described in paragraph (2)(B)(iv)) and land diversion payments that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

"(2)(A) For each of the 1987 through 1990 crops, the total amount of payments described in subparagraph (B) that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey, and (with respect to clause (iii)(II) of subparagraph (B)) other commodities, when combined with payments for such crop described in paragraph (1), shall not exceed $500,000.

"(B) As used in subparagraph (A), the term 'payments' means—

"(i) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

"(ii) any disaster payment under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

"(iii)(I) any gain realized by a producer from forfeiting or repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a), 105C(a), 103A(a), 101A(a), or 201(b), respectively, of such Act (7 U.S.C. 1445b-3(a), 1444e(a), 1444-1(a), 1441-1(a), or 1446(b)); or

"(II) any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level than the original loan level established under such Act;

"(iv) any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, of such Act as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of such Act;

"(v) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(b), respectively, of such Act; and

"(vi) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively of such Act.";

(2) by adding at the end of paragraph (5) the following new subparagraph:

"(C) The regulations issued under subparagraph (A) shall provide that the term 'person' shall not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.";

(3) in paragraph (6)—

(A) by striking out "lands owned" and inserting in lieu thereof "lands or animals owned"; and

(B) by inserting ", or animals are husbanded," after "lands are farmed"; and

(4) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(b) The amendments made by subsection (a) shall not apply with respect to any payment or loan received under any agreement or contract made before the date of enactment of this Act.

(c)(1)(A) The Secretary of Agriculture shall review the regulations in effect on the date of enactment of this Act that define the term "person" under section 1001 of the Food Security Act of 1985 and related regulations in effect on such date otherwise affecting the payment limitations under such section, to determine ways in which such regulations can be revised to better ensure the fair and reasonable application of limitations and eliminate fraud and abuse in the application of such payment limitations.

(B) The Secretary also shall review the amendments to section 1001 of the Food Security Act of 1985 made by this section.

(2) Based on the reviews conducted under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, not later than March 1, 1987, a report on such reviews and—

(A) with respect to the matters reviewed under paragraph (1)(A), proposed regulations or amendments to regulations, to take effect not earlier than October 1, 1987, that will meet the objections with respect to limitations specified in paragraph (1)(A); and

(B) with respect to the matters reviewed under paragraph (1)(B), recommendations on legislative changes to section 1001 of the Food Security Act of 1985 that the Secretary determines are necessary or appropriate.

ELECTRONIC SURVEILLANCE

LEAHY (AND OTHERS) AMENDMENT NO. 3107

Mr. BYRD (for Mr. LEAHY, for himself, Mr. MATHIAS, and Mr. THURMOND) proposed an amendment to the bill (H.R. 4952) to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Communications Privacy Act of 1986".

TITLE I—INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is trans-

mitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": *Provided*, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears

and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) PENALTIES MODIFICATION.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) STATE OF MIND.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 103. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) COMPUTATION OF DAMAGES.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or

any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) REIMBURSEMENT FOR ASSISTANCE.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) COMMENCEMENT OF THIRTY-DAY PERIOD AND POSTPONEMENT OF MINIMIZATION.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 107. INTELLIGENCE ACTIVITIES.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by

the Foreign Intelligence Surveillance Act of 1978.

SEC. 108. MOBILE TRACKING DEVICES.

(a) IN GENERAL.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) DEFINITION.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 109. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.—" before "Whoever" the first place it appears;

(2) by inserting "(b) NOTICE OF SEARCH.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 110. INJUNCTIVE REMEDY.

(a) IN GENERAL.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 111. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or (c), this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this Act.

(c) EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.—Section 104 of this Act shall take effect on the date of enactment of this Act.

TITLE II—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

SEC. 201. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.
"2701. Unlawful access to stored communications.
"2702. Disclosure of contents.
"2703. Requirements for governmental access.
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704 or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) EXCEPTIONS.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of elec-

tronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) BACKUP PRESERVATION.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) CUSTOMER CHALLENGES.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may

have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3 destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by

means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access 2701".

SEC. 202. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

TITLE III—PEN REGISTERS AND TRAP AND TRACE DEVICES

SEC. 301. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.
"3121. General prohibition on pen register and trap and trace device use; exception.
"3122. Application for an order for a pen register or a trap and trace device.
"3123. Issuance of an order for a pen register or a trap or trace device.
"3124. Assistance in installation and use of a pen register or a trap and trace device.
"3125. Reports concerning pen registers and trap and trace devices.
"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service, or with the consent of the user of that service.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) DEFENSE.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace

devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices ..... 3121".

SEC. 302. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this title; or

(2) the date two years after the date of the enactment of this Act.

SEC. 303. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

ACCESS DEVICES AND COMPUTER FRAUD

TRIBLE (AND LAXALT) AMENDMENT NO. 3108

Mr. DOLE (for Mr. TRIBLE, for himself and Mr. LAXALT) proposed an amendment to the bill (S. 2281) to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes; as follows:

S. 2281 is amended—

1. In Section 2(b), by adding the term "(1)" before the words "to read as follows"; and

In Section 2(b), by adding at the end thereof the following new paragraph:

"(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.";

2. In Section 2(a), by adding at the end thereof the following new paragraph:

"(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18."

3. In Section 2(f), by adding at the end thereof the following new paragraph:

"(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)"."

4. In Section 2(g), by adding to the list of terms to be defined as "financial institutions" the following:

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934;

"(H) the Securities Investor Protection Corporation."

5. In Section 2(a), by deleting the period at the end of paragraph (2) and inserting in lieu thereof a semicolon.

In Section 2(a), by adding at the end thereof the following new paragraph:

"(3) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of Title 15.".

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

SPECTER AMENDMENT NO. 3109

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the Continuing Resolution, add the following new Section:

SEC. . Any judicial official, as defined by paragraphs (A) and (B) of section 376(a)(1) of title 28, United States Code, serving in office after June 19, 1986, or the surviving spouse of any such official, may elect, at any time after June 19, 1986, and before April 1, 1987, to participate in the survivors' annuities program authorized by section 376 of title 28, United States Code, as amended by the Judicial Improvements Act of 1985. Any such election shall be made by filing such election with the Director of the Administrative Office of the United States Courts. Such election shall be effective when made and shall entitle the judicial officer, and any survivors, to participate in all the obligations and benefits of the program, as such program, as amended, is to be administered, without regard to section 2(f) of such Act. The election authorized by this Act shall be in addition to any other election authorized by section 376 of title 28, United States Code.

NOTICES OF HEARINGS

SUBCOMMITTEE ON FOREIGN AGRICULTURAL POLICY

Mr. HELMS. Mr. President, I wish to announce that the Subcommittee on Foreign Agricultural Policy, of the Committee on Agriculture, Nutrition, and Forestry, will hold a hearing to review the implications for agricultural trade arising out of the GATT ministerial meetings at Punta del Este, Uruguay.

The hearing, to be chaired by subcommittee Chairman RUDY BOSCHWITZ, will take place at 11 a.m. on Wednesday, October 8, 1986, in 332 Russell Senate Office Building.

If further information is needed, please contact Dan Pearson, at 224-5641.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, the Senate Committee on Governmental Affairs will hold a business meeting on Thursday, October 2 at 10 a.m. in room SD-342. Under consideration will be the following:

S. 2479.—Prompt Payment Amendments.

S. 2630.—Defense Transportation Bill Audit Improvement Act of 1986.

S. 2887.—Relating to the coordination of Federal information policy (Title VI of S. 2230).

Nomination of John Agresto to be Archivist of the United States.

Nomination of Bob Bedell to be Administrator of Federal Procurement Policy.

Nomination of Henry Frazier to be a Member of the Federal Labor Relations Authority.

Nomination of John Griesemer to be a Governor of the U.S. Postal Service.

Nomination of John Melchner to be Inspector General of the Department of Transportation.

For further information, please contact the committee office at 224-4751.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON RULES AND ADMINISTRATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, October 1, 1986, in order to conduct a business meeting marking up the following executive and legislative business:

Nominations of Thomas J. Josefiak and Soctt Thomas to be members of the Federal Election Commission, S. 2673, H.R. 4545, S. 2448, Senate Joint Resolution 268, Senate Resolution 330, and Senate Resolution 482.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DOLE. Mr. President, I ask unanimous consent that the Select Comittee on Intelligence be authorized to meet during the session of the Senate on Wednesday, October 1, in closed session, to conduct a hearing on intelligence matters; and to consider business items.

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

SUBCOMMITTEE ON BUSINESS, TRADE, AND TOURISM

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Business, Trade, and Tourism of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, October 1, to conduct a hearing on travel and tourism statistics.

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

ADDITIONAL STATEMENTS

DEMOCRACY IN CHILE

● Mr. SIMON. Mr. President, I ask to have printed in the RECORD, my statement which was presented at an Institute for Policy Studies rally for "Democracy in Chile" on September 22, 1986.

The statement follows:

STATEMENT OF PAUL SIMON

We are here because we believe in freedom, democracy and justice in Chile, and because for too long these basic human rights have been denied to the Chilean people. We have a particular responsibility to restore democracy in Chile. Thirteen years ago our government helped put General Pinochet into power and for the last five years our government has helped to keep him there. It is time to change our policy. Last week, Filipino President Cory Aquino visited Washington and described their transition to democracy as the triumph of the aspirations of the Filipino people. Let's help make what happened in the Philippines happen in Chile as well. The United States government should stop supporting loans to Chile and start supporting democracy and human rights in that country.

You know the record of the Pinochet government: church workers, human rights activists, shanty town dwellers and members of political opposition groups have been targeted in both official and unofficial operations. Mass roundups, such as the detention of some 15,000 people in May of this year, have resulted in some of the highest arrest figures since the days following the 1973 coup which brought the present government to power.

On July 2, 1986, we were all moved by the burning of Gloria Carmen Quintana and the tragic death of Rodrigo Rojas de Negri. The world was outraged by this crime. The Chilean government responded to the international outcry for justice by bringing mild charges of neglect against one lieutenant who took part in the attack. Their investigation openly disregarded the testimony of many eye-witnesses.

Under the emergency laws in force since the 1973 coup, political parties are banned. Journalists, political and comunity leaders and trade unionists are harrassed and imprisoned for criticizing the government or seeking to organize peaceful protests. Less than two weeks after the attack on Carmen Quintana and Rodrigo Rojas, General Pinochet declared that he would not relinquish power in 1989 as required by the Chilean constitution. His reason for violating the law is, and I quote, "for the pleasure of it."

Recently Pinochet declared a state of seige in response to an attempt to assassinate him. Pinochet has used this assassination attempt as a pretext for a new campaign of repression. Since this state of seige, four of the major opposition leaders have been killed. There has bee no investigation of any of these murders. Also, as part of the state of seige, the government has expelled some of the foreign journalists stationed in Chile and the domestic opposition press has been silenced.

The U.S. cannot be silent while Pinochet distorts three of the most important American ideals: democracy, human rights and freedom of the press. Congress must make it clear that further human rights abuses will not be tolerated. The investigation and prosecution of any further human rights cases will be monitored by Congress to ensure that justice is obtained.

Assistant Secretary of State Eliot Abrams has gone on record to say that the United States does not intend on extending any loans to Chile through multilateral development banks. This decision, as well as the actions of Ambassador Barnes, are to be applauded. We must continue to push for democracy, freedom and justice in Chile.●

JOYCE NALEPKA RECEIVES ICPA FAMILY AWARD

● Mrs. HAWKINS. Mr. President, I was delighted to learn that Joyce Nalepka was honored by the International Commission for the Prevention of Alcoholism and Drug Dependency by receiving its 1986 "ICPA Family Award."

Joyce's award reads: "ICPA Family Award" * * * Honors Mrs. Joyce Nalepka for pioneering and developing parent organizations for drug-free youth * * * Sixth ICPA World Congress, Nice, 1986."

Joyce is the president of the National Federation of Parents for Drug-Free Youth. She is a valuable national resource in our society's war on drugs. Joyce epitomizes the kind of individual commitment and effective private action against drug use that President Reagan must have had in mind when he called upon each of us to add our individual effort and influence to the fight against drug use.

Joyce declared her own personal war on drugs in the late seventies, long before the issue enjoyed the widespread interest and awareness that it does today. She entered the trenches soon after escorting her two sons and their friends to a rock concert at the Capital Centre outside Washington, DC. The spectacle of widespread and flagrant illegal drug use by thousands of teenagers, under the tolerant eyes of the Capital Centre authorities, galvanized her commitment to fight back against drugs use.

Rather than just talking about the problem, Joyce rolled up her sleeves and got busy. She enlisted her friends and neighbors, contacted local officials, refused to take no for an answer, went from one battle to another, started filing her information and contacts, and ultimately played a significant part in the founding of the National Federation of Parents for Drug-Free Youth which today has over 9,000 chapters.

Some of Joyce's accomplishments include:

Spearheading a successful lobbying effort before Congress in 1979 to halt legislation which would have decriminalized marijuana possession, when the bill appeared sure of passage;

Successfully educating the constituents of at least one ex-Member of Congress about his unsatisfactory record on the drug issue;

Spearheading other successful lobbying efforts for model legislation against drug paraphernalia shops and designer drugs;

Alerting parents and communities to the faulty drug education programs which taught "responsible use" of illegal drugs rather than no use.

The drug culture has learned, to its chagrin, that Joyce Nalepka is a tough and determined opponent. She is articulate, she is energetic, and she does not shy away from locking horns with the drug problem, wherever it raises its ugly head. She has clearly demonstrated that one person can indeed make a difference.

Money can't buy the commitment, the enthusiasm, the genuine quality in Joyce Nalepka's work against drug

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use. She has spread her contagious commitment and enthusiasm, as well as her valuable knowledge and experience, everywhere she goes.

She is one of the most widely traveled spokesmen and proselytizers for the parents' movement. This mother and housewife from Silver Spring, MD, now has national stature and no one deserves it more than she. Joyce collects her awards the old-fashioned way, she earns them. Congratulations, Joyce, for a difficult job well done.●

JOAN SHORENSTEIN BARONE CENTER AT HARVARD

● Mr. KENNEDY. Mr. President, last weekend, the ceremonies were held to mark the opening of the Joan Shorenstein Barone Center on the Press, Politics and Public Policy at the John F. Kennedy School of Government at Harvard.

Joan Barone's tireless dedication to journalistic excellence was well know to her countless friends and associates, and all of us who knew her are grateful that her legacy will be carried forward through the center. Joan's extraordinary life and the goals of the center that bears her name are eloquently set forth by David Border in his column in today's Washington Post, and I ask that the column may be printed in the RECORD.

The column follows:

[From the Washington Post, Oct. 1, 1986]

SKEPTICAL VOTERS, SKEPTICAL READERS

(By David S. Broder)

CAMBRIDGE, Mass.—One of the puzzles for politicians and journalists alike this fall has been the widespread public skepticism about the tax-revision bill passed by Congress last week and now awaiting the president's signature.

While President Reagan, its original proponent, and leaders of both parties in Congress hailed it as a major step toward economic rationality and political equity, voters have appeared either indifferent or hostile. Claims that 6 million of the working poor will come off the tax rolls entirely, that 76 million mainly middle-income people will receive a tax cut of about $800 apiece by 1988, and that only 20 million—mainly wealthy—will pay more seemingly have fallen on deaf ears.

What has come through to voters so far is that the government is changing the tax system. And any sentence that contains the words "government" and "taxes" spells bad news to them.

This oddity of public opinion provided a peculiarly fitting background for the ceremonies here last weekend opening the Joan Shorenstein Barone Center on the Press, Politics and Public Policy at Harvard's John F. Kennedy School of Government.

The event had special meaning for me, because Joan, who died of cancer last year, was a dear friend for the last 16 of her 38 years. I met her when she was a graduate student at Harvard, encouraged her to come to The Washington Post as a political researcher in 1970 and watched with pride as she outgrew that job, moved to CBS News and became producer of its "Face the Nation" interview program and many of its best political pieces.

The center her parents, Walter and Phyllis Shorenstein of San Francisco, endowed as a memorial to Joan can be of enduring importance to all of those who have a stake in the way this nation's press and government function.

As Derek Bok, the president of Harvard, said: "Our understanding of the extraordinary role and influence of the press in American politics and government today is only rudimentary." And the same point could be made with equal force about the way in which government officials—at all levels from the president down to the city councilman—seek to influence, manipulate and control the press coverage they and their issues receive.

In a panel discussion at the center's opening, Albert Hunt of The Wall Street Journal clashed with Richard Neustadt and Martin Linsky of Harvard, academies with government backgrounds, on the classic question of whether a journalist or news organization should weigh the consequences of a particular story on government policy before deciding whether to publish or broadcast.

What both journalists and government officials would agree, I think, is that cynicism is equally a threat to both of us. When the public distrusts what its elected and appointed officials say and what its journalists report, the chances of maintaining a healthy democracy are sharply diminished.

That is why so many of us were dismayed at the recent polls showing substantial minorities or even pluralities of the American public saying they thought Nicholas Daniloff might be a spy in the Soviet Union, despite assurances from the president, the secretary of state, the publisher of Daniloff's magazine and his colleagues on the Moscow beat that the Soviet accusations were false.

And the climate of cynicism surrounding the tax bill makes it even more remarkable that a Congress divided between the parties had the courage and persistence to pass such an ambitious measure, lowering rates, closing loopholes and broadening the tax base.

My own feeling is that we in the press and television contributed to the skepticism on the tax bill by questioning President Reagan's motives in proposing it and by dwelling endlessly on the influence of "the special interests" on the members of the congressional tax panels.

Most of all, we failed, as we too often do, to illuminate the substance of this sweeping measure, so that the voters could comprehend the boldness of what has been done.

That is where the new Harvard center can do a service, if it just finds a way to embody and communicate the standards to which Joan Barone devoted her professional life.

She was renowned among her colleagues for being a stickler on the details, for never letting a politican or a reporter slide off the hard points of evidence or argument. She never doubted that newspapers and television broadcasts had a responsibility that went far beyond entertaining people or boiling things down to easily digested simplicities.

She shared the faith of the nation's founders that an informed public would exercise its sovereignty with wisdom. She believed that those who acquire vital information—whether government officials or journalists—have an absolute obligation to communicate as much of it as they possibly can to the readers, the viewers and the voters to whom they are accountable.

She worked to those exacting standards all her life, even when gravely ill, and the center that bears her name will, I hope, instill those same standards in others from the academic, political and journalistic world who come through its doors.●

A MUTUALLY AGREED ARMS RACE

● Mr. KERRY. Mr. President, as we approach the nonsummit summit between President Reagan and Mr. Gorbachev scheduled to take place in Iceland on October 11 and 12, we all wish the President the best of luck in reaching further arrangements with the Soviets aimed at preserving peace and improving the security of our country.

It seems possible that an agreement between the United States and the Soviets on intermediate range nuclear weapons may be near agreement. According to press accounts, each side might retain 100 INF weapons in Europe, and the Soviets would agree to substantial restrictions on INF weapons in Asia. Such an arrangement, if that is in fact negotiated, could well be in the interests of the United States and the NATO alliance. And I hope we will have the opportunity to make that judgment in the course of full hearings and study through the ratification process.

However, there is an apparent stumbling block to a new treaty—the Soviet insistence that no new treaty is possible without continued United States commitment to the ABM Treaty, even as the Reagan administration apparently seeks a new agreement to phase out the limits of the ABM Treaty over the next decade.

Regardless of the Soviet position, I believe the current American position is a mistake, and urge the President to reconsider that position before meeting with Mr. Gorbachev.

It is ironic that the Reagan administration is trying to negotiate a treaty on strategic defenses that would replace current limits on the testing, development, and deployment of ballistic missile defenses with a treaty framework that allows the arms race to proceed forward by mutual agreement—exactly the charge that President Reagan once made about SALT II, when he termed it "fatally flawed."

As Spurgeon M. Keeny, president of the Arms Control Association, has editorialized in the September 1986 issue of Arms Control Today, the Reagan administration proposal is not arms control at all, but "a transparently self-serving arrangement to abolish the ABM Treaty on a timetable consistent with an optimistic assessment of the U.S. Strategic Defense Initative while constraining a potential Soviet ABM deployment in the short term."

As Mr. Keeny rightfully suggests this idea would tear the guts out of

the ABM Treaty and effectively render it a nullity, permitting both sides to move forward into an area of the arms race that had previously been constrained.

To quote Mr. Keeny, "eliminating restraints on strategic defenses is not the formula for arms control; rather, it is a prescription for a new arms spiral between the superpowers. * * * The administration has achieved the ultimate arms control irony. In the name of arms control, it has proposed that the superpowers cooperate in destroying the ABM Treaty, the keystone of the existing arms control framework, and move from mutually assured deterrence to a mutually agreed arms race."

I ask that the full text of Mr. Keeny's editorial be printed in full at the end of my statement.

We should not be seeking to replace the ABM Treaty we should be seeking to strengthen it. We should not be repudiating SALT II—we should live within it while negotiations on reductions in offensive arsenals continue. We should not be rejecting the Soviet nuclear testing moratorium—it is in the interest of our own national security to join it.

There are issues between us and the Soviets which President Reagan should raise—not United States repudiation of the ABM Treaty, but solutions to the problems of the Krasnoyarsk radars, the proliferation and modernization of Soviet air defenses, Soviet strategic laser research, and encryption. These issues can and must be resolved not by abandoning the treaties involved, but through aggressive negotiation and diplomacy, even as the Daniloff case was resolved by achieving the freeing of a prominent Soviet dissident after lengthy meetings between Secretary of State Shultz and Soviet Foreign Minister Shevardnavze last week.

The general language of the ABM Treaty, for example, is filled with terms that have eluded clear definition, terms like "components," or "tested in an ABM mode." The treaty does not even provide clear guidance on the most fundamental questions, such as the difference between permitted research and prohibited development.

To modernize arms control, we need to elaborate and update the general language of the treaty with definitions that both sides can agree on. That process can be done in the secrecy and quiet of the Standing Consultative Commission established by the treaty. Or it can be done in Geneva. But done it must be if the treaty is to survive.

Moreover, ABM Treaty restrictions are increasingly imperiled by giant loopholes—loopholes like the freedom to test and deploy antisatellite weapons, such as are under development in our SDI Program. Both sides are at the edge of vastly improved ASAT capabilities, as the recent U.S. test in space in which a kinetic kill was made through the collision of two satellites aptly demonstrated. We depend on our satellites—we should move to protect them with an ASAT Treaty. There are many possibilities for such a treaty—but the most obvious protection would be for both sides to agree to a ban on ASAT tests. ASAT testing bans can be verified. An untested ASAT has little military value. An ASAT testing ban thus does much to protect both sides satellites.

Preserving and extending arms control is a difficult and even perilous enterprise when both sides are demonstrating the best of wills. As the "nonsummit" summit approaches, I call on the President to reconsider his administration's course of dismantling the work of five preceding administrations, and instead to get on with what must be done to preserve and extend these too fragile, but still significant, foundations of arms control.

The editorial follows:

TOWARD A MUTUALLY AGREED ARMS RACE

The Reagan administration is apparently attempting to persuade the Soviet Union to join the United States in a new agreement on strategic defenses that would guarantee the demise of the ABM Treaty by mutual consent. President Reagan has reportedly offered not to deploy space-based antimissile defense systems for five to seven years provided the Soviet Union agrees they can be deployed thereafter. Moreover, the administration has made clear that these currently prohibited systems could be developed and tested in the meantime.

The President's proposal is a transparently self-serving arrangement to abolish the ABM Treaty on a time table consistent with an optimistic assessment of the U.S. Strategic Defense Initiative while constraining a potential Soviet ABM deployment in the short term. This will hardly be seen as a concession by the Soviet Union because the administration acknowledges that the United States could not possibly begin deployment of a space-based defense system, utilizing new technology, until after the mid-1990's. The Soviet Union, however, could begin a nationwide deployment of its Moscow-type ground-based ABM system much sooner.

The administration's insistence on the right to develop and test space-based defenses involving new technologies would place the ABM Treaty in immediate jeopardy. This action would go a long way toward rendering the ABM Treaty meaningless since a ban on space-based and other mobile defenses is central to the treaty's basic objective of preventing a nationwide defense. In return for these "concessions," the Soviet Union would be expected to agree to deep cuts in its strategic offensive forces.

If these press reports in fact reflect the administration's position, there will almost certainly not be an agreement. And, if the Soviet Union should unexpectedly agree to renegotiate the ABM Treaty along these lines, we will have managed to design an agreement to ensure a fruitless race to build strategic defenses. This will not lead to deep cuts in offensive forces since both sides will move promptly to expand and improve their offensive arsenals in order to guarantee their ability to retaliate in all circumstances. Eliminating restraints on strategic defenses is not the formula for arms control; rather, it is a prescription for a new arms spiral between the superpowers.

President Reagan claims he wishes the United States and the Soviet Union would join together to protect the world from the danger of nuclear weapons. Unfortunately, his administration has no credible plan for achieving this goal. Instead, it would scrap the ABM Treaty in the face of a growing consensus that an effective nationwide defense is technically impossible.

To make room for "Star Wars," the Reagan administration first tried to destroy the ABM Treaty with an unsupportable reinterpretation that would reverse its universally accepted meaning by permitting the banned development and testing of space-based systems. Now, in a more direct approach, President Reagan is apparently trying to enlist the Soviet Union in a cooperative program to undermine and then formally destroy the ABM Treaty. The administration has achieved the ultimate arms control irony. In the name of arms control, it has proposed that the superpowers cooperate in destroying the ABM Treaty, the keystone of the existing arms control framework, and move from mutually assured deterrence to a mutually agreed arms race.

Spurgeon M. Keeny, Jr.●

THE A-7 STRIKEFIGHTER AIRCRAFT

● Mr. DOMENICI. Mr. President, in its report on the fiscal year 1987 defense authorization bill, the Senate Armed Services Committee authorized $35 million in research and development funding for the A-7 Strikefighter aircraft. The House Appropriations Committee also included the provision in the House-reported DOD appropriations bill. The purpose of this program is to modernize our current A-7 aircraft and thus enhance its capability for the close-air support role. The Air Force is planning to equip the Air National Guard with F-16 fighter aircraft at some future time, but there is a strong case to be made instead for modernizing the Air Guard with the Strikefighter.

The A-7 is an excellent aircraft. As many Members are aware, it has been a mainstay of the Navy's fleet of attack aircraft for years. Although the average age of our A-7's is over 12 years, it still has plenty of useful life left. With a considerably upgraded engine, aerodynamic structural modifications and improved night attack avionics, the Strikefighter would be twice as effective as the existing A-7 and probably better than the F-16 in the close-air support role. It could perform the close-air support role well into the 21st century.

Furthermore, development of the Strikefighter would cost only about $200 million over 2 years, followed by a $6 million per aircraft modification effort. This is about half the cost of any new aircraft. In short, the Strike-

fighter Program is worthwhile and cost-effective, at a time when we need to find ways to save money.

I strongly support this needed investment in our country's air forces, and I urge that House-Senate conferees on defense appropriations adopt the funding level recommended by the Senate Armed Services Committee and the House Appropriations Committee. While there is no funding for Strikefighter R&D in the Senate defense appropriations bill for fiscal year 1987, I urge the conferees to accept the House position and fund this program.

MANNING FOR THE NATIONAL GUARD AND RESERVE

● Mr. DOMENICI. Mr. President, during the last few years, an increasing amount of the responsibility for the defense of our country has been placed on our National Guard and Reserve Forces. We are shifting more of the tasks currently being performed by our Active Duty Forces to the Guard and Reserve. I support this process. At a time of budgetary constraints, expanding the size and strength of the Guard and Reserve provides a cost-effective alternative for maintaining a strong defense posture.

The fiscal year 1987 budget request for the Guard and Reserve calls for an increase in full-time manning of 12,112 over the fiscal year 1986 level. The Senate Armed Services Committee has authorized no growth in this area, recommending full-time manning to be maintained at 64,277. The House recommendation also provides no growth. The Senate Appropriations Committee's recommendation does allow for some growth. It sets full-time manning for the Guard and Reserve at 68,311 for the upcoming fiscal year.

I wish to commend the Defense Appropriations Subcommittee in its effort to provide enough flexibility in funding to allow our Guard and Reserve to man the new weapons systems which have been authorized for them. I know that in my own State of New Mexico the Army National Guard has deployed or is preparing to deploy weapons such as the Roland, Chapparal, and Stinger missile defense systems. We will also be deploying a new Hawk missile battalion.

Again, these weapons systems have been authorized. They are important components of our Guard and Reserve Modernization Program, but they require an increase in full-time manning. I urge the distinguished chairman of the Defense Appropriations Subcommittee to ensure that the cuts in full-time manning for the Guard and Reserve do not jeopardize the deployment of these systems with the Guard. In this respect, I believe it is vital that the House-Senate conferees on defense appropriations adopt the Senate level for full-time manning of the Guard and Reserve, and I urge my colleagues who are on the conference committee to stand fast during negotiations on this issue.●

CONCERNING THE SAFETY PROGRAM OF TINDLE MILLS, INC.

● Mr. DANFORTH. Mr. President, truck safety is a serious problem on our Nation's highways. Heavy truck accidents kill 5,000 people each year. Truck accidents reported to the Department of Transportation were 18 percent higher in 1984 than in 1983 and rose another 6 percent in 1985.

There are some companies that are taking steps to stop this disturbing trend. For example, Tindle Mills, Inc., of Springfield, MO, pays drivers on a per-mile basis for every mile driven without an avoidable accident.

Tindle has shown that safety pays for both the company and its drivers. In a 28-month stretch, Tindle's drivers accumulated almost 1.5 million miles without an accident. Its drivers have received $70,000 in bonuses since the program began in 1979.

I congratulate Tindle on its successful program and urge other companies to profit from its example.●

ENGLISH PROFICIENCY ACT

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of S. 2835, the English Proficiency Act of 1986, excellent legislation introduced by the distinguished Senator from New Mexico.

Recently, we have been overwhelmed with statistics that highlight the startling rise in the illiteracy rate in the United States. Current estimates by the Department of Education indicate that 25 million American adults are considered functionally illiterate. They are lacking such basic skills as reading, writing, comprehension, and mathematics that are necessary to function beyond the fourth grade. Another survey conducted by the Census Bureau and the Department of Education found that, while 13 percent of all American adults are illiterate, the illiteracy rate for adults whose first language is other than English is an astounding 48 percent. Hispanics in particular stand out with an illiteracy rate of 56 percent.

As Americans, we pride ourselves on the vast number of opportunities this land provides us; foremost among these opportunities is education. The fact that there are so many millions of Americans who cannot write their own name, or read a road sign or newspaper, is both shocking and deplorable.

This legislation would combat illiteracy and focus on groups that are particularly plagued with deficient reading and writing skills. It would provide grants for adult literacy programs for high school dropouts who are limited in their understanding of the English language; would establish a clearinghouse to facilitate the acquisition and dissemination of effective teaching methods for the targeted population; and would make more effective use of existing resources and programs at the Department of Education.

The consequences that arise from the growing illiteracy rate must be acknowledged. The Americans that are most affected by their inability to read and write cannot afford to continue along this path. The basic skills that result from a solid education are the most important means these people have of bettering their opportunities in life. We have a responsibility to provide the means for these people to become full and productive citizens. It is for these reasons that I strongly support the English Proficiency Act of 1986 and urge my colleagues to act expeditiously in passing it.●

ABORTION AND INFORMED CONSENT: IOWA

● Mr. HUMPHREY. Mr. President, I hope my colleagues will read Ellie's letter from Iowa carefully. I hope they will try to imagine what it must be like for a young woman to realize that she has been misinformed about the true nature of her baby's development. There is a conspiracy of silence regarding the true nature of abortion and the complications associated with the procedure. I ask my colleagues from Iowa to heed the plea of their constituent and cosponsor S. 2791 requiring that women be told all the facts about abortion before they submit to an abortion.

The letter follows:

JULY 4, 1986.

DEAR SENATOR GORDON HUMPHREY: As August approaches, I already feel myself getting depressed. August 10th will be the 16th anniversary of the day I allowed my only child to be destroyed.

Although I should have known what was going on (I was 29 at the time), I'm somewhat embarrassed to admit I didn't. No one told me anything about the developing baby inside me, nor did anyone tell me what would happen to the baby during the abortion. In fact, I wasn't even told what would take place. Certainly, I didn't get any information on how the abortion could affect me psychologically in later years.

My abortion was done in New York City at 16 weeks, a saline abortion, an especially gruesome type since the baby is well developed at 16 weeks. I was fortunate to have no physical complications at all. The abortion was performed at Hillcrest General Hospital in Queens.

Oh, my life was different from the beginning. I'd lost self-respect as well as the respect of some other people in my life, but I had no idea how I would be affected when I finally saw pictures of what developing babies look like and what abortion does to them! It was traumatic, and I've suffered depression, guilt, nightmares, heart irregularities, unstable relationships, et cetera,

during the less than 2 years that have passed since I became aware of the facts.

I'm active in helping other women come to terms with their post-abortion depression and distress, and want you to know how much we all appreciate the efforts you're making to get legislation passed to assure that women soon will have the facts before they make a "choice" they"ll regret so much later on.

I, too, feel education is the best means to help people understand what's involved before a problem pregnancy exists, and definitely before a "choice" can be made. Keep up your efforts, and we will continue to support you and the other pro-life people in Washington, D.C. as well as we can from here.

Sincerely for life,

ELLIE ROUGHT,
Cedar Rapids, Iowa.●

FOUNDER'S HONOR

● Mr. SIMON. Mr. President, I welcome the news of the impending release of Soviet dissident Yuri Orlov, one of the cofounders of the Helsinki Watch Group. The watch members bravely monitored Soviet compliance with the Helsinki agreements of 1975. Amongst the founders were Anatoly Shcharansky, recently released from the Soviet Union, and Naum Meiman, still held against his will within the Soviet Union. For their efforts to assist with the Helsinki agreements, Orlov and Shcharansky were imprisoned and Naum Meiman and his family were ostracized from Soviet society.

It has been more than a decade since Naum and Inna Meiman have requested to emigrate from the Soviet Union. Their quest for repatriation to Israel is the Meimans' life-long dream, but their desire to leave the Soviet Union now has additional importance. A fifth tumor has appeared on Inna's neck. The Soviet doctors feel there is nothing more they can do for her.

In the spirit of cooperation, with Soviet-American relations at a crucial juncture, I strongly encourage the Soviet Union to allow the Meimans to emigrate to Israel.●

PROGRAM

Mr. HELMS. Mr. President, as a brief recap the Senate will convene tomorrow morning at 8:30 a.m. We will be back on the continuing resolution at 9 a.m. Rollcall votes could occur early Thursday morning with relation to the continuing resolution, and at 2:15 tomorrow afternoon the veto message on South Africa will be the pending business under controlled time with a vote at 4 o'clock tomorrow afternoon.

Following that vote, the Senate will return to the consideration of the continuing resolution with rollcall votes very, very late into the evening and possibly beyond.

RECESS UNTIL TOMORROW AT 8:30 A.M.

Mr. HELMS. Mr. President, there being no further business to come before the Senate, under the previous order I move that we stand in recess.

The motion was agreed to; and the Senate, at 10:48 p.m., recessed until Thursday, October 2, 1986, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 1, 1986:

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

To be general

Gen. Fred K. Mahaffey, [redacted] age 52, U.S. Army.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 1, 1986:

EXECUTIVE OFFICE OF THE PRESIDENT

William R. Graham, of California, to be Director of the Office of Science and Technology Policy.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Dale D. Myers, of California, to be Deputy Administrator of the National Aeronautics and Space Administration.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.