United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 101st CONGRESS, FIRST SESSION

SENATE—*Tuesday, May 9, 1989*

(Legislative day of Tuesday, January 3, 1989)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. Today's prayer will be offered by guest chaplain, Dr. James F. Eaves, Southwestern Baptist Theological Seminary, Fort Worth, TX.

PRAYER

Let us pray:

Almighty God, who has preserved and blessed us as a nation, we in this Senate Chamber today acknowledge that You are the only true and eternal God. This great Nation stands in freedom and strength because of Your guidance and grace.

As we approach this Sunday set aside by this Nation as Mother's Day, we give You thanks for our mothers and fathers. We humbly acknowledge the urgent need for the renewal of family life that will produce future citizens, strong in character and integrity. O Father, bless we pray our American homes.

As these Senators who are public servants and leaders of this Nation face many complex problems demanding solutions, we pray that You would give them divine wisdom and guidance. Strengthen them in their personal and public lives.

We ask that You grant grace and patience to their families as they make many sacrifices so these Senators may serve well.

O God, unite our hearts to obey You in all our actions and attitudes, and to live each day in thanksgiving for Your many blessings.

In the name of the Lord of Lords. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

THE JOURNAL

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

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

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, this morning, following the time for the two leaders, there will be a period for morning business not to extend beyond 12:30 p.m., with Senators permitted to speak therein for up to 5 minutes each. The Senate will stand in recess between the hours of 12:30 p.m. and 2:15 p.m. in order to accommodate the party conference luncheons.

For the information of my colleagues, there will be no rollcall votes today.

THE GREENHOUSE EFFECT

Mr. MITCHELL. Mr. President, yesterday, a scientist from the National Oceanic and Atmospheric Administration provided written testimony to a Senate committee that had been substantively altered by the Office of Management and Budget.

Last week, the administration refused to support an international convention on atmospheric pollution. The United States is now the only major Western nation to not endorse such a convention. Twenty-two nations publicly stated their support for such a convention last March.

Last year, during the campaign, then Vice President Bush said that he would "combat the greenhouse effect with the White House effect."

Unfortunately, the White House effect to date is to prevent the United States from regaining its position as a world leader on environmental issues.

It remains to be seen whether the Environmental Protection Agency or the Office of Management and Budget will be in charge of environmental policy in this administration.

The evidence on global warming is strong, and getting stronger. We face the prospect of an unprecedented rate of global warming that could alter the entire global climate system.

Dr. Hansen of the National Oceanic and Atmospheric Administration testified yesterday that he believes the greenhouse effect is accelerating, giving us less time to respond to this problem. Meanwhile, the administration debates whether to support a convention to do something about the problem.

Dr. Hansen also tried to include in his testimony his belief that more frequent droughts are part of the pattern one would expect with the greenhouse effect. OMB did not approve of Dr. Hansen's conclusion and changed his written testimony to make this conclusion appear less certain. Government by censorship is unwise. Ignoring or avoiding the truth will produce policies that are unsound based on inaccurate or incomplete information. The administration's censorship is as self-defeating as it is wrong.

The United States should be leading, not trailing, the effort to convene an international conference on atmospheric pollution. I urge the President to take control of the environmental policies of his administration, to assert his personal and our national leadership in meeting this global threat.

FINANCIAL DISCLOSURE REPORTS

Mr. MITCHELL. Mr. President, financial disclosure reports required by the Ethics in Government Act of 1978 and Senate rule 34 must be filed no later than close of business on Monday, May 15, 1989. The reports must be filed with the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510. The Public Records Office will be open from 8 a.m. until 6 p.m. to accept these filings. Written acknowledgment will be provided automatically for Senators' reports, and upon request for staff

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

members. Any written request for an extension should be directed to the Select Committee on Ethics, 220 Hart Building, Washington, DC 20510.

All Senators' reports will be made available simultaneously on Friday, May 19. Advance written requests for copies of these reports are now being accepted by the Public Records Office. Any questions regarding the availability of reports or their purchase should be directed to that Office, 224-0322. Questions regarding interpretation of the Ethics in Government Act of 1978 should be directed to the Select Committee on Ethics, 224-2981.

Mr. President, I reserve the remainder of my leader time and yield now to the distinguished Republican leader.

RECOGNITION OF THE REPUBLICAN LEADER

The PRESIDENT pro tempore. The Republican leader is recognized under the standing order.

Mr. DOLE. Mr. President, I would like to yield 5 minutes of my time to the distinguished Senator from Alaska [Mr. STEVENS]. He will be here at a later time this morning.

Mr. President, I understand there will be no votes today, is that correct.

Mr. MITCHELL. That is right; the Senator is correct.

THE SCHEDULE

Mr. DOLE. Did the Senator go over the schedule for the remainder of the week?

Mr. MITCHELL. I did not in my opening remarks, but I will in response to the Senator's question and for the benefit of Senators.

As you know, the FSX transaction will be before two Senate committees today and tomorrow. We hope to have that ready for action on the floor on Thursday. That will, I think, involve substantial debate when it does come to the floor.

In addition, I have been advised by the House leadership that the next impeachment proceedings, that involving Judge Nixon, should be available for presentation to the Senate perhaps also on Thursday. If that is the case, then we will have the presentation and, if the distinguished Republican leader is ready, the announcement of the committee to receive evidence in the case. I think it is important that that committee begin its proceedings promptly.

There may be other action. The House, as you know, has announced its intention to take up the conference report on the minimum wage on Thursday. Depending upon the timing of that, we may or may not take that up this week.

Finally, the House will act sometime later this week, hopefully, on the supplemental appropriations bill, which we will take up as soon as they complete action. In all likelihood, we will not be ready for action on that until next week.

Mr. DOLE. I thank the majority leader. I think it is fair to assume we will have a number of votes, probably on Thursday. Maybe even on Friday, if necessary?

Mr. MITCHELL. Yes, depending on how long it takes to deal with the FSX issue.

PANAMA

Mr. DOLE. Mr. President, I would only say we are still awaiting the outcome of the vote count in Panama. I think we know the outcome of the election. We just have not been told the outcome of the vote count.

President Carter has indicated that Noriega has stolen the election. I think Democratic and Republican Senators who have been there as observers have reached the same conclusion. About what we can do about it, I think perhaps there are some options. But primarily it rests with the Panamanian people.

Perhaps they can take a look at the Philippine experience, as they make efforts to oust Noriega from power.

In this country we can continue to look at sanctions. Sometimes they are not effective. I presume we can review the Panama Canal Treaty to make sure American interests are protected. Some of my colleagues would go as far as abrogating that treaty, even now.

But, in any event this does not bode well for what many of us hoped last week when we agreed to the bipartisan resolution, that there be, free and fair elections in Panama. I hope it is not a precedent for what we may expect in Nicaragua next February. But I do believe if the overwhelming majority of the Panamanian people—if the vote was 3 to 1, according to exit polls—then there may be enough people power in that country to resolve the problem themselves.

I reserve the remainder of my time.

MORNING BUSINESS

The PRESIDENT pro tempore. Both leaders reserve the remainder of their time.

Under the order there will be a period for the transaction of morning business. Senators will be permitted to speak for not to exceed 5 minutes each.

The senior Senator from Nevada [Mr. REID] is recognized for not to exceed 5 minutes.

GLOBAL WARMING

Mr. REID. Mr. President, I, first of all, would like to join the distinguished majority leader in his call for an international convention on global warming. Global warming, according to most scientists, is here. The question is, what are we going to do about it?

NEVADA'S FIRST U.S. SENATE PRODUCTIVITY AWARDS

Mr. REID. Mr. President, there are times when even our great system of private enterprise requires public recognition.

We are in an era filled with dire predictions and glum perspectives of American's faltering productivity and loss of competitiveness.

But just as gold is being discovered in the hills of my State of Nevada, so can we uncover the riches of extraordinary performance, if we look, in business and industry.

A short time ago, I was joined by my distinguished colleague, Senator RICHARD BRYAN, in presenting Nevada's first U.S. Senate Productivity Awards.

These awards are designed to recognize organizations that enhance performance, productivity, and prosperity.

Quality improvement, strong management, and responsiveness are things for which all organizations should strive.

But many companies pursue quick profits at the expense of long-term investments.

If our successes are not permanent, we have not made progress.

The U.S. Senate Productivity Awards give businesses an opportunity to assess their performance and evaluate their progress.

Although the U.S. Senate Productivity Awards were established in 1982, this is the first year that Nevada has participated in the program.

The time is ripe. These awards can help revitalize the business community, and inject some idealism into our outlook for the future.

The award selection process is something of a proverbial "search for excellence."

Nevada's Senate Productivity Awards were presented to one organization in each of four categories: resorts and travel; manufacturing; services; and finally, Government agencies.

It may seem novel that we included Government agencies, but they have the same imperative to excel that private industry has to excel.

When OMB Director Richard Darman served as Deputy Treasury Secretary in 1986, he accused corporations of being too much like Government bureaucracies—bloated, inefficient, and unimaginative.

Government agencies should be encouraged to achieve the same high standards of business. Likewise, business can learn something from Government.

All Productivity Award winners—public and private—demonstrate a strong commitment to the future. They are: International Game Technology, Fitzgerald's Casino and Hotel, Citibank of Las Vegas, and the U.S. Bureau of Reclamation, Nevada division. These organizations received recognition for their foresight in an investment in people and resources.

By the year 2000—only 11 years from now—an estimated 21 million more people will have entered our country's work force.

An investment in worker training and retraining will be vital.

As our labor pool grows, the problems borne from inadequate education and illiteracy will have a tremendous impact on American industry's capabilities.

Already, we hear disturbing reports of companies not able to hire the people they need, because the majority of applicants have insufficient skills.

Productivity may require an investment such as that made by General Motors, which opened a new truck plant in Fort Wayne, IN, in 1986.

The company put 3,000 workers through a total of 1.9 million hours of training. That is an investment of more than 633 hours of training per worker.

Today, I applaud the Nevada recipients of the Senate Productivity Awards.

Their accomplishments remind us that we must keep a long-term perspective. We must invest in human resources. As stated in a recent Business Week headline, "It's time to put our money where our future is."

I yield the floor.

The PRESIDENT pro tempore. The senior Senator from Oregon [Mr. HATFIELD] is recognized.

Mr. HATFIELD. I thank the Chair.

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

Mr. HATFIELD. Mr. President, could I inquire as to how much time I have left?

The PRESIDENT pro tempore. The Senator has 1 minute remaining under the morning business time and 1½ minutes under the majority leader's time; a total of 2 minutes and 30 seconds.

Mr. HATFIELD. I thank the Chair.

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

Mr. GORTON addressed the Chair.

The PRESIDENT pro tempore. The junior Senator from Washington [Mr. GORTON] is recognized for not to exceed 5 minutes.

FSX AGREEMENT

Mr. GORTON. Mr. President, during the entire course of my campaign, last year, no constituent or reporter ever posed a single question to me about the FSX.

Beginning in December, however, so rapid was the emergence of the FSX as a political issue that it was the subject of a debate among Republican Senators at an informal weekly luncheon on each of the first 6 weeks during which the Senate was in session. Subsequently on my trip home to the State of Washington for the Senate's Easter recess, the FSX was brought up more frequently by audiences from one corner of the State of Washington to another than was any other single subject, including the budget deficit.

Upon reflection, the controversy over the FSX relates not only to that specific fighter aircraft, but to grave American apprehensions about our entire trade and economic relationship with the Japanese.

After diligent and careful study, I have decided to support the Bush administration's revised agreement with the Government of Japan with respect to the FSX.

Together with every other member of this body, I would greatly have preferred that the Japanese Government help ease our trade imbalance simply by purchasing F-16's from General Dynamics. As must be the case with almost every other member of this body, however, I am aware that that simply is not an option. For reasons which are relatively easy to understand, the Japanese prefer to develop and build their own fighter aircraft. We are faced only with the alternatives of participating as per the present agreement of causing the Japanese to go it alone, or perhaps causing the Japanese to build the aircraft in cooperation with the French. The agreement, with the Japanese as modified by the Bush administration, gives us a 40-percent share in both development and construction contracts, helps the Japanese with some technology which seems to me not to be crucial to us, protects adequately other American technology, and allows for a transfer back to the United States of whatever technology is developed through the FSX project.

Thus, taken in isolation, the agreement is a good one and should be approved. I hope that the leadership of this body brings the subject up promptly and allows all Members to vote on it.

On the other hand, as I said earlier, concern about the FSX contract in the United States seems to me only partly to be directed at the production of a fighter aircraft, no matter how advanced. The debate also speaks to the overall economic and trade relationship between the United States and Japan. While our trade deficit with Japan declined to about $55 billion in 1988, it seems to be on the rise once again. A bilateral deficit of this magnitude is not healthy for either country, and is simply not supportable by the United States over any extended period of time. While only a portion of it is due to Japanese trade barriers against American goods and services, that deficit must be reduced substantially, whether it is the result of Japanese trade barriers or proceeds from some other cause.

Last year, after many months of debate, the Congress enacted the Omnibus Trade and Competitiveness Act of 1988. The new act gives the Bush administration something known as Super 301, which requires the U.S. Trade Representative to identify and seek to eliminate key unfair trade practices by major U.S. trade partners through negotiations. If a trade partner does not eliminate those practices over a specified length of time, it will face possible U.S. retaliation.

Last year, the United States trade deficit with Japan comprised 40 percent of our total trade deficit of $137 billion. U.S. Trade Representative Carla Hills recently released a report documenting foreign trade barriers to U.S. exports. Not surprisingly, the report found that the country that has the largest trade surplus with the United States was Japan. The report cited trade barriers in Japan to United States exports in the fields of telecommunications, construction, agricultural products, supercomputers, optical fibers, and aluminum. The USTR has just begun to take some action with respect to those telecommunications barriers.

Japan is one of our Nation's most important allies and is a valued friend in the world community. Many businesses in my own State of Washington have formed successful trading relationships with Japan. Nevertheless, a combination of very real trade barriers, combined with the overall adverse impacts of such a huge bilateral deficit require decisive action on the part of both the United States and Japan, in order to preserve the constructive relationships both in the field of economics and defense that have marked our relationship since the end of World War II. It is clear that Japan should be designated as a "Super 301" country by the end of this month and I strongly urge the administration to enter such a finding.

In spite of the current political crisis in Japan, I sincerely hope that during the course of the next 12 to 18 months the Japanese will negotiate a sharp reduction in their trade surplus with the United States and will remove the trade barriers identified by Mrs. Hills. I must say, in this connection, that I am far more interested in the bottom line, the dollar amount of our trade

deficit—than I am in specific items, or commodities and specific trade barriers, and I hope that the USTR will keep in mind that it is the bottom line with which Americans are concerned.

In conclusion, Mr. President, I hope that the constructive negotiation of an agreement with respect to the FSX will set the stage for far broader trade negotiations designed dramatically and quickly to reduce our trade deficit with Japan. A failure to achieve that goal is likely to have repercussions which will be of no great benefit to either nation or to our long, constructive and friendly relationship.

The PRESIDENT pro tempore. The senior Senator from Illinois [Mr. DIXON] is recognized for not to exceed 5 minutes.

Mr. DIXON. I thank the Chair.

TO FSX PROPONENTS: NIGHT BASEBALL HAS COME TO WRIGLEY FIELD

Mr. DIXON. Mr. President, I stand before this body today to again voice my opposition to the proposed FSX Fighter Program involving the United States and Japan. I have spent a considerable amount of time in the past few days reviewing this proposed deal, and I remain more convinced than ever that this is a bad deal for the United States, that it is a No. 1 bamboozle, and that it should be scrapped.

Last Friday, I received a briefing on this proposed deal from the General Accounting Office. Although I cannot disclose specific details concerning that briefing because most of the information discussed was classified, I can say that I heard no convincing arguments that we will receive substantial amounts of advanced technology from the Japanese. On the contrary, all I heard was that there is a potential gain of technology in a few areas, but no one can confirm that the Japanese can, in fact, provide this technology.

The Japanese say that they can deliver a cocured composite wing that can withstand tremendous pressures and that they can build a phased array radar for the plane at an economical cost. But there is no proof that they can. In contrast, I understand that American firms are the leaders in composite technology and are ahead of the Japanese in the development of phased array radars. So where are the tremendous gains in technology that the Defense Department and FSX proponents claim we will obtain by participating in this program? We do not need to participate to obtain these technologies. We already have them.

The new spin on this deal being waved by proponents of FSX is the claim that we will gain invaluable manufacturing knowledge from the development of the cocured wing. It seems to me that these proponents are staking their position on the well-known prowess of Japanese manufacturing capabilities and hope rather than on proven ability. No one can confirm that this invaluable manufacturing capability exists.

Promoting this agreement on the merits of technology flow-back is nothing more than a sideshow. In fact, it is a sham. The Japanese have virtually no technology or expertise that we need. We have built state-of-the-art jet fighters for decades and have poured billions of dollars into the development of Stealth and advanced fighter aircraft. The Japanese will be benefiting greatly from our expertise and our technology. We will be teaching them to integrate systems, we will be training their engineers in several technical fields. It is clear to me that the technology flow in this agreement is a one-way street. The one-way arrow is not pointing our way, by any means.

I have seen the letters of clarification exchanged between Secretary of State James Baker and the Ambassador of Japan and I must say that I am uncomfortable with wording such as "approximately" in regard to the 40-percent workshare in the production phase. Phrases like, "Japan will receive access to the source codes necessary to develop the mission control computer" bother me greatly. Does approximate mean only 35 percent and the loss of thousands of American jobs? Does "access to source codes necessary to develop" mean that, as in the case of the F-15 coproduction program with Japan, we will give the Japanese everything they ask for?

The Defense Department is touting this arrangement as a major Japanese defense burden-sharing effort to counter threats such as the Soviet threat to the northern island of Hokkaido. But this is another sideshow. The Soviets, according to some experts, may be presently capable of putting three to five army divisions onto Hokkaido, yet the Japanese are not buying superb United States fighters that are available now to counter that Soviet threat. Instead, the Japanese are taking the time to develop the FSX fighter aircraft and, barring development delays, deployment of these aircraft will not begin until the mid-1990's. Morever, the Japanese are spending three times as much money to do so, money that could be better used to reduce our burden of providing for their defense. This Hokkaido argument does not wash either.

It is clear that the major Japanese motive behind this deal is not to provide for defense. Rather, they want to build an aerospace industry. The Japanese this past October told Dr. Robert Barthelemy, our National Aerospace Program Director, that they plan to excel in the aerospace industry, are making a long-term commitment, and are willing to spend $16 billion to achieve this goal.

Our involvement in this FSX Program will help the Japanese build their commerical aerospace industry, many supporters of this deal will admit. It is dificult to quantify how much they will benefit from our assistance, but obviously their aircraft component and subcomponent firms will become increasingly competitive as a result. Certainly, if this program proceeds to fruition, the Japanese can do what they cannot do now: sell an outstanding fighter to a third world country, which would further erode our market share and cost us hundreds of American jobs.

Mr. President, again I say, let's scrap this deal and return to the negotiating table to persuade the Japanese to buy our battle-proven, state-of-the-art fighters. Proponents of this deal say the Japanese will never buy American fighters off the shelf. My reply to these skeptics is that no one ever thought that night baseball would come to Wrigley Field, but it has.

Mr. President, on this same subject about which my distinguished colleague from the State of Washington just talked, I wish to express my own views which differ substantially. I thought it interesting to hear my friend suggest that the FSX deal with the Japanese was all right, but he immediately wanted us to review all of the super 301 violations by Japan against the economic interests of the United States of America. I suppose some who will support the administration can arrange to defend that kind of a dichotomy back home. It is one that would be difficult for this Senator, may I say to the President pro tempore, to defend because what we are talking about when we talk about the FSX deal is not just a question of our national defense interests; they are very important, but it is also a question of the commercial interests of the United States of America.

I suggest if we do not start worrying about this pretty soon, there will not be a whole lot left to worry about.

Mr. President, Lee Iacocca is well known to Americans. He was on the "Today Show" on February 17 of this year. I have the tape. Jane Pauley is talking to Lee Iacocca. She says, "In the fifties the Japanese won the camera industry. In the sixties they took the video industry. In the seventies automobiles. In the eighties microchips. What's next?" Lee Iacocca answers, "Aircraft. That's the one we still have a great balance in with Boeing and all the rest in our defense industry."

Mr. President, this is what this is all about. If you are going to talk about the defense of the United States of America or if you are going to talk about the shared defense in Asia by

the Japanese, we have the finest fighting aircraft in the world today in the F-16. In 50 hostile situations in the world at large, the F-16 had 50 kills and no losses. That aircraft can be purchased off the shelf from the United States of America today if the Japanese want to buy it—now, listen to this—at a savings of $30 million—$30 million—an aircraft for the purchase of 130 to 170 F-16's vis-a-vis the cost of their own development of the FSX.

The plain and unvarnished truth is that the Japanese see the nineties as the years and the decade of military and commercial aircraft manufacture and advance in Japan. I believe, if I have the good luck to stand here 12 years from now and look back on the decade of the nineties, regrettably I will be forced to say "I told you so."

I want the country to know what kind of a deal this is for America. We are going to let the Japanese have for a little more than $400 million—7 billion dollars' worth of our finest technology that went into the development and the improvements up to this moment of the F-16 aircraft.

That is a bad deal in the beginning. Some would say, "But we are going to get some things back for that." Oh, we are going to get some super technology from them. They talk about two things, composite wing technology and advanced radar technology.

Mr. President, I cannot talk about all the things that were said at a classified meeting last week, but I went to the trouble of going to a meeting the General Accounting Office held. They had representatives of the GAO there. I would say that more than half of the Senators sent representatives to the meeting. I saw at the meeting CONRAD BURNS, the distinguished new Senator from Montana from the other side of the aisle. I saw DICK BRYAN, the distinguished new Senator from Nevada from our side of the aisle. I saw the distinguished senior Senator from North Dakota, QUENTIN BURDICK, who is one of the very senior Members of this body. They all heard what I heard. If anybody wants to question what I am saying, let them do so on this floor.

I finally said to the people from the General Accounting Office, "Now, I am going to repeat this question because this will be my statement on the floor next week." And I am prepared to challenge anybody who challenges this statement. I said, "In your testimony, if I understand it, you are saying to us they do not have any technology superior to ours on composite wing technology that you know of at this time? You have talked mostly of the fact that they got most of what they do have from McDonnell Douglas which developed it in connection with its own airplane manufacturing techniques." And the answer was, "You are correct."

Then I said, "If I understand what you said about advanced radar technology, you have said their radar technology so far as the General Accounting Office knows is about the equivalent of what we had in 1983." 1983.

Mr. President, other Senators were there and the representatives of at least half the Senators were there. I say to you and I say to America that on the basis of everything I have heard, they have nothing to give us in return. They could buy our product off the shelf for $30 million less an airplane if they are caring about their local defense at this point in time. This is a bad deal for America.

I want to say this because I see colleagues on the floor, and I do not make this statement without the permission of the Senator but I want this known. If another Senator talks to this Senator, what he says is private unless otherwise expressed. Before I make this statement, I want to say that I cleared it with the Senator involved. He has not made up his mind how he is going to vote. But as I left that hearing room after the General Accounting Office had talked to us, Senator CONRAD BURNS walked out with me, a new Member whom we all respect for his native intelligence. He turned to me and said, "I want to tell you something, Senator. I swapped a lot of cattle in my day out in Montana and I don't have a gut feeling that is very good about this."

I do not know how he is going to vote, but here is a man who just arrived, who just became exposed to this issue, a pretty good old cattle trader, and his gut feeling is not too good.

I will have more to say on this subject. I see colleagues and friends who may want to talk about this. But my gut feeling is not too good either. I say America is being bamboozled. I say this deal is a bad deal for us.

In conclusion, Mr. President, my friend from Washington said, "Oh, now, if we don't give it to them after they didn't buy it off the shelf, they are going to buy it from the French."

From the French? We kept the Persian Gulf open for them. We have taken care of their national defense and they ought to buy the airplane from us. I thank the Chair. I yield the floor.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas [Mr. PRYOR] is recognized for not to exceed 5 minutes.

FSX TECHNOLOGY

Mr. PRYOR. Mr. President, I would like to first compliment the distinguished Senator from Illinois for not only his eloquent statement but his perception of what this deal means to America, what it means to Japan, what it might ultimately mean to world peace, and also what it might mean to our leadership in the aerospace industry.

He has been not only a leader in this issue, but I can remember not many years ago when the distinguished Senator from Illinois, a very fine member of the Armed Services Committee, summarized, in a very eloquent one-sentence finality, the problems with the troubled Divad antiaircraft gun, and I think that speech killed the Divad gun, thank goodness to the Senator from Illinois. After all the statistics, all the studies, and all the reports, the Senator from Illinois got up on the floor of the Senate and said:

> Mr. President, the thing that is wrong with this gun is it doesn't shoot straight.

At that moment, the Divad was gone. Once again today, he has sensitized what we know to be a bad deal for this country.

Mr. President, I would like to join him in saying that this F-16 jet technology sale to Japan is wrong, it was wrong yesterday, and it is wrong today. I think it will be wrong tomorrow.

How can we justify giving Japan F-16 technology that cost Americans $7 billion to develop when according to GAO we can expect very little in return? How can we justify transferring information that could put at risk America's lead in the international aerospace industry?

We are told now that we must go forward with the FSX deal to help bolster the defenses of an important ally, which Japan certainly is. We have already offered to sell to Japan American-built F-16's and other United States aircraft. The sale of those aircraft would have immediately improved Japan's air defenses, but Japan refused our offer. They refused it saying they wanted to develop their own so-called FSX fighter aircraft in Japan.

We are also told that the F-16 technology agreement is carefully constructed so that it will not harm the U.S. aviation industry.

I suspect that similar words were said years ago, possibly on the floor of this Senate, about VCR's, about television, and about semiconductors before subsidized foreign industries began to wipe out U.S. manufacturers of these products.

Mr. President, Japan is in this particular case not the culprit. Japan is not privately absconding at this time with trade secrets of the FSX. They are not exporting cutrate products to weaken U.S. industries in this particular industry.

Mr. President, the culprit this time is us. It is our Government. It is our Department of Defense. It is our State Department. As our chief negotiators,

these people made very wrong decisions.

Our negotiators, our own negotiators in our own Government, have become the advocates for Japan and for this improper and dangerous sale. In a word, we are about to be bamboozled, I think, by the ineptitude of our own people.

The Foreign Relations Committee will soon vote on our resolution to stop this export of the F-16 fighter aircraft technology. I strongly urge my colleagues to take a hard look at this issue, and to ultimately vote for the resolution and against the sale of this very, very precious technology.

Mr. President, I yield back the remainder of my time.

Mr. DIXON. Mr. President, will my friend yield for a question before he yields back his time?

Mr. PRYOR. I am happy to yield for a question.

Mr. DIXON. I wonder whether my friend from Arkansas has had the opportunity to see a letter from the General Accounting Office that I now hold in my hand that, frankly, has just been handed to me today, dated yesterday, May 8, and signed by the Assistant Comptroller General, Frank C. Conahan? Has he had an opportunity to see that?

Mr. PRYOR. Mr. President, I will respond and say I have not had an opportunity to see that.

The PRESIDENT pro tempore. The time of the Senator from Arkansas has expired.

Mr. DIXON. If I may have 1 minute, Mr. President.

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

Mr. DIXON. I would like to inform my colleague that in that letter Mr. Conahan says, and I directly quote:

> Our preliminary observations are that, overall, the United States has superior composites technology and appears to be ahead in the radar development.

I just wanted my colleague who has so wisely spoken on this issue to understand that these two things we are getting back from them we are ahead of them in. This is a remarkable deal, may I say to my friend from Arkansas, and I thank him for the position he has just so eloquently stated on this floor.

Mr. PRYOR. Mr. President, I thank the Senator from Illinois.

Mr. FORD addressed the Chair.

The PRESIDENT pro tempore. The senior Senator from Kentucky [Mr. FORD] is recognized.

FSX DEAL WITH JAPAN

Mr. FORD. Mr. President, I rise to make a statement relating to the FSX deal with Japan.

Mr. President, the FSX deal with Japan is not a sale; it is a sellout. I keep thinking about it and thinking about it, and I keep waiting to see why it is such a good thing, and I get nothing, which is precisely what the United States is getting, nothing.

As far as I can tell, the only thing that the United States is receiving from this package is the certain knowledge that Japan is feeling good about it. We have, once again, been suckered. Japan is giving us absolutely nothing useful in exchange for F-16 technology. We are giving Japan the capability to build a superb fighter plane. In return, we are obtaining composites and active phased array radar technologies that are inferior to what we already have.

To add insult to injury, Mr. President, the technology that Japan is receiving would catapult them, almost overnight, into a competitive role in the commercial aviation industry. We are cutting our own economic throat to accommodate the country with which we have the largest trade deficit and one to which we owe the most money.

Such behavior is incredible to me. Not only should we be insisting that Japan buy the F-16 fighter off the shelf to lessen our existing bilateral trade deficit, but we should certainly not be giving them the ability to vie with us in the future in the commercial aviation arena.

The original FSX package was negotiated primarily by the Department of Defense with obviously no concern for our balance of trade or for our international economic competitiveness. What kind of bell jar are they living under? Defense and foreign policy can no longer be distinct from trade and commercial policy. If DOD reached this agreement for reasons of improving Japan's defense posture, those reasons are obscure, because the F-16 can deploy faster and has a greater capability than the FSX will. Finally, if the sale was negotiated for political reasons, what kind of foreign policy is it that helps another country at our absolute expense?

The final FSX package is little better. Where as before the deal was touted as a highly desirable technology exchange, now it is being billed as a trade of technology for manufacturing technique. The ante has been lowered; we have switched horses in the middle of the stream. The Japanese get systems integration, and we get a manufacturing process.

If there is one supposedly bright light, it is that in renegotiating the agreement with Japan, the administration secured a promise that 40 percent of the work will be done in the United States—40 percent. Now this is opposed to 100 percent of the work if Japan had just flat out bought the F-16. We are transferring or trading 100 percent work by Americans for only 40 percent work by Americans.

But the Japanese have reneged on every side agreement they have made. For instance, they were supposed to open up 20 percent of their semiconductor market to American businesses. To date, only 11 percent is accessible. Japan's telecommunications industry is another area that was supposed to open up to United States firms and that has not happened at all. Do we really expect them to jump right in to keep this 40 percent coproduction agreement?

And what about spare parts? Seven billion dollars in spare parts will be needed to sustain the FSX, but it will not come from American suppliers and American workers. Some codevelopment arrangement this one is.

Mr. President, the people of Kentucky are not for this agreement. None of our constituents are. They are tired of seeing American jobs go overseas and that is exactly what the FSX agreement is all about—it will displace even more American workers. It will only increase our trade deficit. And it is an outright giveaway to a Nation that refuses to open its markets to American products.

There is something really strange about a trade agreement in which one of the partners is so anxious to get its hands on proven technology that it will pay $30 million more per plane, for a total of $4 billion extra, rather than buy the readymade, tried and true version from us. For a nation that is known for its acute business sense, this is very peculiar and it should tell us that something is very wrong.

I thank the Chair.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The junior Senator from Alaska [Mr. MURKOWSKI] is recognized for not to exceed 5 minutes.

Mr. MURKOWSKI. I thank the Chair.

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

The PRESIDING OFFICER (Mr. KOHL). The Senator from Colorado [Mr. WIRTH] is recognized.

LEADERSHIP ON GLOBAL WARMING

Mr. WIRTH. Mr. President, events on the past week on the issues of global environmental protection are cause for further cries of great alarm. Global environmental issues, global warming in particular, have rapidly emerged as a great, if not the preeminent, challenge to this and all nations.

But, recent developments indicate that the Bush administration is dealing with the problem through indecision, insufficient understanding, and

in a deeply troubling development, through censorship. A few months ago, the American people were told that a new breeze was blowing through the Nation. We were told with the election of George Bush that the new administration would be different than the old. One of the areas in which great change was expected was in the area of environmental protection.

I am concerned, Mr. President, that the current administration is falling into the same pattern that characterized the past 8 years of environmental negligence. The United States cannot shirk its responsibility to lead the world, and must as it always has, to preserve and protect our Nation and the world environment.

The current environmental crisis demands urgent attention. Coral reefs are inexplicably dying. Ninety percent of the coasts around the world are eroding. Temperatures on land and in the oceans are rising. Billions of pounds of toxic air pollutants threaten the health of all living things. The ozone layer is thinning. And clean air is a persistent problem in nearly every city in the United States and around the world.

Unmistakeably, we are pushing the limits of our global environmental systems. The world's best scientists are telling us that we better take notice of the impending catastrophes that almost certainly lie ahead. The magnitude of these environmental threats is absolutely daunting. We are no longer talking about ensuring that individual communities, or individual plant and animal species are protected from these threats, we are focused on issues that will affect every living thing on the planet. Indeed, these are threats to life support systems of the planet, to the habitability of Earth.

Every major scientific organization and agency in this country and around the world has sounded the alarm to policymakers that the threat of global warming is real—in fact, is accelerating. The public is concerned about this message. Public policymakers are concerned about this message. Diplomats around the globe are concerned about this message. But, seemingly, not this administration. Instead, the administration has refused to assert the United States at its rightful place on the forefront of tackling these difficult concerns.

Last week, for example, the White House ignored the advice of the State Department and the Environmental Protection Agency and decided that it knew better than the experts. The White House decided that we should not begin discussions of an international agreement to respond to the global warming threat. Consequently, U.S. representatives are embarrassed at this moment meeting in Geneva with no clear direction of what U.S. policy is or might be on global warming.

All week, the Response Strategies Working Group of the Intergovernmental Panel on Climate Change—an extraordinarily important international endeavor chaired by the United States—is meeting in Geneva. If international action on the global warming threat is to move expeditiously, the United States, as chair of this panel, should have opened the dialog at those meetings on the question of a framework global climate convention. By opening that discussion, President Bush, on behalf of the United States, could have reasserted this Nation as the world's preeminent leader on global environmental issues. Furthermore, he could have paved the way for immediate progress on a negotiated international climate convention—which is probably the only practical and equitable global approach to this enormous problem.

That is why last week, Senators CHAFEE, HEINZ, GORE, and I offered a resolution urging the administration to develop and discuss its position on a framework convention immediately. That resolution passed the Senate unanimously as an amendment to the fiscal year 1990 budget resolution.

Unfortunately, how did the administration respond? They responded by neglecting the advice of their own agencies, by neglecting the advice of the scientific community across the country, by neglecting the resolution passed unanimously by the U.S. Senate and, instead, decided to send our representatives to Geneva with their hands tied.

To add insult to injury, Mr. President, yesterday, the British representative to the United Nations seized this opportunity to show leadership by announcing British support of a global climate convention. So today we in the United States are the only Western industrial democracy not to have endorsed a global climate convention. It is a sad state of affairs.

But the problems downtown do not stop there and, in fact, they got worse. Yesterday, it was disclosed that officials at OMB censored the testimony of one of the finest atmospheric scientists in the world—Dr. James Hansen of NASA—by altering or omitting key statements in Dr. Hansen's testimony. This action is absolutely reprehensible, Mr. President, by what arrogance do the economic analysts and political appointees at OMB presume to know more than a distinguished NASA scientist? This is totally unacceptable, reminiscent of what the Soviets were doing with plant geneticists in the 1930's If we delay any longer, Mr. President, every American is going to suffer.

Indeed, the only explanation that came from the White House is that "inadequate economic analysis" has been done on the costs of taking action. But where have they been? I asked the panel yesterday if any of them had been asked to brief the White House staff. The answer was "No." Had any of them been asked—this is probably the preeminent panel of atmospheric scientists in the country, if not the world—I asked if any of them had been asked to brief OMB. The answer was "No." I asked if they knew of any scientists who had been asked to brief the White House or OMB and the answer was "no."

This is a White House operating behind a veil of remarkable ignorance. Indeed, if the White House would only look at the issue as the experts have, they would find that the economic costs of not acting are going to be staggering.

What then should the President do?

First, he should schedule now the international environmental summit that he pledged to host during last year's campaign. Let us make a reality out of this campaign rhetoric, get heads of states involved and once again say we in the United States are not going to be ignorant, we are going to act with leadership.

Second, the President should establish a top priority for domestic policy, measures to protect the global environment. And it is very clear what those are. There is no debate about that. And the Chair has been one of the 35 cosponsors in the U.S. Senate of the omnibus global warming legislation sponsored by more than a third of the Members of this body, conservatives, liberals; Republicans, Democrats; northerners, southerners.

At the top of both our energy and environmental agendas should be energy efficiency. More than 10 consecutive years of energy efficiency improvements have screeched to a halt, according to recent data. Consequently, oil imports are rising and emissions of greenhouse gases and air pollutants are increasing unabated. A strong program of research and new initiatives to encourage efficiency in all sectors of our economy should be developed.

Third, the United States should strengthen its commitments to such multilateral institutions as the United Nations Environment Programme and the World Bank to promote research and develop accords in these areas and to provide assistance to the developing nations that will help them manage their natural resources more soundly.

Fourth, we should demonstrate to the world that we are serious about preventing global warming by establishing a goal for reducing carbon dioxide [CO_2] emissions. The President would do well to follow the strategy set fourth in a letter written by Senator CHAFEE and 24 of us in this body to publicly endorse efforts to reduce U.S. CO_2 emissions 20 percent by the year

2000. As we wrote, without U.S. leadership, our ability to convince other nations reduce their greenhouse gas emissions will be constrained.

Mr. President, leadership, from the international to local level, is needed now to halt the assault on the atmosphere. To succeed, the leaders of the world must accept what the public already knows: we are pushing the limits of our environmental systems. We must act to reverse these trends. President Bush should seize this opportunity for world leadership and reestablish the United States at the forefront of global environmetal protection.

I would like to close Mr. President, by sharing with my colleagues a quote from somebody, I think everbody in this body admired, Robert F. Kennedy. Robert Kennedy said:

> The future does not belong to those who are content with today, apathetic toward common problems and their fellowman alike, timid and fearful in the face of new ideas and bold projects. Rather, it will belong to those who can blend passion, reason and courage in a personal commitment to the ideals and great enterprises of American society.

Global warming is the greatest challenge that we face. Thank goodness some people in this body, like Senator GORE, Senator CHAFEE, Senator HEINZ, and so many others, have stood up. Let us ask the administration where they have been, Mr. President. Let us suggest that the administration get on with it.

Mr. President, I ask unanimous consent that the various articles alluded to in my remarks be printed in the RECORD.

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

[From the New York Times, May 9, 1989]

THE WHITE HOUSE AND THE GREENHOUSE

The world has started to take very seriously the established threat to the life-protecting ozone layer from industrial chemicals. Many countries are now eager for President Bush to take the lead on another threat to the global climate—the feared warming of the earth's atmosphere by pollutant gases like carbon dioxide. But despite Mr. Bush's ringing compaign pledge to do just that, his Administration flounders in confusion and timidity.

This week, the U.S. is chairman of an international meeting in Geneva to discuss the greenhouse effect. Yet Washington's various bureaucracies have not agreed on a position, and the American delegates will sit on the sidelines.

Leadership on the issue has thus fallen to Europe. Last month Prime Minister Thatcher made her Cabinet sit through a daylong briefing on the greenhouse effect from climatologists. And yesterday the British delegate to the United Nations called for a new international convention to deal with global warming.

Washington's only recent activity on the greenhouse effects seem to have been the Office of Management and Budget's decision to soften public testimony on that subject by a Government scientist. James Hansen, a NASA climatologist, complains that the O.M.B. toned down his conclusions about the severity of global warming before he presented them yesterday to a Senate committee headed by Albert Gore. The O.M.B.'s duty is to coordinate Government policy. But its heavy-handed intervention sends the signal that Washington wants to go slow on addressing the greenhouse problem.

This contrasts strangely with Mr. Bush's campaign oratory last summer. "Those who think we are powerless to do anyting about the greenhouse effect forget about the 'White House effect'; as President, I intend to do something about it," he said in Michigan on Aug. 31. Mr. Bush promised to convene an international conference on the environment. "We will talk about global warming," he said, "and we will act."

Mr. Bush has not acted. He hasn't called for an international conference or even arranged a conference of his own policy makers to resolve their differences. Hence he is hearing no clear advice.

The threat is clear enough, even though experts disagree on how immediate it is. Pollutant gases do indeed trap the sun's heat and might seriously warm the earth's climate. It's far too soon to advocate the most direct and drastic remedy, which is to stop burning coal. But it makes eminent sense to buy insurance against global warming with steps that are worth taking in their own right, from raising auto efficiency to protecting tropical forests.

The threat cannot be addressed unless America assumes a major role. Far from leading the charge, the White House hasn't even joined it.

[From the Washington Post, May 9, 1989]

EXPERTS, OMB SPAR ON GLOBAL WARMING: "GREENHOUSE EFFECT" MAY BE ACCELERATING, SCIENTISTS TELL HEARING

(By Cass Peterson)

The Bush administration's skepticism about the dangers posed by global warming collided yesterday with the views of the government's own scientists, who told a Senate hearing that—if anything—the problem may be worse than their limited computer programs can predict.

Seven leading scientists—including representatives from the National Oceanic and Atmospheric Administration, NASA and the U.S. Geological Survey—told the panel recent evidence suggests that the so-called "greenhouse effect" is accelerating and may already be moving out of the reach of human intervention.

"There is virtually no scientific controversy" about atmospheric changes that are gradually raising the Earth's temperature, said Stephen H. Schneider of the National Center for Atmospheric Research in Boulder, Colo. "That's not a speculative theory."

In another development, Sir Crispin Tickell, Britain's ambassador to the United Nations, announced his nation's support for an international convention to address global warming, leaving the United States alone among major Western economic powers in opposition to such an initiative. Twenty-two nations, including five of the seven members of the Western economic summit, called for such a convention in March.

Among those testifying yesterday was an atmospheric scientist who disavowed his own written testimony because it was altered by the Office of Management and Budget. The White House confirmed a report in the New York Times that an OMB official altered testimony by James E. Hansen, director of NASA's Goddard Institute for Space Studies, to avoid the impression "that there is unanimity within the government on this issue."

Hansen, after giving the Senate Commerce subcommittee on science, technology and space a copy of his edited testimony, said the changes made it appear that he did not believe that global warming will lead to more frequent droughts.

"I don't object to review of policy statements," Hansen testified. "My only objection is being forced to alter the sciene."

Another witness, Jerry D. Mahlman of NOAA, testified that OMB officials also had attempted to alter testimony he delivered in February. Mahlman said he resisted the changes, which he found "objectionable as well as unscientific."

White House press secretary Marlin Fitzwater said that a "fourth-level or fifth-level" staffer at OMB altered Hansen's testimony, but defended it as a routine effort to see that prepared testimony conforms to administration policy.

"Our concern is that unless we base decisions on sound scientific data, we could end up being forced to agree with reductions in global warming gases that are neither realistic nor economically sound," he said.

Global warming, caused by a buildup of carbon dioxide, methane and other gases, has emerged as a major environmental issue with worldwide implications. The gases are trapping more heat near the Earth, like a greenhouse, and posing the threat of climate change, intensified storms and the inundation of coastal areas as oceans rise.

In the 1988 campaign, President Bush vowed that his administration would address the issue, saying he would "combat the greenhouse effect with the White House effect." In recent weeks, however, top budget and White House officials have advocated more research, arguing that too little is known about the economic impact of controlling greenhouse gases.

Last week, White House Chief of Staff John Sununu rejected a proposal to put the United States in the lead in establishing an international convention on global warming. The convention had been supported by Secretary of State James A. Baker III and Environmental Protection Agency Administrator William K. Reilly, who were unable to persuade the rest of the administration to go along.

U.S. delegates would have proposed the convention at a meeting in Geneva this week of the Intergovernmental Panel on Climate Change, a UN group chaired by the U.S.

"We're sitting in the chair of this panel and we're trying to drive the train from the caboose," said Jessica Tuchman Matthews of the World Resources Institute, a Washington-based policy group.

Fitzwater said there is disagreement between the EPA, the State Department and the White House on the state of science surrounding the greenhouse effect. But there was no sign of disagreement among the scientists at yesterday's hearing.

Scientists have estimated that global mean temperatures could rise 4 to 9 degrees Fahrenheit by the middle of the next century if greenhouse gases continue to accumulate at current rates. By way of comparison, the Earth's mean temperature is about 9 degrees Fahrenheit warmer now than it was during the last ice age, when much of the United States was covered with mile-thick glaciers.

"I have no hesitation in calling that catastrophic," Schneider said.

Schneider, Hansen and other scientists said they are not certain how quickly warming will occur or how specific areas of the planet will be affected.

Among the major uncertainties, they said, is how much excess heat oceans can absorb and whether greater evaporation will create more cloud cover, which can have a cooling effect.

But current predictions about the extent of global warming may also understate the problem, they said, just as early models of stratospheric ozone depletion from chlorofluorocarbons understated the rate of loss. It was not until a large "hole" appeared in the ozone layer over Antarctica that scientists discovered that ice crystals were accelerating the chemical destruction of ozone.

Biologist George M. Woodwell, director of the Marine Biology Laboratory at Woods Hole, Mass., testified that recent data show that the accumulation of carbon dioxide in the atmosphere is accelerating. A research station in Hawaii, which has documented a steady increase of about 1.5 parts per million of carbon dioxide each year since 1957, showed a "surge" in the last 18 to 24 months. The new rate of increase is about 2.5 parts per million a year, he said.

"I'm suggesting that the warming of the Earth is increasing the decay of organic matter in the Earth," Woodwell said. "It may be mobilizing carbon from the Earth, and that has not been worked into the climatologists' models."

Ralph Cicerone of the National Center for Atmospheric Research said a similar acceleration could result if temperatures become warm enough to speed decay in northern wetlands and tundra areas, which are rich in organic material that decays very slowly because of long cold seasons.

"These feedback processes have yet to be studied adequately," Cicerone said. "They may be important, or they may not. But none is included in the climate models."

[From the New York Times, May 9, 1989]

WHITE HOUSE ADMITS CENSORING TESTIMONY

(By Philip Shabecoff)

WASHINGTON, May 8.—The White House confirmed today that it had censored Congressional testimony on the effects of global warming by a top Government scientist, but it insisted that the changes reflected policy decisions, not scientific conclusions.

Marlin Fitzwater, the White House press secretary, said the Office of Management and Budget had changed conclusions about global warming data contained in the testimony of Dr. James T. Hansen, director of the space agency's Goddard Institute for Space Studies. He said the action was taken because the ideas presented were "not necessarily those of all scientists who have considered this matter."

In his original test, before it was changed, Dr. Hansen asserted that computer projections showed that global warming caused by pollution from human activity would cause upheavals in the earth's climate. He warned of substantial increases in temperature, drought in mid-latitudes, severe storms and other stresses.

But his testimony was changed to make his conclusions seem less certain.

In response to questions at the regular White House briefing this morning, Mr. Fitzwater said that an official of the Office of Management and Budget "five levels down from the top" had changed Dr. Hansen's testimony to reflect that "there are many points of view on the global warming issue and many of them conflict with those stated by Dr. Hansen."

But Dr. Hansen, appearing today before the Senate Subcommittee on Science, Technology and Space, said that the testimony he had submitted specifically stated that the conclusions represented his own scientific opinion, not Government policy or a scientific consensus.

He said he had been forced by the budget office to make changes that raised questions about the reliability of scientific evidence on expected climate changes. Another change imposed by the budget office made it seem as if there was some doubt that human activity was chiefly responsible for the pollution that, it is now widely agreed, will cause a global warming trend. This would occur as carbon dioxide and other manmade pollutants trap and retain heat from the sun in a process similar to what happens in a greenhouse.

"I don't think the science should be altered," he said in response to a question by Senator Albert Gore, the Tennessee Democrat who is chairman of the subcommittee. "As a Government employee, I can and certainly do support Government policy. My only objection is changing the science."

SIMILAR COMPLAINT REPORTED

Another Government scientist testified at today's hearing that the budget office had tried to change his testimony on scientific issues earlier this year.

The scientist, Dr. Jerry D. Mahlman, director of the Geophysical Fluid Dynamics Laboratory of the National Oceanic and Atmospheric Administration, said that the changes proposed for his testimony on issues related to global warming were "objectionable and unscientific" and that the testimony would have been "embarrassing."

Dr. Mahlman said that he had refused to accept the changes in his testimony. "We in the scientific community demand the right to be wrong," he said, Dr. Mahlman said he prevailed in his effort to prevent the budget office from changing his testimony. Dr. Hansen said, however, that the budget office insisted on editing his testimony despite his strong objections.

GORE ASSAILS ADMINISTRATION

Senator Gore said Dr. Hansen's testimony was changed because the Bush Administration did not want to take action to cope with the expected global warming trend.

He said United States officials now meeting in Geneva with delegations from other countries were arguing that more study was needed before beginning work on an international treaty aimed at reducing the impact and mitigating the effects of climate change.

"President Bush, only months ago, told us he was an environmentalist," Mr. Gore said. "Yet, in the past few days alone, we've seen his Administration back away from a critical diplomatic initative on global warming."

Mr. Fitzwater said President Bush's "personal view is that this is a serious problem that America needs to show and take leadership."

"But the science is something that still has to be sorted out," he said. "Obviously, the President hasn't made a judgment about scientific assessments."

The White House spokesman said that Dr. Hansen had a right to voice his opinion and that no punitive action would be taken against him for objecting to the changing of his testimony.

Mr. Gore said that if there was any retribution against Dr. Hansen, the Bush Administration would face "the equivalent of World War III" with Congress.

[From the New York Times, May 9, 1989]

STILL LIMPING ALONG

(By Tom Wicker)

When I criticized President-elect Bush for indecision last December (he had "hit the ground limping," I wrote), the remark was labeled a "cheap shot." Now that Mr. Bush actually is having to face Presidential decisions, it looks more and more like an expensive truth.

The latest example, and one of the most serious, is his Administration's hesitance to lead the world against "global warming"—although Mr. Bush promised to do so in his campaign, and Secretary of State James A. Baker 3d made it the theme of his first major speech.

Now the White House chief of staff, John Sununu, is reported to have rebuffed officials who wanted the U.S. to propose an international conference to draft a treaty on global warming. Mr. Sununu replied that Mr. Bush did not yet know enough about the economic costs of a treaty that would limit the man-made gases that trap solar heat and cause the "greenhouse effect."

The Dr. James E. Hansen, the director of the Goddard Institute for Space Studies, complained that the Office of Management and Budget had watered down his planned Congressional testimony on the subject. He intended to say that enough was known about the causes and effects of global warming that major steps to curb harmful emissions were necessary and practical. When O.M.B. got through censoring the statement, Dr. Hansen was made to claim, contrary to his professional opinion, that "it remains scientifically unknown" how much human actions contribute to global warming.

All this sounds like a retreat into the flaccid inactivity of the Reagan Administration on acid rain, when for eight years it was claimed that not enough was known about its causes to do anything about its effects. The need to get started on global warming, however, is not in doubt. At a recent international forum in Washington, a parade of speakers urged immediate steps to limit emissions of carbon dioxide and other harmful gases.

Thomas Lovejoy, the vice president of the Smithsonian Institution, who had previously suggested that "the great environmental struggles will be either won or lost in the 1990's," repeated that "massive intervention in society is required over a very short time, perhaps less than 20 years" if global warming and ozone depletion are to be dealt with. William D. Ruckelshaus, twice the Republican director of the Environmental Protection Agency, warned that it would be illusory to assume that there would be "a technological fix," and Martin Hodges a former chief science adviser to the British Government, said that the world "would be incredibly stupid not to take these dangers as real."

Apparently, George Bush doesn't. And saving what's left of the environment is not the only pressing issue he's ducking. Last week he declined to send representatives to a Senate subcommittee that was waiting to hear his proposals on controlling semiautomatic assault rifles. Even a Republican Senator, Arlen Specter of Pennsylvania, was upset.

"I think the Administration ought to be here," he said. "I say that flatly and I said that to the Administration."

Two bills limiting importation, sale, transport and possession of such weapons have been introduced—only by Dennis DeConcini, Democrat of Arizona, usually an opponent of gun controls. He was contemptuous of the Administration's failure to testify, saying "they don't have a position, that's what it amounts to." White House officials conceded that the President hadn't made up his mind on what legislation he wanted, if any.

Even the biggest Republican enchilada is getting itchy over the Bush Administration's pussyfoot performance. Ronald Reagan took time off from his memoirs last week to let it be known that he was concerned about his successor's "excessively cautious approach to nuclear arms reductions negotiations with the Soviets," among other things.

This statement was attributed to the ex-President's "friends" by Lou Cannon, a Washington Post reporter who has been shrewdly interpreting Ronald Reagan for many years; but Mr. Cannon clearly was using this ancient journalistic device to camouflage an interview with Mr. Reagan himself.

Mr. Reagan's "friends" also allowed that his campaign comment about George Bush last year—"he's been part of everything we've done for the past eight years"—now had "an ironic aftertaste." Or maybe that's just what you get when you've put your foot in your mouth.

[From the Washington Post, May 6, 1989]

SUNUNU BLOCKED PLAN TO SEEK CONVENTION ON GLOBAL WARMING

(By Michael Weisskopf)

Top Bush administration officials led by Environmental Protection Agency Administrator William K. Reilly pressed for a U.S. diplomatic initiative on global warming at an international meeting next week in Geneva, but White House chief of staff John H. Sununu rejected the move as premature, according to U.S. officials.

Proponents of the move had recommended that U.S. representatives to a 30-nation meeting sponsored by the United Nations support plans for an international convention identifying global warming as a world environmental threat.

Environmentalists have pressed for a convention that would lead to treaty negotiations to limit the man-made gases known to trap solar heat like a greenhouse and increase the Earth's temperature.

But officials said Sununu has blocked such an initiative by U.S. delegates to the Intragovernmental Panel on Climate Change on the grounds that President Bush does now know enough about the economic costs of such a treaty.

A top aide to Sununu said he "hasn't touched this thing one way or the other" and said the chief of staff did not know anything about it.

A spokesman for Reilly, who met with Sununu on the issue Thursday, said Sununu has been generally "supportive" of an international convention but raised "reasonable questions that deserve answers before the administration commits itself."

The administration's position at the meeting that starts Monday has been debated by domestic policy advisers for weeks. Some officials have argued that Geneva presents a perfect opportunity for Bush to seize the leadership role on international environmental issues that he pledged to take in campaign speeches and his budget statement.

Some Bush advisers believe the president missed a chance to claim that mantle by allowing the European Community to beat him by a day in announcing support recently for a phaseout of chlorofluorocarbons (CFCs) by the year 2000.

The treaty to halve CFCs in the next decade could serve as a model for the global warming issue. Industrial nations formed a convention in Vienna in 1985 that identified the popular chemical as a threat to the stratospheric ozone layer. Negotiations to cut back CFC use began a year later and ended in an agreement in 1987.

Sources said that Reilly, Frederick M. Bernthal, assistant of state for oceans and international environmental and scientific affairs, and White House Counsel C. Boyden Gray favored an aggressive U.S. stance in Geneva.

Office of Management and Budget officials argued for a more deliberate pace, however, arguing that no one has calculated the costs of curbing "greenhouse" gases, chiefly carbon dioxide from the burning of coal and other fossil fuels.

The meeting scheduled for five days next week is part of a process initiated last year by the U.N. Environmental Programme and the World Meteorological Organization after a consensus developed among scientists that greenhouse gases will heat up the Earth about five degrees by the middle of the next century.

Several working groups were set up by the interagency panel, including one led by the United States to consider "response strategies" for combatting the warming trend.

The Geneva meeting will be chaired by the United States to discuss its findings. According to administration officials, the U.S. delegation, which will be led by Bernthal, has been instructed to discuss the possibility of a convention and support further study but not to endorse it.

"We were told not to cross that line," said one official.

The instructions "frustrated" Reilly and other proponents of a convention, according to a knowledgeable source. They fear that Washington will lose the initiative to other nations, even though the EPA has done the cutting-edge work on the causes and effects of global warming and is more advanced in developing solutions for dealing with it.

In a major speech in the presidential campaign, Bush promised to convene a global conference on the environment to discuss global warming and other problems. But when Reilly and other administration officials sought to begin planning for such a conference, Sununu responded that Bush has not decided the best timing, venue and agenda for it, according to a source.

[From the New York Times, May 8, 1989]

SCIENTIST SAYS BUDGET OFFICE ALTERED HIS TESTIMONY

(By Philip Shabecoff)

WASHINGTON, May 7.—The White House's Office of Management and Budget has changed the text of testimony scheduled to be delivered to Congress by a top Government scientist, over his protests, making his conclusions about the effects of global warming seem less serious and certain than he intended.

The testimony had been prepared by Dr. James E. Hansen, director of the National Aeronautics and Space Administration's Goddard Institute for Space Studies, for delivery Monday before the Senate Subcommittee on Science, Technology and Space, Congressional sources said. Dr. Hansen confirmed that the testimony had been changed.

In his original testimony, he said that computer projections of changes in climate caused by carbon dioxide and other gases released into the atmosphere would cause substantial increases in temperature, drought, severe storms and other stresses that will affect the earth's biological systems.

The text of his testimony was edited by the budget office to soften the conclusions and make the prospects of change in climate appear more uncertain, Dr. Hansen said in an interview.

The budget office and other officials in the White House have been urging a go-slow approach to policies dealing with global warming, called the greenhouse effect by scientists. Those officials have, opposed the State Department and Environmental Protection Agency, which have been urging President Bush to take the lead in mobilizing the international community to meet the threat of rapid climate change. The Administration is deeply split over whether to endorse an international treaty that would require action to deal with global warming, high-ranking executive branch officials said.

Senator Albert Gore, Democrat of Tennessee and chairman of the subcommittee, who had been told by Dr. Hansen of the alterations in the testimony, said that White House officials were attempting to change science to make it conform to their policy rather than base policy on accurate scientific data.

"They are scared of the truth," Mr. Gore said. He charged that the testimony was censored to support those in the Office of Management and Budget and other part of the Administration who are seeking to keep the United States from proposing an international treaty to ameliorate the now widely anticipated global warming trend.

Mr. Gore said that at a future hearing "I intend to ask O.M.B. officials who have substituted their scientific judgments for those of atmospheric scientists to come in and testify about the basis for their conclusions. I want to determine their qualifications, the climate models they have used, the amount of study they have given to the subject and the evidence that they found most persuasive. And I intend to pursue this at great length."

BUDGET OFFICE REVIEW IS ROUTINE

A spokeswoman for the budget office reached Saturday said that she made repeated attempts to seek an explanation but that no one from the office was available to respond to questions about the changed testimony. She also said that the only press official who will agree with budget office statements is Barbara Clay, who was among those not available.

The Office of Management and Budget routinely reviews testimony to be presented to Congressional committees by officials to make sure that Federal policy conforms to the President's budget.

The United States heads an international panel assigned the task of preparing a policy response to the global warming trend. The panel is scheduled to make recommendations at a meeting sponsored by the United Nations in Geneva this week.

Secretary of State James A. Baker 3d and Environmental Protection Agency Administrator William K. Reilly are said to be urging that the United States take the lead

on a convention to meet the threat of global warming. But officials in the White House, including the Office of Management and Budget, as well as in the Department of Energy, are urging a wait-and-see approach, saying the scientific information and data on economic effects of a remedial action are inadequate.

Dr. Hansen's testimony, before it was changed, would have given strong support to the position that, while there are still many uncertainties, enough is known now about the general and even regional effects of the global warming trend to start acting now to mitigate and prepare for those effects. Dr. Hansen concluded, for example, "We believe it is very unlikely that this overall conclusion—drought intensification at most middle- and low-altitude land areas, if greenhouse gases increase rapidly—will be modified by improved models."

At the end of the section of his testimony dealing with regional effects of global warming, however, the Office of Management and Budget, over Dr. Hansen's objections, added this paragraph: "Again, I must stress that the rate and magnitude of drought, storm, and temperature change are very sensitive to the many physical processes mentioned above, some of which are poorly represented in the G.C.M.'s (general climate models). Thus, these changes should be viewed as estimates from evolving computer models and not as reliable predictions."

SCIENTISTS CRITICIZES CHANGE

Dr. Hansen said in an interview that the additional paragraph served to "negate" the entire point of that part of his testimony, which was that scientific understanding has now reached the state where "we can begin to draw significant conclusions about droughts, storm, temperature—conclusions which are unlikely to change as the models and observational data become more detailed."

Another part of Dr. Hansen's testimony said that many policies for reducing carbon dioxide growth rates would make good economic sense was changed by the budget office to say that such policies "should" make good economic policy sense.

Still another change required the testimony to say that the relative contribution of human and natural processes to changing climate patterns "remains scientifically unknown." In fact, Dr. Hansen said, he and his colleagues at N.A.S.A. who helped prepare the testimony, "are confident that greenhouse gases are primarily" of human origin.

"It distresses me that they put words in my mouth; they even put it in the first person," Dr. Hansen said and added that he had tried to "negotiate" with the budget office over the wording but "they refuse to change."

"I should be allowed to say what is my scientific position; there is no rationale by which O.M.B. should be censoring scientific opinion," Dr. Hansen insisted. "I can understand changing policy, but not science."

He also said that this was not the first time the budget office had changed his testimony to Congress.

While there is strong consensus within the scientific community that the greenhouse effect is real, there have been a substantial number of challenges to Dr. Hansen's contention that long-term global temperature trends show a high probability that it is already taking place. Dr. Hansen's testimony that the global warming trend is already occurring was presented at a Congressional hearing last July and attracted widespread attention.

While the O.M.B., in its function of coordinating policies within the Executive Branch, reviews and edits such testimony, the research findings of Government scientists are subject to peer review, not to change by the policy-oriented budget office. Dr. Hansen's testimony was based on his and his colleagues' research, which had been subjected to such peer review.

Senator Gore called the alteration of Dr. Hansen's testimony "unbelievable" and said that such Government action would have a "chilling effect" on science and make it more difficult to base sound policy on the scientific evidence.

A number of foreign leaders have been urging the United States to take the lead on global action to meet the threat of global warming, recalling President Bush's campaign pledge to exert such leadership.

[From British Information Services, May 8, 1989]

GLOBAL CLIMATE CHANGE

"The atmosphere knows no boundaries and the winds carry no passports".

Attached is a statement to the UN Economic and Social Council by the Permanent Representative of the United Kingdom to the United Nations, Sir Crispin Tickell.

SUMMARY

The effect of "greenhouse gases" is comparable in its scale and complexity to the problems which arose from the discovery of nuclear energy, fifty years ago.

On 26 April 1989 the British Prime Minister held a seminar of scientists, industrialists, politicians and academics. Their concensus was that despite great uncertainties there was no time to wait.

There are three areas in which international work is required—a framework in which to operate, a review of institutions and a basis for action to manage the consequences of a warmer world.

The framework has two main aspects: an umbrella convention which would set out general principles or guidelines. This task falls to the Intergovernmental Panel on Climate Change. Secondly, as scientific evidence requires, specific protocols should be fitted into the framework.

There are enough international institutions already. The challenge we face is how to make best use of them, and, if necessary, adapt them to changing circumstances. Are the problems of global warming sufficiently taken into account by the many UN and international institutions working in this area?

We may need to consider whether UNEP might be promoted to a specialized agency. An intergovernmental commission to provide a secretariat and monitor the global framework convention on climate should be considered. There could also be a role for the Security Council under Article 34 of the Charter and a Committee of the General Assembly might also be created.

[From Scripps-Howard News Service, May 6, 1989]

BUSH WHITE HOUSE TO PASS UP CHANCE TO LEAD FIGHT ON GREENHOUSE EFFECT

(By Robert Engelman)

WASHINGTON.—The Bush administration has quietly decided to pass up an opportunity to take the lead on fighting the "greenhouse effect" in an international meeting next week, according to administration officials.

Beginning Monday, the United States is chairing a 17-nation working group in Geneva on possible strategies for heading off global warming, which scientists expect to result from heat-trapping industrial pollution of the atmosphere.

Despite pressure from some administration officials to propose specific steps to slow or delay the warming, others expressed doubts and White House chief of staff John Sununu vetoed the idea, administration sources said.

Instead, the U.S. delegation will propose only further discussion and study of the greenhouse problem.

"There are some who would like to have seen the U.S. set a goal of starting work on a treaty to control greenhouse gases, but Sununu put that on hold," one official said Friday. "There's some frustration about that."

Sununu, however, said through a spokesman that sources making such statements are "totally unreliable."

"We are working on our environmental issues," Sununu said. "We're getting input from all over, including Geneva, and we're moving aggressively on clean air."

But neither Sununu nor any White House official disputed accounts that top administration officials—specifically, Secretary of State James Baker, national security adviser Brent Scowcroft, White House counsel Boyden Gray and Environmental Protection Administration head William Reilly—had suggested the administration could use the Geneva meeting to call for work on an international agreement to limit greenhouse emissions.

Reilly said through a spokesman Friday that Sununu was "getting a bum rap."

While some members of the cabinet did have "legitimate questions" about the implications of a greenhouse treaty, Reilly said, "John Sununu has been very supportive of the process" of working out an administration position on global warming.

The Geneva meeting, Reilly added, "is not a drop-dead deadline for action" on the greenhouse effect.

A greenhouse treaty, advocated by many scientists and environmentalists, would be in some ways similar to a two-year-old international agreement to reduce emissions of chlorofluorocarbons, the gases that deplete the upper-atmosphere ozone layer.

Reducing greenhouse gases would be considerably more difficult. Many of them, such as carbon dioxide and methane, are almost inevitable by products of energy consumption, industry and agriculture.

But despite continuing uncertainties about whether climate change is already evident, scientists agree some warming will occur and prove disruptive within the next few decades.

Many scientists and some legislators have recommended early action to reduce greenhouse emissions. Last week the Senate passed a non-binding resolution to make reduction of carbon dioxide emissions a goal of U.S. policy and to begin work toward an international agreement.

The issue has political as well as environmental overtones. Bush declared during the presidential campaign that he would fight the greenhouse effect with what he called "the White House effect." As president, however, he has said little about the issue.

Some European governments have become quite active recently in response to growing public concern about climate change. Two weeks ago British Prime Minister Margaret Thatcher called half of her cabinet minis-

ters together for a six-hour briefing on the issue, according to Martin Holdgate, a British scientist and conservationist who spoke to the group.

Holdgate, in Washington to attend a forum on global environmental change, is among those who favor immediate action to delay greenhouse warming. "We would be incredibly stupid if we did not take the signs of global change induced by man as very real," he said.

But Tom Snead, a spokeseman for the State Department, said the U.S. government had not yet adopted that view and would suggest only in Geneva that energy efficiency makes sense for a variety of environmental and economic reasons.

"It's premature at this time to talk about reductions in carbon dioxide emissions," which come largely from combustion to fossil fuel, Snead said. "You're talking about basic energy production. We don't know enough about global climate to say these greenhouse gases are going to do anything."

The working group is a subcommittee of the intergovernmental Panel on Climate Change, established last year to consider possible responses to the threat of climate change.

The chairman of the working group meeting will be Frederick Bernthal, assistant secretary of state for oceans and international environmental and scientific affairs.

At the group's first meeting, held in Washington in January, Baker declared that "the political ecology is now ripe for action" on greenhouse warming.

PROPOSED FSX AGREEMENT WITH JAPAN

Mr. BRYAN. Mr. President, I rise to express my opposition to the administration's proposed transfer of American technology to the Japanese in the form of the so-called advanced fighter system, the FSX. In doing so, I want to associate myself with the remarks of my friend, the distinguished senior Senator from Illinois who previously voiced his opinion on the floor this morning.

Mr. President, it has been said that those who cannot remember the lessons of the past are condemned to relive them. If this debate were being held in the 1950's, one would expect that a dialog would involve the future of the American automobile industry. It ought to be abundantly clear to all of us that the Japanese are very good in long-term commercial strategy. The 1950 automobile strategy in which they have targeted the American market for substantial export to it has been an overwhelming success. Today, 20 percent of that market is occupied by the Japanese.

If we move into the 1960's, it is equally clear that they were interested in consumer electronics. In 1970, American companies had 90 percent of the American color television market. Today that market is less than 10 percent. The VCR technology, developed in the United States, is no longer produced or manufactured in the United States but is owned predominantly by the Japanese.

And, as we approached the 1970's, it was equally clear that their strategy focused upon semiconductors and the supercomputer hardware of the future and they have made serious inroads in America's competitive position in our own market, much less the world market.

It is obvious to me the Japanese have targeted the manufacture of commercial aircraft as their goal for the 1990's and beyond. It is a market in which American technology enjoys preeminence, both in commercial as well as military aircraft.

Mr. President, I have sat through several briefings over the past few days in which the advocates of this transfer have tried to persuade me and other Members of this body why we should approve the transfer of technology.

I must say that I find no argument that is compelling in our national interest to approve such a transfer. It is acknowledged by all who have participated in these briefings that the Japanese do not exceed us in terms of commercial airframe technology, composite technology, radar technology, or any of the other technologies that would be involved in the manufacture of this advanced weapons system. There may be some commercial advantage to General Dynamics, but there is no advantage to America in approving this transfer.

Indeed, Mr. President, my experience has been, as recently as last evening when I had occasion to visit with some of the members from my own State to talk about telecommunications, that the pattern is clear. Once the Japanese gain access to this technology they are going to move out on their own: Develop it and bring the same technology back to us, perhaps sooner than we can transfer that technology into the production line. It makes no sense, Mr. President, for us to approve this.

How we can justify to the American taxpayer that the dollars contributed by the American taxpayers, which have contributed to the technology represented in the F-16, which is a frontline fighter in the world, should be transferred to the Japanese without any concomitant quid pro quo or advantage to us.

Second, Mr. President, I submit that we do a great disservice to the airframe manufacturers of this country to provide their prospective or future competitors with this kind of technology, which will enable the Japanese to more easily compete with them in the international markets of the 1990's, and into the next century.

Finally, Mr. President, I think it needs to be pointed out that we in this country have developed a tremendous trade deficit. Of all of those with whom we trade, the Japanese are the ones who have the largest deficit in terms of our export/import relationship. Here is an area, Mr. President, in which the United States enjoys an aerospace trade surplus of $17.9 billion in 1988 by exporting some $26.9 billion of American aircraft abroad to the international market. Why, Mr. President, we would seek to compromise or to make it possible for others to compete in that market and erode that competitive share, I do not know.

Mr. President, I ask unanimous consent for 1 more minute?

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

Mr. BRYAN. Finally, Mr. President, I would say to our friends in Japan who express their concern and eagerness in helping us to work with the trade deficit, all of those who heard that dialog, all of us who participated in that colloquy, this, Mr. President, is an opportunity for the Japanese, not to speak but to act, and they ought to be purchasing American aircraft and American technology as one means of eliminating that trade deficit.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. KERREY].

THE MILWAUKEE BUCKS

Mr. KERREY. Mr. President, I rise first of all to say how proud I, and all the freshmen Senators were, of the Milwaukee Bucks over the weekend.

COMPUTER-AGE LIBRARY

Mr. KERREY. Mr. President, on Sunday, April 30, an article in the New York Times described an idea that French President Mitterrand is developing to build a modern computer-age library in Paris. I believe such a proposal would be wonderful for the United States as well and I intend to pursue it.

I have been struggling for several years to develop a description of a communications system in America that could be used by our people to learn. With the technology available and the technologoy we could develop, if we were able to describe the system that we need we should be able to build a system that would provide us with far more than the enhanced dial tone which is now available.

I describe it as a strategic communications initiative which would have three elements: A network that is deployed without regard to regulatory or marketshare constraints; production of a library of data, sound, and video information; and research that develops our technology to do what we want it to do.

Peaceful applications of technology have fewer advocates than military applications. A tool which will permit a 10-year-old to explore and achieve

greater understanding with more complete freedom is less exciting than the roar of a fighter bomber or the killing capacity of a new weapon.

Fear creates an active urgency that necessitates the commitment of vast resources to the cause. The desire for new knowledge is a more passive urge with less political value. Moreover, new discoveries very often threaten the status quo. There are few things worse than having your child come home from school after learning something that has caused them to conclude their parents are wrong.

The idea of a library for the United States, like that being proposed for France is a breakout idea for me. It describes the end use: reading and learning, in a way that is understandable. To make it accessible we will need a network. To make it complete we will need production work. To make it the best we will need research that is directed toward satisfying specific needs.

The description in the article that I like best is that the library is an "intersection of Alexandria and the electronic age." I envision a library that would permit an individual to retrieve and to interact with written, sound, and visual information. I envision a network which would allow the entering of the library long distances any time of the day or night.

I envision a library that would permit a child in Broken Bow, NE, to learn a language, to explore science, to improve mathematics skills, or to pursue any other line of questioning. It is important for me to center my attention on the needs of a 10-year-old rather than on the economic needs of businesses. I believe that it will work for business if it works for the child. I do not believe that the opposite will necessarily hold.

I envision a library that would encourage reading. This, for me, is an essential ingredient. This cannot be seen as a high technology monster which becomes simply a video game. We must consciously insist on measuring the design by this standard: Will it help our people to read?

I envision a library that would permit an individual to physically enter it as well, a classic library with reading rooms and gardens, a library that confirms that the electronic age is not a replacement for the old age of enlightenment.

I will be developing and proposing legislation to encourage the creation of such a library in the United States. The United States ought to be establishing a similar state-of-the-art blend of communications technology and the services that a traditional library offers. I ask unanimous consent that the April 30, 1989, New York Times article be James M. Markham be printed in the RECORD and I commend it to my colleagues.

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

MITTERRAND ORDERS A LIBRARY FOR THE AGES

(By James M. Markham)

PARIS, April 25.—In his latest and in some ways most ambitious effort to reshape the architiectural landscape of Paris, President François Mitterrand is building "a very big library" that is supposed to be the most modern in the world.

Already one of France's most energetic builder-presidents, Mr. Mitterrand has commissioned or completed I.M. Pei's pyramid in the heart of the expanded Louvre, the mammoth Bastille Opera, the Arab World Institute, the Orsay Museum, a new Ministry of Finance on the Seine, a modernistic hollow cube known as the Great Arch in the suburban La Défense complex, and La Villette, a development comprising a part, a museum of science and industry and a music center.

Yet Mr. Mitterrand's plan for a giant, computer-age library, which will be built on the rundown Quai de la Gare along the Senie on the southeastern flank of the city, is clearly his most cherished project. The 72-year-old President has united two passions—his love of books and his love of building.

With a price tag of more than $1 billion, the Bibliothèque de France will occupy a 17.3-acre site and, if all goes according to the President's vision, will be equipped with computer terminals that will link readers throughout France and even the world to its published and electronic resources.

At a Cabinet meeting here last week, Mr. Mitterrand revealed the names of 20 architects who will be invited to submit preliminary proposals for the library; four finalists are to be chosen at the end of July, and building is to start in 1991. The list includes Richard Meier, an American; James Stirling of England; Richardo Bofill, Bernard Tschumi and Jean Nouvel of France; Mario Botta of Switzerland; Hermann Hertzberger of the Netherlands, and the Miami-based firm Arquitectonica.

A VERY GRAND AMBITION

At last year's Bastille Day ceremonies, Mr. Mitterrand disclosed his Presidential wish to create "one of the biggest or the biggest and most modern library in the world." He later scaled this down to "a very big library," or, in France, a "très grande bibliothèque," which the press inevitably shortened to T.G.B.

T.G.B. sounds like T.G.V., which are the well-worn initials of France's high-speed train, the "train à grande vitesse."

Not without a certain irony, Mr. Mitterrand decided this month that the T.G.B. will be built along a quay that takes its name from a railroad station, the Gare d'Austerlitz, whose tracks snake through an unlovely cityscape of warehouses, truck stops and dock sheds before pivoting southwest toward Orléans and Bordeaux. And though the abbreviation clearly does not please the President, the location and the flippant nickname have facilitated headlines like "T.G.B. on the Rails."

There is a nice symbolism in the choice of the site, between the Bercy and Tolbiac bridges on the Left Bank. If the railroad is one of the great creations of the 19th century, the Bibliothèque de France is meant to become the first library that anticipates the 21st.

"It is clear that this will be like no other library in the world," said Emile Biasini, the minister-level official named by Prime Minister Michel Rocard last June to oversee all the President's grands travaux, or great works. "To use an image, it will be at once Alexandria and the electronic age."

HE GIVES THE ORDERS

With a grin, the ebullient Mr. Biasini shrugged off the suggestion that the library might ultimately become known as La Bibliothèque François Mitterrand. But he left no doubt that the library was the President's very personal project.

"He's in charge," Mr. Biasini said. "I work with him, and he gives the orders. And I have fixed dates so that the library will be irreversible before the end of his term in office in 1995."

The choice of the Bercy site fits in with unfolding plans to develop and upgrade the scruffy outer reaches of eastern Paris. The site is just up river from the huge new Ministry of Finance—a design of the French architect Paul Chemetov and the Chilean Borja Huidobro—which juts aggressively into the river from the Right Bank.

A walkway across the Seine will link the library to a vast part that is planned next to the Bercy Omni-sports center, which is used for everything from political rallies to bicycle racing to opera. Bibliophiles will thus be inspired to think great thoughts as they stroll in the park.

The 17.3 acres were donated by Mayor Jacques Chirac of Paris, the neo-Gaullist leader who was defeated by Mr. Mitterrand in last year's Presidential election. This harmonious beginning of the project may avoid the kind of political wrangling between Mr. Chirac and the Socialist President that delayed and confused the design of the Bastille Opera, which is to be inaugurated with a concert the evening of July 13, marking the 200th anniversary of the French Revolution.

OVERSTUFFED AND OVERCROWDED

Even before Mr. Mitterrand introduced the library project last July, it had become clear that the venerable Bibliothèque Nationale on the Rue de Richelieu, which houses 12 million volumes, had become overstuffed and its elegant domed reading room overcrowded with researchers.

After considerable discussion, a team of experts presided over by Dominique Jamet, a journalist close to the President, has decided that the library collection will start in 1945, which will mean removing some three million volumes from the Rue de Richelieu.

"The idea of a cut-off date was simple—the new library could not open without some books," said Mr. Jamet, who is president of the Association de la Bibliothèque de France. "After 1945 means after the war and after the atomic bomb."

The selection of Mr. Jamet to guide the project has raised some skeptical eyebrows among architects and librarians. But the choice of a journalist devoted to the President seems yet another indication that Mr. Mitterrand is the real boss.

The library's avowedly modern vocation will be matched by a computerizing of its collection that is supposed to link it to libraries in Bordeaux, Lyons and Strasbourg—and ultimately to other great libraries of the world. Mr. Mitterrand has a vision of universities and high schools all over the country plugged into the Bibliothèque de France.

RECORDS OF THE PATRIMONY

The new library is also to be the repository of what is called "the audiovisual and

sound patrimony"—electronically stored information and music that has expanded exponentially in the post-1945 era. Pulling this patrimony together will be a bureaucratic nightmare since it is now held by various ministries and public entities.

The library is to have both a traditional research reading room for scholars and, a relative rarity in Europe, another one open to the general public. A 110-page report by two French library experts, Patrice Cahart and Michel Melot, also suggested the robotization of the stacks, permitting the swift retrieval of volumes.

"All this can stimulate a very original kind of architecture," said Mr. Melot, who has proposed a kind of intellectual "boutique" selling specialized academic publications within the T.G.B. "The architect will have to pull together zones that do not all have the same function."

Yet for all the futuristic talk about the new national library, others harbor more modest ambitions for Mr. Mitterrand's last great architectural legacy to the City of Paris.

"I have an enormous admiration for American libraries and I am convinced that the French are determined to learn a lot from the Americans," said Emmanuel Le Roy Ladurie, head of the Bibliothèque Nationale. "Personally, my desire is that the Bibliothèque de France should be at the level of the good American libraries."

The PRESIDING OFFICER. The Senator from Illinois [Mr. DIXON].

SCHEDULE

Mr. DIXON. Mr. President, I appreciate the fact that shortly we have to recess for the purpose of the conference luncheons by the two parties. I wonder if I could make a few brief remarks. My understanding was that the distinguished Senator from Michigan [Mr. LEVIN] wanted to come back and make a few brief remarks.

If I could say a few things until he gets there, I would be delighted to replace my colleague in the Chair for a brief period to hear him, before we close down this morning.

Is there any objection to that by anyone here, Mr. President? That we proceed in that manner?

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

FSX

Mr. DIXON. Mr. President, to add to the RECORD concerning the FSX deal, which has been commented upon generously by a good many people here this morning, I would like to ask unanimous consent that a statement by Mr. Clyde Prestowitz, Jr., which appeared in the Chicago Tribune on May 5, 1989, be printed in the RECORD.

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

[From the Chicago Tribune, May 5, 1989]

THE NEW FSX DEAL HARDLY DIFFERS FROM THE ORIGINAL

(By Clyde V. Prestowitz, Jr.)

The FSX mountain has labored and brought forth a mouse. For several months, the Bush administration appeared to be raising the priority of defense of U.S. technologies leadership in the deal with Japan to co-develop its next-generation fighter as a derivative of the U.S. F-16. Yet, the administration now seems to have settled for little more than the original deal of last December.

Under the agreement, the United States was to turn over to Japan F-16 technology—developed at the cost of $3 billion to $5 billion—in return for 40 percent of the development work on four FSX prototypes ($460 million), a vague expression of "best effort" to achieve a similar U.S. workshare on the eventual 130-plane production run, and an equally vague promise of access to undefined Japanese technology. Flowback to the U.S. of Japanese technology "essentially" derived from U.S. technology was to be free of charge, while indigenously developed Japanese technology would be available for a royalty.

Critics pointed out that the wildly unbalanced nature of this deal (similar to others the U.S. had come to regret) probably would accelerate Japan's drive toward world-class aircraft manufacturing status and narrow the U.S. lead in its last industrial stronghold.

In response, President Bush ordered a review and then asked Japan to agree to certain improvements in the deal. Specifically, the President demanded: (1) Revision of the basic memorandum of understanding to obtain clear assurances of a 40 percent U.S. production workshare; (2) restriction on the transfer of key software codes for the plane's computers; and (3) a clearer definition of the term "essentially" derived from U.S. technology with regard to the flowback of technology to the U.S.

When made in February, the President's demands amounted to a denial of the assertion by the Pentagon and State Department, as well as by former Secretaries of Defense Frank Carlucci and Caspar Weinberger, that the deal as originally negotiated was the best one possible. In particular, the President obviously questioned their insistence that the United States "had every reason to expect that it would receive 40 percent of the eventual production work."

He had good cause. Bitter experience had taught that the words "best effort" in this kind of deal really mean "it will never happen." Experience with the F-15 and others also indicated a U.S. readiness to transfer increasing increments of technology for very little or nothing in return.

Nothing confirmed the wisdom of the President's course and confounded the partisans of the original deal more than the Japanese response. Three months of haggling ensued. Where the Pentagon had earlier insisted that the U.S. "had every reason to expect" a 40 percent production workshare, the Japanese proposed 28 percent, then inched up to 32-35 percent.

The stakes in this game were the engines. At a 40 percent U.S. workshare, if the Japanese were to keep the avionics and other sophisticated work in Japan, the U.S. would have to get most of the engines that contained new and important technology in which the U.S. has a substantial lead.

Similar haggling occurred over technology transfer issues. For most of this time the administration held firm for the President's demands with, amazingly, the State Department taking the lead as the rough guy.

Then, suddenly, it all fell apart. Shortly after Prime Minister Noboru Takeshita's resignation statement, an agreement on the FSX was announced. Under it, the U.S. is to get "approximately" 40 percent of the production workshare. Mention of restriction on transfer of source codes was made, but it is agreed that the U.S. will transfer all codes necessary to realization of the FSX project's objectives.

The terms of the U.S. access to possible Japanese technology were somewhat clarified, and the U.S. agreed that it would not preclude the possibility of Japanese production of the engine. Moreover, these changes were contained in an exchange of letters rather than in the memorandum of understanding itself as the President had requested.

One can only wonder what all the fuss was about. This is essentially the same deal as that announced in January. What is "approximately" 40 percent? Is it 20 percent or 35 percent? Certainly it is not 45 percent. Any suggested restrictions on source code transfer are meaningless as long as they are qualified by the need to "reach project objectives." In time, "reaching objectives" will result in virtually total transfer.

Why did the U.S. back down? One can only speculate, but it appears to be a reassertion of the traditional primacy of defense over economic considerations in U.S. diplomacy. With Takeshita on the skids, the U.S. became concerned that a new prime minister could not agree to any deal on the FSX. Concerned that Japan would not have an adequate fighter in the 21st Century, the U.S. appears to have pressed for a quick deal while Takeshita was still around to do it, proving once again that, between the U.S. and Japan, nothing ever changes.

Mr. DIXON. Frankly, the interesting thing about this article is that many of us thought there was a substantial improvement in this agreement by virtue of the renegotiations that took place during the last several months. But the position of Mr. Prestowitz—who examines this very carefully, in this article which I will not read in full but which I think is a well thought through article—the position of Mr. Prestowitz is that the new FSX deal hardly differs from the original.

Mr. President, sadly, as in many cases the memorandum of understanding and other documents and letters supportive of the arrangement between the United States and Japan are once again market secret. They are classified. So in large measure we cannot question in the committees some of the things documented and we cannot discuss on the floor some of the classified matter. I once again assert, as we did when we had the Base Closing Commission report, that this business of stamping everything secret is a practice that has grown in this country over the last few years and that I very much deplore. I have looked at this classified document. I have the right to do that as a Senator as the Chair knows. I do not see anything there that is secret or that we ought not to be able to discuss.

I do want to put in the RECORD a letter from the Assistant Comptroller

General, Frank C. Conahan, dated yesterday, May 8, 1989. The parts of this that were attached to it that were classified are now not involved. This part is unclassified. What this letter says, Mr. President, if I may call it to the attention of my colleagues, is that in examining this whole question of what we give, we know what we give 7 billion dollars' worth of advanced technology for the greatest fighter aircraft in the world. What do we get back? I think the overwhelming consensus is "nothing." Again I quote from that letter directly:

Our preliminary observations are that, overall, the United States has superior composites technology and appears to be ahead in the radar development.

I believe we are getting nothing in return.

I ask unanimous consent that this letter be printed in the RECORD.

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

U.S. GENERAL ACCOUNTING OFFICE,
WASHINGTON, DC, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION,
May 8, 1989.

Hon. ALAN J. DIXON,
U.S. Senate.

DEAR SENATOR DIXON: On January 30, 1989, you requested that we review various aspects of the proposed FS-X support fighter codevelopment program between the U.S. government and the government of Japan. As arranged with your office, we are furnishing the information we have obtained to date on two Japanese technologies that will be available to the United States under the program. These technologies, which relate to composites and the active phased array radar, are discussed in detail in enclosures I and II.

In October 1987, the government of Japan decided to develop the FS-X support fighter using the General Dynamics F-16 C/D as the baseline aircraft. In November 1988, the Department of Defense (DOD) and the Japan Defense Agency signed the Memorandum of Understanding for the cooperative development of the aircraft. In January 1989, Mitsubishi Heavy Industries, the Japanese prime contractor, and General Dynamics, the U.S. manufacturer of the F-16 signed a Licensing and Technical Assistance Agreement.

According to DOD, the FS-X program was not pursued with the primary objective of obtaining access to Japanese technology or balancing the exchange of technology. Other strategic and national priorities dominated. However, once Japan agreed in principle to codevelop the FS-X and a negotiating position was developed, the United States stressed the importance of obtaining access to the new aircraft's technologies. DOD officials have emphasized the potential value of these technologies in a general sense and are impressed with Japan's overall manufacturing capabilities, particularly its cost-effective electronics production.

Our preliminary observations are that, overall, the United States has superior composites technology and appears to be ahead in the radar development. Our view has to be qualified because there are many unknowns about these Japanese technologies and the United States still has limited information from which to make meaningful comparisons.

In doing our work we obtained information from various U.S. government and industry sources. We reviewed program files and had extensive discussions with DOD program and technical officials. We met with structural, design, and avionics engineers at the Air Force's Wright Research Development Center, Dayton, Ohio. We also met with industry representatives from Hughes, Westinghouse, Texas Instruments, McDonnell Aircraft, and General Dynamics to assess U.S. capabilities and obtain information, to the extent available, about Japanese capabilities. Because our review was underway at the time of the renewed negotiations between the two governments to clarify certain aspects of the program, we did not visit Japan.

We are continuing our efforts to fully respond to your request and hope this information will assist you in your deliberations.

Sincerely,

FRANK C. CONAHAN,
Assistant Comptroller General.

Mr. DIXON. Mr. President, Dr. Robert Barthelemy, the National Aerospace Program Director, addressed a group of Senate staffers at a luncheon on April 20, 1989. During his remarks, Dr. Barthelemy referred to an October 1988 trip to Japan. The purpose of that trip was to assess the pace and goals of the Japanese aerospace industry. Essentially, the Japanese informed Dr. Barthelemy that they planned to excel in the aerospace industry. When asked how, since the Japanese have neither an aviation history nor the background technology in this field, the Japanese responded that they have a long-term commitment and that they are going to get the job done. Dr. Barthelemy also explained that the Japanese Government is committed to spending $16 billion.

Mr. President, you have had a very respected career in business. They are going to spend $16 billion to achieve their goal. It is not nice of us to give them everything they need to get the job done?

I am delighted to see a Senator who enjoys the respect of every Senator in this body, a leader in the Armed Services Committee, a Senator who has over the years demonstrated his understanding of the subject matter at issue, and I am proud to be identified with him in this effort we are making to thwart a very bad deal with America.

Mr. LEVIN. Mr. President, I thank my good friend from Illinois for his flattering words. As usual, he is overly generous with his colleagues.

(Mr. DIXON assumed the chair.)

Mr. LEVIN. Mr. President, there is an underlying question in this discussion. It is almost a haunting question to me. That is, why will not the Japanese buy our F-16's? Why will not the Japanese buy our F-16's?

We buy their automobiles. Why will they not buy our F-16's? We buy their VCR's. We buy their televisions. We buy their cameras. Why will not the Japanese buy a product which we make very well, which we can make cheaper than they can, when we buy all their products?

The answer, of course, is they want the jobs. They want the aircraft industry. That is the obvious answer.

The question that then arises is, Why do we let them do it? Make no mistake about it, it is us letting them do it. People sometimes hear me back home and they say, "Are you mad at Japan; are you mad at Korea? Are you mad at the West Europeans? Are you mad at the Canadians?" Or whoever is taking advantage of us in trade.

My answer is no, I am not mad at them. I am mad at us because we can control our economic destiny in this country.

Folks, there is no use getting mad at Japan and Korea and everybody else. Focus your criticism and your fire at Washington because we are the ones who are going to decide whether or not we are going to transfer this technology to Japan and whether or not then 5 or 10 years down the line we are going to have a civilian aircraft industry.

I think the answer is very clear. We should tell the Japanese and any other country that has a huge trade surplus with us that if they want to sell freely in the United States everything they produce, they are going to have to let us sell to them and they are going to have to buy some of our goods.

We can make the F-16 far more cheaply than Japan can make the F-16. There is no mistake about that. I think that is acknowledged. That is a given. We can make this plane cheaper than they can.

What they want is the long-term benefit. What they are investing in is 10 years down the road when they want this industry basically for Japan. But will we let them do it? That is our decision.

Focus your fire on Washington, not on Japan, not on Tokyo, not on Seoul, not on Ottawa, not on Bonn. Focus criticism on Washington for tolerating a trade deficit with Japan and other countries which is now $150 billion—$150 billion, millions of American jobs. Every other country controls their economic destiny. Every other country puts limits on how many products can come into it. I do not think there is one country producing automobiles in the world that allows in an unlimited number of Japanese cars except us. We have a $55 billion trade deficit with Japan.

By the way, that is a larger trade deficit than the next five countries put together. So our trade deficit with Japan is larger than Taiwan, West Germany, Canada, South Korea, Brazil, and Hong Kong put together. Put our trade deficit together and it

still does not equal Japan's trade deficit with us. But they will not buy our F-16's when we can make those F-16's cheaper. They will not buy them? What we need is to tell Japan very soon, if you are not going to buy our F-16's, we are not going to be able to buy as many of your products; we are going to have to put some restrictions on your products if you will not buy this plane which we can make more cheaply than you can make the FSX. We are going to have to talk to them that bluntly. Every other country talks with every other country that bluntly. When it comes to trade, people talk turkey with each other, but not us. We are still pursuing this ideal which does not exist, this ideal called free trade, which every one of us is for except no other country practices. We are not perfect either, but we are a lot freer than most other countries.

If the Japanese were to buy the F-16 off the shelf, not only would they get a great aircraft at a reasonable price, but it would reduce the huge trade deficit which this Nation currently has with Japan. It is estimated that if they would take our F-16 off the shelf or if we modified it for them, it would cost them from one-half to one-third what they are going to end up paying for their own FSX.

I congratulate the current Presiding Officer and thank him for the leadership he has taken this morning in gathering us together. It is important that some of us in the Senate who feel very strongly on this issue let our people back home, let the country, and let the administration know that we are going to make an effort to stop this deal. It is important that people understand the underlying issue. The underlying issue is, why will they not buy our F-16's if we are buying their cars, their VCR's their cameras, their televisions, and so forth?

It is a question we ought to keep on asking because the answer finally is going to be that they are going to have to buy some of our products. The trade is going to have to be a two-way street, and we are going to insist upon it. The only way it will work is to say very bluntly, very honestly, very sincerely, but very strongly, to all countries that have these huge trade surpluses with us that will not buy our goods, that there is going to be a change, and that we are going to insist on a two-way street in the area of trade; some fairness so that not only are they selling here but they are buying from us as well.

At the same time that Japan is working on the details of this aircraft the United States will still be carrying a heavy burden of assisting in the defense of Japan; the United States trade deficit with Japan will most likely continue to grow; and we will be facilitating the creation of a major challenger to the American civil aviation industry.

And what will the United States get in return from the Japanese. From what I can see, it is very little. For months we have been hearing about the superior Japanese technology that will flow back to the United States aviation industry. In particular, it has been reported that Japan would share with us their breakthroughs in composite materials production and radar.

As it now looks, Japanese industry in these areas are only breaking through to the level that the United States aviation industry has been at for some time. A study by the General Accounting Office confirms this. The cocured composite wing for the FSX has been touted as a major technology that will flow back to the United States. But, according to the GAO the United States aviation industry has been aware of the cocuring process for some time. It has not vigorously pursued the technology because there are many questions about how durable the wing will be under the enormous stress that a fighter aircraft produces and is exposed to in the form of enemy fire.

The phased array radar technology that the United States was supposed to benefit from is also known to U.S industry. While this issue is subject to classification, it has been reported in open sources that the GAO found that Hughes Aircraft and Texas Instruments have known of this radar technology for 10 years. In my view, the GAO study has proven that there are no significant technology breakthroughs that will be provided to U.S. industry from this deal.

After examining these facts, the question that arises in my mind, and in the minds of many of my colleagues is—Why? Why won't the Japanese buy our aircraft, why don't we push them to do it, and why are we putting them in the aircraft business? The F-16 is an excellent fighter that they can have cheaper and faster than if they move forward with the development and production of the FSX.

Also, by purchasing the F-16 outright, Japan could prove that it is willing to deliver on its military commitment to defend its coast out to 1,000 miles as soon as possible. This would provide a solid signal that Japan believes that it should shoulder more of the burden for its own defense. It could also show that it wants to help reduce the trade deficit with the United States and prove to skeptics such as myself that Japan wants to be a trade partner.

This agreement has many murky details regarding which nation will develop or produce which parts of an as yet formless aircraft, but one thing is clear—that to support this agreement will prove that we have not yet learned the important lesson that economic strength is the bedrock upon which our national security is built.

So, again, with thanks to the Chair for his leadership this morning, I yield the floor.

MARY HATWOOD FUTRELL—EDUCATION ADVOCATE

Mr. KENNEDY. Mr. President, at this time I would like to ask my colleagues to join me in honoring a great education advocate, one who has exerted courageous leadership at a critical juncture in the history of our Nation's educational system, and one who has appeared before Senate committees many times to share with us the perspective of a classroom teacher: National Education Association President Mary Hatwood Futrell.

Ms. Futrell is the kind of energetic, demanding, and creative teacher all of us like our children to have. As a teacher, she has always been committed to giving her students more than facts and figures, but also helping them develop the skills and the values they need to be successful in life, including self-respect, perseverance, and dedication to the American way of life. For the past decade, Ms. Futrell has brought that same kind of commitment and energy to her work as a national advocate for children, for education employees, and for the cause of public education.

The course of Ms. Futrell's life and career traces a number of pivotal changes in our Nation's history. At each step of the way she acquired a new appreciation for our Nation's values of equality, democracy, and a commitment to excellence. At each step of the way, she was an active participant in our Nation's relentless drive toward progress.

In 1963, when Ms. Futrell began her career as a teacher at Parker-Gray High School in Alexandria, VA, the Virginia schools were segregated. Two years later, Alexandria moved—as did many other school systems in the country—toward integration. Through her work in her community, Ms. Futrell's steady commitment to equality and to educational excellence helped our Nation through this difficult transition in our history.

Like many of her colleagues, Ms. Futrell's increasing involvement in her professional association paralleled her involvement in activities to enhance her professional skills. Shortly after earning her master's degree, she became chair of the business education department at her high school. She also held several posts in the Education Association of Alexandria. By 1976, she was elected president of the Virginia Education Association. And in 1980, she was elected secretary-treasurer of the National Education Association. She was elected NEA presi-

dent for three 2-year terms, beginning in 1983.

Ms. Futrell's first term as NEA president coincided with the advent of national commitment to education reevaluation and reform. Those concerned about the future of public education in this country could not have wished for a better person in that important post at that important time.

As NEA president, Ms. Futrell helped her association to lead the charge for improvement in education, to advocate for needed changes in education programs and policies, and to avoid education changes that were merely novel or politically attractive. At the same time, Ms. Futrell kept NEA on its unwavering course toward accomplishing the purposes for which its was founded: "to elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States."

Those of us in the Senate who have worked with Ms. Futrell are grateful for her contributions to education. More importantly, public school students throughout the Nation, today and far into the future, have cause to appreciate deeply her service on their behalf.

GEMINI JUNIOR HIGH SCHOOL, NILES, IL

Mr. DIXON. Mr. President, Gemini Junior High School in Niles, IL, has a history of producing great musicians and bands. This year proved especially productive for the students of Gemini Junior High when the Gemini Jazz Band took first place at the University of Illinois invitational competition for the best jazz bands in the State. Prior to this the Gemini Symphonic Band won the top rating in northern Illinois competition.

In 1988 the Gemini Jazz Band won second place in the national competition in Orlando, and was recently named No. 1 in the Nation from tapes of their past performances, by Downbeat magazine. The Gemini Symphonic Band was also named No. 1 in the Nation by Downbeat magazine for its recordings from 1988.

These superb awards represent long hours of practice and great performances by the students of Gemini Junior High School. I would like to take this opportunity to heartily congratulate these fine students and wish them the very best in all of their future endeavors.

VISIT TO THE SAVANNAH RIVER SITE WITH ADM. JAMES D. WATKINS, SECRETARY OF ENERGY

Mr. THURMOND. Mr. President, as we begin the arduous budget process in the 101st Congress, I would like to take this opportunity to bring to the attention of my distinguished colleagues one of the most pressing needs of our Nation. As the sole producer of tritium—an essential nuclear component subject to rapid deterioration—the Savannah River Site [SRS] ranks as a top priority in our national defense policy. I urge my colleagues to keep this fact in the forefront of their thoughts.

Construction of the new production reactor [NPR] at the SRS is of vital importance to our future. Besides improving the overall safety of the SRS, the NPR will guarantee our Nation a sustained supply of tritium well into the 21st century. The three reactors at the SRS are in the twilight of their life span and the next generation of reactors must be brought on line. Although it will take an estimated 8 to 10 years to complete the NPR, it is imperative that we move ahead quickly on this mammoth project recommended by the Department of Energy.

A sustained level of funding for the NPR is of utmost importance. Anything less could move us toward unilateral disarmament, which would leave the United States in a dangerously vulnerable position.

On April 28, I traveled to the SRS in Aiken, SC, and accompanied Admiral Watkins, the Secretary of Energy, and John Tuck, the Under Secretary of Energy, to view the facility first-hand. Also attending this important event were several Members of Congress, including the chairman of the Armed Services Committee, Senator SAM NUNN, members of the South Carolina delegation, and Governor Carroll Campbell. Following the close of my remarks is a complete list of all those in attendance. I believe that our trip was a productive endeavor and that the urgency of the issue was highlighted on a national level.

While on site, Admiral Watkins and our group toured the facility and spoke with management officials and employees. The visit was an important step in demonstrating our commitment to the safe operation of the facility, to effective clean-up, and to ensuring a secure source of tritium for our Nation.

Given the great significance of the SRS, I am anxiously anticipating a safe and timely startup of the three reactors which are currently off line. Admiral Watkins has personally assured me that he expects safe startup to be achievable early enough in calendar year 1990, which would enable us to maintain a viable stockpile of tritium.

I urge my distinguished colleagues to demonstrate their commitment to a safe, secure, and free United States by their continued support of the upcoming initiatives at the SRS.

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

SAVANNAH RIVER SITE VISIT, APRIL 28, 1989, ATTENDANCE LIST

DEPARTMENT OF ENERGY

Admiral Watkins.
John Tuck.
Troy Wade.
Polly Gault.
Steve May.
Leo Duffy.
Jackie Knox Brown.
Joe Karpinski.
Betsy Schaben.
Doug Elmets.
Chris Sankey.
Dan D'Armond.
Bill Desmond.
Cheryl Oar.
Bill Kaspar (Savannah River Site).
John Wagoner (Savannah River Site).
Bill Bibb (Oak Ridge Operations).

OFFICE OF MANAGEMENT AND BUDGET

Bob Grady.
Joe Hezir.

OTHER VIPS

Governor Campbell—South Carolina.
Governor Edwards—President, Medical University of South Carolina.
Paul Lego—Westinghouse.
Ted Stern—Westinghouse.
Jim Moore—Westinghouse.
Leo Wright—Westinghouse.
Frank Baranowski—EG&G.

CONGRESSIONAL

Senator Thurmond.
Senator Hollings.
Senator Nunn.
Senator Glenn.
Congressman Spence.
Congressman Derrick.
Congressman Spratt.
Congressman Thomas.
Sherri Goodman (Staff).

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired. Morning business is closed.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:40 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:41 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the presiding officer [Mr. SANFORD].

Mr. FOWLER addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

MORNING BUSINESS

Mr. FOWLER. Mr. President, I ask unanimous consent that there be a period for morning business to extend until the hour of 3:30 p.m. with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Is there objection? If not, it is so ordered.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

ADVANCED BOMBER TECHNOLOGY

Mr. EXON. Mr. President, I recently had the opportunity to read the issue brief on the B-2 advanced technology bomber presented by the Congressional Research Service or CRS as it is commonly known.

Usually, I would say, Mr. President, CRS does an excellent job of explaining the complex issues facing the Congress on a whole series of issues. However, so much of the B-2 Bomber Program that the CRS reported on is classified that parts of the CRS brief are only speculation, and in many instances can be completely misleading.

Mr. President, the Bomber Construction Program of the United States of America has been one that has come under attack from time to time, but in the end what we have set out to do we have accomplished. I was enough concerned about the CRS report that I forwarded the brief to Jack Chain, the Commander in Chief of the Strategic Air Command. I asked General Chain if he could respond in an unclassified manner to some of the claims contained in the CRS briefing. On March 30, 1989, I received the reply from General Chain on the CRS briefing.

I want to summarize the comments for my colleagues and for the American people. The CRS brief addressed the question of whether the B-2 will be destabilizing; that is, whether its Stealth capabilities will make it an attractive weapon to use in a surprise attack. This is certainly something we need to always look at, and when we design our weapons, we should keep this in mind.

However, as General Chain stated, the B-2 is not, and I emphasize that, Mr. President, a first-strike weapon. We could not launch all the bombers and their supporting tankers without the Soviets noticing it, and having very many hours to prepare against any actual attack by a bomber.

Another issue raised by the CRS brief has to do with the problems associated with the B-1B bomber, and whether the B-2 bomber could also experience technical difficulty. Certainly, it could. The B-1B, like any new major warplane, has been plagued with problems at the beginning. Most of these have been resolved, and efforts to correct remaining difficulties are in the works. General Chain made the point that the B-2 is a completely different program, and applicable lessons from the B-1B Program will be applied to the B-2 production.

The B-1B has allowed time for the development at a measured and a very prudent pace. The B-1B and the B-2 are meant to be complementary. There has never been any plan to replace the B-1B with the B-2 and I am not sure why the CRS raised this as an issue. The B-1B is intended to be a low flying, high speed, penetrating bomber and, later, a cruise missile carrier. The B-2 is intended to be a slower, stealthier penetrating bomber capable of operating safely at high altitude. Having both programs greatly compounds the difficulties of the Soviet Air Defense Planners who must accordingly be prepared to meet very different threats.

Lastly, the CRS brief raised the issue of proper oversight of this "black program." Mr. President, simply because a program is in the black does not mean that there is not continuous, detailed congressional oversight. I personally have been closely monitoring this program for many years and have visited the B-2 R&D and production facilities. The B-2 budget is very carefully scrutinized in the markups of the Subcommittee on Strategic Forces and Nuclear Deterrence, which I chair. General Chain also noted that over 170 Members of Congress, including 56 Senators, and their staffs have access to the B-2 Program. Since 1979, more than 150 Members of Congress and their staffs have made 350 visits to the B-2 contractor facility. In addition, General Accounting Office Personnel are fully informed on the program and have conducted reviews on all aspects of it. Much of the B-2 Program remains highly classified because it is in the best security interest of our Nation to do so. It is not classified to hide wrongdoings, or waste, or technical failure.

Mr. President, I ask unanimous consent that material on the B-2 Program provided by the Strategic Air Command in response to the CRS brief be printed in the RECORD.

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

AREAS HIGHLIGHTED IN REPORT

"With regard to evading radar, a key feature in the design of any stealth aircraft is the absence of externally observable sharp edges."

Low observable technology does indeed require special attention to materials and design. Rounded edges are an important design feature for the B-2 but may not be critical to the design for all stealth aircraft; evidence the recently released picture of the F-117 stealth fighter. But for the B-2, careful attention was given to the question of what geometries were truly pertinent in terms of detection, track, and attack by the enemy. Because of the potential for threat growth in general, we attempted to ensure that the very best thinking went into countering these known probable expansions of threat technology and tactics. The B-2 is being built with a philosophy of "balanced observables." Radar cross section is not the only signature vulnerable to enemy sensors, and that fact was considered throughout the design.

"Reportedly, the B-2 will have lower speed and less maneuverability compared to a B-1B, because of the B-2's configuration (a shape similar to that of an elongated sting-ray) and thrust-to-weight ratio, and will be able to carry less fuel."

The B-2's flying wing design is extremely aerodynamically efficient for a strategic bomber. Whereas speed, maneuverability, and combat radius are the primary aerodynamic design criteria for fighter aircraft; for strategic bombers, the critical criteria are range, payload and takeoff distance. It was because the flying wing concept so well embodies these characteristics that Jack Northrop originally proposed it for a strategic bomber over 40 years ago. The same aerodynamically clean design that reduces the observability of the B-2 also makes it very efficient. With a large wing surface area, the B-2 has a very low wing loading (weight/wing surface area) second only to the glider-like U-2/TR-1. This low wing loading means exceptional high altitude cruise performance where the reduced atmospheric drag means greater fuel efficiencies. While the B-2 does carry less fuel than the B-1B, it has an equivalent unrefueled range—in excess of 6000 nautical miles with a typical SIOP weapon load. When the B-2 fleet is air refueled, it uses 40-50 percent fewer SIOP tankers than a comparable number of B-52s or B-1Bs. Speed and manueverability are significant for a bomber primarily as they relate to survivability of the aircraft. Despite lower maneuverability requirements for survivability due to its low observable design, the B-2's advanced flight control system still provides the same capability as a traditional bomber. Because of its low radar cross section, the B-2 is less dependent on speed to survive. In fact the slower speed was built into the design to improve the overall low observability of the B-2 by reducing its infrared (IR) signature. The B-2 is still capable of high subsonic cruise at altitude or on the deck.

"Maximum takeoff weight: 240,000-376,000 lb.

Payload: approx. 40,000 lb-75,000 lb.

Armaments: Nuclear gravity bombs, Short Range Attack Missiles (SRAM IIs), Advanced Cruise Missiles (ACMs).

Unrefueled range: 4,250 mi-7,500 mi".

The B-2 is capable of carrying up to 20 B-61 bombs or 16 SRAM IIs, SRAM As, B-83s, or combinations thereof, for a SIOP mission. Using a typical SIOP, weapons load, this represents approximately a 25,000 lb payload. There are no current plans to integrate or test the ACM on the B-2.

"Critics of the B-2 have pointed out that its reportedly shorter range (compared to the range of the B-1B) will jeopardize its chances of success in the strategic mission. If the range of the B-2 is as reported (4,250 miles), they say, it will not be able to perform its mission without being refueled. This would pose a major problem, because existing refueling tankers do not incorporate stealth technology, and their use for refueling would seriously compromise the B-2's undetectability.

The B-2 is reportedly being designed to confound modern, short wave radar facilities. Since, however, the Soviets tend to retain "outdated" defense systems, they would have some long wave radars that could not easily be fooled by stealth technology."

While the B-2's unrefueled range is in excess of 6,000 miles, the B-2 is air refuela-

ble, as well, in order to range all the targets that it might be committed against in nuclear or conventional scenarios. If air refueling is required to range a particular target, then it would be accomplished in an area or at an altitude where the greater observability of the tanker would not be a threat to the bomber's survivability. The air refueled range of the B-2 is great enough to permit coverage of even the most deeply embedded targets in the Soviet Union without compromising bomber survivability during air refueling.

Regarding the ability of "outdated" systems to defeat "stealth" technology, it is well understood that detection capabilities vary with the frequency of the radar. While lower frequency systems have an inherently greater ability to detect the presence of an aircraft (because of their longer wavelength, better atmospheric transmissivity, and higher power outputs) they are not able to establish locations of individual aircraft precisely enough to complete the tasks of tracking and kill—higher frequency radars handle those jobs. The implications of these facts have certainly been taken into account in the design of the aircraft. That design, complemented by in-flight tactics, will ensure survivability against the full range of radars—old, modern, and projected.

WILL THE B-2 BE DESTABILIZING?

It can, however, be argued that the B-2 could have a destabilizing effect in a crisis situation. If the B-2 really is almost invisible, the Soviets may see it as a first strike weapon that, in combination with other nuclear weapons, would give the United States the capacity to achieve a military advantage in a nuclear war.

A force of 132 B-2s would be able to attack large numbers of Soviet land-based targets of strategic military value (i.e., mobile ICBMs, command and control systems), which constitute a significant proportion of the Soviet strategic forces, in a sneak attack. A truly stealthy bomber would confound Soviet sensors, and would be perceived by the Soviets as having that capacity. In a crisis situation, if the Soviets were to lose track of U.S. bombers, it could be seen to be in the Soviet's interest to attack. This could require the U.S. to rethink its entire strategic doctrine, or at least the role envisaged for the manned bomber. If the destabilizing nature of the B-2's near invisibility is recognized, different strategies to assure bomber survivability that the one now employed (viz., dispersing bombers and going to positive control launch) could become necessary."

First, the B-2 is not destabilizing because it does not represent a "prompt" threat to any Soviet forces. Its slow speed (compared to SLBMs and ICBMs), known basing locations, and likely requirement for tanker support, ensure that the Soviets would be aware of any large-scale B-2 attack long before it reached them. Although very difficult to track and shoot down individually, the presence of a significant force of B-2s would be detected because the aircraft is not invisible to radar.

Second, the B-2 is stabilizing because it enhances the level of survivability in our current bomber force structure despite increasingly sophisticated Soviet air defenses. As the aging B-52 is increasingly assigned to standoff attack roles, the more survivable B-2 will pick up the mission performed by penetrating bombers. A mix of standoff and penetrating bombers spreads Soviet defenses very thin by forcing them to protect the far forward approaches to the Soviet Union as well as maintain extensive internal air defenses that would try to prevent our retaliation. Additionally, during an international crisis or Soviet sneak attack, bombers can be launched on tactical warning in order to survive, yet be safely recalled if the warning turns out to be a false alarm or if the counterattack needs to be terminated or redirected for any reason. This gives the Soviets less incentive to initiate a first strike.

Third, the B-2 enhances stability because of its flexibility to strike any SIOP target. No Soviet nuclear forces would be completely invulnerable to a U.S. retaliatory attack. This reduces Soviet confidence in their reserve force and again, lessens their incentive to initiate an attack.

Finally, the B-2 is stabilizing because it can continue to function with limited intelligence information. With degraded intelligence collection systems as well as communication capability attendant with war, the ability to provide real time information on targets location may be degraded. Many critics point out the vulnerability of U.S. intelligence satellites. Without these resources to provide real time battle intelligence, ICBMs, cruise missiles, and SLBMs would not be able to strike some targets (such as targets that were missed because weapons assigned to them were destroyed by Soviet attack, or targets which have relocated).

Missile systems require precise locations obtained from up-to-the minute intelligence in order to strike such targets. Relying totally on real time intelligence to retarget missiles during the heat of the battle would result in a U.S. inability to strike these targets. Although the B-2 could use real time data, because it is a manned system it also provides a unique capability to combine older, less precise intelligence with information obtained at the scene to attack targets the other systems cannot find.

Others point out that having two competing firms would provide a fallback situation if one firm produced aircraft of poor quality or fell behind schedule. Scott White, an official at Rockwell, discounts arguments by Northrop officials that competing production lines for a 132-bomber program would be inefficient and economically unfeasible. "We think money can be saved," White says. "Of course, a lot depends on what you mean by competing production lines. To save the most money you have to allow a second producer to build it their own way. Otherwise all you are doing is competing with labor costs." (Defense News, June 15, 1987).

The B-2 program has employed a prudent approach from the beginning which ensures a competitive atmosphere has existed for all procurement activities. The B-2 program had a well conducted design competition between two prime contractor teams. Other procurements like the simulators were competed as well. The program management plan has embodied sound business strategies in an advanced technology acquisition by using cost-reimbursement contracts with award fees, strong incentives for capital investment, substantial contractor use of vendor competition, a planned SPO breakout program, active SPO consideration of second source opportunities, and a major overhead "should cost" study conducted by the prime contractor and two major subcontractors during full-scale development.

In June 87, the Under Secretary of Defense for Acquisition initiated a study to evaluate the feasibility of implementing various cost and risk management alternatives on the B-2 program, emphasizing the use of competition. This extensive analysis concluded that introducing more competition into the B-2 program was not a viable option. Implementing price competition on the program was found not to be cost effective for reasons of the large capital investment needed; long lead times; low production quantities, and inherent inefficiencies in multiple production lines in a program with such low production rates. They conducted extensive sensitivity testing and substantiated the above conclusions even if schedules were to be extended and buy quantities increased substantially. Attempting to introduce additional price competition beyond the Air Force's current activity would be unwise. In addition, starting a new design competition is not practical because of the large investment required and the low probability of improving upon the current B-2 design.

Finally, if a second source produced B-2 aircraft using Northrop's engineering drawings and materials lists, the logistics impact would probably be minimized. However, the likelihood exists that a second source would avoid just "competing with labor costs" by attempting to make production, reliability and maintainability improvements through design changes at the component and subsystem levels. In that case, the logistics impact would be severe. At both field and depot levels, the required trained personnel, technical orders, and support equipment would essentially be supporting two different weapon systems. Life cycle costs would be significantly increased.

GENERAL QUESTIONS/CONCERNS WITH REPORT

1. Will the B-2 be needed to replace the B-1B bomber? (CRS-1 lines 1-2, CRS-2 line 3, CRS-4 lines 3-5, CRS-6 line 12):

The B-2 and B-1B complement each other by presenting Soviet air defenses with a formidable problem. The Soviets will not be able to focus their considerable defensive systems. An attempt to do so would require further massive investment of their already strained resources. The Air Force is planning to maintain the two bombers as penetrators—B-2 against heavily defended areas and B-1B against less defended—to insure the U.S. will be able to hold the post-START Soviet target base at risk. Any U.S. certification of the U.S. START position is critically dependent on the penetrating manned bomber and the Reykjavik counting rule. The Air Force program will provide a force of about 230 penetrating bombers to provide military sufficiency in the face of a disproportionately large Soviet military establishment and industrial infrastructure. Therefore, it is not a question of which one, the nation needs both bombers for military sufficiency against the Soviet target base.

2. Will problems arise in the B-2 program as they did in the B-1B program? (CRS-5 line 23):

Any new weapon system goes through a maturation process. The Air Force, and particularly SAC, is very concerned that the lessons we learned from the B-1B program be incorporated into the B-2 program. Overall, the B-1B was a successful program but has provided us with ways we can improve acquisition and deployment of the B-2. To take full advantage of this situation, the B-2 program has incorporated the well defined B-1B Lessons Learned Program at every level. This includes all appropriate agencies

at SAC, the AFSC Systems Program Office (SPO) and the contractors.

3. Can we afford the B-2? (CRS-2 line 4):

Probably a better question is "how can we not afford it?" With the Soviet's continued investment in defensive systems and the probability the U.S. and Soviets will reach an agreement reducing strategic arms, the B-2 is needed more than ever. The B-2's unique design and specialized technology denies a Soviet defensive network the quality and quantity of data it needs to be able to challenge the B-2. The acquisition of the B-2 is based solidly on military objectives—to hold at risk a wide range of critical targets in the Soviet Union. If the U.S. is to develop a militarily sufficient START force, it must have the B-2.

4. Should more data—in particular cost data—on the program be released? (CRS-2 lines 4-5):

This matter is under consideration. Congress has been actively involved in the B-2 program; those who have needed the information have had it. Over 170 congressional members (56 from the Senate) and their staff have access to the B-2 data. Since 1979 more than 150 congressmen and their staffs have made 350 visits to the B-2 contractor facility. In addition, General Accounting Office personnel are fully informed on the program and have conducted reviews on all aspects of the program.

5. Can congressional oversight of B-2 be adequate under such conditions of secrecy? (CRS-2 lines 5-6, CRS-7 lines 12-13):

The cloak of secrecy around the B-2 does not keep Congress, congressional staffers, GAO, etc., who have a need to know from being informed on the B-2. Over 170 members of Congress (56 from the Senate) and their staffers have access to information on the B-2 program. Since 1979, more than 150 congressmen and professional staffers have made 350 visits to the B-2 contractor facility. The tight security is to keep information from our adversaries. To begin with, this security protects the technological advantage we have enjoyed and, hopefully, will continue to enjoy over the Soviets. This technology edge is perhaps the greatest asset we have. By keeping our capabilities hidden, we deny the Soviets time to react to the B-2 and develop countermeasures. This translates into increased survivability for our aircraft and the people who fly them. It means that should our crews ever have to take the aircraft into battle, they will retain the edge, and if there is to be any confusion or uncertainty, it will belong to the adversary. Finally, the "veil of secrecy" goes a long way in protecting the dollar investment of the taxpayer. It forces the Soviets to develop their own technology in this area as opposed to having it provided to them compliments of the American taxpayer.

6. What effect will the B-2 have on strategic stability (CRS-2 lines 6-7):

The B-2 will enhance strategic stability from both the U.S. and Soviets viewpoint, particularly in a START environment. The Soviets proposed the Reykjavik counting rule which reflects the increasing arms control preference for more stabilizing weapons. The thought the U.S. would use the B-2 in a first strike "surprise attack" is nonsense. The Soviets would certainly know when U.S. bombers and tankers take off from their bases; the message would be no different than if the U.S. flushed its B-52 and B-1B force—it immediately tips the Soviets. The B-2 will enhance stability by bolstering our deterrent forces both with and without a START treaty.

7. Should additional competition be mandated for the program? (CRS-2 line 8):

The B-2 program has employed a prudent approach from the beginning which ensures a competitive atmosphere has existed for all procurement activities. The B-2 program had a well conducted design competition between two prime contractor teams. Other procurements like the simulators were competed as well. The program management plan has embodied sound business strategies in an advanced technology acquisition by using cost-reimbursement contracts with award fees, strong incentives for capital investment, substantial contractor use of vendor competition, a planned SPO breakout program, active SPO consideration of second source opportunities, and a major overhead "should cost" study conducted by the prime contractor and two major subcontractors during full-scale development.

Starting another production line is not economically sound because of large capital investment requirements; the long lead times necessary to establish possible second sources; the limited number of units to be purchased; and the inherent inefficiencies of multiple production lines, especially in a program with relatively low production rates. This type of strategy has been proven effective with engine contractors where the risk is low, the production quantities are high, and the competing companies are at equal stages of development for their own unique products without the necessity for large capital investment. For the B-2 program, this is not the case and will probably never be, even if the schedules were to be extended and/or buy quantities increased substantially.

8. The report states in two areas the Air Force's intention to replace the B-1B by the late 1990s with the B-2 (first paragraph of summary, page CRS-3 line 8, page CRS 4 line 3):

Currently, the Air Force has no intention of replacing the B-1B with the B-2. These two systems will complement each other, with the B-2 penetrating the highly defended areas and the B-1B the less defended areas. The U.S. needs two penetrating bombers in a START regime to hold the highly geographically dispersed and increasingly mobile Soviet target base at risk. The U.S. has always articulated a need for a two-bomber modernization program, and this position has not changed. The B-2 has been the centerpiece of that bomber force through two administrations and five congresses—with strong bipartisan support. The B-1B was approved as a near term program to quickly address a near term shortfall and provide time for the orderly development of the B-2. The penetrating bomber promotes stability by presenting a significant retaliatory threat without representing a disarming first strike capability. The bomber's versatility is scenario independent and useful throughout the spectrum of conflict. The man-in-the-loop provides inherent flexibility.

9. The report states the B-1B will be a stand-off cruise-missile launcher once the B-2 is deployed (page CRS-3 line 8):

The Air Force does not plan to make the B-1B a cruise missile launcher in the foreseeable future. It will maintain its role as penetrator.

10. What is B-2's targeting role (CRS-6 lines 42-45):

As a highly survivable manned penetrating bomber, the B-2 will be preplanned to attack the full range of strategic targets (fixed/mobile, defended-undefended, hard/soft) in all categories and geographic areas of enemy territory. The B-2 will not merely strike targets "leftover" from a prior ICBM/SLBM attack. In addition to striking those targets best suited to the B-2's accuracy and weapons effects, the B-2 may assess targets for damage level prior to striking, thus assuring the required level or damage on the most critical targets and also providing economy of force. While the man-in-the-loop bomber offers on-scene judgment to either apply or withhold a weapon, authority to attack is limited to predetermined and preplanned targets. The B-2 mission will include attacking relocatable targets. Of all current and planned weapon systems, the B-2 can best hold this target set at risk. The bottom line is that the B-2 will be the most survivable and effective bomber platform in the SIOP.

BASIC B-2 PROGRAM COST INFORMATION

Total cost: $42.5 billion (FY81$) for R&D and 132 aircraft. This represents 16% growth from the originally announced $36.6B (FY81$). The new figures represent a flyaway cost (which excludes R&D and FSD expenses) of 305 million (TY$)/aircraft. Total program cost excluding MILCON is $68.1 billion in TY$.

Total program cost includes R&D, training devices (simulator), initial spares and support equipment.

Revised cost estimate results from a major redesign effort in 1983, the challenges inherent in applying advanced technology and the impact of current fiscal constraints on production rates.

The $42.5 billion estimate incorporates approximately $3 billion in savings from program cost reduction initiatives. These include implementation of manufacturing technology and producibility initiatives and other similar contracting efficiency strategies.

Over one-third of the $42.5 billion estimate represents development costs and of that, approximately 70% has already been obligated by the Air Force. In the production phase, the flyaway cost of the aircraft is approximately $305 million (TY$). ("Flyaway" cost entails recurring and nonrecurring production costs and excludes R&D. In other words, everything you see as the airplane takes off from the runway, not including fuel.)

Quote from Gen. Welch letter to AF Times: "The question is: Do we invest the remaining funds required to field the aircraft now that the great majority of the development effort is completed? . . . While we should not proceed on the basis of a sunk-cost argument, the program should be viewed from the perspective of the cost-to-go to field 132 aircraft. The flip side of the cost argument is the cost to this nation of not going forward if that decision leads to the failure of strategic deterrence."

In recent testimony to the HAC Defense Subcommittee (28 Feb) Gen. Welch stressed the cost-effectiveness of the B-2 in terms of cost per target covered. "The B-2 is almost exactly the same price as the B-1 [in this respect], cheaper than the Peacekeeper, and far cheaper than the SICBM". In terms of the value you get, the B-2 is a better buy than any other alternative we have." Note: Computed cost per/WH for B-1=29.1M, B-2=29.6M, PM=40.2M for 50 PIMS (30.2M for 100 PK, 50 PIMS & 50 RG), and SICBM=56.2M.

Gen. Welch acknowledged a comment that recent spending on air-breathers was

higher than for the land-based missile leg but said he would not favor reducing B-2 funding to even the balance. He pointed to the greater target coverage offered by bombers and their importance with respect to START.

THE MANNED BOMBER AND START

START military sufficiency based on modernization and ability to cover targets necessary to deter.

START gound rules penalize ICBMs and cruise missiles and put weight on bomber leg to provide target coverage. Purposeful effort on both sides to provide incentives to utilize bombers for deterrence because they are most "stable" strategic delivery vehicles. They are most flexible and provide the NCA with most options for averting conflict.

COST OF B-1 VS B-2: THE TRUTH ABOUT "STICKER SHOCK"

Several media articles have inaccurately compared B-1 and B-2 costs and indicated the B-2 was twice as expensive as the B-2. Wrong!

In terms of Flyaway costs, the numbers look like this:

	Fiscal year—		No. aircraft
	1981	1989	
B-2	175M	265M	127
B-1	149.4	226.4	100
Delta	25.6	38.6	27

This represents a difference of only 17 percent.

TY$ comparisons which are used to derive the numbers which show the B-2 twice as expensive as their B-1 are meaningless since they are heavily influenced by inflation, i.e., the delta between a B-1/B-2 on this basis is driven by a 40-50 percent difference in inflation alone.

FY81 was selected as a base year for both programs and should be used as a reference point for any comparisons. If other than 81$ are used, it must be done in constant dollars and B-1 costs inflated accordingly.

Comparison of total program costs are also invalid since fundamental differences exist in what each program contains. E.g., the B-2 program includes the cost of simulators, initial spares, support equipment, test program Milcon and some specific aircraft systems, which the B-1 program did not.

The best method for comparing costs is total unit flyaway, since R&D, simulators, SE, spares and Milcon are not included.

On this basis, the only significant difference between the two programs results from differences in basic aircraft systems and capabilities.

While unit flyaway is still not a strict "apples to apples" comparison due to inherent differences in the design of the aircraft, the unit flyaway costs do provide a reasonable and favorable comparison of the two programs, particularly when the revolutionary capability of the B-2 is considered.

Mr. EXON. Mr. President, I hope that this material will assist the American people in better understanding this critically important defense program.

I thank the Chair and I yield the floor.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BREAUX. I thank the Chair.

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

Mr. SIMPSON. Mr. President, in this high degree of technological excellence, this machine does not uncoil its particular yard or two of material, so, we will do as we used to do in the olden days, we will speak without.

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

Mr. SIMPSON. I thank the Chair.

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

MILITARY ASSISTANCE TO NON-COMMUNIST FACTIONS OF THE CAMBODIAN RESISTANCE

Mr. SIMPSON. Mr. President, in recent days, there have been calls from Members of Congress and various press comments calling for direct military assistance to the non-Communist factions of the Cambodian resistance. As the Vietnamese Government proceed with their promised withdrawal from Cambodia, there is surely justified concern that the Khmer Rouge, who cruelly ruled Cambodia from 1975 to 1978 and caused tthe deaths of more than 1 million Cambodians, might return to power. It is now thus argued, and I think it is a very important thing that we address, that we should provide the non-Communist forces in that country with weapons, arms "to strengthen their hand"—that is the quote—against the Communist Khmer Rouge resistance. Recent press reports indicate the administration is now giving serious consideration to providing military aid to the forces of Prince Norodm Sihanouk and former Premier Son Sann.

Mr. President, I am not a member of the Foreign Relations Committee. I do not really want to be on the Foreign Relations Committee. I admire those who serve, and the terrible whipsawing of opinion and activity they endure. I am not what one would describe as an expert on Southeast Asian affairs, but I can tell you that I have surely been deeply involved in the U.S. refugee policy in that part of the world since I came to the Senate, for 10 years. I served as chairman of the Immigration and Refugee Subcommittee. My good friend, Senator KENNEDY, is now chairman, and I still serve as ranking member. My remarks are limited to the impact of that decision only on refugee flows.

It has become increasingly clear to me that it is our duty and clear responsibility to take refugee flows into consideration as we make these kinds of foreign policy decisions to supply arms in the world. We have clearly found that our military assistance and military involvement in the affairs of another country always results in some very serious obligations on the part of the United States to receive and resettle refugees from that particular country if our policy goes awry. We have had it go awry. Not only do domestic groups at home proclaim and pour guilt upon us about our responsibility, our obligations, but other nations now have come to assume that the United States should, would, and must accept major responsibility for providing humanitarian assistance and resettlement opportunities to refugees from these countries in which we were once or ever, militarily involved.

That is the pattern. If somebody can tell me how we avoid that, I would very much appreciate knowing. I do not disagree with the philosophy about that duty. We certainly do assume certain obligations toward groups whom we support and encourage and to whom we provide arms. We should, indeed, resettle our fair share. But let me tell you, we resettle more than our fair share. We resettle more than all the rest of the world combined. We do that for those persons who supported our policies and are forced then to flee their country as a result.

But that is not my point, Mr. President. My point is that we must, when making foreign policy decisions, take into consideration the prospect and effect of refugee flows which could result from those decisions. Creating a refugee flow is a very serious humanitarian problem in itself and creating one with a claim upon resettlement in the U.S. warrants an even greater consideration by the policymakers.

Just as we have incurred these humanitarian obligations to individuals in the South Vietnamese Government and military, as well as to those who threw in with us in Laos and Cambodia, we would incur special obligations toward those members of the Cambodian resistance whom we arm and send back into Cambodia. You are not going to avoid that. Similarly, we have already incurred special obligations to the Contras whom we have armed and supported in Nicaragua. What are we to do with refugee flows from that conflict? I will give you a guess. We are supposed to take care of them. Why? Because we went from humanitarian aid to military. I do not have any objection to that, but that is why we always get to this point.

I am always puzzled when we are told who it is that will go back to run the Government of Cambodia to be named Cambodia, as it should be, instead of Kampuchea. Who are the parties who will use the arms? Who are the parties that will go back into the country and run it? Because it has

been my experience that a great many of the most remarkable people of Cambodia have now been resettled elsewhere in the world. Many of them are in California. If anyone would believe they are going to leave the United States to now go back and do something for their country, I think that is an error in judging human thought and behavior. They are not. So the cream of the crop is gone from their country. Then you are going to arm these other fine people who are there and who are great patriots? I cannot imagine a more disruptive exercise except to create another refugee flow from our blundering one more time with military assistance.

Who will be the ministers of the new government? Who will be the leaders? I have met some marvelous people from Cambodia in the border areas of Thailand and I think they will do a beautiful job, but they are not all potential leaders and ministers of government. Many of them left that country and resettled elsewhere in the world.

I think it is interesting to note some of the great leaders of that country are not going to return. They are in Paris. They are in California. They are in London. They are not going to return to do hard scabble and put together a new government. That is just the reality. They do not let me read any white papers on that. Those are my views. They come from a knowledge of refugee flows. All we are going to do is create refugee flows if we have military interjection in that part of the world, without question.

So, I urge the administration and those who speak with clarity and a sincere voice on the issue of military support, to give that serious consideration before reaching a decision on supplying arms to the Cambodian resistance. Prince Sihanouk and Son Sann's allies in the region, the ASEAN nations should assist. That is their function.

They can and they should provide that military aid, if it is needed. That is not for us to do. It is for those people in that part of the world to do.

So let us use diplomacy and economic and humanitarian assistance as our contribution to the Cambodian settlement, and if lethal aid to the non-Communist forces is required, our ASEAN allies can and must provide that assistance. We should not. I am startled at the urgings of true peacemakers of the world who strap on the armor of Mars when they speak of Cambodia. That would be a grave error, much like many of the tragic consequences and miscalculations of Vietnam.

I have been saving all of this, Mr. President, and have been very reserved in these last days. If I may, what time do I have remaining?

The PRESIDING OFFICER. The Senator has used 9 of the 10 minutes.

Mr. SIMPSON. Mr. President, under the same conditions, I ask unanimous consent to speak for 6 minutes as if in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. BURNS. No objection.

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

Mr. SIMPSON. Mr. President, that is my fine colleague from the state of Montana to the north. So I really will stay within the 6 minutes. I did not see the Senator from Montana. I appreciate that. And morning business is to run until 3:30; is that correct?

The PRESIDING OFFICER. That is correct.

A TRIBUTE TO BARNEE BREESKIN

Mr. SIMPSON. Mr. President, I have another item to place in the RECORD with regard to my fine friend, Barnee Breeskin, the author of the great, rousing Redskin "Hail to the Redskins." He was recently commemorated at a special Touchdown Club luncheon. I know him as a special friend, and I have a special series of remarks to present into the RECORD.

Recently, in the Nation's Capital, my friend Barnee Breeskin, the composer of "Hail to the Redskins," the most famous team song in the history of all professional sports, and a man known to U.S. Presidents and Members of Congress for his generous charitable work through Saints and Sinners Club roasts, was honored by the Touchdown Club of Washington for his life long achievements and his contribution to the public and to the life of this city and our country.

We all join in this long overdue salute to Barnee Breeskin, a great American, whose "Hail to the Redskins" song is part of the ritual of fall in this city—a song on everyone's lips throughout this city and region, especially during the football season as it is regarded as the theme song of the Nation's Capital.

President George Bush and Jack Kent Cooke, Washington Redskin's chairman, expressed their appreciation to Barnee Breeskin for what he has meant to this city and the country. We would like to thank John O'Brien, Northern Telecom and Marty Walsh, United Way of America who put together this Touchdown Club tribute. It's the first time that Barnee has been so honored, but never the last!

Finally, we would like to thank the Circus Saints and Sinners and their chairman, Gen. Donald Dawson, president, Army and Navy Club and Barnee Breeskin for their charitable efforts over the past two decades, involving Members of Congress, and persons from the executive branch.

On this day of May, we say congratulations and a deepest thank you to Barnee Breeskin for enriching our country with your music and wit. You are very loved.

I thank again my fine colleague from Montana, Senator CONRAD BURNS, who is a remarkably fine addition to this body. It has been a great pleasure for me to get to know him, to watch him, and to see him learn the work of the Senate and participate so fully with good common sense and great good humor, which can sometimes be very perilous!

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, thank you very much.

I appreciate the good words of my colleague from Wyoming. I guess if there was someone that I wanted to pattern my humor after, it would be after the Senator from Wyoming, and ALAN makes a good one.

(The remarks of Mr. BURNS pertaining to the introduction of legislation appear in today's RECORD under "Statement on Introduced Bills and Joint Resolutions.")

PETER YEGEN, JR.

Mr. BURNS. Mr. President, I have a little commemoration I wish to make at this time.

The PRESIDING OFFICER. The Senator has the floor.

Mr. BURNS. I wanted to do this back in March, and it seems like we got awfully busy here in the Senate, and I did not get this done. But, nonetheless, I want to take just a few minutes to observe the passing of one of Montana's true pioneers and a personal, dear friend of mine.

On March 15, Peter Yegen, Jr., of Billings, died at the age of 92. He was active in his business until almost the day he passed away, the business of real estate and insurance. He was born July 12, 1896. So one would have to see that during the years that he lived, his lifetime spanned a most exciting era of our national history, along with some of our most tragic times.

So many wonderful technologies, from medicine, communications, and the list goes on, were developed during his time. In fact, you could say that we went from traveling on horseback to traveling to the moon. He came from a generation of stalwart men who faced not only survival in a hard land, but while they were doing it, they ensured the Nation's survival through two great wars and a devastating drought, and in the 1930's, an economic depression.

Today we not only recognize men like Peter Yegen, Jr., and all the women who made it through those hard times in a very young country, and to bring us to this day that we

enjoy now. I, for one, am glad he was here. He was a true representative of the American dream. They say that the dream always survives and the dreamer dies.

In his passing, he left a message, though, and I wrote this down. The author is unknown, but I think it pretty much typifies Peter Yegen, Jr. To all of us who come from the Western plains and the Western mountains, the message has a distinct Western flavor, but it lives in the hearts of all Americans.

I quote the unknown author:

From out Earth's dusty old corral where failures press,
May every bronc you rope be named success
May raging blizzards miss thy range, and pass thee o'er
And troubled Northers ne'er pile drifts around thy door.
And when a nite you camp may it chance to pass
You find yourself on peaceful creek near good grass
And when that final roundup comes some autumn day
May your marks upon the Book of Books be this—OK.

That is to my friend.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina [Mr. HOLLINGS].

Mr. HOLLINGS. Mr. President, I ask unanimous consent that I may proceed for 10 minutes.

The PRESIDING OFFICER (Mr. ROBB). Without objection, the Senator has 10 minutes.

Mr. HOLLINGS. As if in morning business.

Mr. President, I take the floor to support the FSX agreement. This agreement represents an important step forward, an excellent example of Government taking an activist stance in trade policy to preserve markets and jobs for American workers.

There is a naivete rampant in Washington, and particularly in the Congress, that if we provided for the security of Japan, then Japan in gratitude should reciprocate by giving us contracts and business so as to maintain the strength of the United States economy.

We have a hard time learning that Japan is not going to give us anything. Economically, we are in a tremendous competition, and the Japanese will never deal unless we make it to their economic interest. Specifically, we need to take a page from FDR in the days of the Depression. In order to keep the banks open, he closed the doors; in order to save the farms, he plowed under the crops.

Likewise, in today's international economic competition, we need to raise trade barriers so that we can then bargain with the Japanese to remove both their barriers and ours. And, to that end, our Government must at long last flex its muscle and leverage.

Historically, we Americans have used our Government. The trade war started in the very earliest days of our republic, when the British suggested to Alexander Hamilton that he conform to the free trade comparative advantage theory of David Ricardo.

We in the United States, it was suggested, should trade back with the mother country, Britain, now that we were a free fledging nation, what we produce best. There would be a division of labor; there would be no barriers, and Britain in turn would trade back with the fledging United States of America, what they produce best.

Alexander Hamilton wrote a very interesting treatise, the "Reports on Manufactures," in which Hamilton eloquently invited the British to bug off. He said we were not going to remain their colony by just exporting our natural resources, our coal, our timber, plus selected agricultural produce such as rice and indigo. We had no production. We had no industrial capacity. For this fledgling nation to truly become a sovereign nation, to become a power able to defend itself, it was critical that we build up our industrial backbone. So the very first bill passed by the U.S. Congress 200 years ago, sponsored by Madison, Hamilton, and Jefferson, was a tariff bill, a 50-percent tariff on 60 articles beginning with steel and going right on down the list. So in reality, we started the so-called trade war 200 years ago. We have continued the trade war with respect to agriculture. We have had price support programs since the early thirties under FDR. We put in import quotas to protect those price supports in agricultural products. We in turn have subsidized agricultural exports through the Eximbank Act. We have done the same to sell airplanes and other manufactured goods. We used our Government under President Eisenhower to impose oil import quotas to develop, for reasons of national security, our oil production and capacity.

Today the cry for free trade, Mr. President, is the cry of the developed world to the undeveloped world. It is the same proposition the British put to America 200 years ago. Of course, free trade was a great boon during the first 20 years after World War II. It allowed other nations to build up under our Marshall plan, especially the European Community and the Pacific Rim countries. It worked magnificently, and we are proud. We are not bashing these countries' success, we are proud of their success. Do not count me among the Japan bashers.

In the postwar years, we developed that cry of free trade, free trade because we were fat, we were rich, and we were generous. We could easily give away a good bit of our market share. In fact, it was in our interest not to hog it all if we expected to build up the economies of Europe and the Pacific Rim countries.

Unfortunately that well-intentioned policy has been taken advantage of by our multinationals, which are interested in producing overseas where labor is cheap, and making their profits in the richest of markets, namely, the United States of America. Until recently, our international banks such as Chase Manhattan and Citicorp made their big profits abroad. They encouraged free trade, and the State Department—eager to buy friends—also chimed in with the cry of free trade, free trade. Of course, the retailers, as we pointed out in past floor debates, do not sell the imported article at a cheaper price. On the contrary they go for bigger profits not market share. So the retailers have joined in the cry of free trade, and the editorialists in turn are controlled by the retailers. Why do I make the statement "controlled?" Because they charged that I was controlled. The editorials in the New York Times, and the Washington Post were to the effect that here comes this South Carolina Senator in the pocket of the textile industry, he has gotten his contributions and he is calling the tune of those who put him in office.

I showed, of course, that the figure used in the New York Times was $4 million over two Congresses for all 435 Representatives plus one-third running in the Senate each cycle. Obviously, in almost 1,000 political races, $4 million does not amount to a hill of beans.

But I was intrigued and inquired as to where the newspapers got their support. I learned to my very great interest that in 1987 the Washington Post had $1 billion in profits and $893 million, 89.3 percent was from the retailers' advertising. So the retailers making those huge profits, while turning out that malarkey in their editorial columns. Meanwhile, they have got us like monkeys on strings running around here hollering, "Free trade, free trade, let's don't start a trade war, let's don't start a trade war." That is why I take the floor.

The trade war is in the fourth quarter while we are caterwauling in the grandstands.

And with respect to our foreign policy, former Secretary of State Shultz said there should be no linkage.

I go to that most realist of all political leaders, Lyndon Baines Johnson, who went to New Zealand during the early days of Vietnam and they were interested in selling lamb, and President Johnson said, "We will take some of your lamb if we can get your help in Vietnam," and we got New Zealand troops in Vietnam. He knew how to use linkage.

If we do not learn to use the power of our economic market here, the larg-

est and richest in the world, are going right straight down the tubes with this philosophy of "free trade, free trade, let's don't start a trade war."

I do not bash the Japanese because their system of government-orchestrated trade has worked. After all, they saw what we had done and other governments had done. So they have got state-of-the-art governmental involvement in the orchestration of trade policy. They correlate the finances. They go out early every Monday morning and collect from the savers via their postal savings system. The capital is allocated to the Ministry of Finance, and the Ministry of Finance allocates it to licensed manufacturers.

Specifically in the field of automobiles, it is very interesting because we sold Fords and Chevrolets in downtown Tokyo long before World War II. They were not kept out at the end of World War II. The Japanese built up Nissan and Toyota.

Then they controlled the domestic markets and refused to license anybody else—using American technology, developing a quality product with our technology and their control.

We have minimum wage; they have a maximum wage. We have got antitrust; they have got protrust.

And, of course, then they target the foreign market, namely us, subsidize their assault while totally protecting their own market.

If I put a Ford on the dock in Tokyo, Japan, this afternoon, it will take them 4 months to inspect it. Yet we take a fleet of Toyotas in Portland, OR, and inspect four or five, that is a fleet inspection, and in a couple hours put them on flatbeds and send them to Richmond, VA, and Charleston, SC, for sale.

It takes the Japanese 4 months to inspect that Ford. That is not the worst because in France it takes them 1 year to inspect a Toyota. You will not buy a 1989 Japanese car in the country of France until January 1, 1990.

So it is a dynamic that everyone is involved in. As a result now, I just checked this because I had seen an article in the Wall Street Journal with inaccurate figures. The per capita GNP of the United States in 1988 was $19,758. The per capita GNP of Japan was $23,356. So 44 years after World War II, using their government, they are richer than you and me.

I have said ad nauseam that the United States of America has the most productive industrial worker in the world. What is not producing and not competing is our Government, and that brings me full circle to the FSX where our Government at last is weighing in on the side of American industry and the American worker. We ought to look very carefully and support our Government in this policy.

No. 1, the Japanese are not looking to buy a plane. My distinguished colleague from Illinois, who put in the resolution to disapprove this sale is mistaken.

Some years ago, the Japanese become determined to go into commercial aircraft production and irrespective of this particular sale, they are headed in that direction. We cannot avoid it or change it around by any particular measure.

With respect to a fighter aircraft, over 3 years ago, they were determined to produce indigenously in Japan their own fighter.

It was the United States going to them offering to sell the F-16. Many of our allies are building even better planes and that is exactly what the Japanese wanted—an advanced F-16. True, it is, they wanted a certain amount of our technology.

I got to it bluntly yesterday with General Yates, describing the agreement for the administration, I said, "General, let's assume we do turn it down. What would the Japanese need in order to build this so-called advanced FSX, F-16?" He said there were two things. They would need, of course, the engine that the could buy and the enginering technology developed, "the systems' engineering," as he termed it.

Now, we do not have a choice. We have to understand, like the character in Alice in Wonderland, where we are headed. We have to find out first where we are. We act like we are in control, but we are not.

We act like the Japanese want to buy a plane. They do not. Mitsubishi would be tickled to death if this deal is turned down, because they have been arguing severely against it.

To the previous administration's credit, Secretary Weinberger pleaded our special relationship with our ally and friend, Japan—he pleaded the special relationship in consonance with their taking over some of the burden of their defense that we all say they should do. We do not want them to take it all over and build their own systems if we can get coproduction. Secretary Weinberger said, "Well, why not coproduce the plane?" He could understand the cards dealt him limited him in the negotiation.

Now they have come out with a particular plan that is approved by the Secretary of State—of course, the President of the United States signed the agreement and it has his approval—the Secretary of State, the Secretary of Commerce and the Department of Defense.

I could go down some of the specifics but we will hear a debate on them at length. I see a colleague waiting to take the floor.

I just want to say that in the field of commercial aircraft production, they are going ahead with it. And to our advantage, we do have an agreement to gain valuable technology.

If you want to see where the Japanese stand from a technological standpoint, I ask unanimous consent to have printed in the RECORD the Department of Defense "Annex to Critical Technologies Plan (U)," dated April 30, 1989. And on chart ES-1, you can see in an unclassified fashion where the Warsaw Pact, the NATO allies and the Japanese are on critical technologies.

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

[The Department of Defense]

ANNEX TO CRITICAL TECHNOLOGIES PLAN (U)

(For the Committees on Armed Services, U.S. Congress, April 30, 1989)

(U) NATO.—Our allies have strong national programs, and are on a par in some significant aspect of almost every critical technology. They are, therefore, numerous opportunities for cooperation in niche technologies. Progress towards true European unification in 1992, coupled with aggressive multinational efforts in information technology, materials, and military systems will further enhance NATO capability.

FIGURE ES-1.—(U) SUMMARY OF FOREIGN TECHNOLOGICAL CAPABILITIES

Critical technologies	Warsaw Pact	NATO Allies	Japan	Others
1. Microelectronic circuits and their fabrication	(4)	(7)	(5)	Isreal (7) S. Korea (8)
2. Preparation of GaAs and other compound semiconductors	(4)	(7)	(6)	
3. Software producibility	(4)	(7)	(7)	Many Nations (7)
4. Parallel computer architectures	(4)	(7)	(7)	
5. Machine intelligence robotics	(4)	(6)	(5)	Finland (7) Sweden (7)
6. Simulation and modeling	(4)	(7)	(7)	
7. Integrated optics	(3)	(6)	(5)	China (8) Israel (8) S. Korea (8)
8. Fiber optics	(4)	(7)	(6)	Various sources (8)
9. Sensitive radars	(4)	(7)	(7)	Sweden (7)

FIGURE ES-1.—(U) SUMMARY OF FOREIGN TECHNOLOGICAL CAPABILITIES—Continued

Critical technologies	Warsaw Pact	NATO Allies	Japan	Others
10. Passive sensors	(3)	(7)	(7)	Israel (8)
11. Automatic target recognition	(3)	(7)	(7)	Israel (7) Sweden (7)
12. Phased arrays	(4)	(7)	(8)	Israel (8)
13. Data fusion	(3)	(7)	(7)	
14. Signature control	(4)	(7)	.....	
15. Computational fluid dynamics	(4)	(7)	(7)	Sweden (7)
16. Air breathing propulsion	(3)	(6)	(7)	
17. High-power microwaves	(1)	(7)	.....	
18. Pulsed power	(1)	(7)	(7)	
19. Hypervelocity projectiles	(2)	(7)	(7)	Australia (8) Israel (8)
20. High-temperature/high-strength/low-weight composite materials	(3)	(6)	(6)	
21. Superconductivity	(3)	(7)	(5)	
22. Biotechnology materials and processing	(3)	(6)	(5)	Many Nations (7)

Position of Warsaw Pact relative to the United States: [1] Significant needs in some niches of technology. [2] Generally on a par with the United States. [3] Generally lagging except in some areas. [4] Lagging in all important aspects. Capability of allies to contribute to the technology: [5] Significantly ahead in some niches of technology. [6] Capable of making major contributions. [7] Capable of making some contributions. [8] Unlikely to make any immediate contribution.

The PRESIDING OFFICER. The Chair would remind the Senator that his time has expired.

Mr. HOLLINGS. I ask unanimous consent for another 5 minutes, please, Mr. President.

The PRESIDING OFFICER. Is there objection?

Mr. GORTON. Reserving the right to object, is the Senator able to conclude his remarks relatively quickly? I would like to have about 4 or 5 minutes so I may get to a 3:30 appointment.

Mr. HOLLINGS. I am trying to get to one, too.

Yes, I will try my best. I renew my request.

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

Mr. HOLLINGS. I ask unanimous consent that an article by Herbert F. Rogers, president, and chief operating officer of the General Dynamic Corp., appearing in the Washington Post be printed in the RECORD.

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

WHY WE BACKED THE FSX DEAL

(By Herbert F. Rogers)

The controversy about Japan's proposed development of an advanced new fighter aircraft has raised significant questions about U.S. military and trade policies.

Opponents of U.S. involvement in the FSX say it will impede the future competitiveness of America's airplane manufacturers. We believe it is appropriate for General Dynamics, the principal American industrial participant, to express its own views on the matter.

As a defense contractor, General Dynamics is an instrument of U.S. government policies, not a creator of them. The company was involved after the government dissuaded Japan from its original plan to "go it alone" in the design and manufacture of a combat aircraft for the late 1990s.

Subsequently, a debate has ensued on policy and implementation of international programs involving the sharing of military technology with allied nations and potential conflicts between national security and economic factors. While such debate is timely and healthy, it is inappropriately directed at the FSX agreement hammered out during the past two years, which actually serves both U.S. military and economic interests.

General Dynamics is convinced that its agreement to work with Mitsubishi Heavy Industries in co-developing a plane based on the F-16 is a good one. The pact is beneficial to American security, to American industry, to the American economy and to the interests of the company and its employees. Were this not the case, General Dynamics would not have agreed to participate.

Three questions are in order. Why did General Dynamics agree (at U.S. government request) to participate in the FSX program? Wouldn't the company prefer to sell its F-16s "off the shelf" to Japan, as some critics of the FSX plan have demanded? Why, as critics allege, is the company "giving away" precious technology and know-how for little, if anything, in return?

Answers to the latter two questions help provide a reply to the first:

Of course the company would rather sell its airplanes directly, rather than co-develop and coproduce a new version. But that never was likely in this case. Japan's original intent was to develop a new aircraft without U.S. participation, until our government gained the co-development compromise—primarily for mutual defense reasons but also with reduction of the trade deficit and with American industry in mind. If this compromise collapses, there is little doubt that Japan will go it alone and/or use European technical assistance.

There is no reasonable basis to call FSX agreement an American "give-away." Japan will spend approximately $500 million with American industry in the development program and probably $2 billion to $3 billion in production. This will not eliminate America's deficit with Japan, but it will serve as a definite step in reducing that deficit. General Dynamics—and the Defense Department—are convinced that Japan indeed has something to offer in advanced composite and avionics technologies. The technologies that would come from Japan are new. The F-16 technologies that would go to Japan, under strict goverment control, range from current to past. General Dynamics and other American manufacturers already are at work on new technologies and new fighter aircraft.

Concerns about fighter aircraft technology being used to compete against the commercial American aircraft industry are overblown. These concerns are not shared by the American commercial aircraft companies, which for years have had their own cooperative arrangements with Japanese industry, and the two major American commerical aircraft companies support the FSX agreement.

This contrasts with Europe, which houses the most vigorous competitors of American commercial and military aircraft companies—competitors yearning to initiate their own partnerships with Japan and quite anxious to supplant the United States on the FSX.

It is a fact of life that international sales of American products—sophisticated fighter planes or whatever—require partnerships or other cooperative arrangements with purchasing countries. This has been the case with the F-16 since the mid-1970s and is the case now not only with the F-16 but with other military and commercial systems. Many large U.S. corporations have long-range strategic plans that target the international marketplace. In so doing, strategic alliances with foreign companies are a fundamental part of that strategy. The Nunn amendment which Congress approved contributes toward this aim. The FSX program has the potential for being an excellent springboard for still other alliances.

The debates ranging around the FSX program seem to have greater intensity because the agreement is with Japan. One wonders what direction the debates would have taken if the country had been one of our other allies instead of Japan. It may be true that Japan is a special case because of its success in other economic areas. However, this fact does not warrant uprooting the FSX agreement, which has been reached in good faith by two governments that are allies, not enemies, and by industrial corporations on behalf of those governments.

Mr. HOLLINGS. We find, Mr. President, what was pointed out by our distinguished colleague, the Senator from Georgia [Mr. FOWLER], when he said, that at this particular point what we are really seeing is the Soviets are taking their particular military superiority and they are engaged in developing an economic dimension, whereas the Japanese are taking their economic superiority and developing a military dimension.

There is no question everybody has been trying to jump on Japan and bash it. They ought to be bashing Washington. They ought to be bashing this Government because we do not have a trade policy.

But when the administration goes in and does its best under the circumstances to help both the short-range and long-range economic interest, with thousands of jobs, millions of dollars

and a certain level of shared, advanced technology, we should support them. It is not what we want. But we are not in total control of things.

The Japanese are not trying to buy a plane. They are trying to produce it. They are ready to produce it. And I do not want to get into the same thing that we got into with Saudi Arabia, where we would not give them anything and we lost billions of dollars when they turned to the British. This looks to me this afternoon to be a similar situation.

I thank my distinguished colleague from Washington for yielding me time. I thank the Presiding Officer.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

(The remarks of Mr. GORTON pertaining to the introduction of legislation are located in today's RECORD under "Statements On Introduced Bills and Joint Resolutions.")

HISTORIC AGREEMENT IN VIRGINIA

Mr. WARNER. Mr. President, I rise to bring to the attention of my colleagues the significance of a recent interjurisdictional agreement between Prince William County and the city of Manassas Park, two localities in the Commonwealth of Virginia. After years of dispute over a 404-acre tract of land, owned by the city of Manassas Park, but located in Prince William County, these two localities resolved the dispute on April 25, 1989, through a negotiated agreement that mutually benefits both jurisdictions and permits the city to annex the land.

The city of Manassas Park, the Commonwealth's newest, and until today, tiniest city, will benefit from this agreement with an increased tax base as this land is developed for residential and commercial use. The city's population is expected to increase from 7,200 to 10,000 and its land area will grow from 1.8 to 2.5 square miles. Prince William County will benefit from provisons in the agreement which call for the city to contribute to the improvement of major road intersections, the building of a regional park, and a commuter rail station. Through the negotiation process, these two localities realized a spirit of community cooperation. Today the mayor of the city of Manassas Park, Melanie L. Jackson, and the chairman of the Prince William County Board of Supervisors, Edwin C. King, will formally sign the agreement in a public ceremony.

I would like to pay tribute to the signficance of this event by asking unanimous consent of my colleagues for the inclusion in the RECORD of an edited news story published in the Journal Messenger, on April 26, 1989, and an editorial published in the same paper on April 29, 1989, both of which relate a story of local cooperation.

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

12-YEAR LAND DISPUTE ENDS

(By Margo Turner)

The 12-year annexation dispute between Prince William County and Manassas Park ended Tuesday with the approval of a draft agreement between the two jurisdictions.

The 29-page agreement paves way for the development of a 404-acre tract on Blooms Road known as the Bobby tract.

The jurisdictional agreement calls for a 25-year annexation ban on Manassas Park, improvements to Blooms Road and Quarry Road, the development of Signal Hill Park, the construction of a commuter rail station and parking lot, historic preservation studies of the annexed tract and drainage improvements in the Yorkshire area.

The agreement has been "a long time in coming," Manassas Park Mayor Melanie Jackson told the Prince William Board of County Supervisors during a public hearing on the proposal Tuesday.

"We are delighted in a cooperative relationship" with the county, Jackson said. "The land is the key to the vitality of the city."

The City Council held a brief executive session following the county's action, and then convened a special meeting to vote to accept the annexation agreement.

In addition to the agreement, the council approved an amended sales contract with Signal Hill Development Corp. The developer has proposed 1,000 homes and 100 acres of commercial development on the Bobby tract.

Under the amended sales contract, all road improvements, the park and the commuter rail station and lot will be paid by Signal Hill Development Corp.

County Attorney John Foote and Manassas Park City Attorney Charles Perry drafted the annexation agreement with input from a citizens panel, which the supervisors appointed in June.

The agreement is the second in a year. In May, the county unveiled an eight-page annexation proposal. However, residents living next to the Bobby tract voiced strong objections, prompting the supervisors to delay action on the proposal for 90 days while the citizens panel reviewed it.

In September, the citizens panel submitted its report to Brentsville Supervisor William Becker, who along with Foote reviewed the recommendations. Foote then worked with Perry to incorporate the recommendations in the annexation agreement.

Manassas Park officials feel annexing the 404-acres is the key to the city's future, by allowing the city to increase its population from 7,000 to 10,000 and to help expand its tax base through industrial development.

A RARE ACCOMPLISHMENT

It was welcome news this week that a 12-year annexation dispute between Prince William County and Manassas Park has finally been resolved with the approval of a draft agreement between the two jurisdictions.

It was comforting that county and Manassas Park officials never gave up on the annexation proposal despite the many years of battling back and forth. Often it appeared that the dispute would end without a settlement but officials from both sides refused to let it happen.

The agreement opens the door for the development of a 404-acre tract of land on Blooms road. It also calls for a 25-year annexation ban on Manassas Park, improvements to Blooms and Quarry roads, the development of Signal Hill Park, the construction of a commuter rail station and parking lot, historic preservation studies of the annexed tract and drainage improvements in the Yorkshire area.

Manassas Park residents will greatly benefit by the settlement as the annexed land it picked up was vital to giving residents more services and at the same time allow the community to expand.

County residents living next to the properly will also benefit by the improved road system, park development and the commuter rail station which will help commuters in that area as soon as the long-proposed rail system becomes a reality.

The settlement is unique in that Prince William County and Manassas Park each gave a little when necessary. In the end, a compromise was reached in which both sides were happy with the final plan. In many annexation battles, the end result is hard feelings on one side or the other.

It was great that in this case everyone came away with the feeling that they had done what was best for their constituents. A rare accomplishment to say the least.

THE CONTINUED FIGHTING IN BURMA MAY 9, 1989

Mr. MOYNIHAN. Mr. President, we have of late been heartened by the news that the Cambodian civil war might soon be resolved, that after years of careful diplomacy and international pressure peace may return to that troubled country. But Mr. President, not 300 miles from the battlefields of Cambodia an equally bloody civil war is being fought in tragic obscurity. In Burma a brutal military government which has been condemned by the international community, including the U.S. Senate, is escalating its war with the armed Burmese opposition, the Democratic Alliance of Burma. The world can and should take notice.

Since last September, when the military violently suppressed a prodemocratic movement in Burma, several thousand refugees, most of whom are university students, have fled to Burma's borders with Thailand, China, and India. There they have settled under the protection of Burma's ethnic minority insurgents and together with them formed the alliance. In recent weeks, the military has launched an offensive against these positions, conscripting civilians to carry heavy loads and sweep minefields, and pounding refugee camps with all the force it can muster. Five days ago, the alliance camp of Wangkha on the Thai-Burmese border, home to over 500 student refugees, came under attack. Since Saturday night, the military has, without regard to the presence of civilians, reportedly bombarded the camp with

over 2,000 heavy mortar shells each day.

The war has pushed over 20,000 refugees into Thailand, and uncounted others into China and India. Burmese troops have recently crossed into Thailand to stage attacks against insurgent positions from the rear. The Government's purpose is twofold: To eliminate its student opposition and to open trade routes to Thailand, through which it will sell off Burma's natural resources, namely teak logs. Burma contains 80 percent of the world's remaining teak forests. Thailand has depleted its own, and appears eager to participate in the destruction of Burma's forests.

This war has continued for far too long—40 years now. It is the reason Burma lost its democracy, the reason for the ascendency of the army, and there is no good reason for it to go on in obscurity. The armed ethnic opposition fields more soldiers than the Contras. Burma is a nation of 40 million people, larger than Nicaragua, Cambodia, Afghanistan, and Angola combined. Its leadership understands the need for a political solution to the conflict. And a political solution is possible. The opposition is not composed of fanatics. There is no Khmer Rouge in Burma. Its demands are fair, and therefore unexciting: A negotiated cease-fire; the right to participate in free elections; a political system that respects their cultural integrity.

The attitude of the State Department to the conflict, has been marked not so much by negligence but by neglect. We have no contact with the armed opposition, and our contact with the Government consisted, until last September, of training its officers and providing them with helicopters. Our attention has instead focused on Khun Sa, a brutal opium warlord who controls much of the Golden Triangle's heroin traffic. Khun Sa is not an insurgent. In fact, he was once a Burmese Army home guard commander. He is despised by the opposition. In any event, Khun Sa, as sensational as he may be, is not the issue. The issue is the civil war and what we can do to help end it.

It is long past time we spoke out firmly on the need to end the violence in Burma and to help its innocent victims. The war needs mediation. The opposition desires it. Someone, the United States, the United Nations, or ASEAN, should be able to provide it. The Government of Thailand has shown some interest in this regard. It should be encouraged to play a constructive role and commended for each positive step it takes. And as long as the violence continues, the United States and humanitarian aid organizations should work with governments in the region to assist the refugees who are forced to flee from the fighting.

Mr. President, obscure countries have a way of becoming painfully prominent when the world ignores their problems for too long. I trust we have learned from past mistakes to act before it is finally too late.

DR. D. JAMES KENNEDY SAYS 89 PERCENT OF AMERICANS SURVEYED FEEL AIDS SHOULD BE DECLARED A COMMUNICABLE DISEASE

Mr. HELMS. Mr. President, I have just received a letter from a distinguished clergyman in Florida who shared with me the findings of an important survey just completed by Coral Bay Ministries at Fort Lauderdale.

About 150,000 Americans responded to the survey, according to Dr. D. James Kennedy, pastor of Coral Bay Ministries. A total of 22 questions were included in the survey—and, for example, 89 percent stated their belief that AIDS should be declared a communicable disease by the Surgeon General.

Of the respondents, 74 percent support SDI; 83 percent believe Federal spending should be cut to balance the budget; 74 percent believe Ollie North should be pardoned by President Bush; 70 percent do not believe the Soviet Union can be trusted to abide by the INF Treaty; 87 percent believe that there should be a boycott of advertisers who sponsor television programs containing suggestive sex and blatant violence; and 95 percent believe parents should be informed when their children request information or help with either contraceptives or abortion at their schools.

Mr. President, the responses to all of the 22 questions included in the survey merit the considerations of Senators. Therefore, I ask unanimous consent that Dr. Kennedy's letter and the results of the survey of 150,000 Americans be printed in the RECORD at the conclusion of my remarks.

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

FORT LAUDERDALE, FL,
April 1989.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: Many citizens are worried about the direction this country is headed. Christians are especially concerned that our freedoms are being threatened. Ramifications of government decisions touch lives daily, yet the opinions of the general American public seemingly go unheard.

Because of this trend, I sent surveys to thousands of Americans asking them to voice their opinions regarding crucial issues which face our Nation today. I promised them I would inform you of the results of this survey, so you can know where they stand. The survey includes 22 questions about issues ranging from abortion to Federal tax spending. Approximately 150,000 people responded, and the results indicate that many people do not agree with what is happening in Washington.

One important issue addressed in our survey regards the AIDS epidemic. We tallied 5 percent of our returned surveys and discovered that 89 percent of those responding feel that AIDS should be declared a communicable disease by the Surgeon General.

This is just an example of the issues on the minds of many Christian Americans. I am enclosing the questions included in our survey along with the results. I urge you to take the time to review this information, and consider what you can do in your position to see that some of the problems addressed in our survey are resolved.

Thank you for your time. I trust you will take this information to heart and act upon it. My prayers are with you as you do your best to fulfill your responsibility to the American people.

Dr. D. JAMES KENNEDY.

STATE OF THE NATION SURVEY—RESULTS

1. Do you believe that President Bush will be an outspoken advocate of Christian issues and the restoration of lost religious liberties? 50 yes; 9 no; 14 undecided; 27 maybe.

2. Do you believe that U.S. Surgeon General C. Everett Koop should declare AIDS to be a communicable disease? 89 yes; 4 no; 5 undecided; 2 maybe.

3. Do you believe that the Soviet Union's General Secretary Mikhail Gorbachev's new "glasnost" policy of openness will benefit the United States? 15 yes; 43 no; 17 undecided; 25 maybe.

4. Would you vote for a law that would allow firing a homosexual from a job teaching school? 85 yes; 7 no; 4 undecided; 4 maybe.

5. Do you feel the Soviet Union should be trusted to keep the recently signed treaty with the United States to limit the number of medium range warheads? 7 yes; 70 no; 9 undecided; 14 maybe.

6. Do you believe the Strategic Defense Initiative (SDI), i.e. "Star Wars," is designed to defend our population in the face of Soviet attack? 74 yes; 7 no; 12 undecided; 7 maybe.

7. Do you believe that Colonel Oliver North should be pardoned? 74 yes; 10 no; 11 undecided; 5 maybe.

8. Do you believe that legalized abortion is likely to lead to mercy killing of retarded and elderly people (euthanasia)? 71 yes; 12 no; 5 undecided; 12 maybe.

9. Should the federal budget be balanced by cutting spending, raising taxes, or a combination of both? 83 cut spending; 1 raise taxes; 16 cut spending/raise taxes.

10. Do you believe that gambling is immoral? 75 yes; 11 no; 8 undecided; 6 maybe.

11. With the spread of the disease AIDS, do you feel sex education courses should be mandatory (required) or voluntary (elected) in our public school classrooms? 24 mandatory; 26 voluntary; 49 left to parental discretion.

12. Do you believe TV programming is fair in portrayal of Christianity and its beliefs? 6 yes; 85 no; 7 undecided; 2 maybe.

13. Would you boycott products of advertisers who sponsor TV programs containing suggestive sex and blatant violence? 87 yes; 3 no; 3 undecided; 7 maybe.

14. Do you believe parents should be informed when their children request information or help with either contraceptives or

abortion at their school? 95 yes; 3 no; 1 undecided; 1 maybe.

15. Do you believe that the fight to restore prayer in our public school classrooms should continue, despite years of defeat in this attempt? 89 yes; 4 no; 5 undecided; 2 maybe.

16. Do you believe parents should have a say on which textbooks and reading materials are used in school libraries and classrooms? 92 yes; 2 no; 3 undecided; 3 maybe.

17. Do you believe the President has an obligation to remain publicly silent on matters which affect the national security? 68 yes; 21 no; 6 undecided; 5 maybe.

18. Do you believe that being honest depends on the circumstances? 10 yes; 82 no; 3 undecided; 5 maybe.

19. Do you believe there should be state laws requiring the theory of evolution and scientific creationism to be given equal teaching time in science classes? 69 yes: 21 no; 7 undecided; 3 maybe.

20. Would you vote for a generally well-qualified person for President if that person happened to be a homosexual? 2 yes; 95 no; 2 undecided; 1 maybe.

21. Do you feel George Bush will stand firm in his anti-abortion stand even though the pressure is mounting on him to change his mind? 71 yes; 4 no; 9 undecided; 16 maybe.

22. Do you believe that television broadcasting will continue as an effective means to reach people nationwide for the cause of Christ? 76 yes: 7 no; 7 undecided; 10 maybe.

AGENT ORANGE REGULATIONS STRUCK DOWN

Mr. DASCHLE. Mr. President, yesterday veterans exposed to agent orange scored a major victory in their ongoing battle with the Federal Government over the issue of disability compensation. In a ruling released yesterday, U.S. District Judge Thelton Henderson struck down the Department of Veterans Affairs regulations issued in response to a 1984 law requiring the VA to establish standards for disability compensation for veterans suffering from diseases associated with exposure to agent orange.

The decision is extremely significant, for it confirms what Vietnam veterans, scientists, many of my colleagues, and I have been saying for years: In spite of the previous administration's delays, denials, and obfuscations, there is sufficient evidence to warrant Government compensation to veterans who may have been injured as a result of their exposure to agent orange.

The principal findings in the judge's decision were: First, that the cause-and-effect standard the VA has required veterans to meet in agent orange-related claims is unfair and unprecedented; second, that, in its consideration of agent orange-related claims, the VA has failed to give veterans the benefit of the doubt that was mandated by the statute and has been afforded other veterans; and, third, that the Department of Veterans Affairs must reopen the cases of more than 30,000 veterans who were denied compensation under the unlawful regulations.

The judge's decision should not be remarkable, for he made the same decision that any rational person would, given the strength of the scientific evidence and the Government's own policy of giving the benefit of the doubt to veterans filing disability claims. But the decision is remarkable, for, until now, the Government has incredibly, but successfully navigated the path to deception, bypassing the path to fairness. Unfortunately, it has taken over a decade's-worth of valuable time and effort, a lawsuit, and a judge whose position is not dependent on private interests to wade through and make clear again the muddy waters created by the previous administration's efforts.

In his 48-page ruling, the judge had harsh words for the previous Veterans' Administration. He stated that the VA imposed "an impermissibly demanding test" for determining a disease's relationship of agent orange by insisting on proof of a causal relationship and that the VA compounded that situation by failing to give any veterans other than five veterans with chloracne "the benefit of the doubt in meeting that demanding standard." The judge further stated that "these errors * * * sharply tipped the scales against veteran claimants." The judge concluded, after reviewing the law and Congressional Records, that the law requires only that a veteran show a "significant statistical association" between agent orange exposure and a disease, or an "increased risk of incidence, in order to justify disability compensation. The law in question is Public Law 98-542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act. I know something about this, for I drafted the House version of that law, and I know what Congress intended when it passed it.

The judge is correct in his assessment of Public Law 98-542 and the previous administration's implementation of it. The point of that legislation was to make compensation more accessible to disabled agent orange veterans—not to make it impossible for an agent orange veteran to receive compensation. Yet, it has been impossible for agent orange veterans to get compensation for any diseases related to agent orange exposure other than chloracne. And you can literally count on one hand the number of people who have received compensation for that disabling skin disease.

So, where do we go from here? Vietnam veterans will continue to fight this battle on several fronts. They will fight the physical and emotional scars that agent orange and the Government's inadequate response have left them and their families. We cannot, at this point, change that fact. But they will also fight on two other fronts—with the administration and with Congress. On these fronts, we do have the power and the duty to help them.

There is reason for hope on the administrative front. During his confirmation process, Secretary Derwinski stated that he had no preconceived notions about agent orange and that he will take a fresh look at the issue. This court ruling offers the Secretary and the Bush administration a golden opportunity to break with the unfortunate policy of the past and assume a positive leadership role on the agent orange issue. I have expressed this sentiment to Secretary Derwinski and urge my colleagues to do the same.

Public Law 98-542 gives the Secretary the power to amend the Department's compensation regulations to include any diseases that may be associated with exposure to agent orange. I have suggested to the Secretary that he could show his good faith on the issue by immediately adding non-Hodgkin's lymphoma and soft-tissue sarcoma to the list of compensable diseases. In both cases, there is a "significant statistical association" linking the disease with exposure to dioxin or other components of agent orange, and there is certainly evidence to support giving veteran claimants the benefit of any reasonable doubt regarding these diseases.

There is no doubt in my mind that the previous administration would appeal this ruling if it had occurred 6 months earlier. The new administration has not yet acted on the agent orange issue. Secretary Derwinski says he has an open mind, and I believe that he and many others at the Department of Veterans Affairs truly want to serve veterans. I hope Secretary Derwinski and the Bush administration will seize this opportunity to stand with veterans and assume a leadership role on the agent orange compensation issue.

The third front on which veterans, unfortunately, are forced to continue to fight is right here in Congress. I believe the vast majority of Members of Congress do stand with veterans on this important issue, but agent orange compensation has been the victim of a legislative obstacle course. In 1984, the House passed legislation that was stronger than the law Judge Henderson studied, but the Senate insisted on weakening the bill. Last year, the Senate passed agent orange compensation legislation, but the House, in the waning days of the session, essentially killed it. There is always an excuse, a scientific or legislative technicality used to destroy veterans' chances at a genuinely meaningful solution to the agent orange problem. As the judge made clear in his ruling, the issue, while complex in the scientific realm, is not so complex in the realm of vet-

erans' affairs. Vietnam veterans have been treated unfairly, and it's time to correct our mistakes.

This year, you can be assured that I and many of my colleagues will be working hard to ensure that the majority is heard on this issue and that our mistakes are corrected. Senator JOHN KERRY and I are working with Senator ALAN CRANSTON on a new version of the legislation we passed last year. Representative LANE EVANS is working on legislation in the House. I am convinced that this is the year that comprehensive agent orange legislation—to compensate veterans, to promote further, independent study, to improve health reporting to veterans—will be signed into law. I pledge to do everything in my power to see that it does, and I urge my colleagues to join me in this effort.

Mr. President, yesterday agent orange veterans got a glimpse of justice. Congress and the administration have the power to bring real justice to veterans. As we follow up on the court ruling, let's make sure these veterans have a reason to believe that the system really can work for them.

Mr. GORTON. 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. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

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

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

MORNING BUSINESS

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the time for morning business be extended to 4:20 p.m., with Senators permitted to speak therein for up to 5 minutes each.

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

SUPPORT FOR WILLIAM BENNETT

Mr. LIEBERMAN. Mr. President, I rise today to say some words of support for William Bennett, the Director of our National Drug Policy, for his direct and innovative approach to the drug problem and how America should deal with it.

Mr. President, when Dr. Bennett was appointed to this post, I was encourage for two reasons: Remembering his service as Secretary of Education, I thought he brought just the proper degree of irreverance to this new position, and a willingness to shake up the existing bureaucracy. I think if there is any field of governmental endeavor today where we need to be open to new ideas, it is in our war against drugs.

Second, he is a man who has values and is willing to speak about them publicly, and at its base, the drug problem remains a problem of a loss of values and a loss of self-discipline.

The confidence and hope that I had when this appointment was made has thus far been vindicated, because in contrast to more traditional bureaucrats, Dr. Bennett has been outspoken and tenacious in advocating a strong Government reaction to the scourge of drugs. He has not been afraid to provoke criticism of his views.

I noted that several Members of Congress have seen fit to reproach Mr. Bennett for this or that proposal. I say that that is their right and, of course, they can criticize him on particular ideas that he has; but let us all agree that we should not undermine him and the position he holds. Most important of all, let us all agree that the drug issue is not a partisan issue. President Bush, in his inaugural address to all of us, said, "The American people did not send us here to bicker."

I say to you, Mr. President, that that is particularly true when it comes to the problem of drugs and the crimes that drugs create. The American people do not want us to bicker among ourselves. They want new ideas; they want a tough governmental response, and that, thus far, is what Dr. William Bennett has provided us.

His most recent suggestion was made just 2 days ago on a nationally televised talk show—that governments consider boot camps for persons convicted of drug crimes, which has provoked the predictable laments from people who fail to see the drug problem from the street level.

If they did, they would know and appreciate that more and more people in America, particularly in our central cities are becoming victims and hostages of drug abusers and they are crying out to us for help.

Critics of the boot camp idea parrot the line that prisons are not the answer to the drug problem. But I say they miss an important point. Unfortunately, we cannot conclude that prisons are not an effective deterrent because we simply have not kept drug criminals in prisons long enough to find out. Far too many are either never sent to prison, or, if they are, they stay there for a short period of time.

The boot camp concept is deserving of support. Reports from some States indicate that these boot camp prisons work. The experience appears to instill a sense of discipline, self-discipline in inmates who for most of their lives apparently have not had to answer to authority, whether it is parental, or from teachers, or from clergymen. Further, it is just a crueling experience that, once released, the former prisoners appear to be hesitant to do anything that would bring them back. The rate of recidivism is lower than that from normal prisons.

Prisons can be a deterrent if sentencing is swift, certain and matched to the seriousness of the crime. I have long believed that. I am hearing policemen and others at the community level that kids who get involved in drug dealing know that, if caught, there sentences will amount to just a few months in jail in most places in this country today, and that is no deterrent at all, in light of the thousands of dollars that they can make each week dealing in drugs. In fact, prisons sentences are so light that I am told from people on the street that going to prison is often viewed as an odd badge of honor, or a rite of passage, among young people involved in drug trafficking.

I agree that there is a tremendous need for better early childhood education, for more drug treatment centers and other community-based programs to deter young people from turning to drugs, and to help them turn away from drugs once they are addicted. But all of the education and treatment in the world will do nothing to stop the criminal who cannot be reached by those teachers and who is not interested in that treatment. The only thing that will stop that kind of criminal is, tragically, a bullet from a drug assassin or incarceration in a jail.

Our criminal justice system is in drastic need of rehabilitation. The average law-abiding American is losing faith in the ability of our system of justice, and I fear that the average drug criminal is gaining faith that the system will not bring him to justice. It is our responsibility, Mr. President, to restore that confidence and that respect. And we can only do so by sentencing more criminals to more time in jail and by making those sentences stick.

That will take more prosecutors, more judges, and more prisons, and it will take more innovative ideas, like those that are being propounded by William Bennett. We have to get over our habit of finding excuses for the behavior of criminals and start finding ways to lock them up. The main sociological explanation for criminal behavior by drug dealers in my view is our society's willingness to keep making excuses for their actions.

Let us face it: too many drug dealers are acting in a perfectly rational way given their lack of moral values. The odds of making money are large, and good money. The odds of getting caught are relatively small. And the odds of spending very much time in prison, if caught, are smaller still. Take anyone without a sense of values

and present him or her with that set of odds and it is all too easy to predict that the drug trade will flourish. We cannot eradicate evil in our society, but we can do more about the other two things: catching people in the act and making them pay the consequences of their action.

Mr. President, I salute Dr. William Bennett, our Director of National Drug Policy, for his take-charge approach, and I look forward to working with him and other Members of the Senate and Congress on formulating a tough and effective response to America's drug crisis.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PELL. 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. PELL. Mr. President, I ask unanimous consent to speak as in morning business.

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

A FRAUDULENT ELECTION AND DENIAL OF FREEDOM IN PANAMA

Mr. PELL. Mr. President, I very much lament the fact that this past Sunday, the Panamanian people were denied the basic right to vote in a free and fair election for President. The statements by the Panamanian Catholic Church, President Carter, and other election observers, including a group from the European Economic Community, witnessed the election being stolen right before their eyes. They have certified the fact that the election indeed was fraudulent.

Tally sheets were stolen by the military, tally sheets were switched, intimidation of voters was widespread, tampering with the tabulation took place, discrepancies on the voter rolls was evident, observers were prevented from checking the returns. According to the Panamanian Catholic Church election monitors, the opposition supporting Guillermo Endara won the election by a 3-to-1 margin. This figure was supported by President Carter during a news conference in Panama yesterday. Independent pollsters from Argentina and Venezuela also confirm this.

The will of the majority of people to live in a democratic environment was thwarted last Sunday. Equally important and sad is that United States-Panama relations were doomed to continue on a dangerously precipitous path. The extension of the Noriega regime in power by virtue of the fraudulent election means that present tensions are virtually certain to be exacerbated. Both nations have vital interests at stake. I am quite concerned that the situation in Panama, especially because of the stolen election, has precipitated calls for United States military intervention and abrogation of the Panama Canal treaties.

I am very concerned about the state of affairs in Panama, but we must seek other options. These options should include consultation with our friends in the Western Hemisphere. It is clear that U.S. military intervention and the scuttling of the treaties is not in our best interests. Our relationship with Latin America should not become a casualty of the tragedy that is befalling Panama.

The Panamanian people deserve the support of those throughout the world who believe in democracy. They certainly have the support of the U.S. Senate. It is my fervent hope that the yearnings of the Panamanian people for democracy will be realized in the not too distant future and United States-Panama relations will once again flourish.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination: Rufus H. Yerxa to be a deputy U.S. Trade Representative with the rank of Ambassador, reported today by the Committee on Finance.

I further ask unanimous consent that the nominee be confirmed, that any statements appear in the RECORD as if read, that the motion to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

I am authorized to say that the distinguished Republican leader has no objection to this request.

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

The nomination considered and confirmed is as follows:

OFFICE OF U.S. TRADE REPRESENTATIVE

Rufus Hawkins Yerxa, of the District of Columbia, to be a Deputy U.S. Trade Representative, with the rank of Ambassador.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

REREFERRAL OF S. 883

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 883, a bill for the relief of Christy Carl Hallien be rereferred from the Armed Services Committee to the Judiciary Committee, and I am authorized to say that the distinguished Republican leader has no objection to this unanimous consent request.

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

STAR PRINT OF S. 348

Mr. MITCHELL. Mr. President, I ask unanimous consent that a star print be made of S. 348, the Venture Capital Gains Act of 1989 to reflect changes I now send to the desk. I am authorized to say that the Republican leader has no objection to this request.

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

Mr. BUMPERS. Mr. President, the debate on the capital gains issue focuses mostly on the potential impact of a capital gains tax reduction on Government revenue.

As we all know, the President continues to claim that his proposal for a 15 percent maximum capital gains tax rate will generate large amounts of revenue for the Government. The congressional Joint Committee on Taxation disputes this claim and projects large decreases in revenue from this proposal.

I rise today to report that the Joint Committee on Taxation has now completed its review of the capital gains tax proposal that I have introduced, S. 348, and found that it loses a fraction as much in revenue as does the President's proposal.

The Joint Committee found that the President's proposal loses $13.3 billion in its first 5 years.

It finds that my capital gains bill loses $163 million—that is million—in revenue over the first 5 years.

This means that S. 348 loses only 1.225 percent as much revenue as does the President's proposal.

The President's proposal is often referred to as the "15 percent solution." If this is true, then my venture capital gains legislation should be referred to as the "1.2 percent solution."

DIFFERENCES BETWEEN S. 348 AND PRESIDENT'S PROPOSAL

S. 348, the Venture Capital Gains Act, proposes that we provide a modest tax incentive in favor of high-risk, long-term, growth-oriented investments in small business ventures.

The venture capital gains legislation is different from the President's proposal in nine respects:

First. My bill applies only to investments in stock.

Second. It applies only to investments in the stock issued by a small business venture.

Third. It applies only to direct purchases of the stock from the small business issuing the stock.

Fourth. It only applies to new investments. It does not apply to investments made before the incentive goes into effect. The President's proposal applies to old as well as new investments, conferring a huge windfall on investors sitting on oil investments.

Fifth. It requires a 4-year holding period and the holding period is not phased in, as is the 3-year holding period proposed by the President.

Sixth. It grants a 25-percent deduction and sets a 21-percent rate maximum capital gains tax rate. The President has proposed a 45-percent deduction and a 15-percent maximum gains rate.

Seventh. The alternative minimum tax applies to the deducted gains, ensuring that wealthy taxpayers do not use the capital gains preference to reduce their tax liability by excessive amounts. With the President's proposal the minimum tax does not apply.

Eighth. The deduction is available to corporate as well as to individual taxpayers. The President's proposal applies only to individual taxpayers.

These eight differences between the venture capital gains bill and the President's proposal act as powerful constraints on the amount of revenue that is lost.

But, let me emphasize that these differences have a strong substantive rationale. They were not simply included in S. 348 to restrain its adverse impact on revenue.

Let me just comment on a few of the differences between the President's proposal and my venture capital gains legislation.

SMALL BUSINESS CAPITAL

The availability of capital to startup small business ventures has always been a major problem. The tax reform legislation of 1986 exacerbated the problem by putting a high premium on short-term, income-oriented investments.

Venture capitalists do provide capital to startup ventures, but increasingly they are becoming involved with leveraged buy outs and other financial deals. They are more risk-averse than they used to be, partly as a result of the tax reform law and partly as a result of their experience with how risky startup ventures can be.

There is no absence of investors who seem to be willing to invest in the established companies who stock is traded on the major stock exchanges. And they seem to be willing to make these investments despite the absence of any capital gains preference.

My question is why should we give these investors a tax break for something that they are already doing without any tax break?

What we need to do is give them an incentive to change their investment strategy to place a greater emphasis to high-risk, long-term, growth-oriented investments in small business ventures.

That is where we have the need. And that is where the incentive should be directed.

RETROACTIVITY

The President's proposal gives a tax break for any investment, even investments made before the capital gains tax reduction goes into effect.

This means that it provides a tax break for investments that were made with no expectation that the investor would receive any capital gains preference.

To me this is an undeserved windfall.

My question is why should we reward investors for doing what they have already done without any expectation of a tax reward?

I think the reason for this feature of the President's proposal may be that the Treasury Department could not find any other way to make the revenue numbers show a revenue gain in the early years.

You see, if investors can cash in their old investments, they will receive a huge windfall but they will also pay some tax. They will only pay this tax at the new 15-percent gains rate, not the 28 or 33 percent ordinary income rate, but they will pay some tax. I think the Department found it necessary to induce this rush of revenue in order to find that its proposal raises revenue in the first few years.

Treasury Secretary Brady has said that he will review the retroactivity issue and I have asked him in a March 7 letter to provide me with an estimate of the revenue impact of the President's proposal assuming that it is not retroactive. I am sorry to report that as yet I have not even received an acknowledgement of my letter and request. Secretary Brady said at a hearing of the Appropriations Committee that he would review the President's proposal on the retroactivity issue so I expect that there will be no hesitancy in responding to my request.

If it turns out that the only reason the President's proposal raises revenue in the first few years is because it confers a huge, and undeserved, tax windfall on investors, the Department may have to go back to the drawing board.

The President presents his capital gains bill as an incentive for investment. It is ironic that the principal impact of the proposal in its first years would be to encourage investors to cash in their old investments.

S. 348 is prospective only and confers no windfall, but the Joint Tax Committee still finds that it loses a fraction as much revenue as the President's proposal. S. 348 would gain revenue in its early years if it was retroactive, but I do not think there is any policy rationale for conferring a windfall on investors who happen to be sitting on a qualifying investment.

PHASE-IN OF HOLDING PERIOD

S. 348 requires a 4-year holding period for any investment that qualifies for the tax incentive. The President only requires a 1-year holding period for investments made during the first 3 years, a 2-year holding period for investments made in 1993 and 1994 and a 3-year holding period for investments made after 1994.

My question is why should we wait to put the longer holding period into effect?

If we want to encourage long-term investments, why should we start out by encouraging shorter-term investments?

I do not understand the logic of phasing-in the longer holding period.

There is no fairness problem with immediately requiring a 4-year holding period. Any investor making a new investment would know what the holding period is and would not be surprised in any way if it starts at 3 years. And, if the investor made the investment with no expectation of any capital gains preference, he can hardly complain about a 4-year holding period.

Of course, if the holding period starts at 4 years, more reaping their windfall. This would reduce the rush of revenue to the Treasury Department.

Even if the tax preference applies only to new investments, there would be some slowing of gains realizations if the 4-year holding period goes into effect immediately.

For these reasons the Treasury may have found that if it immediately went to a 3-year holding period, it could not project a revenue gain. In fact, it does acknowledge that the President's proposal would lose $11.3 billion in 1996, right after the 3-year holding period goes into effect. So, the phase-in of the holding period is obviously another case of revenue considerations driving tax policy.

But, again, S. 348 puts a 4-year holding period into effect immediately and it still does not lose large amounts of revenue in the early years. If S. 348 provided for a phased-in holding period, the revenue estimate would be even more favorable, but again I believe there is no policy rationale for phasing in the holding period.

S. 348 does not lose a large amount of revenue because it is limited to venture capital investments, where a 4-year holding period is perfectly rea-

29-059 O-90-2 (Pt. 7)

sonable. Venture capital investors often could not find a market for their stock in the first 3 or 4 years. The 1-year holding period would be irrelevant to them.

21-PERCENT GAINS RATE AND MINIMUM TAX

S. 348 proposes that the maximum gains tax rate be set at 21 percent, which is less generous than the 15 percent maximum gains rate the President proposes.

I would like to offer investors a more powerful incentive and I found that some of my colleagues would not cosponsor S. 348 because they thought that it did not provide a strong enough incentive.

I chose 21 percent as the maximum gains rate for two reasons.

First, under S. 348 the alternative minimum tax applies. So, if S. 348 were to give investors a 15-percent gains rate, much of the benefits of that rate would be recaptured by the minimum tax, where the rate is 21 percent. The interplay of the gains rate and the minimum tax would amount to a zero sum game for the investors.

I would be very surprised if the Congress would reestablish a differential for capital gains taxes without applying the minimum tax. The minimum tax applied to capital gains before the tax reform law. The principal argument being raised against restoring the capital gains tax preference is that it would principally benefit the wealthy.

S. 348 meets this fairness argument by applying the minimum tax.

And when I applied the minimum tax, the 21-percent maximum gains rate became the logical gains rate as well.

Second, a 15-percent maximum gains rate would lose more revenue than a 21-percent maximum gains rate. This difference between S. 348 and the President's proposal has important implications for the revenue impact of the two proposals.

I have asked the Joint Committee on Taxation to give me revenue estimates of S. 348 assuming that it sets a 19-percent, a 17-percent and a 15-percent maximum gains rate and assuming that the minimum tax does not apply.

When I receive these estimates I will reevaluate the provisions in S. 348. As I said, I would like to provide a more powerful incentive for venture capital investments if it is fiscally responsible and fair to do so.

MODIFICATIONS OF PRESIDENT'S PROPOSAL

There have been reports that the Treasury Department is considering further modifications in the President's proposal.

The President's proposal during the campaign was much more sweeping than his final proposal and it is clear to me that further restrictions are called for.

S. 348 shows clearly that we can restrain the revenue loss of a capital gains tax incentive if we choose to do so.

The President may not wish to adopt all of the provisions of S. 348, but it is clear that he will have to consider at least some of them if he ever hopes to persuade Congress to give any consideration to restoring a capital gains differential.

The mathematics—$13.3 billion verses $163 million—say it all.

I ask unanimous consent that a copy of the letter of Mr. Ronald Pearlman, chief of staff of the joint committee, of April 24, 1989, and a chart comparing the President's proposal to S. 348 both be printed at this point 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 COMMITTEE ON TAXATION,
Washington, DC, April 24, 1989.

Hon. DALE BUMPERS,
U.S. Senate,
Washington, DC.

DEAR SENATOR BUMPERS: This is in partial response to your request of January 30, 1989, for a revenue estimate of S. 348, which would provide for a 25-percent exclusion to individuals on capital gain realized on the sale of newly-issued stock in a corporation with paid-up capital of less than $100 million, provided the stock is held for 4 years. It was assumed for the purpose of the revenue estimate that the gain on stock issued after January 1, 1990, would be eligible for the preferential treatment.

[In fiscal years and millions of dollars]

1990	1991	1992	1993	1994	1990–94
(1)	-6	-22	-47	-88	-163

[1] Loss of less than $500,000.

I hope that this information is of use to you. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

RONALD A. PEARLMAN.

COMPARISON OF CAPITAL GAINS PROPOSALS

	President Bush	Senator Bumpers (S. 348)
Taxpayers covered	Individual	Individual and corporate.
Maximum tax rate for individuals.	15 percent	21 percent.
Exclusion on gain for individuals.	45 percent	25 percent.
Maximum tax rate for corporations.		25.5 percent.
Exclusion on gain for corporations.		25 percent.
Holding period	1 year until 1992, 2 years in 1993–94 and 3 years after 1994.	4 years; no phase-in of holding period.
Investments covered	Many capital assets, including nondepreciating assets.	Stock of Small Business ($100 million in paid-in-capital).
Capital formation	Covers secondary market trading.	Covers only direct investments that put capital in hands of entrepreneurs.
Windfall	Retroactive to past investments, confers huge windfall.	Only applies to new investments, no windfall.
Minimum tax apply	No	Yes, ensuring fairness.
Revenue loss	$13.3 billion over 5 years: Joint Tax Commission.	$163 million over 5 years: Joint Tax Commission.

MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on May 5, 1989, during the recess of the Senate, received a message from the President of the United States, transmitting sundry nominations and a withdrawal; which were referred to the appropriate committees.

(The nominations received on May 5, 1989, are printed in today's RECORD at the end of the Senate proceedings.)

ANNUAL REPORT ON ADMINISTRATION OF THE RADIATION CONTROL FOR HEALTH AND SAFETY ACT—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 41

Under the authority of the order of January 3, 1989, the Secretary of the Senate, on May 5, 1989, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with section 360D of the Public Health Service Act, I am submitting the report of the Department of Health and Human Services regarding the administration of the Radiation Control for Health and Safety Act during calendar year 1988.

The report recommends that section 360D of the Public Health Service Act that requires the completion of this annual report be repealed. All the information found in this report is available to the Congress on a more immediate basis through congressional committee oversight and budget hearings. This annual report serves little useful purpose and diverts agency resources from more productive activities.

GEORGE BUSH.

THE WHITE HOUSE, *May 5, 1989.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

1990 BUDGET OF THE DISTRICT OF COLUMBIA—MESSAGE FROM THE PRESIDENT—PM 42

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

In accordance with the District of Columbia Self-Government and Governmental Reorganization Act, I am transmitting the District of Columbia Government's FY 1990 Budget and FY 1989 Budget supplemental.

The District's General Fund 1990 operating budget request is $3,071 million. Total Federal payments anticipated in the District's budget are $498 million. The District's FY 1989 budget supplemental contains $106 million in cost increases and $79 million in budget authority recessions, for a net increase of $27 million. This transmittal does not affect the Federal budget.

There are four District budget issues to which I would direct your attention. First, I would encourage you to continue the abortion funding policy that the Congress established in the District's 1989 appropriations bill that prohibits the use of both Federal and local funds for abortions.

Second, the 1990 Budget reproposes an initiative that would require the District of Columbia to charge Federal establishments directly for water and sewer services. The lump-sum appropriation provided in recent years to the District for water and sewer services in Federal buildings increases the deficit unnecessarily because Federal agencies' budgets already contain funds to pay these costs. I urge the Congress to enact this needed reform. Direct billing also reduces appropriated Federal payments for nongovernmental entities, such as the American Red Cross and the Pan American Union, as well as for entities outside the appropriations process such as the Postal Service and the Federal Savings and Loan Insurance Corporation. It would encourage Federal agencies to assure the accuracy of bills received and to pursue conservation policies.

Third, I request reinstatement of Presidential apportionment authority over the Federal payment to the District of Columbia. Directing immediate disbursement of the Federal payment at the start of the fiscal year increases Treasury's cost of borrowing. Further, the Congress very clearly did not intend to exempt the District of Columbia from sequestration in the original Gramm-Rudman-Hollings Act, and there is no reason for doing so via an appropriations bill.

Finally, in a related Federal Budget request, I will include a $1 million supplemental reimbursing the District Government for additional Presidential inaugural expenses incurred above the $2.3 million appropriated.

I look forward to working with the Congress on these matters.

GEORGE BUSH.

THE WHITE HOUSE, *May 9, 1989.*

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance:

David Campbell Mulford, of Illinois, to be an Under Secretary of the Treasury;

Robert R. Glauber, of Massachusetts, to be an Under Secretary of the Treasury;

John E. Robson, of Georgia, to be Deputy Secretary of the Treasury;

Eric I. Garfinkel, of Maryland, to be an Assistant Secretary of Commerce;

Constance Horner, of the District of Columbia, to be Under Secretary of Health and Human Services;

Charles H. Dallara, of South Carolina, to be a Deputy Under Secretary of the Treasury;

Hollis S. McLoughlin, of New Jersey, to be an Assistant Secretary of the Treasury;

Roger Bolton, of Virginia, to be an Assistant Secretary of the Treasury;

Kay Coles James, of Virginia, to be an Assistant Secretary of Health and Human Services;

Mary Sheila Gall, of Virginia, to be an Assistant Secretary of Health and Human Services; and

Rufus Hawkins Yerxa, of the District of Columbia, to be a Deputy U.S. Trade Representative, with the rank of Ambassador.

(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. HATFIELD (for himself and Mr. JEFFORDS):

S. 932. A bill to amend the Solid Waste Disposal Act so as to authorize the Environmental Protection Agency to take certain action to protect the environment; to mitigate water pollution; to reduce solid waste and the cost in connection with the disposal of such waste through recycling; and for other purposes; to the Committee on Commerce, Science, and Transportation

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. CRANSTON, Mr. MCCAIN, Mr. MITCHELL, Mr. CHAFEE, Mr. LEAHY, Mr. STEVENS, Mr. INOUYE, Mr. COHEN, Mr. GORE, Mr. PACKWOOD, Mr. RIEGLE, Mr. GRAHAM, Mr. PELL, Mr. DODD, Mr. ADAMS, Ms. MIKULSKI, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. WIRTH, Mr. BINGAMAN, Mr. CONRAD, Mr. BURDICK, Mr. LEVIN, Mr. LIEBERMAN, Mr. MOYNIHAN, Mr. KERRY, Mr. SARBANES, Mr. BOSCHWITZ, and Mr. HEINZ):

S. 933. A bill to establish a clear and comprehensive prohibition of discrimination on the basis of disability; to the Committee on Labor and Human Resources.

By Mr. THURMOND:

S. 934. A bill to suspend temporarily the duty on K-Acid; to the Committee on Finance.

S. 935. A bill to suspend temporarily the duty on Broenner's acid; to the Committee on Finance.

S. 936. A bill to temporarily suspend the duty on D Salt; to the Committee on Finance.

S. 937. A bill to suspend temporarily the duty on Neville and Winter's acid; to the Committee on Finance.

S. 938. A bill to suspend temporarily the duty on anis base; to the Committee on Finance.

S. 939. A bill to suspend temporarily the duty on naphthol AS types; to the Committee on Finance.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 940. A bill to designate segments of the East Fork of the Jemez River and of the Pecos River as components of the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. STEVENS (for himself, Mr. DANFORTH, and Mr. MURKOWSKI):

S. 941. A bill to enhance the navigation safety of oil tankers operating in the Prince William Sound, Alaska, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. D'AMATO:

S. 942. A bill for the relief of Lea Gelb, Chaim Morris Gelb, and Sidney Gelb; to the Committee on Foreign Relations.

By Mr. MCCONNELL:

S. 943. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to facilitate the use of abandoned mine reclamation fund moneys to replace water supplies that have been contaminated or diminished by coal mining practices; to the Committee on Energy and Natural Resources.

By Mr. KASTEN:

S. 944. A bill to authorize the establishment of a United States-Taiwan Free Trade Area; to the Committee on Finance.

By Mr. MCCAIN:

S. 945. A bill to amend title 38, United States Code, to ensure that all veterans eligible to receive educational assistance under the Veterans' Educational Assistance Program have 10 years after discharge or release from active duty in which to pursue a program of education with such assistance; to the Committee on Veterans' Affairs.

By Mr. BREAUX (for himself, Mr. SIMPSON, and Mr. BIDEN):

S. 946. A bill to reorganize the functions of the Nuclear Regulatory Commission to promote more effective regulation of atomic energy for peaceful purposes; to the Committee on Environment and Public Works.

By Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. MATSUNAGA, Mr. ROCKEFELLER, Mr. GRAHAM, Mr. INOUYE, Mr. KOHL, Mr. PELL, Mr. WIRTH, and Mr. KERRY):

S. 947. A bill to amend title 38, United States Code, to improve conditions of employment for employees of the Veterans Health Services and Research Administration and for other purposes; to the Committee on Veterans' Affairs.

By Mr. GORTON (for himself, Mr. HATFIELD, Mr. MCCLURE, Mr. MUR-

KOWSKI, Mr. BURNS, Mr. STEVENS, and Mr. PACKWOOD):

S. 948. A bill to amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes; to the Committee on the Judiciary.

By Mr. RIEGLE (for himself, Mr. BRADLEY, Mr. CHAFEE, and Mr. DURENBERGER):

S. 949. A bill to amend title XIX of the Social Security Act to provide States additional authority and flexibility under Medicaid to improve children's access to health care services, to assure sufficient payment levels for certain providers and to provide funds for demonstration projects, and for other purposes; to the Committee on Finance.

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S. 950. A bill to provide for an oilspill research development center and to establish a coastal zone restoration and enhancement fund, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DECONCINI:

S. 951. A bill to grant employees parental leave under certain circumstances, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KERRY:

S. 952. A bill to stimulate the design, development, and manufacture of high definition television technology, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMPSON:

S. 953. A bill to amend the Immigration and Nationality Act to revise the grounds for exclusion from admission into the United States; to the Committee on the Judiciary.

By Mr. LUGAR (for himself, Mr. SHELBY, Mr. PRYOR, Mr. STEVENS, Mr. METZENBAUM, Mr. PELL, Mr. KERRY, Mr. CHAFEE, and Mr. HEFLIN):

S.J. Res. 122. Joint resolution to designate October 1989 and 1990 as "National Down Syndrome Month"; to the Committee on the Judiciary.

By Mr. BYRD:

S.J. Res. 123. Joint resolution approving the proposed authorization for the export of technology, defense articles, and defense services to codevelop the FS-X weapon system with Japan and requiring that any coproduction of that weapon system meet certain conditions, and for other purposes; to the Committee on Foreign Relations.

By Mr. GORTON:

S.J. Res. 124. Joint resolution to designate October as "National Quality Month"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SANFORD:

S. Res. 122. Resolution expressing the sense of the Senate in support of actions to eliminate preventable deaths and disabling illness, especially among children, through intensified international collaboration to attain the United Nations goals of universal childhood immunization by 1990 and health for all by the year 2000, and through the convening of a world summit on children; to the Committee on Foreign Relations.

By Mr. BREAUX (for himself, Mr. STEVENS, and Mr. LOTT):

S. Con. Res. 34. Concurrent resolution confirming that it is the responsibility and the desire of Congress to develop a comprehensive telecommunications policy, which includes determining the extent of participation of regional Bell holding companies in providing advanced telecommunications services and equipment; to the Committee on Commerce, Science, and Transportation.

By Mr. MACK:

S. Con. Res. 35. Concurrent resolution expressing the sense of the Congress that the Panama Canal Treaties be abrogated, and other matters; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATFIELD (for himself and Mr. JEFFORDS):

S. 932. A bill to amend the Solid Waste Disposal Act so as to authorize the Environmental Protection Agency to take certain action to protect the environment; to mitigate water pollution; to reduce solid waste and the cost in connection with the disposal of such waste through recycling; and for other purposes; to the Committee on Commerce, Science, and Transportation.

AMENDING THE SOLID WASTE DISPOSAL ACT FOR RECYCLING AND OTHER PURPOSES

Mr. HATFIELD. Mr. President, I rise today, as I have in every Congress since 1976, to introduce the National Beverage Container Reuse and Recycling Act. I am privileged to be joined by my distinguished colleague from Vermont [Mr. JEFFORDS] who, as a former Member of the House of Representatives, has introduced similar legislation in that body since 1975. Together we represent a long history of perseverance for a national bottle bill, having seen its beneficial effects in our States since 1972. We speak today with renewed optimism and commitment to its passage.

The issue of a national beverage container return system is even more timely today than it was in 1976. Our Nation stands at a critical juncture where we must prioritize the conservation of both our environment and our natural resources. The Environmental Protection Agency recently established a national goal of 25 percent source reduction and recycling by 1992. The national beverage container reuse and recycling legislation provides an effective tool for realizing that goal—it will result in an automatic reduction of 5 to 10 percent of the solid waste stream.

We can no longer afford to discard nearly 100 billion beverage containers annually—containers that are recyclable and reusable.

Each year, over 380 trillion Btu's of energy are expended in the manufacturing of beverage containers in the United States. Under this legislation, 32 to 43 percent of that figure would be saved through the return of bottles and cans. Through the mandatory deposit on beverage containers we will have the means to recycle 10.5 million tons of refuse each year and thereby ease the burden on our overflowing landfills.

Currently 10 States; including Oregon, California, Michigan, Maine, New York, Massachusetts, Iowa, Connecticut, Delaware, and Vermont, have laws similar to the one we are introducing this Congress.

In the States which already have implemented beverage container laws, public support has been overwhelming. In Oregon, for example, there is a 90-percent approval rate, while Vermont has a public support rating of 97 percent. The law does not infringe on any citizen's convenience. In every State the return rates range between 90 and 99 percent.

For centuries, we have had the luxury of living in a throwaway society. We cannot continue to live in this fashion. The choice is clear, conservation or plunder, we must give value for value. As stewards of the Earth, our consumption of resources must be balanced with renewal whenever possible. Where resources are not renewable, we must use no more than a reasonable share and reuse what we can. If our stewardship is to be wise rather than rapacious, we must end our throwaway society. I have received many letters of support for this legislation, and would like those from the Wildlife Society, the Wilderness Society, the American Farm Bureau Federation, the Sierra Club, the National Parks and Conservation Association, and the American Fisheries Society to appear in the RECORD following my remarks. Additionally, I ask that an editorial entitled "Bottle-Deposit Laws Fight Litter and Waste," which appeared in the April 24, 1989 issue of USA Today be placed in the RECORD.

Momentum is building for a national system of beverage container return and reuse and I have full confidence that the 101st Congress will adopt national bottle bill legislation. I ask that the text of the National Beverage Container Reuse and Recycling Act appear at this point in the RECORD.

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

S. 932

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Title II of the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) is amended by adding at the end thereof the following new subtitle:

"Subtitle I—

"SHORT TITLE; FINDINGS AND PURPOSE

"SEC. 12001. (a) SHORT TITLE.—This subtitle may be cited as the 'Beverage Container Reuse and Recycling Act'.

"(b) FINDINGS AND PURPOSES.—Congress finds and declares that—

"(1) the failure to reuse empty beverage containers represents a significant and unnecessary waste of important national energy and material resources;

"(2) solid waste resulting from such empty beverage containers constitutes a significant and rapidly growing proportion of municipal solid waste and increases the cost and problems of effectively managing the disposal of such waste;

"(3) disposal of such solid waste, which imposes severe problems in both urban and rural aspects of our environment as well as a financial burden on local and State governments, could be carried out by a recycling of empty beverage containers;

"(4) a uniform national system for requiring a refund value on the sale of all beverage containers would act as a positive incentive to individuals to clean up the environment and would result in a high level of reuse and recycling of such containers and help reduce the costs associated with solid waste;

"(5) a national system for requiring a refund value on the sale of all beverage containers would result in significant energy conservation and resource recovery;

"(6) the reuse and recycling of empty beverage containers would eliminate these unnecessary burdens on the Federal Government, local and State governments, and the environment;

"(7) waste resulting from littering or discarding of certain containers constitutes a significant health hazard and poses a threat to children and others due to broken glass, detachable openings and other sharp objects present in recreation and other environments;

"(8) several States have previously enacted and implemented State laws designed to protect the environment, conserve energy resources and natural resource recovery by requiring a refund value on the sale of all beverage containers, and these have proven effective as well as inexpensive to administer due to their self-enforcing nature;

"(9) nonbiodegradable beverage containers represent a continued threat to the environment;

"(10) a national system of beverage container recycling is consistent with the intent of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.);

"(11) the provisions of this subtitle are consistent with the goals set in January 1988, by the Environmental Protection Agency, which establish a national goal of 25 percent source reduction and recycling by 1992, coupled with a substantial slowing of the projected rate of increase in waste generation by the year 2000; and

"(12) recycling the beverage containers of this Nation would result in a 5 to 10 percent reduction in the solid waste stream of this Nation.

"DEFINITIONS

"SEC. 12002. DEFINITIONS.—For the purposes of this subtitle, the term—

"(1) 'Administrator' means the Administrator of the Environmental Protection Agency;

"(2) 'beverage' means beer or other malt beverage, mineral water, soda water, a carbonated soft drink of any variety, or a drink in liquid form containing wine to which is added concentrated juice or flavoring material and containing not more than 7.5 percent alcohol by volume and intended for human consumption;

"(3) 'beverage container' means a container designed to contain a beverage;

"(4) 'refundable beverage container' means a beverage container which has clearly, prominently, and securely affixed to such container, or printed, embossed, or incised into such container, (in accordance with section 12003) a statement of the amount of the refund value of the container;

"(5) 'consumer' means a person who purchases a beverage in a beverage container for any use other than resale;

"(6) 'distributor' means a person who sells or offers for sale in commerce beverages in beverage containers for resale;

"(7) 'retailer' means a person who purchases from a distributor beverages in beverage containers for sale to a consumer or who sells or offers to sell in commerce beverages in beverage containers to a consumer. The Administrator shall prescribe such regulations as may be necessary to establish what person is a retailer with respect to the sale of beverages in beverage containers to consumers through beverage vending machines;

"(8) 'commerce' means trade, traffic, or transportation—

"(A) between a place in a State and any place outside thereof,

"(B) within the District of Columbia or any territory or possession of the United States, or

"(C) which affects trade, traffic, commerce, or transportation described in subparagraph (A) or (B); and

"(9) 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"REQUIRED BEVERAGE CONTAINER LABELING

"SEC. 12003. LABELING.—No distributor or retailer may sell or offer for sale a beverage in a beverage container unless there is clearly, prominently and securely affixed to such container, or printed, embossed, or incised into such container (in accordance with regulations prescribed by the Administrator) a statement of the amount of the refund value of the container, such amount being not less than 5 cents.

"RETURN OF REFUND VALUE OF BEVERAGE CONTAINERS

"SEC. 12004. (a) REFUND.—If a consumer tenders for refund an empty and unbroken refundable beverage container to a retailer or distributor who sells (or has sold at any time during the period of three months ending on the date of such tender) a brand of beverage which was contained in the container, the retailer or distributor respectively shall promptly pay the consumer the amount of the refund value stated on the container.

"(b) DISCLAIMER.—Subject to the provisions of subsection (a), nothing in this subtitle shall be construed as prohibiting any retailer or distributor from establishing refundable beverage container redemption centers to assist in carrying out the purposes of this subtitle.

"(c) REQUIREMENT TO REFUND.—If a retailer or redemption center tenders for refund an empty and unbroken refundable beverage container to a distributor who sells (or has sold at any time during the period of three months ending on the date of such tender) a brand of beverage which was contained in the container, the distributor shall promptly pay the retailer the amount of the refund value stated on the container.

"(d) STUDY.—(1) The General Accounting Office shall conduct a study for the purpose of determining the feasibility and desirability of establishing a handler's fee to reflect the cost to the retailer or redemption center of handling returned beverage containers pursuant to this subtitle. The results of such study shall be made available to the Administrator within 180 days following the date of the enactment into law of this subtitle.

"(2) Within 180 days following the receipt by him of such report, the Administrator, after a public hearing and opportunity for public comment, shall determine whether or not a handler's fee should be paid to retailers and redemption centers for handling returned beverage containers pursuant to this subtitle. If the Administrator determines that such a fee should be paid, he shall determine the amount of such fee and the means by which moneys necessary to pay such fees will be generated.

"(3) Any beverage container return laws of any State which is in effect on the date of enactment into law of this subtitle shall not be considered to be inconsistent with the provisions of section 12008(c) this subtitle solely by the manner in which such State law provides for a handler's fee or the administration thereof.

"(e) REFUSE TO ACCEPT.—A retailer, redemption center or distributor may refuse to accept any beverage container which does not have the refund value on such container in accordance with the requirements of section 9003.

"(f) RULES AND REGULATIONS.—The Administrator is authorized to promulgate rules and regulations establishing the right of (1) retailers to restrict the number of beverage containers redeemed, and (2) distributors to determine the form and condition in which beverage containers are to be returned to such distributor from the retailer or redemption center.

"RESTRICTIONS ON METAL BEVERAGE CONTAINERS WITH DETACHABLE OPENINGS

"SEC. 12005. RESTRICTIONS.—No distributor or retailer may sell or offer for sale a beverage in a metal beverage container a part of which is designed to be detached in order to open such container.

"PREEMPTION OF STATE AND LOCAL LAW

"SEC. 12006. (a) PREEMPTION.—Except as otherwise provided in this subtitle, no State or political subdivision thereof may establish or continue in effect any law respecting a refund value of beverage containers sold with a beverage to the extent the Administrator determines the law is inconsistent with this subtitle.

"(b) REFUND VALUE.—No State or political subdivision thereof may, for the purposes of determining the amount of any tax imposed by such State or subdivision on the sale of any refundable beverage container, take into account any amount charged which is attributable to the refund value of such container.

"PENALTIES

"SEC. 12007. VIOLATIONS.—Whoever violates any provision of section 12003, 12004, or 12005, or regulation or rule issued pursuant thereto, shall be fined not more than $1,000 for each violation.

"EFFECTIVE DATES

"SEC. 12008. (a) EFFECTIVE DATE.—The provisions of sections 12003, 12004, and 12006 shall apply with respect to beverage containers sold or offered for sale in commerce on or after the expiration of the 2-year period following the date of the enactment of this subtitle.

"(b) COMMERCE.—The provisions of section 12005 shall apply with respect to beverages in beverage containers sold or offered for sale in commerce on or after the expiration of the one-year period following the date of the enactment of this subtitle.

"(c) PREEMPTION.—The provisions of section 12006(a) shall preempt State and local laws to the extent to which they are inconsistent with the provisions of this subtitle only on and after the effective date of such provisions.".

THE WILDLIFE SOCIETY,
Bethesda, MD, May 5, 1989.

Hon. MARK O. HATFIELD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: The Wildlife Society appreciates this opportunity to express our support for the Hatfield/Jeffords Bottle Bill. The Wildlife Society is a professional asociation of over 8,400 wildlife educators, researchers, managers, and administrators working in the public and private sectors to promote sound stewardship of our natural resources.

This legislation would assist in furthering several wildlife conservation objectives. First, the consumption of raw materials would be reduced, and, consequently, less natural resources upon which wildlife are dependent would be used or degraded.

Additionally, litter, a major source of habitat degradation throughout this century, would be reduced. A decrease in litter would benefit wildlife in both rural and urban areas.

Finally, Aldo Leopold's "land ethic," which was recognized in a 1988 Congressional joint resolution as a milestone in the "protection and wise management of our renewable natural resources," is upheld in this bill and would be received by many Americans as invaluable to conserving our nation's natural resources for present and future generations.

Congress should recognize that a nationwide recycling program is urgently needed and would ensure that implementation occurs in all states. The Society has supported H.R. 586, and we view your legislation as an important and pragmatic step toward wiser stewardship of our natural resources.

Sincerely,

HARRY E. HODGDON,
Executive Director.

THE WILDERNESS SOCIETY,
Washington, DC, May 9, 1989.

Hon. MARK HATFIELD,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: Thank you for your interest in introducing The National Beverage Container Reuse and Recycling legislation today, along with Senator Jeffords.

This legislation is important in promoting our nation's need for recycling our resources. While this legislation does not fit directly into The Wilderness Society's public lands agenda, recycling will help improve the visual and biological integrity of our parks, forests, and other public lands.

I hope you will keep us informed as your legislation progresses, and we will be happy to assist you as much as we can in securing final passage of this important legislation.

Again, thanks for your support and leadership. It's great.

Sincerely,

RINDY O'BRIEN,
Director, Governmental Affairs.

AMERICAN FARM BUREAU FEDERATION,
Park Ridge, IL, May 8, 1989.

Hon. MARK HATFIELD,
U.S. Senate, Washington, DC.

DEAR SENATOR HATFIELD: We understand you will be introducing a companion bill to Congressman Paul Henry's bill, H.R. 586, tomorrow.

Current American Farm Bureau policy on that issue reads, "Any beverage sold and not required to be consumed on the premises where sold should be in degradable containers or in containers for which a substantial refund is offered for the return thereof. Existing laws pertaining to littering should be enforced with greater vigor."

Consequently, if we can be of help in supporting your legislation, please do not hesitate to contact us.

Sincerely,

JOHN C. DATT,
Executive Director,
Washington Office.

SIERRA CLUB,
San Francisco, CA, May 5, 1989.

Senator MARK HATFIELD,
Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: We have applauded your leadership in the past in championing the cause of recycling bottles and are pleased to learn that you are introducing a National Beverage Container Reuse and Recycling Act in this Congress.

We have supported measures of this sort in the past and we intend to continue doing so. Our staff is heavily involved in pushing for revision of the Clean Air Act right now but you may count upon us as supporters of this important measure.

Very truly yours,

MICHAEL MCCLOSKEY,
Chairman.

NATIONAL PARKS AND
CONSERVATION ASSOCIATION,
Washington, DC, May 8, 1989.

DEAR SENATOR HATFIELD: The National Parks and Conservation Association has been concerned for many years with the issue of recycling. We are, therefore, very supportive of your efforts in introducing a National Beverage Container Reuse and Recycling Act.

There is no doubt that this legislation will be of great benefit and will address a growing national problem. While we are particularly interested in the positive effects such legislation would have on public lands in general and our national parks in particular, it is clear that this legislation addresses a major national issue.

We greatly appreciate your leadership in introducing this much needed legislation.

Sincerely.

PAUL C. PRITCHARD,
President.

AMERICAN FISHERIES SOCIETY,
Bethesda, MD, May 8, 1989.

Hon. MARK O. HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: The American Fisheries Society has long been concerned with litter problems along our streams and highways. As a consequence of that concern, in 1985 we adopted the enclosed Beverage Container Legislation definition and policy. Item 4 under B. Needed Actions has been highlighted because it specifically supports the imposition of national beverage container deposit legislation. If appropriate, we would like this document to be entered into the hearing record as the American Fisheries Society's comments in support of the Hatfield-Jeffords Bottle Bill.

The American Fisheries Society, founded one hundred-nineteen years ago, is the world's oldest and largest organization of fisheries scientist conservationists. Our 8,500 members are dedicated to fisheries science, plus fisheries habitat protection and enhancement. A national beverage container reuse and recycling act would have a desirable and much-needed impact on the nation's fisheries resources.

Thank you for your leadership in seeking national beverage container deposit legislation. Please call upon us if we can be of assistance.

Sincerely.

CARL R. SULLIVAN,
Executive Director.

BEVERAGE CONTAINER LEGISLATION

(By Gary Kimball and Jon Ross)

A. ISSUE DEFINITION

Everyone has at one time observed an empty can floating in a favorite lake or stream. This refuse does not pose any immediate harm to the aquatic environment, but it violates our aesthetic senses; somehow you really didn't quite "get away from it all." Aesthetics contribute a major part of what we find desirable about the sport fishing experience. While aesthetic impacts cannot be quantified as rigorously as toxic wastes, these impacts are certainly real even if less tangible.

We live in a consumer oriented society and one of the drawbacks of this society is the problem of disposing of the residues of that consumption. Litter and solid wastes issues have received heightened public visibility in recent years because of the increase in litter, rapid filing of landifills and accompanied surface and ground water pollution, and difficulties in siting new landfills.

One solution, although somewhat controversial, has been container deposit legislation. This legislation encourages recycling and reducing litter by requiring a deposit, usually $.05 or $.10 on each beverage container sold to consumers, which is refunded upon return of the container. Enactment of container deposit legislation requires a decision to penalize those who carelessly dispose of empty beverage containers. Legislation of this type allows the individual to retain freedom of choice and is aimed only at those who choose to pollute. Incentives of this nature have an immediate and direct effect on individuals and require a minimum of governmental intervention.

Container deposit legislation has met staunch opposition from affected industries because of purported cost increases, job loss or dislocation, and differing opinion as to the amount of litter reduction to be experienced. There are many different types of litter found along our streams, lakes, rivers, and roadsides. Beverage containers, primarily for soft drinks and beer, compose a large percentage and are the types of litter usually controlled by container deposit legislation. Materials used to produce such containers include glass, plastic, and metal (primarily aluminum or steel).

Beverage container legislation has been enacted in both the U.S. and Canada. Presently, five Canadian provinces (Alberta, Quebec, Nova Scotia, New Brunswick, British Columbia) have container deposit legislation. In the U.S. container deposit laws are currently in force in nine states (Connecticut, Delaware, Iowa, Maine, Massachusetts, Michigan, New York, Oregon, Vermont); additional states are currently considering similar legislation. Many referenda have been voted on regarding the promulgation of container deposit laws. In 1981, legislation was introduced in the U.S Congress to enact a National Container Deposit Law (U.S. Congress 1981).

Container deposit legislation has been proposed as a means of reducing the one way flow of materials that starts with extraction of resources from the earth and ends with burial in a landfill. The presumed benefits of introducing recycling into this process is the reduction in pollution and energy usage associated with the extraction and manufacturing processes as well as reduction of the rate at which waste is placed in landfills (Sullivan 1978). Recycling will reduce the overall need for natural resources. But, recycling will incur additional costs.

Several states have monitored the effects of container deposit laws. Prior to enactment of container legislation, Michigan observed that the number of beverage cans found along roadsides increased from 69 cans per mile in 1968 to 176.5 cans per mile in 1978. Since enactment of their beverage container law, Michigan has experienced an 83 percent decrease in the number of regulated containers in litter counts (Special Joint Committee to Study the Impact of the Beverage Container Deposit Law 1980). Vermont has monitored litter since passing a container law in 1973. They report a 35 percent reduction in total litter and a 76 percent reduction in beverage container litter. Oregon found a 39 percent reduction in total litter, and an 83 percent reduction in beverage container litter since their law went into effect in 1972. Overall, the states report a reduction of 35 percent to 56 percent in total litter, and 76 percent to 83 percent in beverage container litter. These data are in agreement with a 1980 General Accounting Office (GAO) estimate that 80 percent to 90 percent of beverage containers are returned when container laws are in effect (U.S. General Accounting Office 1980). A number of sources have indicated container legislation results in a 6 percent reduction by volume in solid waste disposal in landfills. Reduced need for landfills lessens problems commonly associated with these sites, such as run-off and leachate generation and also preserves options for land use which include maintenance for fish and wildlife.

It is difficult to estimate directly the effects of container legislation on the manufacturing needs and requirements for raw materials used in producing containers and the resultant decrease in pollutants released into the environment as a result of decreased quantities of manufactured containers. New York estimates a 47 percent to 70 percent reduction in airborne pollutants and a 44 percent to 69 percent reduction in waterborne pollutants attributable to the beverage industry once deposit laws were in effect (Office of Development Planning 1982). It is obvious that iron, aluminum, and asbestos (and to a lesser extent copper, nickel, zinc, cobalt, chromium, and mercury) contamination will be reduced as a result of the reduction in mining operations needed to secure iron and aluminum for cans (U.S. Environmental Protection Agency 1982), but the degree of ecological improvement resulting from recycling is difficult to evaluate.

The need to conserve energy and natural resources in the U.S. and Canada has been used as support for arguments, both pro and con, in debates on container deposit legislation. The beverage and disposable container industry claims that refillable containers will increase fuel consumption of vehicles used to distribute beverages because of more frequent two-way trips as well as the need for more vehicles; refillables are heavier and require more storage space. In addition, it is claimed that washing and refilling operations would be slow and lead to more energy and water consumption. The GAO looked at water consumption through all manufacturing stages, from mining of raw materials to final product distribution. They found that recycled aluminum cans and 10-trip refillable bottles require about one-half the amount of water as that of one way bottles.

Energy-generating facilities and fossil fuel mining continue to be among the largest industrial users of our fresh water supplies. The aluminum industry has frequently advertised that recycling aluminum cans saves 95 percent of the energy needed to manufacture a new can, starting with the extraction of aluminum ore. New York and Michigan estimate energy savings at 11 to 26 trillion and 9 trillion Btu's. Regardless of the absolute amount of energy saved, it is widely accepted that lowered energy usage provides economic as well as environmental benefits.

Most conflict surrounding container deposit legislation involves pricing, jobs, and capital costs. The beverage industry has maintained that considerable capital cost would be incurred by an increase in the use of refillable beverage containers. For example, bottling lines and bottle washers would have to be purchased and housed, requiring capital and additional space. Actual capital costs depend on the final container mix chosen by the beverage distributors as a result of legislation (refillable bottles, recyclable cans, nonreturnable containers) New York estimates that capital costs approached $286 to $354 million for the change-over to refillables. Initially it was claimed that the change-over in New York also would result in significant job loss. Although some specific jobs were eliminated, New York estimates a net gain of 5,000 to 6,000 jobs. In Michigan there were job losses in the can and glass manufacturing industries and job gains in the bottling, distribution, and recycling industry, resulting in an overall gain of approximately 4,500 jobs.

The most controversial aspect of container deposit legislation is the immediate increased consumer cost and consumer acceptance. Cost analysis of container deposit legislation is made difficult by the myriad other factors that indirectly affect price. Michigan and New York both felt industry-conducted cost surveys inadequately detailed actual costs to consumers resulting from container deposit legislation. Costs from production to retail sales must be analyzed separately to determine actual increased costs to consumers. Potential increases of 9 percent to 10 percent above the inflation rate were expected in Michigan. New York City Department of Consumer Affairs, for the 16-week period following implementation of their law, found average price increases of $0.58/case of soft drinks and $2.50/case of beer or an increased estimated cost to consumers of $500 million. It is apparent that container deposit legislation will cost consumers additional money. In spite of these increased costs consumers have consistently demonstrated support for container deposit laws through public opinion polls conducted in several states (Michigan, Oregon, Massachusetts, Connecticut, and Iowa). Voters and legislators in forty-one states have rejected deposit legislation, in some cases after fiercely contested (and expensive) campaigns waged by industry and environmental organizations.

Additional costs incurred with container deposit legislation also are borne by retailers. None of the states with container legislation have identical regulations, but the tasks demanded of the retailer remain essentially the same. Retailers must supply additional space, collect and inventory returnables, absorb increased labor costs, and maintain sanitation (American Iron and Steel Institute 1981). However, retailers recognize that returnables guarantee increased customer traffic because customers claiming refunds means more frequent customer visits.

There are alternatives to container deposit legislation that some states have initiated to control litter. Industry in general finds these alternatives more palatable. The first and most commonly cited example of such alternative legislation is Washington's Model Litter Control Act of 1971. The Act has several elements designed to control litter: mandatory fines for those caught littering, a broadly-based tax levied on a variety of items including food and groceries (taxes collected are redirected to litter collection and recycling activities), a litter education program, and a litter collection program that provides jobs to a summer youth corps. Aside from the tax, the program is voluntary. New Jersey took a slightly different approach by charging a landfill tax which is turned back to communities that participate in the recycling program.

The main drawback recognized in these programs is lack of monetary incentive to consumers to return containers. Program effectiveness depends on voluntary efforts. Also, the taxes are non-specific and regressive. The Washington litter tax is levied on food, groceries, and other products, yet these products contribute to a minor portion of litter. Recycling centers accept only specific kinds of recyclables. And, finally, everyone pays for the pollution control program, not just the polluter. Nine other states have adopted litter laws; in five of those states the laws have been abandoned.

One other approach is source separation used on the community level; it has yet to be attempted statewide. The rationale of source separation is to entice the consumer to divide solid waste into a recyclable portion, which will be collected and taken to an appropriate processing center, and a nonrecyclable portion which will be placed in landfills. An advantage of this system is that "curbside service" is possible. Source separation probably would be met with acceptance by both sides of the container deposit issue. But source separation and container deposit laws can be developed as complementary programs, providing a means for strong litter control.

B. NEEDED ACTIONS

Although the American Fisheries Society professes no specific expertise in solid waste management, we believe the following recommendations are in good standing with

the Society's record of promoting the conservation of natural resources and maintaining the "quality of life" associated with the use of fisheries resources:

1. The Society membership is urged to become more aware of present programs for solid waste control.

2. The Society is urged to support in group, and practice as individuals, recycling efforts, recognizing that such practices promote resource conservation and reduce environmental effects due to litter.

3. The Society encourages industry and environmental organizations alike to search for effective inducements to the general public to reduce litter and would support new initiatives; to encourage resources conservation including, for example, all aluminum containers.

4. We recognize that voluntary efforts alone to control litter have been insufficient. Many states which passed litter tax laws in an effort to avoid the high cost of container deposit legislation have abandoned these programs because they were ineffective. At this time the Society endorses the concept of national container deposit legislation. Such legislation would create countrywide uniformity that would guarantee stability to the affected industries, as well as prevent potential border problems occurring between states or provinces with and without container deposit laws. Container deposit laws, where passed, have worked and have gained public support.

5. The Society encourages the establishment of source separation programs because they will reduce the filling rate of landfills and ensure greater recycling of material.

6. The Society encourages subunits to become involved at the state and local levels to implement the Society's recommendations on beverage container legislation and source separation programs.

LITERATURE CITED

American Iron and Steel Institute, Committee of Tin Mill Products Producers. 1981. Restrictive container legislation legislative backgrounder 1981. TN 048-281-5Mp. Washington, D.C. 21 pp.

Office of Development and Planning. 1982. Mandatory deposit legislation; benefits and costs for New York, New York State. 25 pp.

Special Joint Committee to Study the Impact of the Beverage Container Deposit Law. 1980. Michigan's deposit law: second year. Final report. State of Michigan, Lansing. 40 pp.

Sullivan, Mark. 1978. The ABCs about beverage containers. National Wildlife Federation, Washington, D.C. 11 pp.

U.S. Congress. Senate. 1981. Beverage container reuse and recycling act, 97th Cong. 1st sess. S. 709.

U.S. Environmental Protection Agency, Effluent Guidelines Division. 1982. Ore mining and dressing—final development document for effluent limitation guidelines and standards. EPA 440/1-82/06lb. Washington, D.C.

U.S. General Accounting Office. 1980. States experiences with beverage container deposit laws shows positive benefits. Report by the Comptroller General of the United States PAD-81-08. Washington, D.C. 67 pp.

[From USA Today, Apr. 24, 1989]

BOTTLE-DEPOSIT LAWS FIGHT LITTER AND WASTE

You don't see many people littering roads and parks with empty bottles or cans in Michigan.

But if they do, someone like Jim Johnson, a high school teacher in Lansing, is likely to come along and clean up the litter. Johnson figures he earns $250 per year just by picking up discarded beer and soft-drink containers when he's out jogging, and returning them to stores for refunds.

Why this mania for cleanliness in Michigan? It's one of nine states, from Oregon to Massachusetts, that have laws requiring deposits on beer and soft-drink bottles and cans.

In those states, millions of bottles and cans that once were left on beaches, tossed in rivers and partks or thrown along the highways are being carted back to stores instead. Throwing them away is like throwing money away.

States with deposit laws have found that providing consumers with an incentive to return bottles and cans is one of the simplest, least expensive ways to clean up litter and reduce trash going into costly landfills. Congress is considering a nationwide deposit law.

But some people, like the columnist across the page, just don't seem to see the trash surrounding us. Or they say that bottles and cans are just a tiny part of it.

Not so. Look a the litter:

When New York passed its refund law, it reduced the amount of trash going into landfills from New York City alone by 550 tons per day.

In Vermont, roadside litter was reduced by 35 percent.

In Connecticut, litter in parks was reduced 50 percent.

Not only are those states reducing trash and saving money, they're saving energy, too. The electricity required to produce one aluminum can would keep a 100-watt light bulb buring for 100 hours. Recycling that can takes only 5 percent as much power.

Laws on beverage containers alone—called "bottle laws"—won't solve all our trash problems. We need recycling programs for old batteries, used motor oil, paper, plastics, metals and glass, waste or every kind.

But they are a start. Oregon, the first state to pass a bottle law, is a leader in recycling other products, too. It even sends recycled materials overseas. What we call "trash" in the USA gets turned into parts for automobiles in Japan.

According to environmental groups and government agencies, if bottle laws were in effect in all states:

Litter could be reduce by 35 percent.

Energy savings in one year could equal the electricity used by a city the size of Milwaukee for four years.

Taxpayers could save $30 million per year.

Bottle laws work, You can see it when you go from a state that doesn't have a bottle law to one that does.

Most consumers in those states say they don't mind carting cans and bottles back to the stores in return for cleaner roads and cleaner parks. They don't want to worry about stepping on a piece of broken glass at the beach.

Jim Johnson picks up a couple of cans and bottles for every mile he runs in Lansing, Mich.

Widespread bottle laws could have whole armies of people helping him. That could keep America beautiful from the Atlantic to the Pacific and everywhere in between.

Mr. JEFFORDS. Mr. President, I am pleased to be here with the distinguished Senator from Oregon, MARK HATFIELD, to introduce this important bill. We each recognize the immediate reduction in solid waste, as well as the other associated benefits that enactment of this bill can accomplish, and I look forward to working with my friend to see these benefits realized.

Solid waste is one of the most critical problems stalking our Nation today. Each day that we maintain the status quo of complacency marks us closer to the day of reckoning when we suddenly notice that our landfill capacity has become an incapacity. The National Beverage Container Reuse and Recycling Act would reduce the volume of waste currently being shipped to landfills and incinerators by 5 to 10 percent.

When we begin to talk about the percentage of recyclable materials within the waste stream, this bill demonstrates added effectiveness. Other bills being debated set national recycling goals at 25 percent of the total volume of solid waste. The legislation we offer today would put us one-fifth to two-fifths of the way there immediately.

This is a tremendous start at the effort, and with minimal Government costs at either the Federal, State or local level. For once, Congress has a chance to pass a law consistent with Federal and local efforts without requiring the people back home to pay an arm and a leg for our good intentions.

We're not proposing that this should be the answer to our solid waste problems, but it certainly is the fastest and most efficient way to lop off the first significant segment of a waste stream that has overrun its banks.

I must point out that we're accomplishing more than reducing the volume of waste that is handled daily. Indeed, we could have called this bill the "Least-Cost Municipal Waste Initiative," because by reducing the volume of municipal waste, we reduce the demand for labor, equipment, space, and siting problems related to the job of managing solid waste. This saves money for city governments struggling with ballooning budgets. This bill before us should save funds targeted for solid waste management so that they can be used in other city programs, like education, traffic control, or drug rehabilitation.

This bill would also reduce the amount of litter substantially, resulting not only in more sightly neighborhoods and streets, but creating a safer environment as well. A study published by the American Journal of Public Health reported that glass-related lacerations fell by 60 percent following the implementation of the Massachusetts law. Roughly 40 percent of unsightly and unhealthy litter is comprised of beverage containers.

Energy is a huge issue confronting our Nation. The General Accounting Office has estimated that a national

beverage container bill can save the equivalent of over 20 million barrels of oil per year. Other studies have confirmed this figure. Saving oil means saving money; reducing pollution; and contributing to national energy security.

Twenty million barrels may not seem like a lot, given our seemingly insatiable thirst for petroleum, but to slight this savings seems a bit like looking a gift horse in the mouth. If any other Senator will come to the floor with an idea to save as much energy, as much landfill space, as much raw materials, with the associated municipal savings and at virtually no Federal cost, then that Senator should come down here quickly because he'll find two more supporters for his plan.

The bill we're introducing today is virtually identical to bills we've each introduced in every session since the 95th Congress. Senator HATFIELD was able to get the Senate to vote on this issue in 1976, during consideration of the Resource Conservation and Recovery Act. Although that effort was not successful, the Senator has continued to show a willingness to fight the special interests who prefer to exploit natural resources of raw materials rather than work to encourage the recycling of these goods.

It was not so long ago that this Nation recognized an energy crisis as a national issue of top priority. In 1978, following the GAO study that found a 20 to 26 million barrel oil savings from enactment of beverage container legislation, top advisers within the Carter administration split 3-3 on whether to include such a system in the national energy policy. The bottom fell out of the price of oil and suddenly it became not so important to save energy. My friends, we still are faced with an energy crisis.

All this bill does is to attach a 5-cent deposit fee on beverage containers. The nickel serves as a tracking device. Beverage containers leave the distributors' warehouses with a stamp. Upon purchase, retailers pay a nickel to the distributor, customers pay a nickel to the retailer. When the container is returned, the consumer gets his or her nickel back, and then the retailer gets his nickel back from the distributor. The container, instead of becoming part of the solid waste stream and eventually ending up in a landfill or incinerator, ends up back with the distributor, to be used again or recycled.

Ten States now have beverage container deposits laws. Vermont's law dates back to 1972. When we were debating the law, we heard all sorts of terrible things that would come to be if we attached a nickel deposit on containers.

There were concerns raised that Vermont retailers would lose sales to neighboring New Hampshire and Massachusetts. The "mom and pop" store owners expressed doubts about their ability to sort and store returnables. And claims were made that consumers would be harmed by higher prices.

None of these dire predictions have come true. Beer and soda sales in Vermont remain strong. Complaints from storeowners are a thing of the past. In fact, the 3-cent-per-container handling fee has provided an incentive for entrepreneurs to open bottle redemption centers, relieving a great deal of the small store owners' burden.

The 10 States that have adopted bottle bills have never looked back, with approval rates as high as 97 percent in my home State. The sky did not fall on the small store owners. But roadside litter dropped dramatically, solid waste tonnage fell, and citizens gained a stronger environmental ethic.

The time has arrived for a national bottle bill. The only growing glitch with the system is that different States use different administrative methods to accomplish the same end. Bottlers are having to use different labeling systems and sometimes find that renegade containers have entered the system.

A national system would encourage a strong supply of uniform containers for reuse. Containers destined to be recycled would serve to stimulate the recycling market. Those traveling across State lines would be assured of a market for their empty containers.

This bill requires minimal Government expense. On the contrary, enactment of this legislation would lessen the burden on municipal waste collection efforts and help to extend the life of municipal landfills. These are revenue gains for communities.

Mr. President, I commend Senator HATFIELD for the work he has done on this initiative. I encourage other Members to support this bill and to help to see to its passage. A vote for the bottle bill is a vote for clean streets, energy conservation, and a better environment.

Mr. President, I ask unanimous consent that a letter to Senator HATFIELD from the American Hiking Society be printed in the RECORD.

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

AMERICAN HIKING SOCIETY,
Washington, DC, May 9, 1989.

Hon. MARK O. HATFIELD,
U.S. Senate, Washington, DC.

DEAR SENATOR HATFIELD: The American Hiking Society is pleased to hear that you are introducing legislation to encourage recycling of beverage containers. Similar regional legislation has been very successful in decreasing litter and solid waste problems in many areas of the country. We strongly support your decision to introduce the National Beverage Container Reuse and Recycling bill.

The American Hiking Society is a national organization dedicated to promoting trail development and preservation. Through our advocacy work with local trail groups all over the country we are very much aware of the litter problems, especially beverage containers, along trails and transportation corridors. We have supported efforts to encourage recycling in the past and we offer our support and the support of our member groups in helping to pass this legislation.

Thank you again for providing the leadership in the Senate to introduce this important legislation. If the American Hiking Society can be of any assistance, please feel free to contact us.

Sincerely,

THOMAS R. HARVEY,
Executive Assistant.

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. CRANSTON, Mr. MCCAIN, Mr. MITCHELL, Mr. CHAFEE, Mr. LEAHY, Mr. STEVENS, Mr. INOUYE, Mr. COHEN, Mr. GORE, Mr. PACKWOOD, Mr. RIEGLE, Mr. GRAHAM, Mr. PELL, Mr. DODD, Mr. ADAMS, Ms. MIKULSKI, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. WIRTH, Mr. BINGAMAN, Mr. CONRAD, Mr. BURDICK, Mr. LEVIN, Mr. LIEBERMAN, Mr. MOYNIHAN, Mr. KERRY, Mr. SARBANES, Mr. BOSCHWITZ, and Mr. HEINZ):

S. 933. A bill to establish a clear and comprehensive prohibition of discrimination on the basis of disability; to the Committee on Labor and Human Resources.

AMERICANS WITH DISABILITIES ACT

Mr. HARKIN. Mr. President, I rise today to introduce, along with 32 of my colleagues, the Americans With Disabilities Act of 1989—the ADA.

The ADA is, without exaggeration, the most critical legislation affecting persons with disabilities ever considered by the Congress. As Justin Dart, the former Commissioner of the Rehabilitation Services Administration under the Reagan administration has stated:

> [The ADA] is a landmark statement of human rights, which will, at long last, keep the promise of "liberty and justice for all" to the nation's last large oppressed minority. * * * All of us who are associated with the Americans with Disabilities Act have a profound responsibility to millions in future generations. I pray every day that I, and that each one of us, can reach into the depths of our souls, and somehow find the courage to act with such responsibility for the sacred values of democracy and of human life that our grandchildren, and their children after them, will be proud to speak our names.

Last year, the Americans With Disabilities Act of 1988 (S. 2345) had 27 sponsors, 17 Democrats and 10 Republicans. It is most gratifying that the ADA of 1989 is also starting down the road to enactment in a truly bipartisan manner.

Original cosponsors include: Mr. KENNEDY of Massachusetts, Mr. DURENBERGER of Minnesota, Mr. SIMON

of Illinois, Mr. JEFFORDS of Vermont, Mr. CRANSTON of California, Mr. MCCAIN of Arizona, Mr. MITCHELL of Maine, Mr. CHAFEE of Rhode Island, Mr. LEAHY of Vermont, Mr. STEVENS of Alaska, Mr. INOUYE of Hawaii, Mr. COHEN of Maine, Mr. GORE of Tennessee, Mr. PACKWOOD of Oregon, Mr. RIEGLE of Michigan, Mr. GRAHAM of Florida, Mr. PELL of Rhode Island, Mr. DODD of Connecticut, Mr. ADAMS of Washington, Ms. MIKULSKI of Maryland, Mr. METZENBAUM of Ohio, Mr. MATSUNAGA of Hawaii, Mr. WIRTH of Colorado, Mr. BINGAMAN of New Mexico, Mr. CONRAD of North Dakota, Mr. BURDICK of North Dakota, Mr. LEVIN of Michigan, Mr. LIEBERMAN of Connecticut, Mr. MOYNIHAN of New York, Mr. KERRY of Massachusetts, and Mr. SARBANES of Maryland.

The ADA has been endorsed by more than 85 national organizations representing people with a wide variety of disabilities, religious organizations, and by the Leadership Conference on Civil Rights, an umbrella organization representing 185 organizations active in the area of civil rights.

The ADA extends civil rights protections for people with disabilities to cover employment in the private sector, public accommodations, services provided by State and local governments, transportation, and telecommunications.

The ADA sends a clear and unequivocal message to people with disabilities that they are entitled to be treated with dignity and respect and to be judged as individuals on the basis of their abilities and not on the basis of presumptions, generalizations, misperceptions, ignorance, irrational fears, patronizing attitudes, or pernicious mythologies.

The ADA also sends a clear message to employers, places of public accommodations, State and local governments, public transit authorities, telephone companies, and others that the full force of the Federal law will come down on anyone who continues to subject persons with disabilities to discrimination by segregating them, by excluding them, or by denying them equally effective and meaningful opportunity to benefit from all aspects of life in America. No longer will our Nation tolerate the continued building of architectural, transportation, and communication barriers that prevent or restrict individuals with disabilities from living independent and productive lives in the mainstream of American society.

The ADA, plain and simple, is a broad and remedial bill of rights for individuals with disabilities. It is their emancipation proclamation.

Why is this bill needed?

The National Council on Disability, an independent Federal agency whose current membership consists of 15 persons appointed by President Reagan, has documented in two recent publications, "Toward Independence" and "On the Threshold of Independence" the distressing reality that discrimination against persons with disabilities in employment, public accommodations, housing, transportation, communications, and public services is still substantial and pervasive in our Nation.

The National Council explained:

> A major obstacle to achieving the societal goals of equal opportunity and full participation of individuals with disabilities is the problem of discrimination. Discrimination consists of the unnecessary and unfair deprivation of opportunity because of some characteristic of a person. It is the antithesis of equal opportunity. The severity and pervasiveness of discrimination against people with disabilities is well-documented.

One of the National Council's chief recommendations was the enactment of an omnibus civil rights statute extending protections under our Nation's civil rights laws to prohibit discrimination in areas such as employment in the private sector, public accommodations, public services, transportation, and communications. S. 2345, the Americans with Disabilities Act of 1988, was the product of their work.

The U.S. Commission on Civil Rights, another independent agency established by Congress, recently concluded in a publication entitled "Accommodating the Spectrum of Individual Abilities" (1983) that:

> Despite some improvements . . . [discrimination] persists in such critical areas as education, employment, institutionalization, medical treatment, involuntary sterilization, architectural barriers, and transportation." The Commission further observed that: "Discriminatory treatment of handicapped persons can occur in almost every aspect of their lives.

In 1986, Louis Harris and Associates conducted a nationwide poll of Americans with disabilities "The ICD Survey of Disabled Americans: Bringing Disabled Americans Into the Mainstream." Mr. President, I would like to share with you some of Mr. Harris' major findings.

Disabled Americans are much poorer than are nondisabled Americans, with a particularly disturbing rate of poverty among elderly persons with disabilities.

Being disabled means having less social life than nondisabled people, and, for a majority of disabled persons, not being able to get around and socialize.

Disabled Americans participate much less often in a host of social activities that other Americans regularly enjoy, including going to movies, plays, sports events, and restaurants.

Having a disability also has a negative impact on vital daily activities, like shopping for food. A much higher proportion of disabled persons than nondisabled persons never shop in a grocery store.

Disabled Americans are also less involved in community life than are nondisabled Americans.

A 57-percent majority of disabled Americans feel that their disability has prevented them from reaching their full abilities as a person.

Not working is perhaps the truest definition of what it means to be disabled: two-thirds of all disabled Americans between the age of 16 and 64 are not working at all; but, a large majority of those not working say that they want to work. Sixty-six percent of working-age disabled persons, who are not working, say that they would like to have a job. What this means is that about 8.2 million people with disabilities want to work but can't find a job.

The majority of those not working, and out of the labor force, must depend on insurance payments or government benefits for support.

Eighty-two percent of people with disabilities would give up their government benefits in favor of a full-time job.

Individuals with disabilities who say that their disability constrains their activities and social life identify several important barriers which contribute to their problems, including lack of access to public transportation and lack of access to public buildings and bathrooms.

In 1987 Louis Harris and Associates conducted a followup survey "ICD II Employing Disabled Americans." Among the most important findings of this survey were the following:

By almost any definition, Americans with disabilities are uniquely underprivileged and disadvantaged. They are much poorer, much less well educated and, have much less social life, have fewer amenities and have a lower level of life satisfaction than other Americans.

Large majorities of top managers, 72 percent—equal opportunity officers, 76 percent—and department heads/line managers, 80 percent—feel that disabled people often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled people.

In 1987, President Reagan established a commission to study and make recommendations on the AIDS epidemic. One year later, the Commission issued its final report, with recommendations "Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic."

One of the major findings of the Commission is that discrimination against individuals with HIV seropositivity and all stages of HIV infection, including AIDS, is widespread and has serious repercussions for both the individual who experiences it and for this Nation's efforts to control the epidemic. As the report concludes:

as long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination * * * will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone.

One of the major recommendations of the report is the enactment of:

comprehensive Federal anti-discrimination legislation, which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations, and participation in government programs, should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the antidiscrimination protections of this legislation.

In sum, the unfortunate truth is that individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the ability of such individuals to participate in and contribute to society.

The other unfortunate truth is that Federal law does not reach many of these discriminatory acts. In 1964, the Congress, in passing the historic Civil Rights Act of 1964, extended protections to minorities to prohibit discrimination by recipients of Federal aid, to minorities and women to prohibit discrimination by employers, and to minorities to prohibit discrimination by places of public accommodations.

And yet, 25 years after the passage of the Civil Rights Act of 1964, Federal law still does not provide protections for persons with disabilities who are denied a job in the private sector; denied the right to go to a restaurant, hotel, theater, shopping center, doctor's office or other place of public accommodation; and denied access to voting places for State and local elections and other rights and opportunities made available by State and local governments. Further, deaf and hard of hearing people and people with communication disorders are still being denied effective opportunity to use telephones.

Currently, Federal law only protects individuals with disabilities from discrimination by Federal agencies in employment—section 501 and section 504 of the Rehabilitation Act of 1973—by recipients of Federal financial assistance in employment and in the provision of programs and activities—section 504—and by Federal agencies in the conduct of their business—section 504. Section 503 requires Federal contractors to take affirmative actions to hire people with disabilities.

In addition to the lack of protection against discrimination in the areas of employment in the private sector, public accommodations, all services provided by State and local governments, and telecommunications, there is also a need to clarify the applicability of section 504 of the Rehabilitation Act of 1973 to public transportation because the Reagan administration and some Federal courts have totally misconstrued the meaning of section 504.

One of the precepts of section 504 is that segregation of people with disabilities will not be tolerated in much the same way that title VI of the Civil Rights Act of 1964 makes segregation of racial and ethnic minorities illegal. Section 504 is intended to provide people with disabilities the same right to ride the same buses that nondisabled people ride.

In other words, mainstreaming of people with disabilities is one of the essential principles of section 504. Thus, the majority opinion of the three judge panel of the Third Circuit Court of Appeals in Adapt versus Burnley was correct when it said that section 504 was designed to emancipate people with disabilities and that mainstreaming is required; thereby, rejecting a contrary conclusion by the district court judge. The majority correctly concluded that public transit authorities are compelled under section 504 to make reasonable accommodations to their program; that is, purchase new wheelchair-accessible buses to fulfill the statute's goal of integration.

Thus, there is a need to clarify section 504 in the public transportation context to ensure once and for all that no Federal agency or judge will ever again misconstrue the congressional mandate to integrate people with disabilities into the mainstream.

Thus, the purposes of the ADA include providing clear, strong, consistent, enforceable standards addressing all forms of discrimination against individuals on the basis of disability and ensuring that the Federal Government plays a central role in enforcing these standards on behalf of individuals with disabilities. This means that discrimination on the basis of disability in any form will not be tolerated and people with disabilities will be able to hold their Federal Government accountable for ensuring the enforcement of their rights.

The ADA is designed to prohibit discrimination against individuals on the basis of disability. This means that covered entities cannot discriminate against a person with a physical or mental impairment that substantially limits a major life activity, a person with a record of such an impairment, or a person being regarded as having such an impairment. See the final regulations implementing the Fair Housing Amendments Act of 1988 (54 Fed. Reg. 3232 et seq., January 23, 1989) for a definition of the terms "physical or mental impairment" and "major life activities," "has a record of such impairment," and "is regarded as having an impairment." See also appendix A to the regulations originally published by the Department of Health, Education, and Welfare on May 4, 1977 (42 Fed. Reg. 22676) for a more detailed explanation of these terms.

Discrimination made illegal under the ADA includes harms—such as segregation, exclusion, or denial of benefits, services, or other opportunities that are as effective and meaningful as those provided to others—resulting from actions or inactions that discriminate by effect as well as by intent or design.

Discrimination includes harms affecting individuals with disabilities or persons associated with such individuals that are based on false presumptions, generalizations, misperceptions, patronizing attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination under the ADA includes the effect a person's handicap may have on others.

Discrimination under the ADA also includes harms resulting from the construction of transportation, architectural, and communication barriers and the adoption or application of standards and criteria and practices and procedures. Thus, actions based on thoughtlessness or indifference—of benign neglect—will not be tolerated.

Mr. President, some of my colleagues have been asking me "What will this bill cost?" They are hearing from businesses and other covered entities that the costs of providing reasonable accommodations and designing and constructing accessible facilities are substantial.

Mr. President, let me address these concerns one at a time. First, costs do not provide the basis for an exemption from the basic principles in a civil rights statute, like the ADA. The mandate to end discrimination must be clear and unequivocal.

Second, the question of costs associated with ensuring civil rights for people with disabilities has been exaggerated. For example, in the employment context a survey of employers obligated to provide "reasonable accommodations" found that compliance was "no big deal." "A Study of Accommodations Provided to Handicapped Employees by Federal Contractors" (Berkeley Planning Associates, June 1982). In 1987, Honeywell, in its own report on employees with disabilities indicated that: "the majority of accommodations provided to employees with disabilities cost less than $50."

The President's Committee on Employment of People With Disabilities operates JAN, the [Jobs Accommodation Network]. JAN helps employers design accommodations for their employees with disabilities. Mr. President, let me share with you typical examples of low-cost accommodations that enable employees with disabilities to perform their jobs.

An individual working in the food service industry, who only had the use of one hand, was able to perform all of the tasks expected of her except open cans. The company purchased a specially designed can opener for people who only have the use of one hand. The cost of the accommodation was $35.

A receptionist who was legally blind was provided a light probe which allowed her to determine which lines on a telephone were ringing, on hold, or in use. The cost of the accommodation was $45.

A salesperson with cerebral palsy was provided a headset for a phone that allowed him to write while talking. The cost of the accomodation was $49.95.

A groundkeeper who had recovered from a stroke had limited use of one arm, yet to maintain his position, needed to be able to rake grass. The use of a detachable extension arm on the rake allowed him to grasp the handle on the extension with the hand with limited use and control the rake with his other hand. The cost of the accommodation was $19.80.

A medical technician who was deaf needed a timer that had an indicator light in order to perform the lab tests required by her job. The cost of the accommodation was $26.95.

A potato inspector was required to core out bad spots in potatoes with a potato corer. Carpal tunnel syndrome drastically reduced the inspector's ability to perform this task. An adapted potato corer mounted on a table allowed the inspector to remain in his position. The cost of the accommodation was $33.

A housekeeper in a motel who had bending restrictions needed to inspect under the beds when she cleaned rooms. A mirror on an extending wand and a reacher allowed her to both inspect and reach any items under the beds. The cost of the accommodation was $11.

With respect to proving access to buildings, when new buildings are designed with accessibility in mind, the costs are often less than one fourth of 1 percent. One survey of the costs of making new buildings accessible found that facilities spent on an annual basis—for cleaning and polishing the floors—13 times more than the amount expended for making the buildings accessible.

That is not to say there won't be costs or that it is inappropriate to recognize costs in devising particular standards for inclusion in the bill. For example, cost was a factor in the decision that the bill should not mandate the retrofitting of existing buses; only new buses must be accessible. With respect to employment, an employer is not responsible for providing a reasonable accommodation if it can demonstrate undue hardship on the business. With respect to existing facilities, the bill does not require that existing facilities used by places of public accommodations be made fully accessible. A covered entity need only make structural changes that are readily achievable; a concept which does not require substantial expenditures. For example, and office building might be required to construct an $80 ramp but would not be required to add an elevator.

Third, a focus or emphasis on the costs of compliance by covered entities totally misses the bigger picture. The economic benefits to society in terms of reductions in the deficit from getting people off welfare, out of institutions, and on to the tax rolls cannot be ignored. This bill must be part of our overall strategy to get our Nation's economic house in order.

The National Council in Disability has analyzed the Federal spending on people with disabilities. In its reports to Congress referred to earlier in my remarks, the Council found that the Nation's Federal expenditures on disability benefits and programs exceeds $60 billion annually, with $57 billion spent on programs premised on the dependency of the people who receive benefits—the remainder is expended for education, training, and rehabilitation. Eligibility for these welfare and benefit programs is based upon inability to engage in substantial gainful activity or significant low income—for example, SSI, SSDI, Medicaid, and Medicare. The $57 billion figure does not even include the costs by State, local, and private companies, which may be equal to the Federal expenditure.

I believe that the ADA will substantially reduce the costs of dependency of individuals with disabilities. As I mentioned previously in my statement, Lou Harris recently found that "not working" perhaps the truest definition of what it means to be disabled in America. Ending discrimination will have the direct and immediate effect of reducing the Federal Government's expenditure of $57 billion per year on disability benefits and programs that are premised on dependency of the individual with a disability. It will also have the immediate effect of increasing the likelihood that many of 12 million Americans with disabilities of working age who are unemployed but want to work will become consumers and taxpayers.

Every cost-benefits analysis of the section 504 regulations has reached the same conclusion. For example, the Department of Labor concluded that its rule would have a substantial beneficial effect in the form of reduced need for veterans benefits, rehabilitation, disability, medical and food stamp payments (45 Fed. Reg. 66,706, 66,718 (1980)).

The Department of Labor also acknowledged "intangible benefits such as greater independence for handicapped individuals, a more productive workforce and a larger pool of skilled taxpaying workers." (Id.) Furthermore, the Department added, "When individuals move from being recipients of various types of welfare payments to skilled taxpaying workers, there are obviously many benefits not only for the individuals but for the whole society." (p. 66,721)

This is the time to take steps to facilitate the flow of people with disabilities into paid employment. As Jay Rochlin, the Executive Director of the President's Committee on Employment of People With Disabilities has said:

> The demographics have given us an unprecedented 20 year window of opportunity. Employers will be desperate to find qualified employees. Of necessity, they will have to look beyond their traditional sources of personnel and work to attract minorities, women, and others for a "new" workforce. Our challenge is to insure that the largest minority, people with disabilities, is included.

So, Mr. President, on behalf of my brother who is deaf, my nephew who is quadriplegic, and the 43 million Americans with disabilities, today we introduce this historic legislation—the Americans With Disabilities Act. Let's celebrate the 25th anniversary of the enactment of the Civil Rights Act of 1964 by passing the ADA this year and finally recognize the civil rights of Americans with disabilities.

Set out below is a brief summary of the bill.

Section 1 is the short title. Section 2 sets out congressional findings and the purposes of the bill. Section 3 defines several key terms such as: "disability," "auxiliary aids and services," and "reasonable accommodations." These definitions are comparable to the definitions used for purposes of section 503 of the Rehabilitation Act of 1973—which requires government contractors to take affirmative action to hire individuals with disabilities and section 504 of the Rehabilitation Act of 1973—which prohibits discrimination against persons with disabilities by recipients of Federal financial assistance.

Title I sets out the general forms of discrimination prohibited by the act. These general prohibitions are comparable to the prohibitions included in section 504.

Title II specifies that an employer, employment agency, labor organiza-

tion, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any term, condition, or privilege of employment. The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964. The ADA also incorporates by reference section 1981 of the Civil Rights Act of 1981 for acts of intentional discrimination.

Title III specifies that no qualified individual with a disability may be discriminated against by a State or agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision. Title III also includes specific actions applicable to public transportation provided by public transit authorities considered discriminatory. Finally, title III incorporates by reference the enforcement provisions in section 505 of the Rehabilitation Act of 1973.

Title IV specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation operated by a private entity on the basis of disability. Title IV also includes specific prohibitions on discrimination in public transportation services provided by private entities. Finally, title IV incorporates the applicable enforcement provisions in title VIII of the Civil Rights Act of 1968.

Title V requires all common carriers to provide telecommunication relay services to permit individuals who use nonvoice terminal devices such as TDD's to communicate by telephone with individuals who are able to use voice telephone services. Common carriers that provide intrastate telephone services to their customers must make available provide intrastate relay services. Similarly, common carriers that provide interstate telephone services to their customers must make available interstate relay services. Common carriers that provide both intrastate and interstate telephone services to their customers must make available both intrastate and interstate relay services.

All relay services must meet minimum standards and guidelines established by the Federal Communications Commission and must provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to users of voice telephone services.

Common carriers are exempted from the above requirements in those States where the State or one of its agencies designates an entity or entities to provide relay services and those services are in fact provided in a manner consistent with standards and guidelines issued by the Commission.

Title V incorporates by reference applicable enforcement provisions in title VIII of the Civil Rights Act of 1968 and the Communications Act of 1934.

Title VI includes miscellaneous provisions, including: a construction clause explaining the relationship between the provisions in the ADA and the provisions in other Federal and State laws; a prohibition against retaliation; a clear statement that States are not immune from actions in Federal court for a violation of the ADA; a directive to the Architectural and Transportation Barriers Compliance Board to issue guidelines; and authority to award attorney's fees.

Mr. President, I ask unanimous consent that the text of the bill and letters in support of the legislation be printed in the RECORD.

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

S. 933

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

Sec. 201. Definitions.
Sec. 202. Discrimination.
Sec. 203. Posting notices.
Sec. 204. Regulations.
Sec. 205. Enforcement.

TITLE III—PUBLIC SERVICES

Sec. 301. Definition of qualified individual with a disability.
Sec. 302. Discrimination.
Sec. 303. Actions applicable to public transportation considered discriminatory.
Sec. 304. Regulations.
Sec. 305. Enforcement.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 401. Definitions.
Sec. 402. Prohibition of discrimination by public accommodations.
Sec. 403. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 404. Regulations.
Sec. 405. Enforcement.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

Sec. 501. Definitions.
Sec. 502. Telecommunications relay services.
Sec. 503. Regulations.
Sec. 504. Enforcement.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Construction.
Sec. 602. Prohibition against retaliation.
Sec. 603. State immunity.
Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 605. Attorney's fees.
Sec. 606. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United State billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive National mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" shall include—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" shall include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

(4) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES.—Subject to the standards and procedures established in titles II through V, it shall be discriminatory to subject an individual or class of individuals, directly or through contractual, licensing, or other arrangements, on the basis of disability, to any of the following:

(A) Denying the opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity.

(B) Affording an opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity that is not equal to that afforded others.

(C) Providing a service, program, activity, benefit, job, or other opportunity that is less effective than that provided to others.

(D) Providing a service, program, activity, benefit, job, or other opportunity that is different or separate, unless such action is necessary to provide the individual or class of individuals with a service, program, activity, benefit, job, or other opportunity that is as effective as that provided to others.

(E) Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or individual that discriminates.

(F) Denying the opportunity to participate as a member of boards or commissions.

(G) Otherwise limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

(2) EQUAL OPPORTUNITY.—For purposes of this Act, aids, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the individual's needs.

(3) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(4) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(A) that have the effect of discrimination on the basis of disability;

(B) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the services, programs, activities, benefits, jobs, or other opportunities provided with respect to an individual with a disability; or

(C) that perpetuate the discrimination of others who are subject to common administrative control or are agencies of the same State.

(5) RELATIONSHIPS OR ASSOCIATIONS.—It shall be discriminatory to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other opportunities to an individual or entity because of the relationship to, or association of, that individual or entity with another individual with a disability.

(b) DEFENSES.—

(1) IN GENERAL.—It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(2) QUALIFICATION STANDARDS.—The term "qualification standards" may include—

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE II—EMPLOYMENT

SEC. 201. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) EMPLOYEE.—

(A) IN GENERAL.—The term "employee" means an individual employed by an employer.

(B) EXCEPTION.—The term "employee" shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) LIMITATION ON EXCEPTION.—The exception contained in subparagraph (B) shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(3) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(4) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

SEC. 202. DISCRIMINATION.

(a) GENERAL RULE.—No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) the failure by an employer, employment agency, labor organization, or joint labor-management committee to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;

(2) the denial of employment opportunities by a covered employer, employment agency, labor organization, or joint labor-management committee to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation; and

(3) the imposition or application by a covered employer, employment agency, labor organization or joint labor-management committee of qualification standards, tests, selection criteria or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability, or any class of qualified individuals with disabilities, unless such standards, tests or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

SEC. 203. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 204. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 205. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-8, and 2000e-9), and the remedies and procedures available under section 1981 of the Revised Statutes (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning employment.

TITLE III—PUBLIC SERVICES

SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABILITY.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, commission or other instrumentality of a State and political subdivision.

SEC. 302. DISCRIMINATION.

No qualified individual with a disability shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a State, or agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision.

SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—If an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(f) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of an individual or entity later than 1 year after the date of enactment of this Act, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS.—With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SEC. 304. REGULATIONS.

(a) ATTORNEY GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination

regulations under part 41 of title 28, Code of Federal Regulations (as in existence on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) SECRETARY OF TRANSPORTATION.—

(1) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 303.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 305. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 304, concerning public services.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 401. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State or between any foreign country or any territory or possession and any State or the District of Columbia or between points in the same State but through another State or the District of Columbia or foreign country.

(2) PUBLIC ACCOMMODATION.—

(A) IN GENERAL.—The term "public accommodation" means privately operated establishments—

(i)(I) that are used by the general public as customers, clients, or visitors; or

(II) that are potential places of employment; and

(ii) whose operations affect commerce.

(B) INCLUSIONS.—Public accommodations referred to in clause (i)(I) include auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels, and motels (other than inns, hotels, and motels exempt under section 201(b)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(b)(1)), terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

(3) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) GENERAL RULE.—No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

(b) CONSTRUCTION.—As used in subsection (a), the term "discriminated against" includes—

(1) the imposition or application of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations;

(2) a failure to make reasonable modifications in rules, policies, practices, procedures, protocols, or services when such modifications may be necessary to afford such privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages, and accommodations;

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in undue burden;

(4)(A) a failure to remove architectural and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(B) where an entity can demonstrate that removal of a barrier under subparagraph (A) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of this Act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;

(6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403—

(A) a failure to provide a level of transportation services to individuals with disabilities, including individuals who use wheelchairs, equivalent to that provided for the general public; and

(B) purchasing or leasing a new bus, or vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 402(b)(2);

(B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and

(C) remove barriers consistent with the requirements of section 402(b)(4); and

(3) the purchase or lease of a new vehicle (other than an automobile) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 404. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 403.

(b) OTHER PROVISIONS.—Not later than 240 days after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 402.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 405. ENFORCEMENT.

Sections 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) of section 813 shall not apply.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

SEC. 501. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means services that enable simultaneous communication to take place between individuals who use TDDs or other nonvoice terminal devices and individuals who do not use such devices.

(3) TDD.—The term "TDD" means a Telecommunication Device for the Deaf, a machine that employs graphic communications in the transmission of coded signals through the nationwide telecommunications system.

SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of this Act for any common carrier, as defined in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)), that offers telephone services to the general public, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services, except that it shall not be considered discrimination for such a common carrier to fail to provide such services in any State to which subsection (b) applies if such services are provided under subsection (b).

(b) STATE DISCRIMINATION.—It shall be considered discrimination by a State, that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations issued by the Commission, for purposes of this Act, for such State, through the designated entity, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) CONSTRUCTION.—Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

SEC. 503. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations to carry out this title, and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

SEC. 504. ENFORCEMENT.

(a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) and subsection (d) of section 813 shall not apply.

(b) ADMINISTRATIVE ENFORCEMENT.—

(1) IN GENERAL.—The Commission shall enforce the provisions of this title.

(2) APPLICABLE ENFORCEMENT PROVISIONS.—The remedies, procedures, and rights set forth in sections 206, 207, 208, and 209 of the Communications Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and in title IV of the Communications Act of 1934 (47 U.S.C. 401 et seq.) shall apply with respect to the enforcement of this title, except that nothing in this subsection shall be construed to limit or restrict in any manner the remedies, procedures, or rights set forth in subsection (a).

(3) CEASE AND DESIST ORDERS.—Whenever, after full opportunity for hearing, on a complaint or under an order for investigation and hearing made by the Commission on the initiative of the Commission, the Commission shall be of the opinion that any carrier, or any State as described in section 502(b), is or will be in violation of this title or of any regulation issued under this title, the Commission shall—

(A) order that the carrier or State cease and desist from such violation to the extent that the Commission finds that such violation exists or will exist; and

(B) take other actions as it finds appropriate and necessary.

(4) PENALTIES.—

(A) IN GENERAL.—Any carrier or State to which section 502(b) applies that knowingly fails or neglects to comply with this title or of any regulation or order made by the Commission in carrying out this title shall forfeit to the United States the sum of $10,000 for each such offense.

(B) SEPARATE OFFENSES.—Each distinct violation of the provisions of this title shall be a separate offense under subparagraph (A). In case of a continuing violation, each day shall be considered a separate offense.

(C) RECOVERING FORFEITURES.—Such forfeitures shall be payable and recoverable in the same manner as prescribed in section 504 of the Communications Act of 1934 (47 U.S.C. 504).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities than are afforded by this Act.

(c) RELATIONSHIP AMONG TITLES.—The requirements contained in titles I through V shall be construed in a manner that is consistent with the other provisions of this Act, and any apparent conflict between provisions of this Act shall be resolved by reference to the title that specifically covers the type of action in question.

SEC. 602. PROHIBITION AGAINST RETALIATION.

No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 603. STATE IMMUNITY.

A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of sections 304 and 404.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

SEC. 605. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 606. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.

CONSORTIUM FOR
CITIZENS WITH DISABILITIES,
May 8, 1989.

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: The Consortium for Citizens with Disabilities (CCD) and other national organizations that advocate for the rights of America's 43 million citizens with disabilities and chronic disorders, would like to thank you for your leadership on The Americans With Disabilities Act of 1989. This bill seeks to establish a comprehensive national mandate to eliminate discrimination against persons with disabilities.

Discrimination is a daily experience for individuals who have disabilities. This bill will afford civil rights protections to all individuals in this country who have disabilities. It is intended to provide people with disabilities, America's largest minority, the same federal civil rights protections that are enjoyed by other minorities.

It is time for this country to address the reality that Americans with disabilities are relegated to second-class citizenship. This long overdue legislation simply states that people with disabilities are entitled to the same rights that all other Americans take for granted—the right to communicate, the right to work, the right to live in the community, and the right to socialize.

As President Bush has stated, "Disabled people do not have the same civil rights protections as women and minorities . . . I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out anymore." The Americans With Disabilities Act

is a significant step toward achieving this goal.

Again, we would like to thank you for your leadership. We look forward to working with you to enact this law. Thank you.

Sincerely,

ACLD, An Association for Children and Adults with Learning Disabilities.
AIDS Action Council.
Alexander Graham Bell Association for the Deaf.
American Academy of Child and Adolescent Psychiatry.
American Academy of Otolaryngology Head and Neck Surgery.
American Association for Counseling and Development.
American Association of the Deaf-Blind.
American Association on Mental Retardation.
American Association of University Affiliated Programs.
American Civil Liberties Union.
American Council of the Blind.
American Deafness and Rehabilitation Association.
American Diabetes Association.
American Foundation for the Blind.
American Psychological Association.
American Speech-Language-Hearing Association.
Association for Education and Rehabilitation of the Blind and Visually Impaired.
Association for the Education of Rehabilitation Facility Personnel.
Association for Retarded Citizens of the United States,
Autism Society of America.
Child Welfare League of America.
Conference on Educational Administrators Serving the Deaf.
Convention of American Instructors of the Deaf.
Council for Exceptional Children.
Deafness Research Foundation.
Disabled But Able to Vote.
Disability Rights Education and Defense Fund.
Epilepsy Foundation of America.
Episcopal Awareness Center on Handicapped.
Gallaudet University Alumni Association.
Gazette International Networking Institute.
International Association of Parents of the Deaf.
International Polio Network.
International Ventilator Users Network.
Lamda Legal Defense and Education Fund.
Leadership Conference on Civil Rights.
Mental Health Law Project.
National Alliance for the Mentally Ill.
National Association for Music Therapy.
National Association of the Deaf.
National Association of Developmental Disabilities Councils.
National Association of Private Residential Resources.
National Association of Protection and Advocacy Systems.
National Association of Rehabilitation Facilities.
National Association of Rehabilitation Professionals in the Private Sector.
National Association of State Mental Retardation Program Directors.
National Coalition for Cancer Survivorship.
National Council of Community Mental Health Centers.
National Council on Independent Living.
National Council on Rehabilitation Education.
National Down Syndrome Congress.
National Easter Seal Society.
National Fraternal Society of the Deaf.
National Handicapped Sports and Recreation Association.
National Head Injury Foundation.
National Mental Health Association.
National Multiple Sclerosis Society.
National Organization for Rare Disorders.
National Organization on Disability.
National Recreation and Park Association.
National Rehabilitation Association.
National Spinal Cord Injury Association.
Paralyzed Veterans of America.
People First International.
Self Help for Hard of Hearing People, Inc.
Spina Bifida Association of America.
Telecommunications for the Deaf, Inc.
The Association for Persons with Severe Handicaps.
Tourette Syndrome Association.
United Cerebral Palsy Associations, Inc.
World Institute on Disability.

MAY 8, 1989.

DEAR SENATORS HARKIN AND KENNEDY: We, the undersigned representatives of denominations and faith groups in the United States, are deeply concerned about the discrimination daily faced by individuals with physical or mental disabilities. Such discrimination can be found in every segment of life in this society. Although there have been some improvements in the last few years, largely due to protection afforded by section 504 of the Rehabilitation Act of 1973, such discrimination remains a pervasive problem for over 42 million disabled Americans.

As members of faith groups, it is our responsibility to strengthen and heal one another within the human family. The unity of the family is broken where any are left out or are subject to unequal treatment or discrimination. "If one member suffers, all suffer together; if one member is honored, we all rejoice together" (1 Corinthians 12:26). Those with physical and mental disabilities have for too long been the target of such suffering, prejudice and discrimination effectively denying them the opportunity to compete on an equal basis for all of the rights, privileges and opportunities that are afforded to others as members of this society.

We write today to express our support for strong federal legislation addressing these issues, particularly in the private sector where much of that discrimination now takes place. We urge that you support legislation to protect the rights of persons with disabilities including particular attention to the problem of discrimination in employment, communications, access to public services, and public accommodations. One such piece of legislation introduced in Congress which appears to us to meet our principles is the Americans with Disabilities Act of 1989. This legislation provides protection against discrimination for individuals with disabilities similar to protection provided other minorities in current civil rights law.

We also want to make clear our support for inclusion of those infected by the Human Immunodeficiency Virus and people living with AIDS. We concur with the *Report of the Presidential Commission on the HIV Epidemic*:

"As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone. Discrimination against persons with HIV infection in the workplace setting, or in areas of housing, schools, and public accommodations is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care for or associate with such individuals."

The Americans with Disabilities Act provides that an individual with a disability must be given equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs. We urge you to support this bill, or similar legislation, that protects the rights of the disabled by helping to insure that all members of this society are allowed to participate on an equal basis.

Thank you for your consideration of this important issue.

Sincerely,

Dr. Daniel D. Weiss, General Secretary, American Baptist Churches, USA; Dr. John O. Humbert, General Minister and President, Christian Church (Disciples of Christ); Dr. Donald E. Miller, General Secretary, Church of the Brethren; Dr. Claire Randall, President, Church Women United; The Most Reverend Edmond L. Browning, Presiding Bishop, The Episcopal Church; The Reverend Dr. Herbert W. Chilstrom, Bishop, Evangelical Lutheran Church in America; Edward F. Snyder, Executive Secretary, Friends Committee on National Legislation.

The Reverend Arie R. Brouwer, General Secretary, National Council of Churches; Rabbi Irwin M. Blank, Past President, Synagogue Council of America; Rabbi Alexander Schindler, President, Union of American Hebrew Congregations; Dr. William F. Schultz, President, Unitarian Universalist Association; Dr. Avery D. Post, President, United Church of Christ; Bishop Robert C. Morgan, President, General Board of Church and Society, The United Methodist Church.

Mr. KENNEDY. Mr. President, I am pleased to join in sponsoring the Americans With Disabilities Act; 43 million Americans with disabilities deserve the opportunity to be first-class citizens in our society.

The road to discrimination is paved with good intentions. For years, because of our concern for the less fortunate, we have tolerated a status of second-class citizenship for our disabled fellow citizens.

The Americans With Disabilities Act will end this American apartheid. It will roll back the unthinking and unacceptable practices by which disabled Americans today are segregated, excluded, and fenced off from fair participation in our society by mindless biased attitudes and senseless physical barriers.

The timing of this bill has special significance in the history of civil rights. This year we celebrate the 25th anniversary of the Civil Rights Act of

1964. That legislation helped bring about one of the greatest peaceful transformations in our history for millions of Americans who were victims of racial discrimination, and this legislation can do the same for millions of citizens who are disabled.

The Americans With Disabilities Act applies to both the public sector and the private sector. It prohibits discrimination on the basis of disability in employment, public accommodations, transportation, and communications. Its goal is nothing less than to give every disabled American a fair share of the American dream.

The removal of physical barriers and access to reasonable accommodations are among the most essential elements of this measure.

The lunch counter sit-ins of the early 1960's led to the great public accommodations title of the 1964 act. But if the students demonstrating at those lunch counters had been in wheelchairs, they could not have made it through the door of the establishment. If Rosa Parks had been disabled, she could not have boarded the bus at all.

Accessible transportation is the lynchpin for integration of the disabled. It does little good to open the doors of institutions, to provide rehabilitation and early intervention programs, if the disabled can not even leave their homes and move freely in society. Disabled Americans deserve a better future in their communities than to be relegated to sitting in front of television sets in their homes.

Reliance on paratransit facilities often means no transit at all. Paratransit is called a demand-response system, but to many of the disabled it is a beg-deny system. Hundreds and sometimes thousands of disabled citizens in every city languish on paratransit waiting lists, hoping for rides which are denied, or which are provided under strict limitations—only to see the doctor, or only until 3:00 p.m. on weekdays, or only five trips a month. The restrictions are endless. Under these conditions, no human being can work, raise a family, or function normally in society.

In every era, society is confronted with the challenge of dealing with those who are disabled. All too often, out of fear and misunderstanding, the reaction is to shun those who are afflicted. Half a century ago, our response to the polio epidemic was to close swimming pools and instruct children to avoid the water fountain at their school. Many Americans once felt compelled to whisper when mentioning cancer in their family—fearing that it might be transmitted through casual contact.

Even today, young adults suffering from an acute phase of multiple sclerosis are treated as drunks, and older Americans with unrecognized Alzheimer's disease are rebuked for behavior beyond their control. Most recently, we have seen the impact of fear and misinformation in the treatment of people with AIDS. I have heard from individuals and families whose homes have been torched and whose lives have been threatened.

In every case, science, public health, and painful experience have shown that the appropriate reaction is not to fear or to isolate, but to reach out with assistance, understanding, and support.

In no instance is this response more essential than in the epidemic of AIDS. Beyond the fundamental issues of fairness and justice for individuals, protection against discrimination for people with HIV disease are essential to protect the public health. We cannot expect to bring this devastating scourge under control unless we make it possible for individuals who believe that they may be infected to come forward for counseling and testing.

If the price of seeking professional medical guidance is the potential loss of employment, public accommodations, and vital services—we cannot possibly expect those at greatest risk to participate in prevention and treatment programs.

The legislation that we are introducing today is designed not only to protect individuals with disabilities—but to protect the general public health and the integrity of our society.

Some will argue that it costs too much to implement this bill. But I reply, it costs too much to go on without it. We are spending billions of dollars today in the Federal budget on programs that make disabled citizens dependent, not independent.

We need a new way of thinking. The short-term cost of this legislation is far less than the long-term gain. Disabled does not mean unable.

Vast resources can be saved by making disabled Americans productive Americans. They deserve to participate in the promise of America too. May the enactment of this legislation be the first of many steps in a new effort by Congress and the administration to redeem that promise.

Mr. DURENBERGER. Mr. President, in January 1988 the National Council on the Handicapped released the report "On the Threshold of Independence" describing the progress that has been made on implementing the recommendations contained in the 1986 report "Toward Independence." While this report acknowledged that Federal legislation already exists concerning discrimination against persons with disabilities, it also pointed out that the existing law is limited to programs or activities receiving Federal assistance, executive agencies, or the U.S. Postal Service. The National Council's report found that a major element to achieving independence and quality of life for people with disabilities lay in the elimination of discrimination and the protection of the rights of the disabled.

Senator Hubert Humphrey once stated in remarks before this body that—

> It was once said that the moral test of government is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly, and those who are in the shadows of life, the sick, the needy, and the handicapped.

I find it disheartening that in a society founded on the notion of equal opportunity, that we continue to focus on the disabilities of some people and fail to recognize their abilities. That is why I will be joining with my distinguished colleagues from Iowa in introducing the Americans with Disabilities Act. The Americans with Disabilities Act is comprehensive legislation developed with the support of the National Council on Disabilities and many others to protect the rights of the disabled and provide a clear and comprehensive mandate to end discrimination in the areas of employment, public accommodations, transportation, and communications.

Thirty-seven million Americans are disabled and two-thirds of them are not working. In most cases this is not because they do not want to work or are unable to perform the skills necessary for maintaining employment, but rather they are faced with significant barriers that prevent them from working, including lack of transportation or the discriminatory hiring practices of employers.

I would like to tell you about a young woman who is a constituent of mine. R.K. is a very capable young woman who has a bachelor of science degree in psychology and in home economics as well as a masters degree in food science and nutrition. She ranked in the top 10 percent in the Nation when she passed her registered nutritionist examination. However, she also has cerebral palsy. She has had several interviews. I would like to share with you just two that describe the discrimination persons with disabilities face in the work force. One interview took place at a metropolitan hospital where she was told that she was very qualified for the job. However, the hiring authority told her fellow employees would not be comfortable working with a person with a disability. She did not get the job. Another interview was with a State agency in Minnesota. During the interview, she was asked if she drove. An irrelevant question to the job, not asked of other applicants. Then she was asked to demonstrate her handwriting skills. Again, a request not asked of other applicants. She did not get the job.

Another resident of Minnesota, K.L., has cerebral palsy and Kron's disease. His desire was to become a radio disc jockey. His school counselor suggested he talk to the director of the program. When he called, he was told he would have to audition. When he showed up to the audition, K.L. was cut-off midway through because he didn't have what it took to be a disc jockey. The program director said that he had worked with handicapped persons before, that they were difficult to work with and that he didn't care to work with them again.

Mr. President, it is a disgrace that discrimination and bigotry of this kind exists in our society. Not only for those who are denied opportunity to control their own lives and make meaningful choices, but also, for us as a society who does not benefit from the participation of persons with disabilities. America over the next two decades will be in a fight for economic survival. We simply cannot afford the economic cost of discrimination. We cannot afford to waste the abilities and talent persons with disabilities can bring to the labor market. Employment offers individuals the opportunity at a chance, a chance to move from dependency to independence. As I speak with members of the disability community, I hear over and over again the frustrations of people who only run up against dead ends. There is no hope, there is no sense of self-worth. This legislation will give people like R.K. and K.L. that chance at hope a chance to prove their self-worth by ensuring them the opportunity to compete for jobs on a level playing field. This is a matter of justice without question. But it is also a matter of getting America ready to maintain our strength and leadership into the 21st century.

According to the National Council, "transportation is a critical component of a national policy that promotes the self-reliance and self-sufficiency of people with disabilities." This is especially true for rural areas. The Minnesota Governor's Council on Disabilities recently held hearings on the problems persons with disabilities face in the area of transportation. However, four of the people were unable to attend because their accessible transportation did not arrive. Several other persons had to leave early because their only transportation home came before they could testify. As part of this hearing and an ongoing study of the disabled in Minnesota, the council found that a lack of services in rural areas is forcing the disabled to move to the city where they can receive the services they need to get around and function in society.

Accessible transportation is essential if a person is to seek and maintain a job. According to a 1986 Harris poll, 3 out of every 10 disabled persons say that a lack of accessible or affordable transportation is an important reason why they are not working. This legislation would ensure that all new public buses used in a fixed route system be accessible, that paratransit systems be made available for those disabled who cannot use the mainline system, that new facilities be made accessible, and that a public accommodation that provides transportation services that carry in excess of 12 passengers be accessible.

Lack of access to public buildings and to restrooms is the reason 4 out of 10 people with disabilities do not participate in community activities. Nowhere has this been more clear to me than when a former campaign volunteer in my 1982 campaign, who happened to be in a wheelchair, went in the pouring rain to vote back and could not vote because she was unable to get up the stairs to get into the building to vote. That is one of the reasons I worked to enact the Voting Rights and Accessibility for the Elderly and Handicapped Act (Public Law 98-435). But there are other examples of how a person has not been able to eat in a restaurant, see a movie, apply for a job, deposit money in their bank, simply because the building was not accessible. It is hard for those, me included, who don't experience it everyday to realize the barriers people with disabilities face everyday. Things as simple as not being able to get into a public telephone booth, or having to measure the width of restrooms.

Minnesota is one of the most progressive States in terms of both rehabilitation and the rights of the disabled. Minnesota has one of the best building codes in the country. The problem is the lack of enforcement. The ADA will provide this enforcement. Title IV of this act specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

As technology continues to expand and communications play a greater and greater role in everyday life, the deaf community is increasingly left out of this process, simply because they are unable to use the telephone. The telephone has become a necessity in every one of our lives. To deny the deaf an opportunity to communicate when the technology is available to do so is simply unacceptable in today's society. This bill will open the door for communications for the deaf by establishing intrastate and interstate communication networks that allow the deaf to communicate with anyone through a relay system.

I want to compliment Senator HARKIN for the work he has put into this bill over the past year. My colleague from Iowa has worked hard and long to include changes to this year's version of the ADA that I believe significantly improve this bill over last year's version. There are, however, still a few areas of concern that I believe will need to be addressed if this legislation is to pass in this Congress. The first of which is the ability of rural areas to meet the demands of this legislation. It is still somewhat unclear the effect this legislation will have on rural services. Nothing would be worse than if this bill caused an already ailing rural community to discontinue certain services simply because it was unable to meet the demands under this bill. As debate continues on this legislation, I will continue to monitor these effects to ensure that rural community services will not be forced to shut down under the requirements of this bill.

Second, over the past 20 years, the number of Federal regulations imposed on State and local governments has increased dramatically. This tremendous burden on State and local governments drains resources that might be used more effectively at the local level. It is important that the Federal Government not impose mandates on State and local governments without accepting fiscal responsibility for the rules and regulations it imposes. Again, I will follow closely to see that we are not imposing undue burdens without assuming the Federal cost of those burdens.

Third, I would hope that in developing this legislation that we are sensitive to avoid concerns that this act could broaden the interpretation of civil rights to unintended groups, and to allow the U.S. Government to impose undue restrictions on the rights of religious and other private institutions. While I am a strong advocate of civil rights, I am also dedicated to protecting the rights of private institutions and by no means want to see legislation enacted that would restrict religious liberty of private institutions or forces them to compromise their values or morals.

Although these matters will need to be addressed before final passage, I believe that the fundamental goal of this bill—to guarantee equal opportunity and rights to persons with disabilities that are afforded to others in our society and are currently denied to the disabled simply because they are handicapped—must remain intact. I have discussed these concerns with my colleague from Iowa, and I am pleased that he is open to addressing them before final passage of this bill. I look forward to working with Senator HARKIN, the administration in building a landmark bill which we can all proudly support.

Mr. McCAIN. Mr. President, I am pleased to announce my support for the Americans With Disabilities Act.

This measure would seek to provide a comprehensive mandate to end discrimination against individuals with disabilities. For too long, disabled Americans have not been afforded the same civil rights as nondisabled persons. We must now act to remedy this disparity.

In 1974, with the signing into law of the Rehabilitation Act, this Nation proudly declared that individuals with disabilities ought to be granted the same right to participate in the fortunes of our society as those without disability. Last year the Congress restated this commitment with the adoption of the Civil Rights Restoration Act.

Despite these efforts, people who are differently abled still face legal discrimination. Although most sectors of society have made major strides in their efforts to bring the disabled into the mainstream of our communities, documented cases of legalized discrimination occur with frequency. We cannot tolerate this situation any longer.

Our country is only as good as the communities that make it up. For our communities to remain dynamic, we must fully incorporate all our citizens. The disabled must not be left out of the mainstream, or the vibrancy of the American landscape will suffer. Obviously much needs to be done before we can finally say with confidence that Americans with disabilities are being afforded an equal opportunity to full participation in our society.

The Americans With Disabilities Act of 1989 will offer the disabled community an omnibus civil rights statute. It would offer people with disabilities the same protection in private employment that nondisabled people currently possess. Furthermore, it would prohibit discrimination in public services, transportation, telecommunications, and the practices and operations of a State.

While I support the concepts of this measure, I have some concerns about portions of the bill—among which are the assurance that "undue hardship" for public accommodation be clarified so that small business is not forced to suffer unduly, the scope of the bill's provisions in regard to interstate transportations systems other than air transportation, the bill's language concerning penalties, and how telecommunications relay services might impact on all sectors of the telephone industry.

On the last point, during the 100th Congress, I, along with Senator HOLLINGS, INOUYE, DANFORTH, and PACKWOOD, introduced the Telecommunications Accessibility Enhancement Act of 1988. This measure was referred to the Commerce Committee, which has jurisdiction over telecommunication issues. The committee gained valuable insight into the issue of telecommunication relay services for the deaf and hard of hearing. Although this measure has been referred to the Subcommittee on the Handicapped, this issue has been of great interest to the Commerce Committee, and its expertise in this area must be called upon.

I would also like to clarify my understanding of the communications section of the bill. It is my understanding that the bill mandates that the common carriers that provide intrastate telephone services within the State provide intrastate relay services. Furthermore that carriers that provide telephone services across State lines would be required to provide relay services for calls made across State lines. And finally, that common carriers that provide both interstate and intrastate services be required to provide both interstate and intrastate relay services.

Those members of our society who use a Telecommunication Device for the Deaf, a TDD, deserve every right to full access to our telecommunications system. I am concerned, however, as to the potential inpact on the small rural and independent telephone companies. The legislation calls for the Federal Communications Commission to rule in this area as to what will be required to make a common carrier TDD accessible and have relay capabilities. I would urge the FCC to carefully consider all views on this issue, the possible economic impact on the industry, and work closely with the Commerce Committee as the rulemaking process would unfold. Furthermore, I would encourage the FCC to maintain a high level of communication directly with the hearing-impaired community so that their interests will be accurately represented. These interested parties together can achieve the noble goals set out in this measure.

Mr. President, I have concerns with the legislation—many of which I have mentioned in a general sense. My colleagues have also voiced other reservations in regard to the Americans With Disabilities Act of 1989. These concerns must be dealt with as action on the ADA proceeds. Most importantly, we must seek to minimize any adverse effects on small business. The ADA must be approached in the spirit of compromise, and I am sure it will be.

I believe this is an important and significant measure. Disabled Americans must be given the right to be fully participatory members of our community. This is a large step in that direction. I am pleased to offer my support, and look forward to working with the other sponsors of this legislation to address these concerns and questions.

Mr. SIMON. Mr. President, I am proud to join my colleagues today in introducing the Americans with Disabilities Act—a piece of legislation that can change the life of our Nation significantly for the better.

By not using the human resources of our Nation—by allowing discrimination to stand in the way of full participation by the estimated 15 percent of our population who has some form of disabling condition—we weaken ourselves as a nation. We are not fulfilling the promise of the American dream to all of our citizens.

It is 25 years since we enacted the Civil Rights Act of 1964. As we celebrate the anniversary of that event we pay tribute to the administration and Congress that had the vision and courage to say it was time for minorities in this country to have an equal chance to participate and to succeed. But as we celebrate that event, we are recognizing that we did not complete the job back in 1964 for all of the minorities who need equal access to opportunity in this Nation. The time has come to complete the guarantee of nondiscrimination for the more than 40 million Americans who must overcome not just a disabling condition, but the superstition, fear, and prejudice that accompanies it.

This legislation will not have the large price tag that some fear. In fact, the price of our not removing the barriers of discrimination is so large that no legislation we can contemplate at the moment would come close to it. More than $100 billion a year is being spent by Federal, State, and local governments to sustain persons with disabilities in welfare situations. An estimated $200 billion more may be lost in taxes and in the expenditures of nonprofit organizations and family members. And there is simply no way to put a price tag on the lost dignity and indepedence of individuals who want to be contributing members of their families, their communities, and their country.

The Rev. Dr. Martin Luther King, Jr., once said, "in our society it is murder, psychologically, to deprive a man of a job or an income. You are in substance saying to that man that he has no right to exist." For too long we have been allowing this message to be given to men and women with disabilities in our society. Discrimination in all its forms is a destroyer of the human spirit—and it is most certainly a destroyer of the promise of America to all of her citizens. The Americans with disabilities act will go far to fulfilling the promise—and to making us a better, more just, and more prosperous Nation.

Mr. CHAFEE. Mr. President, I am pleased to join in introducing the Americans With Disabilities Act of 1989. What better way could there be to mark the 25th year of the Civil Rights Act than for Congress to write into Federal law these fundamental and long overdue protections?

The 1964 Civil Rights Act was a landmark act in this Nation's civil rights history. But for too long, it has been an unfinished landmark, because its provisions do not afford protection to the 36 million Americans who are disabled. The Americans With Disabilities Act would address this longstanding gap by extending the relevant protections of the 1964 Civil Rights Act to those with disabilities.

It is an initiative designed to ensure that the American dream does not stop at the doorsteps of people with disabilities. This proposal stands for the proposition that no individual should be denied the opportunity to participate fully in our society. It stands for the proposition that our society should support independence rather than dependence among the disabled.

The Americans With Disabilities Act is also a logical partner to another piece of legislation many of us have sponsored—the Medicaid Home and Community Quality Services Act, S. 384. S. 384 would change Federal programs to reflect the same philosophies we are endorsing today: Opportunity, independence, and full participation in society.

It is time for both the public and private sectors to help, rather than hinder, those with disabilities in their attempt to achieve their fullest potential. Together, our efforts can ensure a future in which all of our citizens, regardless of their disability, will thrive.

Mr. LIEBERMAN. Mr. President, I am pleased to be a cosponsor of the Americans With Disabilities Act of 1989. For too long Americans with disabilities have been the victims of discrimination. As a society we have been guilty of underestimating their talents and the contributions they can make to this country.

This legislation, a civil rights act for people with disabilities, states that in no aspect of our society may we unjustly discriminate against those with disabilities. The act bars discrimination in employment, in public services including public transportation and public buildings, public accommodations and communications. The act will enable us to uncover a wealth of skills in all our citizens and will enable people with disabilities to fully participate as equals in American society.

As a former attorney general I know that State governments express concern about the burdens placed upon them by laws such as this one. As a former attorney general I also know that this act does not place undue burdens on the States. It is a reasonable law which requires States to the maximum extent feasible to enable citizens with disabilities to fully participate in the life of their community and State. As attorney general I hired several attorneys with disabilities and discovered the ease with which reasonable accommodations can be made to enable people with disabilities to be contributing members of the work force.

There are more than 36 million people with disabilities in America today. Not only have we not done enough to help them fulfill their potential for productivity and enjoy the quality of life to which they are entitled, we as a society have placed often unsurmountable obstacles in their way. We have discriminated against people with disabilities and segregated them from our daily lives. Fifty percent of Americans with disabilities report household incomes of $15,000 or below, 40 percent of people with disabilities did not graduate from high school and 66 percent of people with disabilities between the ages of 16 and 64 are not working. A majority of these people would like to be working but employers do not think they are capable and many are unable to find transportation to available jobs.

The Americans With Disabilities Act must be enacted. We can ill afford to ignore the skills and talents of people with disabilities; we need their contributions; we need their desire to work; we need to learn from them how much each individual is able to contribute. America will be a better place when we can assure that each person who wants to work can work, that each person is able to participate in the political process and that each person can communicate or visit with their loved ones as they wish.

Mr. KERRY. Mr. President, I rise in support of legislation being introduced today by the chairman of the Subcommittee on the Handicapped, Senator HARKIN. The Americans With Disabilities Act of 1989 is a crucial piece of legislation whose time is long overdue. The importance of this legislation cannot be overstated. This act is vital in the fight to end discrimination against the disabled in the areas of transportation, education, communication, and employment.

We as a society have always recognized our obligation to provide for our disabled neighbors, and in many respects we have done so. However most services provided have been in terms of maintenance and subsistence, and not in the area of eliminating the physical barriers and discrimination which are often the greatest difficulties facing disabled Americans. We need to redirect our energies toward enabling the disabled to be self-sufficient, independent citizens with the same opportunities as you and I.

According to a 1986 Harris poll 75 percent of all disabled citizens are not working, and tragically only 15 percent of all disabled citizens work full time. The primary reason for this is not because disabled individuals are incapable of work; it is not because of an individual's disability; and it is certainly not because of a lack of desire to work. Mr. President, this survey found that over one-half the disabled respondents cited discrimination as the primary obstacle to employment, and 28 percent cited the lack of accessible transportation.

Mr. President, lack of accessible transportation and mobility are major factors in limiting educational and employment opportunities, which are key to self-sufficiency and independence. Conversely, dependence resulting from limiting access and opportunity, not only strips a measure of dignity from capable individuals, but in terms of social services, lost wages, and wasted human potential, represents an enormous social and economic cost.

It is unconscionable to imagine an able work force languishing at home because there is no access to public transportation. Mr. President, I do not want to minimize the great strides made in urban and rural areas to accommodate travel for disabled Americans. But there is still a long route to travel on this necessary road, and we must pick up the pace. Tragically in the Nation as a whole the majority of our public transportation systems remain inaccessible to the disabled.

This legislation puts us on the right track in reversing this unacceptable performance. I am particularly pleased with the advances this legislation will make in the area of interstate and intrastate travel as well as the breakthroughs in telecommunications for disabled Americans.

The goal of universal access to transportation and the integration of disabled citizens into every aspect of everyday life, has been repeatedly expressed by President Bush. Unfortunately, in the President's decision to appeal the U.S. Court of Appeals decision Adapt versus Department of Transportation, he clearly missed his first opportunity to take action on these convictions. Should Adapt be allowed to stand, it will help accomplish many of the goals and objectives in the area of transportation set forth in this important bill. I urge the President to rethink his actions on this case, and not to let another chance to fulfill his promise slip away.

Mr. President, it is close to impossible to separate the ability to travel or communicate with both employment and a decent quality of life. For example, being able to come and go to meetings, school, the movies, or the restaurant without planning days or weeks in advance is impossible for many disabled citizens. Talking on the telephone, following a sports game on television, or operating a word processor are all activities that most of us take for granted, yet they too are needlessly unavailable to many of the disabled.

I believe that the Americans With Disabilities Act represents true hope

for equal opportunity for disabled Americans. The time has come for us to give disabled children a chance to dream of becoming doctors, lawyers, architects, or engineers, yes and President, and to know that it is not just a dream. As a people we cannot afford to ignore or take pity on our neighbor, when there is no need. As a nation we cannot continue to prosper without the contribution of disabled Americans, when they have so much to offer.

Again I applaud the efforts of the sponsor of this legislation, and look forward to working with all my colleagues toward the passage of this important bill.

Mr. CRANSTON. Mr. President, I am very pleased to join with the distinguished Senator from Iowa [Mr. HARKIN] and many other colleagues from both sides of the aisle in introducing this historic legislation.

The proposed Americans With Disabilities Act of 1989 [ADA] is an omnibus civil rights statute that has a single purpose—to help ensure that persons with disabilities have the opportunity—freed of the shackles of discriminatory practices—to participate in our society as fully as possible and, thus, to achieve their full potential.

Mr. President, this legislation represents a major advance. It is the culmination of efforts throughout the 1970's and 1980's—beginning with the development and enactment of the Rehabilitation Act of 1973, and its landmark section 504, of which I was a principal author—to secure the civil rights of disabled persons. This legislation says to millions of Americans who are disabled that it will no longer be allowable or acceptable for you to be discriminated against—that you will enjoy the same rights and access to jobs, transportation, public accommodations, and housing as do all other Americans.

Mr. President, as we approach the 1990's, people with disabilities are still too often brushed aside and pushed down—and not permitted to use their capabilities to the fullest. When given the opportunity, people with disabilities have made great contributions to the United States and, indeed, to the world. Unfortunately, so many barriers and obstacles exist that those opportunities are still too few and far between. That has been society's great loss.

Over the last two decades, people with disabilities have made great inroads and are increasingly being recognized for their abilities, not their disabilities. But progress is slow. Although I recognize that we cannot legislate attitudes, we can make sure that unenlightened attitudes no longer find support in the law.

MASS TRANSIT PROVISIONS

Mr. President, as chairman of the Banking Committee's Subcommittee on Housing and Urban Affairs, I would like to make a brief statement on the mass transit provisions of this legislation. Our bill would codify the reasoning of the recent decision of the U.S. Court of Appeals for the Third Circuit in *Americans Disabled for Accessible Public Transportation* v. *Burnley*, 867 F.2d 1471 (1989).

In requiring that all new buses and new or newly altered transportation facilities be made accessible to persons with disabilities, to the maximum extent feasible and that paratransit services be made available as a supplemental service for those who may be unable to utilize lift-equipped buses, the court correctly ruled, "Only a mixed-system of lift-equipped buses for those able to utilize them and a paratransit system for those who cannot will adequately implement the statutory mandates."

The court correctly stated that a segregated paratransit system alone would always result in "uneven treatment to the disabled," not only because it is segregated, but also because by its nature it "deprives the handicapped of spontaneous activity, whether it be of an emergency, business, or pleasurable nature." Unlike paratransit, which requires the making of travel reservations well in advance, mainline accessibility enables persons with disabilities to go to the nearest bus stop and board the next bus to come along, just like everyone else.

The court also properly determined that a requirement that newly purchased buses be accessible "does not exact a fundamental alteration to the nature of mass transportation" and would not impose any "undue financial burdens" on transit systems. In my view, the major benefits that accessible transportation will bring to persons with disabilities and to the American economy as a result of diminished unemployment and underemployment among persons with disabilities make the continuing effort to assure accessibility a high priority.

CONCLUSION

Mr. President, I was proud to have been an original cosponsor of the Americans with Disabilities Act last year. However, at that time, I expressed certain reservations about how quickly and how completely the goals of the legislation were to be achieved under that bill.

The bill we are introducing today addresses my concerns and I believe sets forth reasonably realistic goals and timetables. I congratulate the chairman of the Subcommittee on the Handicapped, Mr. HARKIN, for his outstanding work over these last many months in crafting a strong, but balanced, measure that would be a major stride forward toward our goal of a United States where all citizens have an equal opportunity to pursue the American dream.

Mr. President, I urge all my colleagues to support this legislation.

Mr. RIEGLE. Mr. President, I am pleased to join Senators HARKIN, KENNEDY, DURENBERGER, JEFFORDS, SIMON, and MCCAIN as an original cosponsor of the Americans With Disabilities Act of 1989.

This historic legislation will secure the civil rights of 43 million disabled Americans. For too long the disabled citizens of this country have not been afforded the rights guaranteed under the Civil Rights Act of 1964 or the Fair Housing Act of 1968.

Since the days of its inception, this Nation has encouraged and valued independence and self-sufficiency. Discrimination stands as a barrier to the achievement of self-sufficiency. By prohibiting discrimination in employment, the provision of public services, transportation, and telecommunications, this bill is a critical step in assuring the disabled that they have equal opportunity to realize their full potential.

One of the prime goals of legislation affecting disabled Americans has been the effort to incorporate them into the mainstream. While the Americans With Disabilities Act would remove the barriers to participation in the workforce, efforts must also be made to ensure that participation is possible. The present system of disability insurance encourages retirement from the workforce. This approach is wrong. Americans with disabilities should have every encouragement to take advantage of the options opened up by the Americans With Disabilities Act. I will soon introduce with Senator DOLE a bill that will provide work incentives to those who receive Social Security disability income.

In addition, I have introduced S. 200, the Social Security Disability Beneficiary Rehabilitation Act of 1989. This legislation would redirect the SSDI program away from the retirement model and toward a program specifically designed to meet the needs of disabled workers. A vocational rehabilitation evaluation would be integrated into the initial and ongoing determination process.

Mr. President, I would also note that the Americans With Disabilities Act of 1989 substantially curtails the requirements of employers and localities contained in the 1988 version of the bill. No longer does a company have to prove the threat of bankruptcy to be exempt from the requirements; rather, the bill requires reasonable accommodations for handicapped employees unless such requirement would pose an undue hardship. The bill also clarifies section 504 with regard to access to transportation for the disabled.

I urge my colleagues to join me in support of this historic expression of

this country's commitment to civil rights for its disabled citizens.

Mr. JEFFORDS. Mr. President, last year, the Task Force on the Rights and Empowerment of Americans With Disabilities, chaired by Justin Dart, visited all 50 States to conduct public forums on discrimination against people with disabilities. Across the country, the task force found that in many cases protections against discrimination on the basis of disability are either lacking or poorly enforced.

The evidence collected by the task force has laid the groundwork for action by Congress this year. This is the year that we must pass the Americans With Disabilities Act. We must make the dream of equal opportunity a reality for America's 37 million people with disabilities.

The Americans With Disabilities Act builds on earlier anti-discrimination statutes such as the Civil Rights Act of 1964, the Fair Housing Amendment Act of 1988, and most notably, the Rehabilitation Act of 1973. To a large extent, the Americans With Disabilities Act simply enhances the application of these earlier laws and in some cases extends to the private sector several of the safeguards against discrimination that already apply to the Federal Government.

The bill would affect discrimination on the basis of disability in employment, public accommodations, public services (including transportation), and communications. This year's legislation is slightly different from the version introduced in the 100th Congress, primarily in an effort to lower any costs associated with the bill, while preserving the objective of preventing discrimination.

Certainly, I am aware that there are still some concerns about the bill. The series of hearings that have been scheduled over the next few weeks should provide us with the information that we need to address these concerns and to consider any further adjustments to the bill that might be necessary.

So I am looking forward to the hearings and to action early in this Congress. As President Bush has stated, the passage of the Americans With Disabilities Act will provide nothing more than "simple fairness." Simple fairness for the millions of Americans who want nothing more than the opportunity to contribute their talents to our great Nation.

By Mr. THURMOND:

S. 934. A bill to suspend temporarily the duty on K-Acid; to the Committee on Finance.

S. 935. A bill to suspend temporarily the duty on Broenner's acid; to the Committee on Finance.

S. 936. A bill to temporarily suspend the duty on D Salt; to the Committee on Finance.

S. 937. A bill to suspend temporarily the duty on Neville and Winter's acid; to the Committee on Finance.

S. 938. A bill to suspend temporarily the duty on anis base; to the Committee on Finance.

S. 939. A bill to suspend temporarily the duty on naphtol AS types; to the Committee on Finance.

TEMPORARY SUSPENSION OF DUTY ON CERTAIN CHEMICALS

Mr. THURMOND. Mr. President, I rise today to introduce six bills which will suspend the duties imposed on certain chemicals used in coloring textile products, paints, inks, and plastic components. Currently, these chemicals are imported for use in the United States because there is no domestic supplier or readily available substitute. Therefore, suspending the duties on these chemicals would not adversely affect domestic industries.

The first bill would temporarily suspend the duty on 1-Amino-8-hydroxy-4,6-naphthalene disulfonic acid mono sodium salt (K-Acid) which is a chemical used in the manufacturing of reactive dyes for the textile industry.

The second bill would temporarily suspend the duty on 2,Naphthyl amine-6-sulfonic acid (Broenner's acid) which is used in making reactive dyes for coloring cotton and wool.

The third bill would temporarily suspend the duty on 2-Naphthyl amine-1, 5-disulfonic acid and the mono sodium salt (D Salt). Both of these components are combined and used in the manufacturing of reactive dyes for cotton and wool.

The fourth bill would temporarily suspend the duty on 1-Naphtol-4-sulfonic acid and the mono sodium salt (Neville and Winter's Acid). Once again these chemicals are used in the manufacturing of reactive dyes for cotton and wool products.

The fifth bill would temporarily suspend the duty on 3-Amino-methoxy benzanilide (anis base) which is used in the production of Azo pigments. These pigments are used in the production of paints, printing inks, and colorants for plastics.

The sixth and last bill would temporarily suspend the duty on 3-Hydroxy-2-naphthanilide, 3-Hydroxy-2-naphtho-o-toluidide, 3-Hydroxy-2-naphtho-o-anisidide, 3-Hydroxy-2-naphtho-o-phenetidide, 3-Hydroxy-2-naphtho-4-chloro-2,5-dimethoxy Anilide, and N,N'-bis [acetoacetyl-O-tolidine] (naphthol AS types). These pigments are also used in the production of paints, printing inks, and colorants for plastics.

Mr. President, suspending the duty on these chemicals will benefit the consumer by stabilizing the costs of manufacturing the end-use products. Further, these suspensions will allow domestic producers to maintain or improve their ability to compete internationally. There are no known domestic producers of these materials. I hope the Senate will consider these measures expeditiously.

I ask unanimous consent that the text of the bills be printed in the RECORD immediately following my remarks.

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

S. 934

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. K-ACID.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.30.07	1-Amino-8-hydroxy-4, 6-naphitalene disulfonic acid mono sodium salt (CAS No. 85294-32-2) provided for in subheading 2922.21.50).	Free ...	No change ...	No change ...	On or before 12/31/92".

SEC. 2. EFFECTIVE DATE.

The amendment made by the first section of this Act applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 935

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BROENNER'S ACID

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.30.07	2, Naphthyl amine-6-sulfonic acid (CAS No. 93-00-5) (provided for in subheading 2921.42.50).	Free ...	No change ...	No change ...	On or before 12/31/92"

SEC. 2. EFFECTIVE DATE.

The amendment made by the first section of this Act applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 936

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. D SALT

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.30.07	2-Naphthyl amine-1, 5-disulfonic acid and the mono sodium salt (CAS No. 117-62-4 and 19532-03-07) (provided for in subheading 2921.42.50).	Free ...	No change ...	No change ...	On or before 12/31/92".

SEC. 2. EFFECTIVE DATE.

The amendment made by this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 15 days after the date of enactment of this Act.

S. 937

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NEVILLE AND WINTER'S ACID.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.30.07	1-Naphtol-4-sulfonic acid and the mono sodium salt (CAS Nos. 84-87-7 and 6099-57-6) (provided for in subheading 2908.20.10).	Free ...	No change ...	No change ...	On or before 12/31/92".

SEC. 2. EFFECTIVE DATE.

The amendment made by the first section of this Act applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 938

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ANIS BASE.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.30.07	3-Amino-methoxy benzanilide (CAS No. 102-35-4) (provided for in subheading 2921.49.30 or 2924.29.25).	Free ...	No change ...	No change ...	On or before 12/31/92".

SEC. 2. EFFECTIVE DATE.

The amendment made by this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 15 days after the date of enactment of this Act.

S. 939

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NAPHTHOL AS TYPES.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.30.07	3, Hydroxy-2-naphtharilide (CAS No. 92-77-3), 3-Hydroxy-2-naphtho-o-toluidide (CAS No. 135-61-5), 3-Hydroxy-2-naphtho-o-anisidide (CAS No. 135-62-6), 3-Hydroxy-2-naphtho-o-phenetidide (CAS No. 92-74-0), 3-Hydroxy-2-naphtho-4-chloro-2,5-dimethoxy Anilide (CAS No. 4273-92-1), and n,N'-bis (acetoacetyl-O-tolidine) (CAS No. 91-96-3) (provided for in subheading 2924.29.14).	Free ...	No change ...	No change ...	On or before 12/31/92".

SEC. 2. EFFECTIVE DATE.

The amendment made by the first section of this Act applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 940. A bill to designate segments of the East Fork of the Jemez River and of the Pecos River as components of the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

JEMEZ AND PECOS RIVERS WILD AND SCENIC RIVER ADDITION ACT OF 1989

● Mr. BINGAMAN. Mr. President, I rise today to introduce legislation that would add two fine streams in my home State of New Mexico to the National Wild and Scenic Rivers System, the East Fork of the Jemez River and the Pecos River.

Last year, the Congress designated a 24.6-mile stretch of the Rio Chama as a wild and scenic river. The Rio Grande in northern New Mexico and the Red River near Questa were among the first rivers protected under the act. The East Fork of the Jemez and the Pecos belong in the system as well.

We in New Mexico appreciate better than some the value of free-flowing streams. Water is scarce in my State and we cherish the Jemez and the Pecos for their scenic, recreational, and natural beauty. This measure would protect these rare streams from construction of dams and other disturbances.

The East Fork of the Jemez would be protected for 11 miles, from the Baca location No. 1 to its confluence with the Rio San Antonio, at the Santa Fe National Forest's Battleship Rock picnic ground. A small portion of the river passes through private land, but the property owner has been consulted and has no objections to the wild and scenic designation. The rest of the river flows through the Santa Fe Forest. The East Fork originates in the Valles Caldera, one of the natural wonders of New Mexico, and flows south and west, cutting through a volcanic flow of Valles Rhyolite to form a rugged, sheer-walled canyon. Here, the southern-most extension of Canadian dogwood is present. The river passes the Las Conchas campground, and is followed by New Mexico Highway 4. A rugged stretch of canyon includes cliffs, boulders, heavy forests of Engelman spruce and mixed conifers. In parts, the river flows from wall to wall of the canyon. Elsewhere, the canyon widens, and the river nourishes lush meadows. Other attractions are Jemez Falls and a hot spring. Peregrine falcons feed in the canyon, along with the Jemez Mountain salamander, unique to the area. Trout fishing is a popular sport for many. Access is ready: Alburquerque and Santa Fe are less than 2 hours' drive.

The Pecos would be protected for approximately 21.5 miles, from its headwaters near the Santa Barbara Divide in the Pecos Wilderness to the townsite of Terrero. The Pecos is a river well known in folk tales of the West and is important to eastern New Mexico and west Texas. It originates high in the Pecos Wilderness and descends through rugged granite canyons, alternating with mountain meadows in beautiful, high valleys. Most of the land along the river is owned by the U.S. Forest Service or the New Mexico Department of Game and Fish; the river does pass through some private land between the confluence with the Rio Mora and Terrero. However, there are no provisions for the condemnation of private land in the legislation. Private property rights will not be affected. The river is popular for camping, fishing, swimming and hiking. It is rich with aspen, spruce and fir. The segment to be protected includes the narrow Pecos Box, where the river churns several hundred feet below the road. Fishing in this stretch is restricted to artificial flies and lures.

The bill divides the East Fork of the Jemez into three segments, designating 2 miles as recreational, 4 miles as wild, and 5 miles as scenic. The Pecos is split into two segments, with 13.5 miles designated wild and 7 miles as scenic. The U.S. Forest Service has recommended these designations and reports that public support for the protections appear to be high.

This legislation will not only protect special rivers for future generations, but boost tourism in my State. I ask my colleagues to join me in supporting this measure.

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. 940

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 "Jemez and Pecos Rivers Wild and Scenic River Addition Act of 1989".

SEC. 2. WILD AND SCENIC RIVER DESIGNATION.

Section 3(a) of the Wild and Scenic River Act (82 Stat. 906; 16 U.S.C. 1274(a)) is amended by adding the following new paragraphs:

"( )(A) JEMEZ RIVER, EAST FORK, NEW MEXICO.—Segments of the East Fork of the Jemez River, to be administered by the Secretary in the classifications indicated, as follows:

"(1) the segment from the Baca Location Number 1, approximately 2 miles southwest, past the Santa Fe National Forest's Las Conchas Campground, to State Highway 4, where it crosses the river at the Sante Fe National Forest's Las Conchas trailhead, as a recreational river;

"(2) the segment from the Las Conchas trailhead approximately 4 miles west to where the same highway crosses the river near the Sante Fe National Forest's East Fork trailhead, as a wild river; and

"(3) the segment from that highway crossing (State Highway 502 where it crosses the river near the Sante Fe National Forest's East Fork trailhead) approximately 5 miles west to the confluence with the Rio San Antonio, at the Sante Fe National Forest's Battleship Rock picnic ground, as a scenic river.

"(B) A map entitled 'East Fork of the Jemez Wild and Scenic River' generally depicting the foregoing segments of the East Fork of the Jemez River shall be kept on file and available for public inspection in the office of the Headquarters of the Sante Fe National Forest.

"( )(A) PECOS RIVER, NEW MEXICO.—Segments of the Pecos River, to be administered by the Secretary in the classifications indicated, as follows:

"(1) the segment from the river's headwaters near the Santa Barbara Divide in the Pecos Wilderness approximately 13.5 miles south to the Pecos Wilderness boundary, as a wild river; and

"(2) the segment from that point (the Pecos Wilderness boundary) approximately 7 miles south to the townsite of Terrero, as a recreational river.

"(B) A map entitled 'Pecos Wild and Scenic River' generally depicting the foregoing segments of the Pecos River shall be kept on file and available for public inspection in the office of the Headquarters of the Santa Fe National Forest.".●

● Mr. DOMENICI. Mr. President, I rise today to join my colleague from New Mexico [Mr. BINGAMAN] in introducing a bill to designate segments of the Pecos River and of the East Fork of the Jemez River in New Mexico as components of the Wild and Scenic Rivers System.

Last year marked the 20th anniversary of the Wild and Scenic Rivers Act. The first wild and scenic river in the Nation was a portion of the Rio Grande in northern New Mexico. New Mexico marked the anniversary of the enactment of the act and the designation of the Rio Grande with the passage of legislation that Senator BINGAMAN and I worked on to designate 24.6 miles of the Rio Chama River as part of the Wild and Scenic Rivers System.

The bill Senator BINGAMAN and I are introducing today will protect segments of two more rivers for the benefit and enjoyment of present and future generations. It is a commendable way to begin the second 20 years of the Wild and Scenic Rivers System in New Mexico.

The designation of the Rio Chama gave New Mexico a total of approximately 78 miles of wild and scenic rivers. Approximately 53 miles of rivers in New Mexico are original components of the Wild and Scenic Rivers System. These 53 miles encompass about 49 miles of the rugged, upper Rio Grande River and the lower 4 miles of the Red River feeding into the Rio Grande near Questa, NM.

Now, after a period of careful consideration and public review, the bill that Senator BINGAMAN and I are introducing today proposes to add another 31.5 miles to the system in New Mexico—11 miles of the East Fork of the Jemez and 20.5 miles of the Pecos River, both located in the outstanding scenery of the Santa Fe National Forest.

The 1968 act provides the criteria for qualification as a wild and scenic river. A river must "possess outstandingly remarkable scenic, recreation, geologic, fish and wildlife, historic, cultural, or other similar values." These two river segments fulfill these criteria and would be worthy additions to the Wild and Scenic River System.

The East Fork of the Jemez River originates in the Valles Caldera as a small, meandering stream in the vast crater. It passes through Valles Rhyolite cliffs, a sheer-walled canyon, on its way to its junction with the Rio San Antonio, where the Jemez River is formed. This river segment passes through the heart of the Jemez Mountains' most popular recreation area.

The Pecos River, famous in the folklore of the frontier, flows out of the Pecos Wilderness through rugged granite canyons and waterfalls and passes by small, high-mountain meadows. It is one of New Mexico's most heavily used trout streams.

With the designation of these rivers segments, New Mexico would have portions of 5 rivers as part of the system, which now includes portions of more than 70 rivers nationwide. Currently there are more than 7,300 miles in the National Wild and Scenic River System.

I would like to add, as there was some concern expressed by property owners along the river, that this legislation will not divest property owners of any rights that they currently have. I have been assured by the Forest Service that individuals who own land along the river will continue to be able to use and develop their property as they have in the past.

I congratulate Senator BINGAMAN for his work on this measure and am pleased to cosponsor it.●

By Mr. STEVENS (for himself, Mr. DANFORTH, and Mr. MURKOWSKI):

S. 941. A bill to enhance the navigation safety of oil tankers operating in the Prince William Sound, AK, and for other purposes; to the Committee on Commerce, Science, and Transportation.

PRINCE WILLIAM SOUND OIL TANKER NAVIGATION SAFETY ACT OF 1989

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S. 950. A bill to provide for an oil spill research and development center and to establish a coastal zone restoration and enhancement fund, and for other purposes; to the Committee on Energy and Natural Resources.

PROVIDING FOR AN OILSPILL RESEARCH AND DEVELOPMENT CENTER AND RESTORATION FUND

Mr. STEVENS. Mr. President, I have legislation today that I would like to send to the desk for appropriate reference. But, first, I would like to outline that legislation. The main bill is cosponsored by Senator DANFORTH and my colleague, Senator MURKOWSKI, and the second is a bill that I introduced for myself and my colleague, Senator MURKOWSKI.

These are bills that we have been working on for some time now, since the disaster that occurred in Prince William Sound near Valdez when the *Exxon Valdez* went ashore on Bligh Reef. Having examined in depth the adequacy of Federal law, these are our suggestions for changes in Federal law to try to make us sure as it is humanly possible that such a disaster could not occur again.

I call these bills to the attention of Members of the Senate and urge their cosponsorship, if any would like to join us. But in any event, we urge that every Senator, particularly those involved in coastal States, examine these bills to determine which, if any, provisions they believe ought to be applicable to the movement of oil by tanker, and which should apply to their States also.

The main bill that I am introducing, the first one, would increase the fund that was created by the Trans-Alaska Pipeline Right-of-Way Act—we call that the TAPS Act—to $500 million. That fund originally was $100 million. It was created by a tax of 5 cents per barrel on oil that moved through the trans-Alaska pipeline until $100 million had been accumulated.

The fund now, as a matter of fact, is $278 million because of the interest that has been earned on the fund since it has reached its required level of $100 million, and this is the first major spill that has had the ability to draw funds from that trans-Alaska pipeline fund.

This bill would also create a Prince William Sound Oil Spill Recovery Institute to be an institute to specifically address the Prince William Sound spill and disaster, and to see what must be done to mitigate the effects of that spill, and to enhance the environment if it is possible in order to overcome the detrimental effect of this spill.

One of the changes that we wish to make in the liability fund is not only to increase from $100 million to $500 million the money available, but we, in our bill, propose that the Coast Guard have immediate access of up to $150 million for cleanup, in the event there is a spill.

As the distinguished President pro tempore and Presiding Officer knows, those of us in the Appropriations Committee are now worried that Federal agencies are using funds that were appropriated for other purposes, but in an emergency they are assisting in coordinating and supporting the cleanup efforts, and that is costing money, which later will be repaid, we believe, by Exxon. Exxon is responsible for these cleanup costs.

Meanwhile, the Federal agencies are stretching out their functions in other areas of our country, and we think that the $150 million minimum should be available immediately, in the event of a disaster of this type.

Further, we want to have stricter contingency plan requirements. This bill would require that there be prepositioned equipment, materials, personnel, and escort vessels to carry out the contingency plans; that those plans be exercised at least twice a year by the Coast Guard; and that each tanker be required to carry on board sufficient boom, container material, and small boats to deploy it, to encircle the vessel itself, and 100 yards from the vessel, for immediate containment of the oil in the event there is a spill.

We would change the existing law to require in Prince William Sound that Alaska State pilots remain on board these tankers until they pass Bligh Reef; that the Coast Guard have access to drivers license records in terms of those who have been convicted of driving while under the influence of alcohol; and that a person who has been so convicted be prohibited from becoming an officer in charge of such a tanker for 5 years after such a conviction; and as a minimum, the Coast Guard could suspend those who they found were still abusing alcohol from being in charge of such tankers.

We have asked for this legislation because we believe it is necessary to tighten the requirements, in order to demonstrate our national concern over this terrible disaster that took place.

Mr. President, I have visited now on two occasions, for some length, the cities of Alaska that were in the area of the spill; Valdez, Cordova, Seward, Homer, Seldovia, and Kodiak. They are all very much disturbed by the results of this spill. Some of these provisions are to meet the problems that those cities have encountered.

One of the things we would like to have is an assurance that we have the most modern technology used in these tankers that continue to exit our port of Valdez.

Without regard to whether there is any additional exploration in my State, Mr. President, there will be tankers leaving Valdez carrying 2.1 million barrels of oil a day for some years now.

We feel the adequacy of the existing navigation system needs to be reviewed. We wish to have another navigation light on Bligh Reef. There is a light on Bligh Reef, on the approach to the reef from the sea. There is no light on that reef, on approach to it, from the Port of Valdez. We think it should be adequately lighted on both ends of the reef. It is a reef that, at high tide, is still barely beneath the surface of the sound, and presents one of the most obviously difficult obstacles in that area to navigation.

We seek to raise the level of the offshore pollution fund that is created by the Outer Continental Shelf Lands Act to $250 million and use between $2 and $10 million of that money to fund a research and development center for offshore spill prevention and cleanup technology.

The interesting thing I found, Mr. President, was that there really was no real national center in this country to develop new technology and to inform the industry of the existence of this technology. I personally believe that there is a great deal of technology in the world that our people were not adequately informed of.

I ran into the concept of sea-fences, which the Navy had in their Navy salvage units. These were developed in Norway and in the European areas, and they were not commonly used by American industry. Incidentally, they are larger than the boom that was deployed immediately right after the *Exxon Valdez* spill, which I was told was 18 inches. These sea-fences are up to 9 and 10 feet, and the boom that is now being used up there is roughly 4 feet.

But during the time when that tremendous spill was spreading out all over the sound, there had to be enormous container equipment available, and it was not available.

Mr. President, one of the amendments we seek to have made is to amend the Disaster Act of the United States to include oil spills. We found that an oil spill is not considered to be a man-made disaster that can be classified as a national disaster. And it is our opinion that that should happen.

I would like to include in the RECORD at this point the bill that I am introducing, and a summary of that bill, and the second bill, also, that is introduced by Senator MURKOWSKI and myself to establish a coastal zone restoration and enhancement fund and oil spill research and development center, as I described.

I thank the Chair for his patience.

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

S. 941

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 "Prince William Sound Oil Tanker Navigation Safety Act of 1989".

DEFINITIONS

SEC. 2. As used in this Act, the term—

(1) "Prince William Sound" means all navigable waters within the jurisdiction of the State of Alaska and the United States north of Hinchinbrook Entrance to the Port of Valdez, Alaska;

(2) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(3) "spill" includes any spilling leaking, pumping, pouring, emitting, emptying, or dumping; and

(4) "oil tanker" means a vessel constructed, converted, or adopted to carry oil in bulk in its cargo spaces.

PILOTAGE

SEC. 3. The Secretary shall initiate a rulemaking within 60 days after the date of enactment of this Act to require that all oil tankers entering and departing the Port of Valdez, Alaska, embark and disembark a pilot licensed by the State of Alaska at locations that will ensure that pilotage of all oil tankers in waters adjacent to and north of Bligh Reef is provided by such State pilots. Such rule shall be final and in effect within 90 days after the date of enactment of this Act.

LICENSED PERSONNEL

SEC. 4. Within 60 days after the date of enactment of this Act, the Secretary shall initiate a rulemaking to require for all oil tankers transiting Prince William Sound, Alaska, that, except when pilotage of any such vessel is provided by a pilot licensed by the State of Alaska—

(1) there be one deck officer on the navigation bridge in addition to the master and mate on watch, to assist in navigation, communications, and lookout responsibilities;

(2) no less than two of the personnel required by paragraph (1) to be on the navigation bridge be licensed for the restricted waters being transited at the time within Prince William Sound; and

(3) no less than one of the personnel required by paragraph (1) to be on the navigation bridge fix and record the position of

the vessel on a nautical chart of the area at least once every six minutes, and retain and make available the annotated chart for inspection by the Secretary.

Such rule shall be final and in effect within 90 days after enactment of this Act.

NATIONAL DRIVER REGISTER

SEC. 5. ACCESS TO REGISTER.—Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended—

(1) by redesignating paragraphs (4) and (5) (as so designated by section 305(b) of the Airport and Airway Safety and Capacity Expansion Act of 1987) as paragraphs (6) and (7), respectively; and

(2) by inserting immediately after paragraph (3) the following new paragraph:

"(4) Any individual who has applied for or received a license to be in control and direction of a commercial vessel may request the chief driver licensing official of a State to transit information regarding the individual under subsection (a) of this section to the Commandant of the Coast Guard. The Commandant may receive such information and shall make such information available to the individual for review and written comment. Any such comment shall be included in any record or file maintained by the Commandant that contains the information to which the comment is related. The Commandant shall not otherwise divulge or use such information, except to verify information required to be reported to the Commandant by an individual applying for, holding, or renewing a license to be in control and direction of a commercial vessel and to evaluate whether the individual meets the minimum standards required in order to be issued or hold such a license. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than five years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

(b) RULEMAKING.—Prior to the expiration of the 90-day period following the date of enactment of this Act, the Secretary shall initiate a rulemaking to require each applicant for a license to be in control and direction of a commercial vessel, and each holder of any such license, to make available to the Secretary, in accordance with section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), information regarding the motor vehicle driving record of such applicant contained in the National Driver Register. Such rule shall be final and in effect on and after the expiration of the 180-day period beginning on the date of enactment of this Act.

ALCOHOL AND CONTROLLED SUBSTANCES TESTING

SEC. 6. (a) REGULATIONS.—The Secretary shall, within 60 days after the date of enactment of this Act, issue regulations to require the periodic, random, and reasonable cause, as well as post-accident, testing for use of alcohol by those persons who, pursuant to licenses issued by the Secretary, exercise control and direction (as determined by the Secretary) of oil tankers within the navigable waters of the United States. Such regulations shall—

(1) be designed to identify those persons who exercise such control and direction of an oil tanker while impaired by or under the influence of alcohol;

(2) include provisions, procedures, and safeguards analogous to those set forth in the Final Rule published on November 21, 1988, at pages 47064 through 47082 of the Federal Register; and

(3) shall be published as a final rule within 90 days after enactment of this Act.

(b) PROHIBITION ON SERVICE.—No person shall serve as a licensed individual responsible for the control and direction (as determined by the Secretary) of an oil tanker within the navigable waters of the United States if such person—

(1) has been determined by the Secretary to have served in such capacity while impaired by or under the influence of alcohol;

(2) has been denied a motor vehicle license by a State for cause within the previous 5 years;

(3) has had any cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the previous 5 years; or

(4) has been convicted within the previous 5 years of an offense described under section 205 (a)(3)(A) or (b) of the National Driver Registration Act of 1982.

BLIGH REEF LIGHT

SEC. 7. The Secretary shall, within one year after the date of enactment of this Act, install and ensure operation of an automated navigation light on or adjacent to Bligh Reef in Prince William Sound, Alaska, of sufficient power and height to provide effective long-range warning of the location of Bligh Reef.

VESSEL TRAFFIC SERVICES

SEC. 8. The Secretary shall within 180 days after the date of enactment of this Act—

(1) acquire, install, and operate such additional radar equipment, train and locate such personnel, and issue such final regulations as are necessary to—

(A) increase the range of the existing Vessel Traffic Service System in the Port of Valdez, Alaska, sufficiently to track the locations and movements of oil tankers transiting Prince William Sound, and sound an audible alarm when such vessels depart from designated navigation routes; and

(B) install a Vessel Traffic Service System radar unit on Naked Island in Prince William Sound to provide additional radar coverage of oil tanker traffic lanes and anchorages; and

(2) submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the feasibility and desirability of instituting positive control by the Coast Guard on oil tanker movements in Prince William Sound with the use of the Vessel Traffic Services System, radar, radio telecommunications, and satellite-linked transmitters aboard such tankers.

OIL TANKER SIZE AND DOUBLE BOTTOMS

SEC. 9. The Secretary shall within 180 days after the date of enactment of this Act submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives—

(1) a report describing the size and cargo capacity of oil tankers transiting Prince William Sound, specifying changes in such size and cargo capacity over the past 20 years, evaluating the extent to which the risks or difficulties associated with oil tanker navigation, vessel traffic control, accidents, oil spills, and the containment and cleanup of such spills are influenced or related to an increase in such size and cargo capacity, and containing a specific recommendation as to whether limitations on such size or cargo capacity should be imposed to minimize such risks and difficulties; and

(2) a report assessing the extent to which the oil spill from the Exxon Valdez in Prince William Sound would have been prevented or mitigated had the vessel been built with double hull, double bottom, or other structural features, and containing a specific recommendation as to whether oil tankers transiting Prince William Sound should be required to have such double hulls, double bottoms, or other structural features.

OIL SPILL CONTINGENCY PLANS AND APPROVAL

SEC. 10. (a) ISSUANCE OF REGULATIONS.—Notwithstanding any other provision of law, the Secretary shall, within 120 days after the date of enactment of this Act, issue final regulations requiring owners and operators of oil tankers transiting Prince William Sound to prepare and submit to the Secretary for approval a contingency plan for the prevention, containment, and cleanup of oil spills from their vessels. At a minimum, such plans shall include—

(1) a clear and precise, detailed description of how the individual plan relates to and is integrated into the overall National Contingency Plan;

(2) procedures for timely notification of appropriate authorities of a spill;

(3) identification of personnel responsible for taking correction action in the case of a spill;

(4) a description of procedures to be used to minimize the damage from a spill and to make immediate repairs if possible;

(5) a description of countermeasures, response and cleanup personnel and equipment and their locations on vessels or elsewhere, and the time required to deploy them at the spill site;

(6) minimum standards for personnel training;

(7) provisions for disposal of recovered oil;

(8) arrangements for the prepositioning of oil spill containment and cleanup equipment on and around Prince William Sound, including escort vessels with skimming capability, barges to receive recovered oil, heavy duty sea booms, pumping, transferring and lightering equipment, and other appropriate recovery equipment for the protection of the coastal and marine environment, including fish hatcheries; and

(9) requirements that oil tankers transiting Prince William Sound carry equipment, material, and personnel sufficient to respond immediately in the event of an oil spill so as to minimize and contain it to the maximum extent practicable and minimize the damage to the coastal and marine environment, including—

(A) sufficient heavy-duty oil boom and deployment capability to encircle the vessel at 100 yards or more;

(B) materials or other equipment to control leakage of oil from the vessel; and

(C) pumps and other necessary equipment; and

(10) establishment of an oil spill response team at appropriate locations on and around Prince William Sound consisting of trained personnel and equipment sufficient in numbers and capabilities to provide an immediate and effective response to a maximum probable spill.

(b) INSPECTION AND MAINTENANCE.—Subsequent to issuance of the rules described in this section, the Secretary shall implement regulations providing for regular inspection of oil tankers and equipment to ensure compliance with the requirements of subsection (a).

(c) COOPERATIVE EFFORTS.—In complying with this section, an owner or operator of an oil tanker may rely on his or her participation in a cooperative effort with other persons subject to this section to satisfy the requirements of this section.

(d) APPROVAL OF PLANS.—(1) In approving the contingency plans required by this section, the Secretary shall consider the adequacy of containment and cleanup equipment, trained personnel, communications equipment, response time, and logistical arrangements for coordination and implementation of the response.

(2) No plan shall be approved unless the Secretary determines that the equipment, personnel, and arrangements for implementing a response listed in the plan are sufficient to respond to the maximum probable spill in Prince William Sound.

(e) GUIDELINES FOR MAXIMUM PROBABLE SPILL.—The Secretary shall publish guidelines for the determination of the maximum probable spill in Prince William Sound, taking into account the amount of oil being transported, stored, or transferred, and the risk of a spill; except that in no event shall the maximum probable spill be less than the largest historic spill in Prince William Sound.

(f) PROHIBITION.—It shall be unlawful to operate an oil tanker in Prince William Sound that is not in compliance with a contingency plan submitted and approved under this section.

(g) LEGAL EFFECT OF CONTINGENCY PLANS.—The provisions of contingency plans approved by the Secretary pursuant to subsection (d) shall be deemed to be legally binding upon those persons submitting them to the Secretary. The district court of the United States for the district of Alaska shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise enforce such plans upon application by the Secretary.

(h) PUBLIC AWARENESS AND PRACTICE DRILLS.—(1) The Secretary shall annually publish an up-to-date description of the contingency plans prepared for oil spills in Prince William Sound, and an inventory of equipment available to respond to such spills.

(2) The Secretary shall require practice drills of the contingency plans prepared for oil spills in Prince William Sound not less than twice each year. The Secretary shall review and publish a report on such drills, including an assessment of actual response time and available equipment and personnel compared to those listed in the contingency plans, and requirements, if any, for changes in the plans or their implementation. The Secretary shall require such additional drills and changes in arrangements for implementing approved plans as are necessary to ensure their effective implementation.

(i) ACTION BY SECRETARY IN EVENT OF SPILL.—Notwithstanding any other provision of law, the Secretary shall notify the President immediately if (1) the extent of an oil spill in Prince William Sound is or may be greater than 1,000,000 gallons of oil, (2) more than one bilge or cargo tank or compartment in the vessel is spilling oil into the environment, (3) there is a clear and present danger to life, the environment, or major improvements in the area affected or likely to be affected by the spill, or (4) implementation of the contingency plan or other arrangements are not adequate to provide an immediate and effective response to the spill, regardless of its extent. The President shall, upon such notification, direct that the Secretary, acting through the Commandant of the Coast Guard, assume direction and control of the containment, cleanup, removal, and other responses to the spill. The assumption by the Secretary of such direction and control shall not affect the determination of liability for the costs of containment, cleanup, removal, or damages associated with or resulting from the spill.

OIL SPILL RECOVERY INSTITUTE

SEC. 11. (a) ESTABLISHMENT OF INSTITUTE.—The Secretary of Commerce shall provide for the establishment of a Prince William Sound Oil Spill Recovery Institute (hereinafter referred to as the "Institute") to be administered by the Secretary of Commerce through the University of Alaska Institute of Marine Studies.

(b) FUNCTIONS.—The Institute shall conduct research and carry out educational and demonstration projects designed to—

(1) identify and develop the best available techniques, equipment, and materials for dealing with oil spills in the arctic and subarctic marine environment; and

(2) determine, document, assess, and understand the long-term effects of the Exxon Valdez oil spill on the natural resources of Prince William Sound and its adjacent waters, the environment, the economy, and the lifestyle and well-being of the people who are dependent upon them.

(c) ADVISORY COUNCIL.—(1) The policies of the Institute shall be determined by an Advisory Council composed of—

(A) one representative appointed by each of the Commissioners of Fish and Game, Environmental Conservation, Natural Resources, and Commerce and Economic Development of the State of Alaska; and

(B) one representative appointed by each of the Secretaries of Commerce, the Interior, Agriculture, Transportation, and the Navy, and the Administrator of the Environmental Protection Agency, all of whom shall be Federal employees.

(2) The representative of the Secretary of Commerce shall serve as Chairman of the Council.

(3) Such policies shall include the conduct and support, through contracts and grants, on a nationally competitive basis, of the research, projects, and studies to be supported by the Institute in accordance with the purposes of this section.

(d) ADVISORY COMMITTEE.—(1) The Advisory Council shall establish an Advisory Committee, composed of specialists in matters relating to oil spill containment and cleanup technology, arctic and sub-arctic marine ecology, and the living resources and socioeconomics of Prince William Sound and its adjacent waters, from the University of Alaska and elsewhere in the academic community.

(2) The Advisory Committee shall provide such advice to the Advisory Council as such Council shall request, including recommendations regarding the conduct and support of research, projects, and studies in accordance with the purposes of this section.

(e) DIRECTOR.—The Institute shall be administered by a Director who shall be appointed by the President. The Director may hire such staff and incur such expenses on behalf of the Institute as are authorized by the Advisory Council.

(f) EVALUATION.—The Secretary of Commerce is authorized to conduct an ongoing evaluation of the activities of the Institute to ensure that funds received by the Institute are used in a manner consistent with the provisions of this section.

(g) AUDIT.—The Comptroller General of the United States, and any of his or her duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the Institute that are pertinent to the funds received and expended by the Institute.

(h) STATUS OF EMPLOYEES.—Employees of the Institute shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(i) TERMINATION.—The authority for establishment, operation, and funding of the Institute shall terminate 10 years after the date of enactment of this Act.

(j) AUTHORIZATION OF FUNDING.—For the purposes of this section, there are authorized to be made available to the Department of Commerce, $5,000,000 for fiscal year 1989 and $2,000,000 for each of fiscal years 1990 through 1999. Any such funds shall be provided from the Trans-Alaska Pipeline Liability Fund in accordance with the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.).

OILSPILL DISASTER ASSISTANCE

SEC. 12. (a) FINDINGS AND DECLARATION.—The Congress hereby finds and declares that—

(1) the oilspill in Prince William Sound which resulted from the negligent grounding of the Exxon Valdez is a disaster of major proportions; and

(2) because of the widespread impact on governments, communities, and individuals in areas affected by the disaster, the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) should be amended to allow Federal relief for such disastrous oilspills.

(b) DEFINITION.—Section 102(2) of such Act (42 U.S.C. 5122(2)) is amended by inserting "oilspill," immediately after "flood,".

(c) PARTY LIABLE.—Section 317(a) of such Act is amended—

(1) by inserting ", or through willful misconduct or negligence," immediately after "intentionally"; and

(2) by inserting ", or the willful misconduct or negligence," immediately after "omission".

TRANS-ALASKA PIPELINE LIABILITY FUND

SEC. 13.(a) Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(3)) is amended to read as follows:

"(3)(A) Strict liability for all claims arising out of any one incident shall be limited to $500,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $70,000,000 of such claims that are allowed. Financial responsibility for $70,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Act of June 30, 1948 (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $500,000,000.

"(B) Notwithstanding any other provision of law, after receiving notice that an incident has occurred, and upon the request of the Secretary of the Department in which the Coast Guard is operating, the Fund

shall immediately deposit $150,000,000 in the account established under section 311(k) of the Act of June 30, 1948 (33 U.S.C. 1321(k)) for use by the Coast Guard to reimburse Federal and state agencies for expenses incurred in connection with the containment, cleanup, relief, and rehabilitation efforts undertaken in response to the incident. The $150,000,000 so deposited shall be counted against the $500,000,000 available for any single incident. Any portion of the $150,000,000 deposited that is not expended shall be returned to the Fund.

"(C) Any government expenditures beyond the $150,000,000 made available in subparagraph (B) of this paragraph shall be submitted with all other claims for reimbursement from the $350,000,000 remaining. If the total claims allowed under this subparagraph exceed $350,000,000, they shall be reduced proportionately. The unpaid protion of any claim may be asserted and adjudicated under other applicable Federal or State law.".

(b) Section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(5)) is amended by striking "$100,000,000" wherever it occurs and inserting in lieu thereof "$500,000,000".

(c) Section 204(c)(6) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(6) is amended to read as follows:

"(6)(A) The collections under paragraph (5) shall be delivered to the Fund.

"(B) The Fund shall make available to the Department of Commerce $5,000,000 for fiscal year 1989, and $2,000,000 for each of the following fiscal years through 1999, for the purpose of funding the Prince William Sound Oil Spill Recovery Institute established under section 11 of the Prince William Sound Oil Tanker Navigation Safety Act of 1989.

"(C) The Fund shall make available to the Secretary of the department in which the Coast Guard is operating such funds for fiscal years 1989 and 1990 as are considered necessary by the Secretary to carry out the provisions of sections 7 and 8 of the Prince William Sound Oil Tanker Navigation Safety Act of 1989.

"(D) Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration, satisfaction of claims, and subparagraphs (B) and (C) of this paragraph shall be prudently invested in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.".

IMPACT ON OTHER LAW

SEC. 14. Nothing in this Act shall be construed or interpreted as changing, diminishing, or preempting in any way the authority of a State, or any political subdivision thereof, to regulate oil tankers transiting Prince William Sound or to provide for oil spill contingency response planning and activities, in State waters.

ACCESS TO PRINCE WILLIAM SOUND

SEC. 15. The Secretary may deny the right to enter, exist, or transit Prince William Sound to any oil tanker that is operated in violation of this Act or a regulation prescribed under this Act, including the requirements of section 10 that oil tankers be operated in compliance with approved contingency plans.

PENALTIES

SEC. 16. (a) A person violating this Act or a regulation issued under this Act is liable to the United States for a civil penalty of not more than $25,000. Each day of a continuing violation is a separate violation.

(b) Each vessel to which this Act applies that is operated in violation of this Act or a regulation issued under this Act is liable in rem for a civil penalty as prescribed in subsection (a) of this section.

(c) A person willfully and knowingly violating this Act or a regulation issued under this Act shall be fined not more than $50,000, imprisoned for not more than five years, or both.

(d) The district courts of the United States have jurisdiction to restrain a violation of this Act or a regulation issued under this Act.

S. 950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

RESEARCH AND DEVELOPMENT CENTER

SECTION 1. (a) Section 302(a) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1812(a)) is amended by striking "$200,000,000" and inserting in lieu thereof "$250,000,000".

(b) Section 302(d)(2) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1812(d)(2)) is amended by striking "not less than $100,000,000 and not more than $200,000,000" and inserting in lieu thereof "not less than $150,000,000 and not more than $250,000,000".

(c) Section 302(c) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1812(c)) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(4) use by the Secretary, in an amount not less than $2,000,000 and not more than $10,000,000 annually, for the Research and Development Center established in subsection (g) of this section.".

(d) Section 302 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1812) is amended by adding the following subsection:

"(g)(1) The Secretary shall establish a Research and Development Center (hereinafter referred to as the 'Center') to be administered by the Commandant of the Coast Guard.

"(2) The Center shall conduct and support, through contracts and grants, research, development, testing, and training in the best available techniques, equipment, and materials to prevent, contain, remove, recover, and clean up oil spills in the navigable waters of the United States by oil tankers transporting oil from offshore facilities or from other sources.

"(3) In administering the Center, the Secretary shall consult regularly with representatives of the Departments of Commerce, the Interior, the Environmental Protection Agency, the Navy, foreign governments, international organizations, and knowledgeable academic, industry, and other persons in order to identify and pursue development of the best available techniques, equipment, and materials.

"(4) The Secretary, in consultation with the Secretary of the Treasury, is authorized to draw, and the Secretary of the Treasury is directed to make available to the Secretary, such sums as the Secretary considers necessary to carry out the purposes of this section; except that such sums shall not be less than $2,000,000 nor more than $10,000,000 in any one fiscal year."

POST-SPILL RESTORATION AND ENHANCEMENT

SEC. 2. (a) Efforts to restore and enhance areas affected by an oil spill shall be directed by the Administrator of the Environmental Protection Agency, in consultation with—

(1) the Departments of Commerce, the Interior, and Agriculture;

(2) any affected State resource agencies; and

(3) a Coastal Zone Advisory Board composed of two persons from each coastal State's coastal zone management agency, who shall be appointed by the Governor of that coastal State.

(b) The Administrator shall expend such sums as he or she considers necessary from the Fund established in subsection (c) of this section in order to restore and enhance, in the most environmentally sensitive and effective manner possible, the living and non-living natural resources of areas affected by an oil spill.

(c)(1) A revolving Coastal Zone Restoration and Enhancement Fund shall be established in the Treasury for use by the Administrator to restore and enhance areas affected by an oil spill.

(2) A one cent per barrel fee shall be collected on each barrel of refined petroleum product refined in, or imported into, the United States for deposit in the Fund established under paragraph (1) of this subsection. Such fee shall be collected at the time when the barrel of refined product—

(A) leaves the United States refinery in which it was initially processed into refined product; or

(B) arrives in the United States in a refined form.

(3) The collection of this fee shall cease when $500,000,000 has been accumulated in the Fund, and collection shall be resumed whenever the accumulation in the Fund falls below $500,000,000.

(4) All sums not needed for restoration and enhancement efforts by the Administrator shall be invested prudently in income-producing securities approved by the Secretary of the Treasury. Income from such securities shall be added to the principal of the Fund.

SUMMARY SECTION-BY-SECTION OF THE PRINCE WILLIAM SOUND OIL TANKER NAVIGATION SAFETY ACT OF 1989

Section 1 gives the short title of the Act and Section 2 sets forth definitions of key terms.

Section 3 deals with pilotage of oil tankers in Prince William Sound. It requires that Alaska State pilots be used between the Port of Valdez and Bligh Reef.

Section 4 deals with the licensed personnel which must be on the navigation bridge of an oil tanker in Prince William Sound. It requires at least 3 officers on the bridge, at least 2 of whom must be licensed for the waters being transited in Prince William Sound. It also requires that the location of the vessel be marked on a navigation chart once every 6 minutes, for later inspection by the Coast Guard.

Section 5 gives the Coast Guard access to information in the National Driver Register about the driving record of individuals seeking or renewing licenses to direct and control commercial vessels. This will ensure that the Coast Guard knows about drunk driving, reckless driving, and other driving violations by applicants.

Section 6 provides for periodic, random, reasonable cause and post-accident testing to identify people who are directing and controlling the operations of oil tankers while impaired by or under the influence of alcohol. Procedures and safeguards for such testing are to be analogous to those published in regulations for drug testing. No person may be licensed to direct and control an oil tanker if that individual has been caught operating it while impaired or under the influence, or been denied a driver's license or had a driver's license suspended or revoked within the previous 5 years.

Section 7 requires installation and operation of a navigation light on Bligh Reef.

Section 8 requires upgrading of the VTS radar in Prince William Sound, a new radar unit on Naked Island, and a report on the feasibility and desirability of instituting positive control of tanker movements in the Sound.

Section 9 requires a study and recommendations regarding limits on the size of oil tankers in Prince William Sound and requirements that they be built with double bottoms, double hulls, or other structural features.

Section 10 sets out required elements that must be contained in contingency plans for oil tankers transiting Prince William Sound, including the requirement that they must clearly describe exactly how they fit into the overall contingency plan. Arrangements for prepositioning of equipment, materials, and personnel and escort vessels are required. Each tanker must also have on board enough boom to encircle the vessel at 100 yards.

Overall, the plans must be adequate to deal effectively with a maximum probable spill, which means a spill that is at least as large as that of the *Exxon Valdez*.

No tanker may operate in the Sound unless it has a plan that has been approved by the Coast Guard. The plans have the force of lay and can be enforced as such in the U.S. District Court.

The Secretary of Transportation, through the Coast Guard, must require practice drills at least twice a year to test the effectiveness of the plans and the ability of tanker operators to perform. Any failures or inadequacies will have to be remedied.

Finally, this section sets out a mechanism for Federal direction and control of an oil spill response. The Coast Guard will direct and control the response to a spill in the Sound if (1) the spill is or is likely to be greater than 1 million gallons, (2) more than 1 tank on the oil tanker involved in the spill is spilling oil, (3) there is a clear and present danger of life, the environment, or major improvements in an area affected or likely to be affected by the spill, or (4) the spill will not be dealt with adequately by arrangements under the contingency plan.

Section 11 establishes the Prince William Sound Oil Spill Recovery Institute to identify and develop techniques, equipment and materials for responses to oil spills in the arctic and sub-arctic environment, and to work on the long-term impacts of the *Exxon Valdez* spill on natural resources of the Sound. It will be funded at $5 million in fiscal year 1989 and $2 million per year thereafter with funds from the Trans-Alaska Pipeline Liability Fund.

Section 12 declares that the Congress finds the *Exxon Valdez* oil spill in Prince William Sound is a disaster of major proportions, and amends the Stafford Act to include oil spills under the definition of a major disaster. The section also amends the definition of liability under Stafford Act to include willful misconduct and negligence.

Section 13 raises the liability limits of the Trans-Alaska Pipeline Liability Fund from $100 million per incident to $500 million per incident. Upon request of the Secretary, $150 million of the $500 million will be deposited in the 311(k) account used by the Coast Guard to pay for federal clean-up expenses. Should federal expenses exceed $150 million, then the government is eligible to file for reimbursement, along with any other claimants, from the remaining $350 million. This section also provides money from the Fund or the Prince William Sound Oil Spill Recovery Institute and the upgrading of the Valdez Vessel Traffic Safety System.

Section 14 states that nothing in the act shall preempt State regulation of oil tankers or contingency plans within state waters.

Section 15 gives the Secretary the authority to deny the right of entry, exit or transit to any oil tanker that is operated in violation of this act.

Section 16 establishes both civil and criminal penalties for violations of this act. The civil penalty is $25,000 for each violation, with each day that a particular violation continues counting as a separate offense. The criminal penalty is up to 5 years in jail and/or $50,000. U.S. District courts are given authority to restrain violations under this act.

SUMMARY SECTION-BY-SECTION ON OIL SPILL RESEARCH AND COASTAL ZONE RESTORATION AND ENHANCEMENT

Section 1 raises the level of the Offshore Polution Fund to $250 million, and directs that not less than $2 million or more than $10 million be made available from the Fund to the Coast Guard in order to fund a research and development center for offshore oil spill prevention and cleanup technology.

Section 2 designates the Administrator of Environmental Protection Agency as the person in charge of the restoration and enhancement of areas impacted by an oil spill. A $500 million Coastal Zone Restoration and Enhancement Fund is established through user fee of one cent per barrel on crude oil at the point of refining, or on refined products at the point of arrival in the U.S. This fund is available to the Administrator for restoration and enhancement work. The Administrator directs the effort in consultation with the Departments of Commerce, Interior, and Agriculture, impacted state resource agencies, and Coastal Zone Advisory Board.

PRINCE WILLIAM SOUND OIL TANKER NAVIGATION SAFETY ACT OF 1989

Mr. DANFORTH. Mr. President, I am pleased to join the senior Senator from Alaska as an original cosponsor of the Prince William Sound Oil Tanker Navigation Safety Act of 1989, which is designed to respond to the devastating oilspill off Valdez, AK, and to prevent a recurrence.

As the ranking Republican member of the Commerce Committee's National Ocean Policy Study, the Senator from Alaska has been a leader in all of our efforts to protect the ocean and coastal waters, their living marine resources, and the people who depend upon them. This bill reflects, once again, his strong leadership and commitment to those objectives.

This is comprehensive legislation. It imposes new requirements for pilotage, licensed personnel, alcohol testing, disclosure of drunk driving convictions, radar monitoring, and other measures that should serve to prevent another grounding like that of the *Exxon Valdez*. It also establishes firm requirements for contingency plans, requires that they be approved by the Coast Guard, makes the provisions of those plans legally binding and enforceable, and provides for Federal direction and control of cleanup efforts to avoid a recurrence of the shameful fiasco that we have witnessed over the past several weeks. Finally, the legislation responds to the human needs resulting from an oilspill of this magnitude. It recognizes that a major oilspill is, in fact, a national disaster, and provides well-deserved relief and assistance to people who are impacted by such a spill.

In short, Mr. President, the senior Senator from Alaska has developed comprehensive and effective legislation in response to the Alaskan oilspill. I am pleased to be a cosponsor, and I urge my colleagues to join me in supporting it.

Mr. MURKOWSKI. Mr. President, today I am joining with my senior colleague from Alaska, Senator TED STEVENS, to cosponsor the Prince William Sound Tanker Safety Act.

The need for this corrective legislation was horribly demonstrated on March 24, 1989 when the oil tanker *Exxon Valdez* ran aground spilling some 240,000 barrels of North Slope crude oil into the waters of Prince William Sound, AK.

The effects of the *Exxon Valdez* oilspill have been disasterous. Hundreds of miles of formerly pristine beaches have been fouled by crude oil. Thousands upon thousands of birds, animals, fish, and other creatures dependent upon the marine environment have been killed.

Fishermen, guides, and many other Alaskans have lost millions of dollars in income. Some may even lose their way of life.

Exxon has spent and will continue to spend millions of dollars to clean up the crude oil and attempt to restore Prince William Sound.

All of this occurred because everyone involved became complacent.

Because we were careless and complacent we did not adequately and accurately assess the risks associated with oil tanker traffic in Prince William Sound. Because we failed to assess the risks, we did not seek to eliminate them.

Mr. President, the legislation that Senator STEVENS and I are introducing today attempts to do that very thing. It attempts to eliminate and minimize,

to the greatest extent possible, the risks posed by the movement of crude oil in ocean-going tankers in Prince William Sound.

As my colleague, Senator STEVENS, indicated today, currently there is approximately 2 million barrels leaving the Port of Valdez for distribution on the west coast of the United States each day. That pipeline provides the United States with approximately 25 percent of the total crude oil produced in our country. Many of the risks at which this bill is aimed were, of course, apparent before the oilspill. Yet they seemed remote and so unlikely to occur that we opted for other considerations, apparently of cost, perhaps of convenience. We are now paying the price of ignoring those risks.

We must not let such a thing happen again, Mr. President. We must ensure that there is a constant vigilance and effort to prevent another oilspill of this magnitude. And we must ensure that we have at our disposal the best available means and technology to respond to such a spill if our preventive efforts fail. We did not have the containment or the contingency plans in this case.

I intend to do my utmost to see that we accomplish those things. I believe we ought not to pursue legislation to open new and promising energy prospects such as the Arctic National Wildlife Refuge to oil and gas development until we are satisfied that we have adequately and completely addressed all the risks of shipping oil out of Alaska as well as addressed the containment and contingency plans associated with any exploration in the Anwar area.

I further believe we ought not to go forward with oil exploration in Bristol Bay Lease Sale 92 until we have proven we have the technology to respond to contingency and containment to an oilspill in those waters and have actually tested that capability.

But we should not confine our attention solely to Alaska. Well over half of all the petroleum consumed in the United States is transported into our Nation by tanker. An oilspill comparable to the *Exxon Valdez* spill could occur in virtually any coastal area of this country. Just as we were not prepared for such a disaster in Prince William Sound, we are not today prepared for such disasters anywhere in the United States either.

In the near future I will be introducing legislation to amend and substantially modify the existing Federal oilspill cleanup and response law. The premise of that legislation will be to ensure that the costs and liabilities of transporting crude oil by tanker realistically reflect the risks associated with that activity.

It is, of course, too late to prevent the *Exxon Valdez* oilspill. We are left now to clean up, restore, and learn from our mistakes. The legislation we are introducing today is just one step in that process.

I commend my friend, the senior Senator, Senator STEVENS, for initiating the Prince William Sound Oil Tanker Navigation Safety Act. I am pleased to join with him as a cosponsor.

By Mr. D'AMATO:

S. 942. A bill for the relief of Lea Gelb, Chaim Morris Gelb, and Sidney Gelb; to the Committee on Foreign Relations.

RELIEF OF GELB FAMILY

● Mr. D'AMATO. Mr. President, I rise to offer legislation to correct an injustice done many years ago to American citizens. Morris and Lenke Gelb owned a flour and produce business in Munkacevo, Czechoslovakia, prior to World War II. Because they were Jewish, the Gelbs were advised to flee Czechoslovakia. Soon after their departure, the Nazis seized and occupied their property. Remaining family members were taken to concentration camps.

After the war, the Gelbs learned from surviving relatives of the deterioration of their property and the subsequent annexation of the region of Czechoslovakia including Munkacevo into the Soviet Union. When it was clear that their property was not reclaimable, the Gelbs remained in the United States and filed for citizenship.

Title II of the War Claims Act of 1948 provided for claims of nationals of the United States based on the loss of or damage to real property in many European nations, including Czechoslovakia, as a result of military operations. Mr. President, this poses a peculiar problem for the Gelbs. Even though their property was in Czechoslovakia before and during the war, it is now located in the Soviet Union.

Had the Czech Government not ceded this area of land to the Soviet Union, the Gelb claim would still be compensable. Unfortunately, Mr. President, this is not the opinion of the Foreign Claims Settlement Commission or the Justice Department.

Therefore, Mr. President, this legislation is necessary to ensure that the Gelbs receive a fair hearing at the Foreign Claims Settlement Commission. Specifically, this legislation requires that the Commission redetermine the validity of the claims by the Gelbs without any regard to any previous determinations.

There is precedent for this action, Mr. President. In 1984, private legislation was signed into law, Private Law 98-54, which directed the Foreign Claims Settlement Commission to reopen a case for precisely the same reason—Czechoslovakian cessation of land to the Soviet Union does not preclude United States property claims from that region.

Mr. President, I ask that the Congress grant this relief to the Gelb family for their very worthy claim.●

By Mr. McCONNELL:

S. 943. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to facilitate the use of abandoned mine reclamation fund moneys to replace water supplies that have been contaminated or diminished by coal mining practices; to the Committee on Energy and Natural Resources.

IMPROVEMENT OF RECLAMATION PROGRAM

Mr. McCONNELL. Mr. President, today I rise to introduce legislation that would improve the Abandoned Mine Land (or AML) Reclamation Program under the Surface Mining Control and Reclamation Act (or SMCRA). The legislation would amend section 402 to return all funds collected from coal operators in a State back to fund that State's AML reclamation program. The legislation would also amend section 403 to increase the priority for projects to replace water supplies that have been damaged by past coal mining practices.

FULL RETURN OF FUNDS

SMCRA provides for a tax or collection of reclamation fees on coal produced in the United States. The major purpose of this collection is to fund State programs for the reclamation of mined areas left without adequate reclamation before the passage of SMCRA. As of September 1988, the Federal Office of Surface Mining (or OSM) collected $2.26 billion in reclamation fees nationwide. However, only $1.15 billion or just 51 percent has been awarded back to the States for the purposes of the program. OSM's return of funds to the States has been inconsistent and subject to intense controversy and constant change. Several smaller coal States have received back 5 and 7 times what has been collected. Pennsylvania, one of the larger coal States has received 108 percent of funds collected. My State of Kentucky has received just 44 percent of its funds. Other major coal producing States have received just 40 to 60 percent of their funds.

I believe Kentucky and other States deserve a more equitable return of their fees. For this reason, this legislation would amend section 402(g) of SMCRA to require the Secretary of the Interior to allocate annually to each State the full amount of fees that are collected in that State. The requirement to return the full amount would not apply in States that have completed reclamation pursuant to the objectives of the AML program under SMCRA.

ENABLING WATER PROJECTS

Significant areas of the United States and especially Kentucky have had water supplies destroyed by impacts from past coal mining. OSM's in-

terpretation of SMCRA's eligibility and priority requirements has favored land reclamation over projects to repair or replace damaged public water supplies. As a result, the Kentucky AML division has had important water projects rejected by OSM. In addition, the eligibility provisions in the existing law limit projects to those impacted by mining conducted prior to passage of SMCRA in 1977. In one case, Kentucky documented that pre-1977 mining impacted a water supply and proposed a project to repair the damage. OSM turned this project down because it claimed the water supply may have also been impacted by post-1977 mining. The existing law also establishes six priority objectives for the program. For the most part OSM funds only the two highest priorities and has mandated water projects to be lower priority projects.

This legislation would amend section 403 of SMCRA to raise the priority of projects to construct or repair public water distribution facilities including water treatment plants to replace water supplies affected by coal mining. Under the legislation these type water projects would be priority two projects. The amendment would allow a State to spend up to 50 percent of its allocation on such projects. Amended section 403 would also allow projects that may have been impacted by post-1977 mining so long as the adverse impacts were predominately caused by pre-1977 mining.

I do not believe it is good policy to first spend money on land reclamation in areas where water supplies have been ruined. Citizens without safe drinking water cannot be expected to be interested in land reclamation. Nor do I believe that funds collected from active coal production should be redistributed to the States in an inequitable fashion. This legislation would enhance a State's ability to repair water systems damaged by coal mining and would result in an equitable redistribution of AML funds between the States.

By Mr. KASTEN:

S. 944. A bill to authorize the establishment of a United States-Taiwan Free Trade Area; to the Committee on Finance.

UNITED STATES-TAIWAN FREE TRADE AREA

● Mr. KASTEN. Mr. President, I rise today to introduce a bill of profound importance for the future of American competitiveness and policy toward one of our most important allies in the Pacific Rim. This bill—a companion to one introduced by Congressman PHIL CRANE—authorizes a free-trade agreement between the United States and the Republic of China on Taiwan.

Taiwan has proven to the whole world that capitalism works. It is a symbol of stability and economic prosperity—and we have a historic opportunity to underscore our friendship while profiting from the expanded market it provides.

The Republic of China has taken steps to open up its markets to United States goods and services. Among those steps are: opening of its markets to insurance companies; liberalization of restrictions on banks; opening up bidding on special construction projects, such as the Taipei subway, to United States companies; and tariff cuts on many items, such as farm products, textiles, footwear, hats, and bicycles. The Republic of China has also sent missions to the United States to buy millions of dollars' worth of our goods.

The steps already taken demonstrate the good faith of the Republic of China. However, much more needs to be done. The Republic of China must cut tariffs on more items. United States companies must have fair access to Taiwanese markets.

A free-trade agreement with Taiwan would ensure United States access to the Taiwanese market, and make our goods more competitive there. It would benefit both the United States and Taiwan, and provide yet another international example of the economic potency of the principle of free market economics.

We have all been searching for new ideas on how to increase U.S. jobs, bring down trade deficits, increase our manufacturing productivity, and maintain our still-enviable standard of living. Enacting a free-trade agreement with Taiwan would be a positive step toward each of these goals.

Those who worked on the Israel and Canada free trade efforts are well aware that certain groups can and will react harshly toward a free trade agreement. I have my own concerns about how certain American businesses would be affected by a free trade agreement. But these are concens that we can—and will—address in a constructive manner during FTA negotiations between our two countries.

A potential hurdle to an FTA with the Republic of China is apprehension on the part of some that the Taiwanese would gain more from our markets than we would from theirs. The fact, however, is that United States businesses are hungry for Taiwanese markets, and would gain a great deal from an FTA with Taiwan—and so would all of the workers who get new and better jobs as a result.

Over the last decade, free trade has proven itself as the uncontested champion when it comes to improving the quality of life for men and women the world over. The United States and Taiwan can write a new chapter in this history of success—and that's what my bill calls upon them to do.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 944

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSULTATIONS REGARDING A UNITED STATES-TAIWAN FREE TRADE AREA.

The President is urged to initiate consultations with the Government of Taiwan to determine the feasibility and desirability of negotiations with such Government under the authority of section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902(c)) for the purpose of entering into a reciprocal and mutually advantageous trade agreement creating a free trade area between the United States and Taiwan.

SEC. 2. SPECIAL PROVISIONS APPLICABLE TO NEGOTIATIONS.

(a) ADDITIONAL NEGOTIATING OBJECTIVES.—Consultations undertaken under section 1 should aim at determining the feasibility and desirability of obtaining a trade agreement which, in addition to achieving the negotiating objectives set forth in section 1101 of the Omnibus Trade and Competitiveness Act of 1988, would make substantial progress in—

(1) improving the trade relationship between the United States and Taiwan by providing mutual economic benefits in the form of trade creation, greater economic efficiency, enhanced competition, and lower consumer prices;

(2) removing the remaining formal and informal barriers to trade in both countries, thereby expanding trade opportunities and improving the bilateral balance of trade;

(3) providing a better mechanism for identifying and addressing remaining trade barriers in both countries (including high tariffs on United States-produced agricultural and manufactured goods imported into Taiwan and on Taiwan-produced steel products imported into the United States) so as to avoid "issue-by-issue" trade disputes and to prioritize more effectively bilateral trade goals;

(4) providing an effective vehicle for developing rules in nontraditional areas such as services, trade-related investment, and the protection of intellectual property rights, thereby complementing and enhancing similar negotiations under the General Agreement on Tariffs and Trade;

(5) creating an effective and less confrontational dispute-settlement mechanism to resolve bilateral problems before it becomes necessary to resort to special trade law procedures or the General Agreement on Tariffs and Trade;

(6) encouraging United States firms to take greater advantage of opportunities in the Taiwanese market and to improve their export potential to that market; and

(7) identifying appropriate means to deal with broader policies that have an impact on trade, such as exchange rate management and financial market and investment regulations; and

(8) improving market access in both countries as a means of expanding bilateral trade opportunities and enhancing mutual security interests.

(b) USITC REPORT.—In determining the feasibility and desirability of the negotiations described in section 1(a), the President should also take into account the report of the United States International Trade Com-

mission entitled "Pros and Cons of Entering into negotiations on Free Trade Area Agreements With Taiwan, Korea, and ASEAN, or the Pacific Rim Region in General" (No. TA-332-259).

(c) WAIVER OF NEGOTIATION REQUEST BY TAIWAN GOVERNMENT.—Section 1102(c)(3)(B) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902(c)(3)(B)) does not apply to a trade agreement referred to in section 1.●

By Mr. BREAUX (for himself, Mr. SIMPSON, and Mr. BIDEN):

S. 946. A bill to reorganize the functions of the Nuclear Regulatory Commission to promote more effective regulation of atomic energy for peaceful purposes; to the Committee on Environment and Public Works.

NUCLEAR REGULATION REORGANIZATION REFORM ACT OF 1989

Mr. BREAUX. Mr. President, I rise today to join with my ranking Republican member on the Nuclear Regulatory Subcommittee, Senator ALAN SIMPSON from Wyoming, along with Senator JOE BIDEN, to introduce the Nuclear Regulatory Reorganization and Reform Act of 1989, virtually the same bill that passed the Senate 89 to 6 last August. I believe that all of us who are interested in the regulation of nuclear power should share a common goal as we examine this legislation. That goal, simply stated, should be the promotion of institutions that provide more effective and consistent regulation of the peaceful uses of atomic energy; for it is only through such a regulatory program that the confidence of the American people in the benefits of this technology will be restored. We must be successful in this effort if there is any hope that nuclear power will be able to play the crucial role that I believe it must in meeting our future energy needs.

I am well aware that 40 years ago, conventional wisdom held that the regulation of nuclear materials was best left to a Commission, where diversity of opinion and collegial decisionmaking process would result in actions that the American public could believe represented the very best judgment of a group of experts.

Of course, in 1946, when the Commission format of regulation was originally devised, the Congress did not want to vest in an agency headed by one person the technological development of the awesome power of nuclear energy that we had unleashed against Japan to end World War II.

Ironically, as the Congress decided over the years to split up the defense and the civilian promotional and regulatory responsibilities of the old Atomic Energy Commission, it chose to rid the defense and promotional side of the equation of the supposed benefits of a Commission decisionmaking process. And, to be sure, I sincerely believe that the benefits of a Commission process are largely illusory.

Since I became chairman of the Nuclear Regulation Subcommittee, and in the years before that when our distinguished ranking member, Senator SIMPSON, was the chairman, the subcommittee has spent a great deal of time investigating the current structure of the NRC. Indeed, in the last Congress, with the assistance of two investigators on detail from the General Accounting Office, the subcommittee held a dozen hearings on various activities of the NRC, including six hearings where the structure and functions of the Commission, including allegations of regulatory coziness between the Commission and its licensed utilities, were a principal focus. I must confess that I am not terribly pleased by what I have learned.

Just last week the subcommittee held a hearing on the NRC's response to an industry organization's report expressing concerns over the operation of the Rancho Seco powerplant, as well as the NRC's response to secret settlement agreements that would prevent workers from testifying before various parts of the agency. I was amazed at the lackadaisical attitude the NRC demonstrated concerning both of these issues.

I think it is fair to say that we have learned that we primarily have both people and organizational problems with nuclear energy, not technological problems.

The people problems involve some in both the industry and the regulatory community who have failed to maintain a proper perspective and boundary between the regulated and the regulator.

The organizational problems, moreover, are not new and should be familiar to any student of nuclear regulation. Unfortunately, however, I think the people problems tend to get all the news and we wind up not focusing the attention we should on the fundamentals.

It should be recalled that during the administrations of both President Kennedy and President Carter—the latter as an outgrowth of the investigation into the root causes of the accident at Three Mile Island—it was determined that serious problems were presented by the Commission format of regulation. The examination of the regulatory structure undertaken by both administrations led to calls for the creation of an agency headed by a single Administrator.

But the Kennedy initiatives were obviously left uncompleted and, while the Carter administration did succeed in promoting enhanced powers for the Commission's chairman, it did not make the final step that is the focus of the legislative initiatives being introduced. Today, more than 10 years after the accident at Three Mile Island, and 3 years after the accident at Chernobyl, I hope we can move one step closer to truly modernizing our regulatory structure.

As I have stated previously, I believe the record amply demonstrates that the Nuclear Regulatory Commission is a collegial body that rarely makes its most important decisions collegially.

Where, for example, does the record indicate a public decision on the structure and functions of the Commission's Office of Investigation?

Where can we find a public discussion of the Commission's decision regarding the wisdom of surface-based testing at candidate repository sites for nuclear waste?

Where is the record regarding final decisions by the Commission on its material false statement rules or its enforcement policy statement?

The answers to these questions are found, among other places, from the transcripts of closed meetings, notation vote sheets, and the notes from meetings between the staff of individual Commissioners.

Mr. President, the Nuclear Regulation Subcommittee has conducted an in-depth analysis of NRC decisionmaking over the past 3 years, and the simple fact is that less than 10 percent of the decisions that have come from the agency during this timeframe can be attributed to collegial discussions occurring in an open meeting when a majority of the Commissioners are present. A more cursory examination of the record since 1975 indicates that this pattern is not far from the norm of every Commission during that timeframe.

I do not want these remarks to be taken as overly critical of the decisionmaking process, but rather to illustrate the fact that the supposed benefits of the Commission format are not in practice what they in fact are in theory. Indeed, I am not sure that any of us fully expect every step in the decisionmaking process to be made on the public record, although every decision should be based upon the facts contained in the record and in accordance with the law. To expect otherwise would be somewhat hypocritical, given the nature and circumstances surrounding many of our own decisions.

Of course, we here in Congress are accountable to our constituents through the election process, and it is in the area of accountability that I believe the Commission format fails so miserably. Are the Commissioners accountable to the President that appoints them? Generally, unless they are guilty of malfeasance in office, the answer is no, they are not.

Are the Commissioners accountable to an American public that never casts a vote for them? Except in the broadest sense, the answer is again, no.

Are the Commissioners accountable to the Congress, in particular those of

us in the Senate who vote on their confirmations? Here, the answer is both yes and no, or, it depends. Absent a broad consensus on a particular legislative or regulatory initiative, it depends, it seems, on how loud we yell at them, and even then, it seems to depend upon whether or not we are perceived by them as a threat. This is not the way to promote consistent and effective regulation.

Mr. President, isolated and insulated from both the President and the Congress, and thus from the American people who elect us, the NRC operates almost as if it were in a fourth branch of the Government—or a fifth if you count the press, as many people do. Accountability and effective, consistent regulation are big answers to the problems of the nuclear industry. And I, for one, do not believe that effective and consistent regulation is possible within the context of the Commission form of government.

As I mentioned earlier, the single administrator legislation I am introducing today, the Nuclear Regulation Reorganization and Reform Act of 1989, is nearly identical to the NRC reorganization legislation, S. 2443, that passed the Senate 89 to 6 last August during the 100th Congress.

The bill that I am introducing today has the following changes from the bill that passed the Senate last August: First, the NRC's authorization will be handled separately; second, there are no inspector general provisions, since that legislation passed separately last Congress; third, there are no uranium enrichment provisions attached to this bill; and fourth, there are no provisions on standardization or fitness for duty since final rules on these issues have now been issued by the NRC.

I sincerely believe that the bill that I am introducing today is a big step in the right direction, and I respectfully ask my colleagues for their support.

Mr. President, our intent, as chairman of the subcommittee, and I see my distinguished ranking colleague who is now on the floor, is to hold a limited number of hearings to discuss this legislation. It is essentially the same legislation that passed this body in the last Congress by a vote of 89 to 6. I think the expression from this body was very strong that the move toward a single administrator that we could look to for being responsible was a major improvement, a major step in restoring the credibility to nuclear power in this country, for only through a strong governmental oversight program can the American people realize that everything that can be done in fact is being done to ensure the public safety of this very important source of energy, which I support.

I think the problems that we have experienced are basically people problems and not technological problems, and therefore I think this new regulatory program will be a major step in restoring that credibility and, at the same time, doing more to regulate an industry that is very important to the future not only of the United States, but indeed of the world.

I yield the floor.

Mr. SIMPSON. Mr. President, I thank you very much.

It is a pleasure to work with Senator BREAUX. I am very pleased to cosponsor with him, my friend and colleague from the State of Louisiana, the Nuclear Regulation Reorganization and Reform Act of 1989.

I have come to respect him greatly. I enjoy being the ranking member of the subcommittee which he chairs. I commend him for the hard and the steady work he has done in this area.

The Subcommittee on Nuclear Regulation which he chairs and on which I serve as ranking member, faces extraordinary issues. There are always issues of emotion, fear, guilt—and certainly we see that whole panoply of emotion as we deal with those things; issues that are controversial and yet vital for the economic health of the Nation.

The whole function of the NRC is to assure the public health and safety. There is no other mystery. There is no other mission. Senator BREAUX has done a remarkable job, both in the last session of Congress and now, to develop a well-balanced and much-needed approach to the reorganization of the regulatory program for nuclear generating facilities.

The bill the two of us are introducing today is essentially identical to legislation passed overwhelmingly in the last session of Congress. That legislation was reported to the Senate last year after lengthy hearings by the subcommittee.

As a result of those hearings the subcommittee concluded, as had all the earlier studies, that the current structure of the Nuclear Regulatory Commission is incapable of providing an efficient and effective program for the regulation of the civilian nuclear power industry.

The Kemeny Commission, which investigated the accident at the Three Mile Island nuclear power station 10 years ago came to a similar conclusion and stated very bluntly this:

> As presently constituted the NRC does not possess the organization and management capabilities necessary for the effective pursuit of safety goals.

Further, the Rogouin special inquiry group, that was another Three Mile Island investigatory team, stated:

> We have found in the NRC an organization that is not so much badly managed as it is not managed at all.

That group stated that:

> The Nuclear Regulatory Commission itself is not focused, organized, or managed to meet today's needs. In our opinion the Commission is incapable, in its present configuration, of managing a comprehensive national safety program for existing nuclear power plants and those scheduled to come on line in the next few years that is adequate to ensure the public health and safety.

Based on its assessment of NRC's management, the Rogouin group concluded and said:

> The central and overwhelming need is for legislative and regulatory reorganization to establish a single chief executive with the clear authority to supervise and direct the entire NRC staff.

Mr. President, the NRC—I think this may be startling to some—is the only Federal agency left with any public health and safety responsibilities which is not headed by a single administrator. Such a management scheme is necessary, not only to assure accountability for the public health and safety, but also to restore public confidence in nuclear power as a source of much needed energy.

I think it should be noted, importantly so, that most NRC commissioners themselves, both former and present, favor the single administrator concept. Nuclear power is obviously the energy option we require.

We are going to deal soon with the greenhouse effect. It was interesting to hear a discussion of that this morning. This administration is not opposed to examining the greenhouse effect. They just want to know whether it is going to be a conference or a consultation or with the United Nations or whatever it may be. But this administration has never ever been in a situation where they did not deal with that honestly. They feel it is a grave problem.

We have to have nuclear energy to continue the economic growth of this country; to be able to compete internationally. We know those things. But along with this growing need for energy we have to have a growing understanding and increased appreciation for the need to protect and respect the environment.

This President is committed to that. The new Administrator of the EPA is committed to that.

We have heard all the results of in-depth research which associates the burning of fossil fuels with the serious problems of global warming and acid rain. We are going to deal with that here on this floor. We must do that. We cannot allow regional struggles to prevent us from doing that.

I do represent a low-sulfur coal State. The previous majority leader represented a high-sulfur coal State. Those are serious problems, provincial things that make us conflict and not always get our work done. I have been at the root of some of that. We must deal with that. We will.

But we also know now of environmental devastation that can occur from the production and shipment of oil. We knew those things before. They are called risks. There are no risk-free things we do in life. Yet it seems to me that in these areas of acid rain, nuclear power, it is, somehow, that we should have it risk-free—and it will never be so.

It is odd to me that we do not pay the same attention to watch 50,000 or 55,000 people die in automobile accidents each year, we never say a word about it around here very much. That is the greatest risk, I guess, which we have: transportation to and from our work and our jobs and our families.

But enough of that. It is not risk-free but there is something we can do with the Nuclear Regulatory Commission which will make it work better and that is to make it have a single administrator. It is a collegial body that does not "college." They do not speak. They cannot.

Under the sunshine laws they are prohibited from anything more than cursory contact, like ships passing in the night, avoiding each other through the hallways. So they write memorandums to each other. They have layers of lawyers. And they really do not communicate with each other. The people of America thought that is what they were there for, to talk, to discuss the issues of the day. They do not. They cannot.

You do not dare to say that we should change the sunshine laws or the roof will collapse on your head. I have not any desire to do that. But certainly the sunshine laws that prevent a collegial body from talking should be revised or else get rid of the collegial body. That is what you ought to do and that is what this proposal is doing.

We have to work on ways to conserve energy; new conservation methods, new technologies; and we also need nuclear power. There are 108 reactors. Some may say well, I do not like nuclear power. Well, you may not but that is what you have 108 reactors.

There is another marvelous thing—I have said this before—there is not a politician who does not like to get up on his or her hind legs and talk about "They will never bring that to my State, they will never transport that across my State." There's always a great hoorah and excitement that goes through the crowd in that experience.

I say OK, in the year 2005 there will be 20,000 metric tons of spent fuel lying under 6 feet of demineralized water 30 miles from some of the biggest places in the United States. What are you going to do with it? Do you have any ideas? Would you like to join as players or just babblers?

That is what we will have, 43,000 metric tons of the type of material that, if the water were suddenly to leave it, from its encasement through a fissure or earthquake or injury or loss in the Earth, it could become recritical in a very swift time. Yet, "No, you cannot take it across my State. No, you cannot do anything with it."

Well, some day politicians will have to pay the price for that and I guess that is the only price we understand, and that is at the ballot box after they kind of put an ejection seat under you and say: Why did you not tell us about that? Why did you lie? Why did you josh us along? That is what is going to come and that is part of the problem with the Nuclear Regulatory Commission.

There is no way to get a strong signal of what it is that we are doing for the public health and safety when it comes from five different mouths and two layers of attorneys in the NRC.

Enough of that. That is not what I had intended quite to share, all of that. I just think the changes that my friend from Louisiana and I are placing here are necessary to improve nuclear regulation as included in the bill and to assure some confidence in the decisions made by the Nuclear Regulatory Commission. So we take it to a single administrator. I think it is long overdue to make that very sensible change.

Second, it provides for a Nuclear Reactor Safety Investigations Board. That Board will consist of three members appointed by the President with advice and consent of the Senate. It will be responsible for investigating any significant event, which is defined in the bill, which will occur at a licensed nuclear facility. Establishment of that Board, too, Mr. President, will go a long way in restoring the public's confidence in the safety of nuclear power as an energy source.

So in sum, I do indeed urge our colleagues to support this important legislation. This bill is necessary to fully protect the public health and safety and to encourage future development of nuclear power facilities. It is the result of diligent efforts of Senator BREAUX and the subcommittee and staff, and I hope deserving of the full support of the Senate.

Mr. BIDEN. Oftentimes, when the Senate addresses a complex and esoteric issue like regulation of nuclear energy, the road to Senate approval is a long and rocky one. Today, I am pleased to join Senators BREAUX and SIMPSON in reintroducing legislation that has survived just such a journey through the Senate. It is my hope the Senate will act quickly on this bill to completely overhaul the Nuclear Regulatory Commission [NRC].

The Senate approved a nearly identical measure by a 89 to 6 vote in the 100th Congress. Unfortunately, it was passed too late in the session for the House to act on it, despite our best efforts to encourage them to do so. I am pleased that Senators BREAUX and SIMPSON are moving on this proposal early in the 101st Congress, so it can be sent to the other body in a timely manner. It is high time for the NRC to be reorganized so the public can have greater confidence in its actions.

My principal interest in this bill is subtitle C, the Nuclear Reactor Safety Investigations Board. Earlier this year, I reintroduced legislation to establish an independent safety board for the NRC to improve its investigation of and followup to accidents at the 110-plus operating nuclear reactors across our Nation. In the 100th Congress, Senators BREAUX, SIMPSON, and I, worked closely to develop the language of subtitle C. That subtitle will establish an investigatory board with the independence, strength, and resources to improve public confidence that nuclear reactors are meeting the highest operating standards.

Nuclear energy has been in the spotlight this year for a number of reasons. One is the growing public concern over the greenhouse effect. Nuclear advocates believe the fact that nuclear energy does not generate greenhouse gasses will make it a much more attractive option for utilities planning an expansion of generating capacity. At the same time, the recent 10-year anniversary of the accident at Three Mile Island has recalled nuclear energy's unfulfilled promises and failed performance.

It has been 10 years since the operators of the central Pennsylvania reactor shattered the image of the entire nuclear industry. What I find remarkable is that the nuclear industry has been so completely incapable of regaining that lost confidence. Other industries have suffered well-publicized accidents during that time, but none have suffered such a long-lasting negative reaction.

It is more than a public relations problem at work. No amount of slick press releases can overcome industry actions that are less than forthright and appear contrary to the facts of the situation. The industry claims that it meets the highest standards. But a recent study by the Massachusetts Institute of Technology compared reactor operations in the United States, France, Japan, Sweden, Switzerland, and West Germany; the United States finished last. The study also found that between 1975 and 1984, the United States nuclear industry was the only one that did not improve its performance.

The nuclear industry claims that needed improvements are made quickly. But accidents at Rancho Seco in California and Davis-Besse in Ohio were traced to equipment improvements that were known for years but never made. And the NRC's own data

shows that dozens of reactors across the Nation have failed to fully implement changes required by the NRC in the aftermath of TMI.

The industry needs to recognize this record as less than confidence-inspiring. Congress needs to recognize that the regulatory system has not done enough to turn this record around.

That is why I hope that we can proceed quickly with this legislation and send it over to the House as soon as possible. There is no reason for our Nation to continue to accept the existing state of affairs with regard to nuclear regulation. I commend the chairman and ranking member of the Nuclear Regulation Subcommittee for their efforts on this bill, and I look forward to working with them to establish a credible, effective safety board as part of an overall reorganization of the NRC.

By Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. MATSUNAGA, Mr. ROCKEFELLER, Mr. GRAHAM, Mr. INOUYE, Mr. KOHL, Mr. PELL, Mr. WIRTH, and Mr. KERRY):

S. 947. A bill to amend title 38, United States Code, to improve conditions of employment for employees of the Veterans Health Services and Research Administration, and for other purposes; to the Committee on Veterans' Affairs.

VETERANS HEALTH-CARE PERSONNEL ACT

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I am today introducing S. 947, the proposed "Veterans Health-Care Personnel Act of 1989." I am joined in introducing this measure by my good friends and colleagues on the Veterans' Affairs Committee, Senators MITCHELL, MATSUNAGA, DECONCINI, ROCKEFELLER, and GRAHAM, and my good friends Senators INOUYE, KOHL, PELL, WIRTH, and KERRY. I especially want to pay tribute to the very close collaboration of Senator MITCHELL in developing this measure to which he and his staff have made major contributions. The purpose of this measure is to provide the VA the necessary tools, strategies, and flexibility to attract qualified and competent health-care personnel—registered nurses, pharmacists, physical and occupational therapists, and others—in today's competitive marketplace. Reflecting our very strong concern that we must find ways to reduce the Federal deficit, this legislation seeks to find methods to improve VA programs without incurring major new costs.

BACKGROUND

Both within and outside of the VA, the problem of recruiting and retaining sufficient numbers of qualified health-care personnel is one which has intensified in recent years. A number of factors have contributed to this problem, including inadequate salaries, increased demand for personnel, poor working conditions, and decreased enrollment in educational institutions which prepare health-care professionals. Because the health care furnished to veteran-patients is largely a function of the quality of the personnel furnishing the care, we must do all that we can to enable the VA to attract the best and brightest health-care personnel into the system. These men and women who give so much of themselves as they fulfill their daily responsibilities also require respect and support. I believe it is our job to ensure that they receive that respect and support both because it is right and because it will lead to better health care for veterans who need their attention.

Mr. President, problems associated with recruitment and retention of health-care professionals are not new. Periodically the Nation and the VA has been faced with shortages of such personnel. Over the last several years, beginning in 1980, I have introduced in the Senate a number of measures to help the VA deal with the recruitment and retention problems regarding nurses and other health-care personnel. Of particular relevance to nurses have been provisions enacted in Public Law 96-330 on August 26, 1980, authorizing special pay rates for physicians and dentists, the VA Scholarship Program, and a pilot program to study nurse recruitment and retention; and provisions enacted in Public Law 97-251 on September 8, 1982, authorizing the Administrator to increase pay for nurses and certain other health-care personnel for such purposes as overtime, weekend pay, and evening and night-shift differentials, modifying the Scholarship Program to make VA employees eligible to participate, and authorizing VA to implement the "Baylor Plan" for scheduling and reimbursing nurses. Additionally, Public Law 100-322, enacted on May 20, 1988, contains provisions, many of which I authored, including those requiring the VA to pay VA nurses who work on Saturdays the same rate of premium pay as they receive for Sunday work, making VA employees who pursue a degree in nursing eligible for the agency's Tuition-Reimbursement Program, opening the VA's Scholarship Program to members of all disciplines providing direct patient-care services, requiring chief nurses to be included in medical facility policymaking committees, requiring a study and report on various matters affecting nurse employment, including pay compression, adequacy of shift diffentials, and flexible benefits. This study is due to be submitted to Congress on May 19, 1989.

Earlier, on November 21, 1983, Congress enacted, in Public Law 98-160, legislation I authored to enhance the VA's ability to recruit and retain health-care professionals by placing respiratory therapists, licensed practical nurses, physical therapists, and medical technologists, among others, under title 38 for pay purposes only. Just last year, my provision to expand this category to include pharmacists and occupational therapists was enacted in Public Law 100-322 on May 20, 1988.

On August 26, 1980, because of problems the VA was experiencing with the recruitment and retention of health-care professionals, Congress enacted, as part of Public Law 96-330, my proposal to provide the VA the authority to approve special salary rates. Over the succeeding 9 years, the VA has turned more and more frequently to this provision, section 4107(g) of title 38, and today this provision is the only authority available which permits the VA to adjust salary rates in an attempt to remain competitive with community salaries.

More recently, in legislation I introduced on May 27, 1988, in S. 2462, which was passed by the Senate on October 18, 1988, as part of the provisions of S. 2011, I proposed provisions identical to many of those being introduced today and which I will describe later. Unfortunately, because we were unable to reach agreement with the House Veterans' Affairs Committee on a House-passed provision—in H.R. 5288—providing for across-the-board increases in nurses' salaries, the compromise legislation forged between the two bodies—enacted in Public Law 100-687—contained few health-care provisions.

Mr. President, my concerns about the specific House-passed pay provision were not a reflection of my beliefs that there were no problems in the area of pay for VA nurses. I have the utmost respect for those who choose nursing as a profession and have long believed that their efforts should be adequately recognized in both monetary and noneconomic ways. Provisions we are introducing today are designed to address the issues critical to nurse recruitment and retention as well as to help VA attract other essential health-care professionals.

Mr. President, a detailed history of the recruitment and retention problems I have described can be found in the committee reports accompanying S. 9 (S. Rept. No. 100-215, pages 150-61) and S. 2011 (S. Rept. No. 100-439, pages 150-51). Since the time of that second report in 1988, other developments have occurred both nationally and in VA which are affecting adversely the Department's ability to recruit and retain qualified health-care professionals. Although many of the studies and reports published relating to these developments have involved nursing, primarily because this is the largest group of health-care profes-

sionals, the same conclusions can be drawn with regard to other professions such as pharmacists, physical and occupational therapists, and medical technologists.

In this regard, according to a recent report entitled "AHA tracks shortages in health-care personnel" in the January 2, 1989, edition of AHA News, 48 percent of hospitals responding to the AHA's 1988 Human Resources Survey reported a problem with recruiting physical therapists [PT], 31 percent reported a problem recruiting pharmacists, 25 percent reported difficulties recruiting radiologic technicians, 22 percent reported difficulties with medical technicians, and 7 percent reported difficulties with respiratory technicians. Of the hospitals that responded to the survey, 92.8 percent experienced problems recruiting 1 or more of the 20 health-care personnel categories listed in the questionnaire. Additionally, 88 percent of those responding stated they were having difficulties recruiting registered nurses [RN's] and 85 percent identified retention of RN's as a problem.

In late December 1987, the Secretary of Health and Human Services established a special Commission on Nursing to advise him on problems associated with the recruitment and retention of RN's and to develop recommendations on how the public and private sectors could work together to address these problems. An interim report, which was published in July 1988, concluded that: First, the shortage of RN's is real, widespread, and of a significant magnitude; second, it is primarily the result of an increase in demand as opposed to a contraction of supply; third, the shortage is contributing to the deterioration of the work environment and may also have a negative impact on the quality of care provided; and, fourth, both long- and short-term projections for the future are not encouraging unless significant intervention is forthcoming.

In December 1988, the Commission published its final report. It makes 16 specific recommendations and proposes 81 directed strategies in the areas of: First, utilization of nursing resources by focusing nurses' time on nursing responsibilities; second, nurse compensation; third, health-care financing; fourth, nurse decisionmaking; fifth, development of nursing resources through facilitating nurse education; and, sixth, maintenance of nursing resources. I am pleased to note that many of the specific recommendations coincide with the intent of specific provisions I introduced and which were enacted in Public Law 100-322 and others which I propose in S. 2462, including encouraging innovations which recognize and appropriately utilize RN's; ensuring nurse participation in the governance, administration, and management of health-care organizations; fostering collaboration and mutual respect among the health-care team; and providing financial assistance to undergraduate and graduate nursing students. Other recommendations, particularly those relating to compensation for nurses, are addressed in the legislation we are introducing today.

Nationwide, according to the Commission report, the vacancy rate for RN's tripled to 11.3 percent between 1983 and 1987. In contrast, VA vacancy rates appear to have leveled off, although these VA statistics may be misleading. It is important to note that VA has also been decreasing its authorized number of full-time equivalent employees [FTEE's] during the course of this fiscal year. Due to a severe budget shortfall, VA does not have adequate funds both to hire appropriate numbers of personnel and to purchase needed equipment and supplies. Rather than divert funds for these latter purposes to support its personnel needs—and further weaken its infrastructure—VA has permitted FTEE levels to decrease. According to a semimonthly VA report entitled "Medical Care FY 1989 FTEE Date," by March 11, 1989, VA had 648.4 fewer FTEE RN's than it had on October 24, 1987; 1,034.6 fewer FTEE licensed practical nurses [LPN's], licensed vocational nurses [LVN's], and nursing assistants [NA's], and 117.6 fewer FTEE health technicians and other allied health personnel. Had these reductions not taken place, VA vacancy rates might be significantly higher.

Specifically, comparing vacancy and turnover rates published by VA in studies entitled "1986 Survey of Health Occupational Staff," and "1987 Survey of Health Occupational Staff," and preliminary figures gathered in preparation for a similar study of 1988 experience, the 1986 vacancy rate for RN's was 1.6 percent, the 1987 vacancy rate was 4.6 percent, and the preliminary 1988 vacancy rate remains at 4.6 percent. Because of the decrease in authorized positions, which might have an impact on these rates, I believe the more telling statistic is the turnover rate, which was 16.1 percent for 1986, 22.2 percent for 1987, and 26.5 percent for 1988. Rates for LPN's and LVN's depict a similar trend. In 1986 the vacancy rate was 8.4 percent, the 1987 vacancy rate was 10.6 percent, and the preliminary 1988 vacancy rate is 10.8 percent. The turnover rate for this group of employees was 18.9 percent in 1986, 30.3 percent in 1987, and 35 percent in 1988.

Mr. President, these figures are alarming—over one-fourth of the licensed nursing staff in VA is new to the Department—and I cannot help but believe that this profoundly affects the quality of care furnished to our veteran-patients.

Vacancy and turnover rates for pharmacists, physical therapists, and occupational therapists are similar. The 1986 pharmacist vacancy rate was 8.6 percent; in 1987 it decreased to 7.4 percent; but in 1988 it shows a slight increase to 7.6 percent. The pharmacist turnover rate decreased between 1986 and 1987 from 22.6 to 20.1 percent, but in 1988 it has risen back to 22 percent. The 1986 physical therapist vacancy rate was 22.6 percent; in 1987 it rose slightly to 24.5 percent; and it rose slightly again in 1988 to 26.3 percent. The turnover rate decreased minimally between 1986 and 1987 from 24.3 to 23.9 percent, but in 1988 it again rose to 24.4 percent. Rates for occupational therapists have generally worsened over the years. In 1986 the vacancy rate was 13.7 percent; in 1987 it was 13.5 percent; and in 1988 it has grown significantly to 19.1 percent. The turnover rate in 1986 was 23.4 percent; in 1987 it was 26.2 percent; and in 1988 it has increased to an overwhelming 32.7 percent.

Mr. President, these data paint a very dreary picture. I can conclude only that many health-care professionals do not find VA health-care facilities an attractive place to work. We must find methods to reverse this trend and require VA to implement them. Our veterans, as well as the dedicated health-care professionals who have remained with VA through these difficult times, deserve better. The measures we are proposing in this bill are designed for that purpose.

SUMMARY OF PROVISIONS

Mr. President, the provisions in this measure would:

First, require the Secretary to take steps to establish and maintain levels of pay—which are competitive with but not exceeding the pay of employers offering similar employment and competing in the same labor market area for qualified employees—for full- and part-time RN's, registered nurse anesthetists [RNA], and certified registered nurse anesthetists [CRNA], and authorize the Secretary to establish and maintain levels of competitive pay for employees covered by title 38 for pay purposes only—the so-called hybrid category, which includes certain psychologists, respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists. The steps involved in establishing and maintaining such levels of pay would be as follows: First, require individual VA facility directors to perform an annual survey of comparable health-care facilities in the same labor market area, no later than June 1, 1990—thereafter December 1 of each year—to determine the entry-level salaries for RN's, RNA's, CRNA's, and, if determined by the Secretary, hybrids, taking into consideration both educa-

tional preparation and years of experience. Second, if the findings of such a survey demonstrate that wages paid in the community are such that VA is no longer competitive in its efforts to recruit and retain qualified employees in one or more of the positions surveyed, step 1 of the appropriate entry pay grade would be adjusted to provide pay in an amount competitive with, but not exceeding, the wage rate paid in the labor market area surveyed for that occupation, and additional steps within each grade and other higher, related grades would be increased accordingly, so as to maintain the same proportional relationship between steps and grades, other than entry grades determined by the survey, as currently exists. Third, if the findings of such a survey demonstrate that wages paid in the community are competitive with but do not exceed those paid by VA, no further adjustment would be required. Fourth, when determining competitive salaries, premium pay, other additional pay, and the value of other benefits such as payment of insurance premiums—both in VA and non-VA facilities—would be taken into consideration. Fifth, in no instance would the rate of an employee's pay be decreased as a result of lower salaries identified in the community through the survey process although the salary scale would be adjusted downward if such a salary trend occurs in a specific labor market area. Sixth, pay increases resulting from the labor market area survey would become effective the beginning of the first pay period on or after July 1, 1990—thereafter the beginning of the first pay period on or after January 1 of each year. Seventh, in addition to other parameters which may be set forth in regulations, a comparable health-care facility would be defined as one identified by the individual facility director to be in direct competition with VA for the same employees. Eighth, if no comparable health-care facilities exist within a given labor market area, the salaries of the same type of employees employed in other health-care settings in the labor market area for whom the VA is competing would be utilized. Ninth, if the number of comparable facilities and the number of corresponding employees within the labor market area is insufficient to produce a valid comparison, a VA health-care facility, approved by the Chief Medical Director, in a similar demographic and labor market area would be utilized as the comparison. Tenth, for any grade in the VA salary scale determined by the Secretary, upon the recommendation of the CMD, to be an entry level grade, the entry salary could not be increased to a level in excess of step 10 of grade 13 of the general schedule—for those grades which are not entry level, the entry salary would not exceed the statutory cap of the Executive Schedule. Eleventh, unless a promotion, demotion, or change of assignment is involved, either voluntarily or otherwise, employees transferring from one VA facility to another would retain their grade and step but would receive the applicable wage associated with such grade and step as determined for the second facility. Twelfth, require the Secretary, not later than March 1 of each year—beginning with 1991—to submit an annual report to both Veterans' Affairs Committees containing a review of the implementation of this new authority and the effect of market rate adjustments on the ability of VA to recruit and retain health-care professionals pursuant to this legislation, and any other legislative actions recommended to assist in recruitment and retention efforts (section 101).

Second, require VA to pay overtime to RN's, RNA's, and CRNA's at the rate of one and one-half times such nurse's hourly rate of basic pay (section 102).

Third, require the Secretary to provide a 6-percent pay differential to nurses appointed to head nurse positions or assigned to such positions in excess of 30 days. This differential would be payable only for the period of time such nurse holds or fills the position of head nurse (section 103).

Fourth, authorize the Secretary to make cash awards of no less than 5 percent and no greater than 20 percent of an employee's annual basic rate of pay to no more than 20 percent of the managers and supervisors of each of the professional groups identified in section 4104(1) of title 38—physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries—for exemplary performance as defined by criteria promulgated by the Secretary—section 201.

Fifth, authorize the Secretary to establish and operate a dependent care assistance program for certain employees in the Veterans Health Services and Research Administration [VHS&RA] that meets the requirements of section 129 of title 26—section 202.

Sixth, authorize VA to hire, without regard to the civil service examinations and register process, VA-trained health-care professionals other than physicians, dentists, and nurses during the first year after their graduation—section 401. Similiar to section 621 of S. 2011 as passed by the Senate on October 18, 1988.

Seventh, reduce, from 90 to 45 days, the period, after VA submission of a special-pay rate request for title 5 health-care employees working in VA, in which the President or the President's designee may disapprove the proposed rate, and clarify that the proposed rate may be put into effect immediately upon approval if approval is given in a shorter period—section 121(b). Identical to section 622 of S. 2011 as passed by the Senate on October 18, 1988.

Eighth, require the Secretary to ensure an equitable allocation of VA health professional scholarships to persons enrolled in their second year of a program leading to an associate degree in nursing—section 301. Identical to section 623 of S. 2011 as passed by the Senate on October 18, 1988.

Ninth, authorize the appropriation of $5 million for each of fiscal years 1990 and 1991 and $6 million for each of fiscal years 1992 and 1993 for VA to reinstitute the program described in subchapter III of chapter 82 which authorizes the appropriation of funds for the expansion or improvement of programs in postsecondary schools which educate health-care professionals; provide for such funds to remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated; require that the development of those careers, approaches, and opportunities described in section 5091 of the title 38 must occur in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved; and authorize VA to expend up to 10 percent of each year's appropriation on VA programs—described in current section 5096(2)—designed to develop or initiate improved methods of education and training for health-care personnel—section 302. Substantially identical to section 624 of S. 2011 as passed by the Senate on October 18, 1988.

Tenth, require VA during calendar years 1990, 1991, and 1992 to conduct a pilot program at not less than five VA medical facilities to determine the desirability of: (a) Establishing programs which foster interdisciplinary professional collaboration and collegial relationships between physicians and RN's; (b) creating new alternatives for utilizing the skills and knowledge of RN's in furnishing direct-patient care; (c) increasing the pay differential for evening and night service; (d) revising the grade, classification, pay, and performance qualifications and other appropriate personnel and management systems used in VHS&RA; and (5) establishing flexible employment benefits programs for VHS&RA employees; and require periodic and reports on the pilot program by the CMD to both Committees on Veterans' Affairs, followed not later than 60 days thereafter by the Secretary's comments on each such report—section 402. Similar to section 625 of S. 2011 as passed by the Senate on October 18, 1989.

Eleventh, increase the cap on special salary rates to provide the authority for such rates to exceed by two times

the difference between the minimum and maximum of the grade; and require the Secretary to notify the Committees on Veterans' Affairs when such an increase becomes 94—or more—percent of the maximum amount permitted—section 121. Identical to section 622(a) of S. 2011 as passed by the Senate on October 18, 1989.

Twelfth, expand the Secretary's authority to make an exception to the title 5 provisions reducing the amount of retirement or retainer pay of a retired member of the uniformed services employed by the Federal Government—now limited to physicians—to include other employees within VHS&RA if necessary to meet special or emergency VA employment needs which result from a severe shortage of well-qualified candidates—section 105.

Thirteenth, require the Secretary to establish and conduct, for 5 years, a leave transfer program for medical emergencies of VA employees appointed pursuant to section 4108 of title 38 and authorize the Secretary to establish and conduct a leave bank program for medical emergencies of those same employees—section 203.

Fourteenth, require the Secretary to award each nurse, upon recertification in a specialty, an amount equal to 1 percent of such nurse's annual basic rate of pay if the nurse is employed in the clinical specialty in which he or she is certified and if the most recent performance evaluation of the nurse was not less than satisfactory—section 106.

COMPETITIVE PAY RATES FOR REGISTERED NURSES AND OTHER HEALTH-CARE PROFESSIONALS

Mr. President, the salary rate for RN's working in non-VA health care facilities varies considerably across the Nation. According to the American Nurses Association [ANA], in March 1987 the average lowest salary paid to full-time registered nurses in staff positions in rural locations was $19,255 and the average highest salary was $25,339. In urban areas with less than 1 million population the average lowest salary was $20,097 and the average highest was $27,346, and in urban areas having a population greater than 1 million, the average lowest salary was $21,989 and the average highest was $28,716. When broken down by region, the West North Central United States paid the lowest average lowest salary, $18,477, followed by the East South Central, South Atlantic, New England, Mountain, West South Central, East North Central, Middle Atlantic, and the Pacific regions, the latter paying the highest average lowest salary, $23,513.

Figures for the average highest salary followed a similar pattern with the West North Central paying the lowest average highest salary, $24,581, followed by the East-South Central, New England, South Atlantic, East-North Central, Middle Atlantic, Mountain, West-North Central, and Pacific regions, the latter paying $29,390. Nationwide, the average lowest annual salary for a full-time registered nurse in a staff nurse position was $20,205 and the average highest annual salary was $26,729.

A study of 1988 salaries undertaken by Cole Surveys, a subsidiary of the Wyatt Co., an international benefits, compensation, and risk-management firm, published in an article entitled "Cole Nurse Compensation" in the December 2, 1988, edition of Modern Healthcare, stated that, when reviewing salary increases of nurses, regional economic conditions figured prominently. Salaries of nurses on the east coast and in the South were increasing the greatest. Base salaries as of July 1, 1988, of medical-surgical nurses in hospitals with 100–349 beds averaged $25,500.

VA salaries are largely determined according to two sections within title 38: section 4107(b) and 4107(g). Section 4017(b) authorizes eight grades for RN's—junior, associate, full, intermediate, senior, chief, assistant director, and director. Specific qualifications for entry into any one of the eight nurse grades is described in VHS&RA supplement, MP-5, part II, chapter 2. For example, a nurse assigned to junior grade is one who has graduated with associate degree or diploma in nursing and who has no nursing practice experience; a nurse assigned to associate grade must have completed either 1 year of successful nursing practice or have no nursing practice experience but have received a baccalaureate degree in nursing; and a nurse assigned to full grade is expected to have completed either 2 years of successful nursing practice, or have a baccalaureate degree in nursing from an accredited program and 1 year of successful nursing practice, or have completed a master's degree in nursing, or have a master's degree in a field related to nursing and a baccalaureate degree in nursing. At present, these three grades are considered to be entry level grades for bedside staff nurse positions.

Generally, salary rates for the eight nursing grades correspond to grades 6–15 of the general pay schedule, and, as of January 1989, junior grade ranges from $17,542 and $22,807; associate grade ranges from $20,521 to $26,677; full grade ranges from $23,846 to $31,001; and intermediate grade ranges from $28,852 to $37,510. As of September 1988, prior to the January 1989 4.1-percent cost-of-living adjustment reflected in the ranges just described, the average salary of nurses assigned to junior grade was $22,582; associate grade was $24,181; full grade was $27,403; and intermediate grade was $32,538.

As I previously discussed, on August 26, 1980, as part of Public Law 96-330, provisions enabling VA to provide special salary rates were enacted. Section 4107(g) authorizes an increase in pay for title 38 employees and hybrids to provide for "an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of personnel at non-Federal facilities in the same labor market." When this measure was first enacted, it was thought that its use would be the exception rather than the rule. As of January 31, 1989, however, VA has authorized 125 of its 172 medical facilities to implement special rates for RN's, 127 facilities to implement special rates for pharmacists, 94 facilities to implement special rates for PT's, and 75 facilities to implement special rates for LPN's.

Clearly, the exception is now the rule as to these professions. As Ms. Vernice Ferguson, deputy assistant chief medical director responsible for nursing services, was quoted as saying in the March 1989 edition of U.S. Medicine, "Any time you have the exception to the rule becoming the rule * * * it tells you your system isn't responding to reality."

Mr. President, although special salary rates have helped VA maintain a competitive posture within an individual health-care facility's respective labor market area, this authority was conceived as a measure which might be used in special circumstances rather than as the norm. At the time this measure was enacted, we did not anticipate that VA salaries would lag behind to such a great extent or that salaries in a community would change so frequently. Additionally, the system as implemented to utilize this authority is slow to respond to salary changes occurring within the marketplace. As set forth in VA guidelines, MP-5, part II, chapter 3, section D, submission of a special rate request "presupposes all recruitment possibilities have been exhausted and full attention has been given to addressing retention considerations such as working conditions and duty assignment." Although that is a laudable objective, the labor market changes so rapidly that such preconditions are not workable.

Prior to being able to establish a special salary rate, a VA health-care facility director is required to submit to VA Central Office [VACO] substantial amounts of information to demonstrate the existence of a problem with the recruitment and retention of personnel. The gathering of such data and the development of a persuasive document for VACO review frequently takes a month or longer. Once submitted to VACO, the justification for the special rates is carefully reviewed and either approved, returned for further information, or disapproved. Accord-

ing to a recent VA survey of 193 cases in which rates became effective between August 1, 1988, and January 31, 1989, the lag time between VACO receipt and approval averaged about 82 days. Because of special circumstances surrounding the approval of COLA requests at that same time, this average is almost twice as long as previous reports for turnaround time for special rate approvals. We are concerned that in many instances the lengthy preapproval process—during which time the VA facility is already experiencing a staffing shortage—serves to worsen the staffing problem. Staff may become overworked and frustrated and thus seek to leave the organization. This, of course, creates an even greater shortage which may result in the further deterioration of care furnished veterans. Once this downward spiral begins, it is very difficult to break it.

Turnover also has the potential to add significant costs to the already expensive proposition of furnishing health care. For each new employee hired there are costs associated with advertising, interviewing, processing of paperwork, and orientation. The orientation provided an RN new to the VA system generally runs no less than 6 weeks. Not only is the salary of this new employee an additional expense—$2,800 for those 6 weeks using the average VA associate grade salary—but the salary of the more highly paid employees providing the orientation is an expense.

To reverse this trend and to provide VA the tools to be proactive rather than reactive, section 101 of the legislation we are introducing would require the VA Secretary to establish and maintain levels of pay for full- and part-time RN's, RNA's, and CRNA's, and authorize the Secretary to establish and maintain levels of competitive pay for other health-care employees covered by title 38 for pay purposes only—the so-called hybrids—which are competitive with but not exceeding the pay of employers offering similar employment and competing in the same labor market area for qualified employees. Although this sounds very similar to the description for special salary rates previously discussed, the major difference between the measure I am introducing today—which to avoid confusion I will refer to as competitive pay—and the existing statutory authority for special rates include the following:

First, special rates are discretionary while competitive pay for RNs, RNAs, and CRNAs would be mandatory;

Second, competitive pay salary ranges would generally be determined by the individual facility director while special rates are approved by VACO;

Third, competitive pay calls for salary ranges to be increased or decreased on an annual basis depending upon labor market area rates; and

Fourth, in the instance of competitive pay, a preestablished time would be established for review and adjustment of pay grades rather than waiting for a problem to arise as is the case with special rates. Of course, in the intervening year between routine competitive pay reviews and adjustments, special rates could still be implemented as needed.

SELECTION OF COMPARABLE HEALTH-CARE FACILITIES

Mr. President, this measure would require directors of each VA health-care facility to perform an annual survey, no later than June 1, 1990—and on December 1, 1990, and on each December 1 thereafter, of basic entry wages paid in comparable facilities within their labor market areas which the directors identify as being the areas in which their competitors are located. Not all facilities within a labor market area are necessarily competitors of VA health-care facilities. This is particularly true in large urban areas, and it may be true in smaller and more rural areas. Generally, competition is dependent upon size, scope of services offered, type of patient, and complexity of care. However, other factors such as facility location, traffic patterns, and geographic characteristics of the area can be variables. Many times a determination as to one's competitors can be made in a reasonable, quantifiable fashion; but this is not always possible.

Although I believe that VACO has the responsibility to furnish guidelines to facility directors as to how competitors might be selected, I do not believe that VACO should issue hard and fast rules as to the method for making such a determination. Therefore, our legislation would require the Secretary to promulgate regulations which would provide maximum flexibility for individual facility directors. If these regulations are not issued by April 1, 1990, facility directors, using their own criteria, will have the responsibility to establish and implement competitive pay for all registered nurses. It is also our intent that any determination made by a facility director would be made with the input of the individual facility chief nurse, in the case of RNs, or of the other service chiefs affected.

If a VA health-care facility is unique in its labor market area, the salaries of other like health-care professionals performing similar tasks in facilities within the labor market area would be surveyed. An example of a facility without an easily identifiable competitor might be a VA facility treating largely a long-term psychiatric patient population located in a rural area. In that instance, this measure would provide for a comparison to be made with other health-care facilities within the labor market area employing and competing for RN's.

Mr. President, there may be a rare instance where no competition can be found within a given labor market area. Our bill would then require the facility director, with approval of an official designated by the CMD, to utilize as a comparison a labor market area with similar demographic characteristics which has a VA facility and to adopt that VA facility's competitive pay rates.

INTERIM AUTHORITY TO DETERMINE LABOR MARKET AREA

It is our understanding that in certain labor market areas, nurses and other health-care professionals are commuting outside of the traditional labor market area surrounding their health-care facilities in order to work in areas paying higher wages. This phenomenon further accentuates the scarcity of health-care workers in those areas from which they are departing. Under current special rate regulations, a facility director is not able to expand his or her labor market area to take this movement into account and is thus losing qualified employees to those higher paying areas. Under the new competitive pay provision we are proposing introducing today, facility directors would be given maximum flexibility to define the labor market area with which they are competing; thus, the problem I just described would be minimized. However, in order to provide the Secretary adequate time to develop comprehensive regulations, competitive salary rates established pursuant to this provision would not become effective until July 1990, some 9 months from the beginning of fiscal year 1990. To assist facilities which are in the position of competing with distant labor market areas, a provision is included in this bill to require facility directors in rural geographical locations, which are losing qualified nurses and pharmacists to higher paying labor market areas, to carry out immediately the labor market area survey described in this measure in determining whether they have a need to seek approval of special rates under the current authority in 4107(g).

DETERMINATION OF SALARY RATES

Mr. President, it is our understanding that it is often difficult to obtain accurate information regarding salaries of health-care professionals, particularly those beyond the entry level. In some instances pay policies within non-Federal systems permit wages to be individually negotiated with incoming employees, and in other instances the pay structure is based on different criteria than that utilized within VA. However, entry pay rates for new and lesser experienced professionals are generally more easily discoverable and compared than those for experienced

professionals. Therefore, our legislation calls for determining entry-level salaries and then building grades and steps based on those entry-level rates. To avoid salary compression within a grade or between grades, this measure would require that the rates of pay for grades and steps established maintain the same proportional distribution between the rates of steps and grades that currently exists. To maintain consistency within the pay system, our bill would require the CMD to prescribe the number of grades (but not less than three) and the number of steps within each grade. If a new grade or additional steps within a grade are added by the CMD, the new grade or step would be required to bear the same proportionate relationship to other grades or steps as current steps bear to one another.

Currently, entry-level nurse salaries are considered to be at the level of junior, associate, and full grades. This determination had been made by VA when establishing the nurse salary schedule. Our legislation does not require that those specific grades be maintained, therefore, we provide for the Secretary, upon the recommendation of the CMD, to establish which grades will be considered to be entry-level.

As I previously mentioned, on May 19, 1989, the committee is expecting a congressionally mandated study which is expected to describe the extent to which pay compression is occurring within VHS&RA. One type of pay compression occurs when the range between the pay of new employees and experienced employees is narrow. VA officials have told us that compression is a major problem within the VA system and that this has led to retention difficulties. Under the current system, when a special rate is approved, the entry rate for that grade is increased and the range of the grade is increased accordingly. Under the current system, when a new employee is hired, he or she is offered the new higher entry rate. However, the rate earned by experienced employees is not adjusted upward proportionately when the special rate is approved; therefore, new employees may be hired at salary levels that took considerable time for longer-term employees to attain. In contrast to this situation as to special rates, this measure requires the rates of employees within specific steps of grades to increase when the range of the grade increases.

This measure, as does the title 38 provision authorizing special rates, would require that the wage rates paid be competitive with the wage rate paid in the labor market surveyed but not exceed the highest such rate. This provision reflects my belief that the Federal Government should not be the wage leader in a given community and contribute to the increased inflationary impact of medical care. This philosophy is not intended to suggest that Federal employees are not of top quality but rather reflects my view of the special responsibility of the Federal Government not to generate inflationary pressures.

A major difference between competitive pay and special rates in specific regard to the manner in which salary ranges are to be determined is that this measure requires the facility director to take into consideration other factors which affect base salary rates. These factors include payment of premium pay and additional pay such as weekend, shift, and holiday differentials, and the value of other benefits such as the contribution of employers toward employee health insurance premiums. Additionally, the general availability of health-care professionals within the community and the difficulty of recruiting to a particular location within the community should be considered. These variables can have a significant impact upon the salary structure established and will require the facility director to utilize his or her judgment in determining rates. Strict formulas and other rigid methods will not suffice in such situations.

It is our intention that VA, when implementing the provisions described—identification of competitors, performance of the annual survey, and establishment of competitive pay—promulgate few specific regulations. In making this point, I do not downplay the importance of thorough and adequate justification of pay decisions; however, I believe that the very intricate special-rate regulations have contributed substantially to the insufficiency and inefficiency of that system.

LIMITATION ON ENTRY-SALARY RATES

Mr. President, this measure would cap entry-level salaries of grades established primarily for supervisors and managers at the statutory cap of the executive schedule, currently $75,500, and it would cap the entry-level salary of all other grades at the level of step 10 of grade 13 of the general schedule published by the Office of Personnel Management, currently $53,460. This provision is explicitly intended to place a cap on the authority of VA to increase salaries. Although the concept of competitive pay for health-care professionals is one I firmly believe in, this new program must be carried out consistent with overall Congressionally-defined Federal pay parameters.

ADJUSTMENTS OF SALARY RATES

Mr. President, as a result of VA establishing under our bill salary rates on an annual basis in order to be competitive with the community, salary ranges may also be adjusted downward. I understand that such a phenomenon occurred in the skilled labor market in Houston, TX, when oil prices dropped. This measure would protect an individual's salary if VA were to adjust salary ranges downward. Thus, new employees could be hired at lower rates than their predecessors.

Additionally, in areas where the VA is the salary leader by virtue of the Federal pay scale being naturally higher than that within the community, VA would be required to adjust that salary scale downward. I'd like to stress that the current wages of employees would not be affected by that adjustment—basic salary rates of individuals already on board would be protected and would remain the same until the community caught up with the Federal rate. However, the concept of competitive pay would be an inequitable one if it called only for increased salary rates to meet local standards and excluded decreases to reflect those same standards.

In a similar light, employees transferring from one health care facility to another would retain their same step and grade if they retained the same position with similar responsibilities at the second facility, but their earnings would reflect the specific salary attributed to that step and grade in the new facility. Hence, their salaries could increase or decrease. As I have previously indicated, the concept behind competitive pay is that salaries should reflect the wages of the community in which the VA health care facility is located. To permit employees to maintain their previous salary without taking into consideration local conditions would violate the integrity of the system.

COMPETITIVE PAY VERSUS LOCALITY PAY

Mr. President, much has been reported recently about the use of "locality" pay within the Federal system. In a study released on March 29, 1989, the National Commission on the Public Service, chaired by former Federal Reserve Chairman Paul A. Volcker, recommended, "* * * a new pay-setting system that recognizes the fact that public employees live and work in localities characterized by widely different living costs and labor market pressures, and adjusts compensation upward accordingly." Although the details of such a system were not extensively described in this initial report, reference was made to maintaining the current pay structure and providing a special allowance for those living in high cost areas and in areas of intense labor competition. The relevant congressional committees are tackling the problems of civil service pay, and OPM has hired a contractor to gather information and conduct research on locality pay.

One important fact to note is that VHS&RA has been providing pay competitive to that paid in the community for a number of years. According to VA statistics, as of December 31, 1988,

30,700 employees, both title 38 and hybrids—27.7 percent of all VHS&RA employees excluding physicians—were covered by over 770 individual special rate authorizations in 40 occupations. This is in comparison to 19,500 employees on March 1, 1988—an increase of 57 percent in a 10-month period. At the end of January 1989, 154 VHS&RA facilities had a special rate authorization for at least one health care occupation.

Hence, the legislation we are introducing today would not establish a new concept within the Department. What it would do would be to provide VA the authority to be proactive in its recruitment and retention efforts rather than reactive—that is, to avoid counterproductive lag times. If the VA had the ability to keep pace with rates paid in the community, I believe that greater numbers of health care professionals would seek out VA as an employer and the expensive turnover I reported earlier would be significantly decreased.

OVERTIME PAYMENTS TO REGISTERED NURSES

Mr. President, section 102 of this measure would require VA to pay overtime to RN's, RNA's, and CRNA's at the rate of 1½ times such nurse's hourly rate of basic pay. Current law limits overtime pay for these employees to a rate not to exceed 1½ times the hourly rate of basic pay for the minimum rate of intermediate grade of the nurse schedule, currently $13.87 per hour. As of December 31, 1988, of the 36,305 full-time, part-time and intermittent RN's working for VA—514 of whom are RNA's or CRNA's—23,934 (66 percent) are at the intermediate grade or higher.

The provision in current law was enacted in 1973 as part of Public Law 93-82, and was intended to be similar to the method used for computing overtime payments for general schedule and wage board employees pursuant to title 5. That title 5 provision has remained unchanged. However, as previously discussed, VA is competing with non-Federal hospitals for scarce RN's, and those hospitals routinely pay 1½ times a nurse's actual hourly rate of basic pay for overtime hours worked. This places VA at a severe disadvantage.

When nurses seek employment, they look at a total array of benefits offered by an organization, not only the basic pay. Because overtime work is a frequent occurrence in many health care facilities, earnings which result from such work contribute significantly to a nurse's annual income and to job selection.

Additionally, because VA is often short of staff, nurses are frequently requested to volunteer to work overtime. Because of the current cap on overtime earnings, I understand that many decline to do so. In these instances, some facilities are turning to temporary nurse agencies to supply them with adequate numbers of nursing staff. Not only do these agencies pay nurses more than VA pays its nurses, or in certain instances would pay under our bill, including overtime—a cost which is, of course, passed on to VA—but these agencies charge an administrative fee to cover the services associated with procuring the nurse. Moreover, these charges do not account for any additional costs to the VA system incurred due to a lack of efficiency or quality resulting from an agency nurse who is not familiar with VA policy and procedure. These expenditures—combined agency nurse salary, administrative fee, and incidental costs—frequently exceed the cost of paying VA nurses 1½ times their rate of basic pay and end up purchasing the services of a less experienced nurse's services.

HEAD NURSE PAY DIFFERENTIAL

Mr. President, unlike most hospitals, VA pays RN's based on their credentials and performance rather than on the position they hold. Thus, a nurse working at the bedside has the potential to earn an amount equal to that of head nurses and supervisors. In the December 1988 report of the HHS Secretary's Commission on Nursing referred to earlier, it is recommended that health care organizations develop pay scales that reflect different levels of nursing experience, performance, educational attainment, and demonstrated leadership. VA long ago did so, and it should be proud of this innovative and creative system. Unfortunately, this same success has created a problem in the area of head nurse recruitment and retention.

The head nurse position is a key one in any hospital organization, and many would agree that it is one of the most difficult. The head nurse is responsible for a patient unit or ward, and it is at this location that the vast amount of direct patient care is furnished. The nurse in that position is responsible not only for a number of nursing personnel working under his or her supervision, but is accountable for the quality of nursing care and the coordination of all care furnished by other services. These supervisors are first-line in the truest sense of the word, and they are frequently the only managers present to address problems of physicians, other clinical staff, and the many nonclinical hospital staff so essential to furnishing a high quality of patient care.

Because a nurse working at the bedside can earn as much as a head nurse without assuming these additional administrative responsibilities, there is no financial incentive to assume that management role. The impact of this is illustrated in a recent survey of 172 VA medical centers which identified a growing vacancy rate for head nurses—18.5 percent in fiscal year 1986, 22.9 percent in fiscal year 1987, and 22.4 percent in fiscal year 1988.

Mr. President, I believe that the head nurse position is a pivotal one if good quality patient care is to be provided to our Nation's veterans. Therefore, section 103 of this bill includes a provision which would provide a 6-percent pay differential to nurses appointed to the head nurse position. This amount is based on the policy of VA which provides for a two-step increase in the case of a promotion. Two steps is approximately equivalent to 6 percent. In recognition of those nurses assigned to that position on an interim basis, the bill provides that those assuming that role for a period in excess of 30 days also would receive that 6-percent differential.

PROFESSIONAL SPECIALTY CERTIFICATION

Mr. President, section 106 of our bill would require the Secretary to award each nurse upon recertification in a professional specialty a lump-sum payment in an amount equal to 1 percent of the nurse's basic annual rate of pay provided that the nurse's last performance evaluation was not less than satisfactory. The recertification would be required to be issued by a recognized professional organization and in the specialty in which the nurse is employed by VA.

Certification, unlike licensure, is not a requirement for nursing practice. It is a credential which is pursued by those professionals who strive for excellence and recognition in their field. To become certified a nurse must take a difficult written examination which tests knowledge and the ability to apply that knowledge in a certain subject area. To become recertified, nurses generally must prove—every 2 to 4 years depending upon the specialty area—that they have continued to practice in their specialty area, attended continuing education programs, and, in several instances, shared their knowledge with others through teaching. Currently, VA nurses in senior grade or below may receive a one- to five-step increase on the basis of professional achievement provided they have demonstrated excellence in performance and have a potential for assuming greater responsibility. One way this achievement can be demonstrated is by becoming certified by an appropriate national certifying body. It is my understanding that most VA nurses receive at least a one-step—3.3 percent—increase upon certification. However, no economic incentive is provided for recertification.

We want to make sure that a special effort is made to encourage and retain those nurses who have taken the time and made the effort to take this additional step to demonstrate a higher level of knowledge. So as not to detract from the current practice of often giving a one-step increase in con-

junction with certification and otherwise satisfactory performance, our bill would require that upon recertification each nurse would receive a lump-sum amount equal to 1 percent of his or her annual salary provided that the nurse's last performance review was not resulting in a less than satisfactory rating.

EXEMPLARY PERFORMANCE CASH REWARDS

Mr. President, section 210 of our bill would authorize the Secretary to make cash awards of $500 to $5,000 for exemplary performance to no more than 20 percent of supervisors and managers in each of the professions listed in section 4104(1) of title 38—so-called title 38 employees; that is, physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded function dental auxiliaries. I believe such a provision is long overdue.

Currently two provisions in title 5 provide for cash awards for superior performance, section 5384 and section 5406. Pursuant to section 5384, performance awards may be made to employees within the Senior Executive Service to encourage excellence in performance. The amount of the award may not be less than 5 percent nor more than 20 percent of the appointee's rate of basic pay. In VA, those eligible for such awards include facility directors, regional directors, and key leadership persons in VA Central Office.

Section 5406 of title 5 requires the payment of performance management recognition awards for any supervisor or management official in General Schedule grades 13, 14, or 15, who receives an outstanding rating during the performance review process. The amount of the award is limited to not less than 2 percent and not more than 10 percent of the employee's annual rate of basic pay. Those VHS&RA employees eligible for these cash awards include only the directors of clinical and nonclinical services—that is, those professionals other than nurses, physicians, dentists, and other title 38 employees listed in section 4104(1) of title 38.

I believe that title 38 managers and supervisors should be eligible for cash awards which recognize their significant contribution to the furnishing of good quality patient care. Our provision differs from those found in title 5 in two ways. First, it would recognize the outstanding performance of employees in grades below that which is equivalent to the General Schedule grade 13 and, second, it does not automatically require that any award be bestowed. Awards would be granted to title 38 employees for their exemplary performance according to criteria established by the Secretary. It is our intent to circumvent the criticism of the title 5 program whereby many believe that those who receive the awards are not outstanding. If this is enacted, I intend to recommend strongly that the Secretary carefully monitor the recipients of such awards each year to be certain that the awards are distributed in an equitable fashion only to employees who provide exemplary performance.

DEPENDENT CARE ASSISTANCE PROGRAM

Mr. President, in response to a suggestion received from a VA employee who is a California constituent of mine, section 202 of this legislation would require the Secretary to establish and operate for VHS&RA employees a dependent care assistance program which meets the requirements of section 129 of title 26 which permit employees to contribute up to $5,000 annually tax free—$2,500 in the case of a separate return by a married individual—for the care of the employee's dependents. Under such a program, upon the request of the employee, an employer excludes from the employee's gross income specified amounts which would be placed in an escrow account. The employee then draws upon this account for dependent care costs. Just as amounts for 401(k) plans are treated for Federal income tax purposes, the amount so set aside is not reported to the Internal Revenue Service as part of the employee's earned wages, thus resulting in a reduction of the employee's income tax.

On March 19, 1987, my constituent, Dr. David L. McArthur, submitted this suggestion through the VA Incentive Awards Program. This suggestion was referred to the VA general counsel who sought guidance from OPM. In an October 5, 1988, memorandum from the VA general counsel to the Director of the Office of Personnel and Labor Relations, the general counsel advised that OPM stated that there was nothing under any title 5 provision permitting a Federal agency to establish such a program, and VA general counsel indicated that VA did not have sufficient authority to establish such a program for title 38 employees.

Mr. President, the growing crisis in recruitment and retention of health care personnel poses a threat to VA's capability of providing health care to our Nation's veterans. I believe it is imperative that VA begin to examine a wide range of employee benefits which may assist in resolving some of these problems, one of which is certainly assistance in the area of dependent care programs. Many employees have children or other dependents who need guidance and supervision while the responsible adult is working. Because such programs are increasingly found in the private sector, VA needs to offer benefits which are equally attractive. We need to promote a variety of solutions to meet problems associated with the recruitment and retention of such employees. In addition to adjustments in salary to make VA a more attractive place to work, many creative, cost-effective approaches such as this must be developed.

This rationale applies as well as to other VA employees and thus our bill would extend this dependent-care deduction feature to all VHS&RA employees. This new authority would complement the authority enacted in Public Law 100-322, which I proposed in the Senate with my colleague, the Senator from Arizona [Mr. DECONCINI], to require VHS&RA to establish child-care programs, as appropriate, at its medical centers and facilities under the auspices of the VA Canteen Service.

WAIVER OF RETIREMENT OR RETAINER PAY FOR VA HEALTH-CARE PROFESSIONALS

Mr. President, section 105 of this measure would authorize the Secretary—in the case of a shortage of scarce health-care professionals providing patient care services or services incident to direct patient care—to make an exception to the title 5 provision reducing the amount of retirement or retainer pay of a retired member of the uniformed services employed by the Federal Government. The Secretary would be authorized to exercise this authority, if necessary, to meet special or emergency VA employment needs which result from a severe shortage of well-qualified candidates. This provision would expand the current authority in section 4107(i) of title 38, relating to physician appointments, which was enacted in 1984 in Public Law 98-528. On April 12, 1989, while testifying before the House Committee on Veterans' Affairs Subcommittee on Hospitals and Health Care, Dr. Gronvall, CMD, stated that VA recommended expansion of this new authority to cover all VA occupations—not only nurses—providing patient care services or services incident to direct patient care.

Pursuant to section 5532 of title 5, following appointment to a civil service position, a former officer's retirement pay is reduced to an amount equal to $7,698.51 plus half the remainder of his or her retired pay, increased proportionately by the amount of consumer price index increases. This provision originally was enacted to save taxpayer money by preventing the practice known as double dipping—retired armed services personnel who not only receive their earned retirement pay but hold another full-time position and earn full-time pay. The belief was that the Government could save the cost of some retirement pay if the retiree was working and earning income elsewhere. In fact, because of the severe difficulties now being experienced in recruitment and retention of health-care professionals and the cost associated with this problem, a savings may not be resulting.

The number of scarce health-care professionals retired from the Armed Forces is difficult to determine, and the number of those who would want to continue their careers within the Federal Government is equally difficult to ascertain. However, it has been suggested that for those armed services personnel who do wish to continue their careers outside the uniformed service, VHS&RA would be a natural environment in which they might work. The VA patient population, while older, has a common bond with that found in military hospitals. Also, the military careerist is familiar with Federal policies and procedures and, therefore, would be comfortable in this similar environment. According to VA, the current authorized physician program has been exercised infrequently and prudently, but it has been helpful in recruiting qualified physicians in a variety of special shortage situations. If other retired armed services health-care professionals could be enticed to work within VA in scarce positions, the cost associated with vacant positions might decrease.

SPECIAL SALARY RATES FOR HEALTH-CARE EMPLOYEES

Mr. President, although the implementation of competitive pay would greatly reduce VA's need for special salary rates, that need would not be eliminated totally. In today's fast-paced recruitment marketplace, wages for RN's might move ahead rapidly in the middle of the year, making an additional adjustment necessary, or, for those employee categories for whom competitive pay is authorized but not required, the continuation of special rates as currently implemented would certainly be necessary if competitive pay is not implemented for them. Thus, it is important to ensure that the mechanism under which special rates are paid is maintained and improved as necessary. Provisions in our bill would do this.

The extent to which salary rates can be increased under the current authority is limited to the amount by which the maximum for the affected grade exceeds the minimum for that grade. Section 121 of this measure would raise this limit so that the increase could be up to twice the difference between the maximum and the minimum for the grade involved and would require the Secretary to notify the committee when such an increase is 94 or more percent of the maximum amount permitted. This provision is identical to section 622(a) of the provisions of S. 2011 as passed by the Senate on October 18, 1989.

In addition, because VA would need adequate time to promulgate regulations implementing competitive pay and, therefore, the provision as described in section 101 of this bill would not be implemented until July 1, 1990, this improvement in special rate authority would be needed with respect to the hiring and retaining of both RN's during the interim period. As previously discussed, the majority of RN's in VA fall within one of four grades—junior, associate, full, or intermediate—each grade having nine primary steps. The increments from one step to the next are approximately 3 percent. At one time, the first step within the grade was considered the entry level. However, as the nurse shortage has become more acute and as the competition for their services has become keener, nurse salaries in non-Federal hospitals have increased.

To remain competitive and maintain the ability to recruit and retain nurses, VA has had to advance starting salaries so that today, in the Boston, New York, San Francisco, and Los Angeles areas, the starting salary for junior grade nurses is at the maximum amount authorized by law for that grade—a difference of $10,530 from the theoretical entry level first step. The maximum has also been reached in the Boston area for associate grade nurses. In San Francisco, the starting salary for associate grade nurses is very close to the maximum, and it is expected that salaries will quickly reach that point as a result of a labor contract, which became effective September 1988, providing for a 21-percent increase over the next 34 months for nurses in surrounding non-Federal hospitals in the bay area.

In addition, pharmacists in the Los Angeles area are at the maximum allowable by law, and others in San Francisco, Northport, and New York City are near that maximum. The provision we are proposing is aimed at helping to ensure that VA has the ability to increase salaries of its nurses and other title 38 or hybrid health professionals so as to continue to remain competitive.

It is my understanding that salary rates in New York City for junior grade nurses reached the maximum authorized by law on or before February 28, 1988; in San Francisco on March 27, 1988; and in Los Angeles on June 23, 1988. To avoid future situations in which VA competitive capability is eroded away without the Congress being notified of the need for a legislative remedy, this measure would require the Secretary to notify both the House and Senate Veterans' Affairs Committees when salaries come within 94 percent or more of the maximum rates. This should provide the Congress with the forewarning necessary to consider the need for new legislation in a timely manner.

APPROVAL OF SPECIAL RATES OF PAY

Mr. President, section 121(b) of our bill would: First, reduce, from 90 to 45 days, the period, after VA submission of a title 5 health-care employees' special pay rate request, in which the President or his agent may disapprove the proposed rate; and second, clarify that the proposed rate may be put into effect immediately upon approval given in a shorter period. This provision is identical to section 622 of the provisions of S. 2011 as passed by the Senate on October 18, 1988. VA's Chief Medical Director testified in support of this provision at last year's hearing on June 16, 1988.

As previously discussed, under current law, when the Secretary determines it to be necessary in order to obtain or retain the services of certain personnel employed under the title 5 personnel system who provide direct patient care services or services incident to direct patient care, the Secretary may increase the rates of basic pay authorized under applicable statutes and regulations. In such cases, the Secretary is required to notify the President not less than 90 days prior to the effective date of the proposed increase. The President then has that 90-day period to disapprove the proposed increase and, if so doing, the President must notify the appropriate Committees of the Congress of the reasons for such action.

The procedure for establishing special rates has been previously discussed in my description of competitive pay. Requests to establish special pay rates are initiated at VA Medical Centers and are submitted to the VA Central Office [VACO]. Once submitted to VACO, the justification for the special rates is carefully reviewed and either approved, returned for further information, or disapproved. If approved by VACO, the request is then sent on for review by the President's agent, the Director of the Office of Personnel Management [OPM]. The elapsed time to this point can average as long as 90 days. A review conducted by the Director of the VA's Office of Personnel and Labor Relations at the committee's request showed that between August 1, 1988, and January 31, 1989, 51 special-rate authorizations were subject to review by OPM. Of these 51 cases, the average turnaround time was 49 days. OPM has never disapproved a special-rate authorization proposed by the VA under section 4107(g).

I am concerned that the lengthy preapproval process—during which time the VA facility is already experiencing a staffing shortage—may serve to worsen the staffing problem. Staff may become overworked and frustrated and thus seek to leave the organization. This, of course, creates an even greater shortage and may cause the care furnished veterans to suffer.

APPOINTMENT OF VETERANS' ADMINISTRATION-TRAINED PERSONNEL

Mr. President, as part of the VA's mission to establish and implement education and training programs for health-care disciplines, VA health-care

facilities provided training opportunities for tens of thousands of students each year—close to 100,000 students in 1987. At the time of graduation, many of these students turn to the VA as a potential employer. Persons in those professions who are not covered under the VA's title 38 appointment authority—generally, health-care personnel other than registered nurses, physicians, and dentists—are required to complete the time-consuming process of examinations and register listings prescribed for the Civil Service competitive system. This process justifiably focuses on the preservation of merit principles for filling vacancies rather than on the need to appoint much-needed health-care personnel in an expedited fashion. Unfortunately, this often results in graduates, whom VA would like to employ, seeking and accepting employment elsewhere.

The shortage of health-care professionals has created a competitive environment in which hospitals and other health-related employers are actively recruiting capable employees. Private sector employers are offering potential applicants immediate employment with very attractive salaries and benefits. VA, as previously noted, is having difficulty keeping up these latter areas and the complex, lengthy Civil Service application and acceptance process adds to the burden. A 1986 VA study found that fewer than 6 percent of students take jobs with the VA facility where they received a significant portion of their clinical training. There is no reason to believe that these figures have increased in the intervening years.

Section 401 of this measure would authorize the Administrator to appoint those who, in the previous year, have graduated with a recognized degree or certificate from an accredited institution in a health-care profession or occupation, who received their clinical training at VA facilities to positions at those facilities without regard to the Civil Service examination and register processes. This provision is similar to section 621 of the provisions of S. 2011. Rather than describing as 1 year the length of time within which such an appointment would be made, S. 2011 used the term "recent graduate." I believe that greater specificity should help avoid any confusion as to the intent of this provision.

In proposing this new authority, I do not intend that principles of the merit process—or of veterans' preference—be ignored, nor do I intend that other screening procedures to ensure the hiring of high-quality personnel be bypassed. However, because these graduates have completed a course of education with a practicum at a VA health-care facility, supervisory personnel at the VA will have had an opportunity to assess and evaluate their work in a clinical setting, and thus can be expected to know far more about such applicants' clinical competencies than they do about other applicants.

A further benefit to VA from hiring persons who have been recent students in VA facilities is the savings in recruitment and orientation costs, which can amount to several thousand dollars per employee.

ASSISTANCE TO HEALTH-CARE PERSONNEL EDUCATION INSTITUTIONS

Mr. President, section 302 of this measure, which is virtually identical to section 624 of S. 2011, would:

First, amend subchapter III of chapter 82 of title 38—relating to a program of VA grants to provide assistance in the education of allied health-care personnel, other than physicians and dentists, at VA-affiliated schools and to assist in developing and evaluating new health careers, interdisciplinary approaches, and career-advancement opportunities—to add a new section. This new section (5094) would authorize the appropriation of $5 million for each of fiscal years 1990 and 1991 and $6 million for each of fiscal years 1992 and 1993 for the VA to reinstitute the program; and provide for the funds to remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated;

Second, require that the development of those careers, approaches, and opportunities described above must occur in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved; and

Third, authorize the VA to expend up to 10 percent of each year's appropriation on VA programs designed to develop or initiate improved methods of education and training for health-care personnel.

In response to a shortage of physicians and other health-care professionals in the early 1970's, Public Law 92-541 added chapter 82 to title 38. This chapter provided for programs for which appropriations were authorized over a 7-year period—fiscal years 1973-79—for a pilot program of assistance in the establishment of 5 new State medical schools—subchapter I—and over a 10-year period—fiscal years 1973-82—for a program of grants to affiliated medical schools—subchapter II. These programs were generally successful in providing the monetary support needed to expand and improve the Nation's capacity to train physicians.

Under subchapter III of chapter 82, entitled "Assistance to Public and Nonprofit Institutions of Higher Learning, Hospitals and other Health Manpower Institutions Affiliated with the Veterans' Administration to Increase the Production of Professional and Other Health Personnel," 135 grants and 3 supplemental grants—totaling $47.9 million—were awarded during fiscal years 1974 through 1985. The provisions of subchapter III authorize VA to carry out a program of grants to provide assistance in the establishment of cooperative arrangements among universities, colleges, and other schools of higher learning and nonprofit health manpower institutions affiliated with the Veterans' Administration designed to coordinate, improve, and expand the training of health-care professionals and technical workers. A detailed discussion of the grants awarded pursuant to this provision can be found in the committee report accompanying S. 2011 (S. Rept. 100-439, pages 155-157).

Serious shortages continue to exist in many categories of health-care personnel, and the numbers being trained are not sufficient. Experts are predicting that this trend will continue. I believe that, if VA is to have sufficient numbers of qualified health-care professionals, it must be prepared to provide some funding to schools which are committed to VA and which will expose their students to the high quality of care furnished there.

It is my intent that, in the case of each grant award, VA obligate in any fiscal year only such funds as the school requires for that year rather than obligating in the fiscal year in which the project is approved the total sum required by the school for the life of the project. Although the committee is sympathetic to the need of schools to be assured of full funding throughout the expected life of the grant, I would like to see as many programs as possible be implemented so as to address more quickly VA's critical health personnel shortage.

Additionally, I believe that, although educational facilities may generally be the best equipped and most experienced in the process of teaching new health-care workers, personnel within VA facilities may also have valuable new ideas and approaches for educating and training such workers. I want to encourage creative efforts in VA as well. Therefore, up to 10 percent of each year's appropriation for the grant program could be used for VA health-personnel education programs which are considered to be of exceptional quality and which meet the needs of VA in ways which non-VA institutions are unable to match.

HEALTH-PROFESSIONAL SCHOLARSHIP AWARDS

Mr. President, section 301 of this bill, which is identical to section 623 of the Senate-passed provisions of S. 2011, would require the Secretary to ensure an equitable allocation of scholarships to persons enrolled in their second year of a program leading to an associate degree in nursing.

The Health Professional Scholarship Program was established by the enactment of Public Law 96-330, on August

26, 1980, to assist in the provision of an adequate supply of physicians and nurses and, if needed, of certain other health-care professions for VA and the Nation. As originally enacted, the legislation required the Administrator to give priority in awarding scholarships to those individuals who had previously received scholarships under the Scholarship Program. These provisions remained unchanged until 1987.

Section 326 of S. 9 as reported by our committee on November 6, 1987, and as subsequently amended in the Senate-House conference report on H.R. 2616 (H. Rept. No. 100-578), required the Administrator to give priority to the scholarship applications of individuals entering their final year in a course of training. This provision was enacted in section 216 of Public Law 100-322 on May 20, 1988. Although not explicitly set forth in the joint explanatory statement accompanying the conference report on H.R. 2616, the conferees' intention was that the Scholarship Program be made available to students, particularly nursing students, enrolled in an associate degree program.

Since the inception of the Scholarship Program until the start of the 1989 school year, VA has awarded nursing scholarships only to students enrolled, or accepted for enrollment, in the upper division, that is, their junior or senior year, of a baccalaureate program or pursuing a course of education leading to a master's degree in nursing. On May 12, 1988, Senator MURKOWSKI and I wrote to the CMD to encourage him to extend the Nursing Scholarship Program to student nurses in there second year of an Associate Degree Program. In his June 10, 1988, response, the CMD stated that, because of an overwhelming response to the Scholarship Program—over 1,600 applications for approximately 260 scholarships—VA was limiting scholarships to awards at the baccalaureate and master's degree level. Since that time, VA has received 1,711 nursing applications and 325 physical therapy applications and has awarded 304 and 47 scholarships, respectively.

I am very concerned about the continuing shortage of nursing personnel and believe that all efforts should be made to recruit such personnel expeditiously. While strongly supporting baccalarueate education for nurses and other health-care professionals, particularly in today's complex health-care environment and, thus, believing that priority should be given to those working on completion of a baccalaureate degree, I am concerned that some communities do not have readily accessible 4-year programs. Persons in such locales who are interested in nursing as a career and are unable to attend school without some financial support are therefore currently being precluded by VA's practice from obtaining such VA assistance.

PILOT PROGRAM ON PAY AND PERSONNEL MANAGEMENT PRACTICES

Section 402 of this measure, which is similar to section 625 of the Senate-passed provisions of S. 2011, which is similar to section 332 of S. 9, a provision reported by the committee and passed by the Senate on December 4, 1987, would: First, require VA during calendar years 1990, 1991, and 1992 to conduct a pilot program at not less than five VA medical facilities to determine the desirability of (a) establishing programs which foster interdisciplinary professional collaboration and collegial relationships between physicians and RN's, (b) creating new alternatives for utilizing the skills and knowledge of RN's in furnishing direct-patient care, (c) increasing the pay differential for evening and night service, (d) revising the grade, classification, pay, and performance qualifications and other appropriate personnel management systems used in VHS&RA, and (e) establishing flexible employment benefits programs for VHS&RA employees; and second, require periodic reports on the pilot program by the CMD to both Committees on Veterans' Affairs, followed not later than 60 days thereafter by the Secretary's comments on each such report.

A detailed history of matters leading up to the introduction of this provision can be found in the committee report accompanying S. 9 (S. Rept. No. 100-215, pp. 159-161) and in the committee report accompanying S. 2011 (S. Rept. No. 100-439, pp. 158-163). Unfortunately, the pilot program was not agreed to by the House conferees, but, rather, a provision requiring the Administrator to study and report on the possible effects of pay compensation, increased pay differentials for evening- and night-tours of duty, and flexible benefits programs within VA medical centers was enacted on May 20, 1988, as section 231 of Public Law 100-322 and that report is due to be submitted to Congress on May 19, 1989. Because I remain convinced that such pilot program is the best way to study and consider such alternatives, we are proposing it again as part of this bill.

PAY DIFFERENTIALS

Because furnishing care in medical facilities is a 24 hours-a-day, 7 days-a-week function, certain employees must be scheduled to work at times that are generally viewed as undesirable. Because the majority of workers choose to work Monday through Friday during regular daylight hours, employers, including VHS&RA, frequently pay premium wages in order to attract workers to other shifts or to work at less desirable times. Still, VA cannot attract sufficient staff to these unpopular tours, and many must rotate to those shifts to provide coverage. I believe a reasonable approach which might enhance recruitment and retention and might also save money would be to offer increased premium pay for these unpopular tours of duty and, therefore, entice personnel to work them on a permanent basis. This would then permit VA to offer permanent day shift positions to those wanting them.

COLLABORATIVE PRACTICE COMMITTEES

One of the most significant complaints lodged by nursing professionals is that hospital administrators and physicians fail to appreciate or make appropriate use of their skills or give them autonomy over their clinical practice. One approach to addressing this concern is collaborative practice programs which foster interdisciplinary professional collaboration and collegial relationships between physicians, nurses, and other direct health-care providers. These programs have been shown to enhance personal job satisfaction for both nurses and physicians.

A July 1987 preliminary VA report, entitled "Task Force on Recruitment and Retention of Non-Physician Health Care Workers," states:

> [T]here is much room for improvement among our physician and nursing staff in their attitudes and dealings with each other and with our other health care workers.

FLEXIBLE BENEFITS PROGRAMS

Flexible benefits programs, often referred to as cafeteria style benefits, offer employees a choice among types of health insurance, disability insurance, child care, annual leave, sick leave, and other benefits which are paid for in whole or in part by the employer. In testimony before the House Subcommittee on Government Operations on March 1, 1988, Constance Horner, Director of the Office of Personnel Management stated:

> OPM is extremely interested in these developments [flexible benefits] because we understand that if we are to staff the federal agencies successfully in coming decades, we must offer types and levels of benefits that are competitive with those available in other sectors. * * * Since they [benefits] affect the lives and welfare of millions of people, changing them in any fundamental way should be the result of a cautious, deliberative process.

Because of the difficulty in recruiting and retaining health care professionals, I believe VA would be an ideal test site for such a program.

CREATIVE NURSING MODELS FOR FURNISHING CARE

Mr. President, the demand for nurses in the United States is expected to increase as our population ages and health care becomes more complex. Ways must be found to attract persons into the profession, not only to resolve today's shortage but to ensure that adequate numbers of nurses will be available in the future. The literature

suggests that many perceive the work of nursing and the environment in which this work occurs as unattractive and undesirable. Nurses are viewed as having little autonomy and status, and nursing is viewed as a field requiring little educational preparation and knowledge. I believe that VA can and should take a leadership role in changing these perceptions as well as in actually changing the precepts upon which these assumptions are based. Thus, this bill includes a provision designed to move VA in that direction. The December 1988 Final Report of the HHS Secretary's Commission on Nursing also encourages health care facilities to take similar actions.

REVISION OF PERSONNEL MANAGEMENT SYSTEM

At our June 16, 1988, hearing, VA testified in support of the pilot program provision and also requested additional statutory authorities to broaden the ability to test various pay practices which particularly affect pay compression and flexible benefits. I believe that VA should have the flexibility to exercise creativity in designing and testing certain pay systems which will assist in addressing job shortages and recruitment problems.

I also believe that it is important to study and evaluate all issues relating to the possible enhancement of VA recruitment and retention efforts. Management studies have shown that salaries and benefits alone will not attract and retain employees; an environment in which employees feel they are recognized for their contributions and permitted input into the decision-making process is also a significant factor. I urge VA to do this. I have been very encouraged by the recent establishment by the CMD of a new Health Care Staff Development and Retention Office. I hope that all efforts will be made to provide that Office with the support and resources it needs to do the job effectively.

LEAVE SHARING

Public Law 100-566, the Federal Employees Leave Sharing Act of 1988, enacted on October 31, 1988, provides for a 5-year leave sharing program for title 5 employees. This authority, subchapter III of chapter 63 of title 5, requires OPM to establish a program under which annual leave accrued or accumulated by an employee may be transferred to the annual leave account of any other employee for the purpose of assisting the receiving employee during a time of medical emergency. Subchapter IV of chapter 63 requires OPM to establish during that 5-year period a leave bank demonstration project under which employees may voluntarily transfer annual leave to a leave bank from which annual leave may be made available to an employee needing such leave because of a medical emergency. Although earlier laws authorized testing such programs for title 38 employees, these provisions expire on September 30, 1989. Section 203 of our bill would require the Secretary to establish, or enter into an agreement with OPM to participate in a leave transfer program for health care professionals such as that described in title 5 and provide the Secretary the authority to establish, or enter into an agreement with OPM to participate in, leave banks for health care employees.

VA has submitted draft legislation having a similar purpose, and I introduced that as S. 899 on Tuesday, May 2, at the administration's request. That provision provides the Secretary the authority to establish a leave sharing program, both leave transfers and leave banks, for medical emergencies as authorized by the title 5 provisions.

Leave sharing is a very helpful and humane means of assisting employees during difficult personal times. Additionally, because many employees do not have the necessary accumulated leave to see them through these crises, they frequently are forced to resign or take leave without pay. Leave sharing would assist with recruitment and retention by providing an economical mechanism to retain qualified personnel. Leave transfer has been tested by OPM and found to be administratively feasible and successful; therefore, I believe VA should be required to establish such a program. The leave bank concept is very intriguing and, I believe, would be equally as successful as leave transfer, but a leave bank is not a program which has been as extensively tested. Therefore, until such time as the administrative policies are found to be workable, we propose only to authorize rather than require this program.

CONCLUSION

Mr. President, the provisions we are introducing today are intended to place VHS&RA in a competitive position within the health care marketplace for nursing personnel and other key health care professionals. Because of the many different factors which affect physician recruitment and retention, the alleviation of difficulties in that area are not addressed in this bill. This issue is being pursued actively, and I plan to develop legislation later this year after the CMD's Report to the President on the Adequacy of Special Pay for Physicians and Dentists has been submitted. This report, originally due to be submitted to Congress on December 30, 1988, is expected to be submitted on June 30, 1989.

NOTICE OF HEARING

Mr. President, the Committee on Veterans' Affairs will hold a hearing on this measure and other general health-related measures pending before our committee on Thursday, May 18, at 8:30 a.m. in 418 Russell Senate Office Building. The other measures or portions of measures to be covered are, within S. 13, the proposed "Veterans Benefits and Health Care Act of 1989" which I introduced for myself and others, section 211, services to overcome service-connected disability affecting procreation; section 213, State home construction grants; section 214, pilot programs for providing veterans with assistive animals; section 215, pilot program for providing signal dogs to certain veterans; section 222, sharing of specialized medical resources; section 223, coverage of veterans' health services and research administration personnel by Federal employees' collective bargaining procedures; section 224, disciplinary actions and grievances; and section 225, development of recommended legislation for the elimination of inconsistencies in certain veterans' benefits laws;

S. 165, a bill by Senator THURMOND which would require VA to construct a VA medical research center for VA and the Medical University of South Carolina in Charleston, SC;

S. 573, a bill by Senator MURKOWSKI to provide for third-party reimbursement of the United States for the cost of health care and services furnished a service-connected disabled veteran by VA for a non-service-connected disability;

S. 574, the proposed "Veterans Health Care Program Improvements Amendments of 1989," by Senator MURKOWSKI and others;

S. 748, a bill to extend the authority of VA to continue the State home grant and respite care programs and to revise VA authority to furnish outpatient dental care, which I introduced on behalf of the administration; and

S. 900, a bill by Senator ROCKEFELLER to extend VA's respite care authority.

Testifying or submitting testimony will be the Department of Veterans' Affairs, representatives of veterans' service organizations, professional nurses organizations, Federal employee unions, and others.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 947

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 "Veterans Health-Care Personnel Act of 1989".

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—PAY MATTERS

SEC. 101. PAY RATES FOR NURSES AND OTHER HEALTH-CARE PROFESSIONALS IN CERTAIN POSITIONS.

(a) IN GENERAL.—(1) Chapter 73 is amended by inserting after section 4107 the following new section:

"§ 4107A. Competitive pay rates for certain nurse and other health-care professional positions

"(a)(1) It is the purpose of this section to ensure, by a means providing maximum flexibility to directors of Department of Veterans Affairs health-care facilities, that the rates of basic pay for health-care professional positions described in paragraph (2) of this subsection in each such facility (including the rates of basic pay of personnel employed in such positions on a parttime basis) are sufficient for such health-care facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-care facilities in the recruitment and retention of qualified personnel for such positions.

"(2) The health-care professional positions referred to in paragraph (1) of this subsection are registered nurse positions, registered nurse anesthetist positions, certified registered nurse anesthetist positions, and the positions for such other health-care professionals referred to in clauses (1) and (3) of section 4104 of this title as the Secretary may determine upon the recommendation of the Chief Medical Director.

"(b) The Secretary shall ensure that, for pay periods beginning on or after July 1, 1990, the rates of basic pay for covered positions in the Department are established in accordance with this section instead of section 4107(b)(1) of this title.

"(c)(1) Not later than June 1, 1990, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

"(A) conduct a survey in accordance with this subsection; and

"(B) on the basis of such survey, establish the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out the purpose of this section.

"(2) The rates of basic pay established pursuant to paragraph (1) of this subsection shall become effective beginning with the first pay period that begins on or after July 1, 1990.

"(3) Not later than December 1 of each year after 1989, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

"(A) conduct a survey in accordance with this subsection; and

"(B) on the basis of such survey—

"(i) determine whether it is necessary to adjust the rates of basic pay for such covered positions at such facility in order to carry out the purpose of this section; and

"(ii) effective with the first pay period that begins on or after January 1 of the next year, adjust the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out such purpose.

"(4)(A) In the case of the covered positions in each category of covered positions in a Department health-care facility, the director of that facility shall survey the entry-level compensation established for the corresponding health-care professional positions in comparable non-Department health-care facilities within the same labor market area as that Department health-care facility. The Secretary shall specify in regulations the criteria for determining the number of comparable non-Department health-care facilities to be included in the survey.

"(B) If the number of non-Department health-care facilities comparable to a Department health-care facility in the same labor market area is less than the number determined in accordance with the criteria specified pursuant to subparagraph (A) of this paragraph or is less than the director of that Department health-care facility considers necessary in order to produce a valid comparison, such director shall, in the case of the covered positions referred to in such subparagraph, survey—

"(i) the entry-level compensation established for the corresponding health-care professional positions in such comparable non-Department health-care facilities as are located within that labor market area; and

"(ii) the entry-level compensation established for the corresponding health-care professional positions in other non-Department health-care facilities within that labor market area.

"(C) For the purposes of this paragraph, a non-Department health-care facility is comparable to a Department health-care facility if the director of the Department health-care facility determines, in accordance with regulations prescribed by the Secretary, that the non-Department health care facility (i) is in direct competition with the Department health-care facility for the recruitment and retention of personnel qualified for employment in covered positions, and (ii) has other characteristics that are comparable to the characteristics of a Department health-care facility.

"(d)(1) If the director of a Department health-care facility determines in any year that, because of an insufficiency in the number of non-Department health-care facilities or non-Department covered positions, a survey under subsection (c) of this section would not provide a valid comparison with respect to the covered positions in the director's facility, the director shall establish or adjust the rates of basic pay for the covered positions in the director's facility as provided in this subsection instead of subsection (c) of this section.

"(2) Not later than 90 days before the date on which the director of a Department health-care facility establishes or adjusts rates of basic pay pursuant to paragraph (1) of this subsection, the director shall—

"(A) identify a labor market area that is similar to the labor market area of such facility and includes a Department health-care facility; and

"(B) notify the Chief Medical Director of the labor market identified pursuant to clause (A) of this paragraph.

"(3) The director of a health-care facility referred to in paragraph (1) of this subsection shall prescribe the same rates of basic pay for the covered positions in the director's facility as are prescribed for the same covered positions in the Department health-care facility located in the identified labor market area unless the selection of that labor market area for the purpose of this subsection is disapproved by the Chief Medical Director in accordance with paragraph (5) of this subsection.

"(4) If the Chief Medical Director disapproves (in accordance with paragraph (5) of this subsection) the selection of a labor market area by the director of a health-care facility for the purpose of this subsection, the director of that facility shall prescribe the same rates of basic pay for the covered positions in that facility as are prescribed for the Department health-care facility in a labor market area which the Chief Medical Director shall designate. The Chief Medical Director may designate any labor market area that the Chief Medical Director determines to be similar to the labor market area of the director's health-care facility.

"(5) Not later than 60 days after receiving a notification from the director of a Department health-care facility under paragraph (2)(B) of this subsection, the Chief Medical Director shall—

"(A) approve the selection of the labor market area identified in the notification; or

"(B) disapprove the selection of that labor market area, designate another labor market area determined by the Chief Medical Director to be similar to the labor market area of the director's health-care facility, and notify that facility director of that designation.

"(6) In order for a labor market area to be determined similar to the labor market area of a Department health-care facility for the purposes of this subsection, both labor market areas must be similar in size, demographic characteristics, and labor market characteristics.

"(e)(1) When the director of a Department health-care facility establishes or adjusts the rates of basic pay for a grade for any category of positions at such facility in order to carry out the purpose of this section, the director shall specify the minimum rate of basic pay for such grade and, subject to paragraph (3) of this subsection, increase or reduce the other rates of basic pay for such grade to amounts that bear the same relationship to the specified minimum rate of basic pay and to each other as the rates of basic pay within such grade bear to each other before the increase or reduction, as the case may be.

"(2) The minimum rate of basic pay prescribed for a grade for the positions in any category of covered positions in a Department health-care facility on the basis of a survey conducted under subsection (c) of this section shall be sufficient for the pay and other employee benefits of the health-care professionals employed in such positions in such grade to be competitive with the entry-level compensation (but may not exceed the highest rate of entry-level pay established) for the corresponding health-care professional positions in non-Department health-care facilities in the same labor market area, as ascertained by the director of such facility in such survey.

"(3)(A) Except as provided in subparagraph (C) of this paragraph, the maximum rate of basic pay for any grade designated by the Secretary, upon the recommendation of the Chief Medical Director, as the entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for grade 13 of the General Schedule under section 5332 of title 5.

"(B) The maximum rate of basic pay for any grade other than an entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for a position in level V of the Executive Schedule under section 5316 of title 5.

"(C) The limitation prescribed by subparagraph (A) of this paragraph shall not apply to the entry-level grade for any category of covered positions if the positions have been designated by the Chief Medical Director as supervisory or managerial positions. The maximum rate prescribed by subparagraph

(B) of this paragraph shall apply to such entry-level grade.

"(4) Whenever a grade is added to the schedule of grades for covered positions in any category of covered positions or a step within grade is added to a grade in such schedule, the director of a Department health-care facility shall establish the rates of basic pay for that grade or the rate of pay for that step, as the case may be, in the same manner as the rates of pay are established and adjusted under the other provisions of this subsection. The rates of basic pay for the additional grade shall bear the same relationship to the minimum rate of basic pay specified for such grade and to each other as the rates of basic pay within each other grade in such schedule bear to each other. The rate of pay for an additional step within grade shall bear the same relationship to the other rates of basic pay within such grade as such other rates bear to each other.

"(f) An employee who is paid a rate of basic pay established under this section and who is transferred (voluntarily or otherwise) from a covered position in one Department health-care facility to a covered position in another Department health-care facility shall be paid the rate of basic pay in effect for the covered position at the health-care facility to which the employee is transferred for the same grade and the same step within that grade as was applicable to that employee immediately before the transfer if the Chief Medical Director determines that the duties of the position to which the employee is transferred are at least comparable to the duties of the position from which the employee was transferred.

"(g)(1) Rates of basic pay may be increased or reduced under this section.

"(2) A reduced rate of basic pay established for a covered position under this subsection shall not apply to an employee serving in such position at a Department health-care facility on the day before the effective date of the reduced rate. That employee shall continue to be paid at a rate of basic pay not less than the rate of basic pay applicable to that employee on such day for as long as the employee continues to serve in such position at such facility.

"(h) The establishment and adjustment of rates of basic pay under this section for covered positions does not limit the authority of the Secretary to pay bonuses under section 4120 of this title to employees appointed to such positions.

"(i)(1) Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report regarding the exercise of the authority provided in this section for the immediately preceding calendar year.

"(2) The report shall contain an assessment of the effects of the exercise of such authority on the ability of the Department to recruit and retain qualified health-care professionals for covered positions. The Secretary shall include in the report recommendations for such additional legislation to facilitate the recruitment and retention of qualified health-care professionals for such positions as the Secretary determines necessary or appropriate.

"(3) If the authority provided in this section was exercised for the year covered by the report only to adjust the rates of basic pay for nurse positions, the report shall also contain the reasons that rates of basic pay were not adjusted for other health-care professional positions under such authority for such year and any plans for adjusting the rates of basic pay for other health-care professional positions under such authority.

"(j)(1) The Secretary, upon the recommendation of the Chief Medical Director, shall prescribe regulations setting forth criteria and procedures to carry out this section. Such regulations shall provide maximum flexibility for the director of each Department health-care facility. Documentation requirements in such regulations shall be minimal.

"(2) If the Secretary fails to prescribe final regulations under this subsection before April 1, 1990, the Secretary shall, not later than such date, prescribe interim final regulations for the purposes of this subsection. Such regulations shall be effective upon issuance and shall remain in effect until the effective date of final regulations issued for the purposes of this subsection.

"(3) If neither final regulations nor interim final regulations are prescribed under this subsection before April 1, 1990, the director of each Department health-care facility shall, nevertheless, make determinations and establish and adjust rates of basic pay under this section with respect to covered positions in such facility for 1990 and subsequent years. In the case of any determination or other action which is subject to criteria or procedures to be prescribed in such regulations, the director of each such facility shall apply such criteria and follow such procedures as the director considers appropriate and consistent with this section. Each such director shall apply the final regulations when issued.

"(k) For the purposes of this subsection:

"(1) The term 'covered position' means a position referred to in subsection (a)(1) of this section.

"(2) The term 'health-care facility' means a hospital or an independent outpatient clinic.

"(3) The term 'entry-level compensation', with respect to corresponding health-care professional positions in non-Department health-care facilities, means—

"(A) the minimum rate of pay established for professionals in such positions with education, training, and experience equivalent or similar to the education, training, and experience required for health-care professionals employed in the same category of Department covered positions; and

"(B) the other pecuniary employment benefits, if any, provided for the non-Department health-care professionals paid such minimum rate of pay.

"(4) The term 'corresponding', with respect to health-care professional positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care professional positions in Department health-care facilities.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4107 the following new item:

"4107A. Competitive pay rates for certain nurse and other health-care professional positions.".

(b) TERMINATION OF APPLICABILITY OF REQUIREMENT TO SET PAY RATES BY EXECUTIVE ORDER.—Section 4107(b)(1) is amended by striking out "The" at the beginning of such section and inserting in lieu thereof "Except in the case of rates of basic pay subject to adjustment under section 4107A of this title, the".

(c) RELATIONSHIP OF PAY RATES TO ADDITIONAL PAY.—Section 4107(e)(1) is amended by striking out "in subsection (b)(1) of this section".

(d) GRADES FOR NURSE PAY SCHEDULE.—(1) Section 4107(b)(1) is amended by striking out the items under the heading "NURSE SCHEDULE" and inserting in lieu thereof the following:

"Three or more grades, as prescribed by the Chief Medical Director pursuant to paragraph (3) of this subsection.".

(2) Section 4107(b) is amended by adding at the end the following new paragraph:

"(3) The Chief Medical Director shall prescribe the number of grades and the number of steps within grades for nurse positions.".

(e) INTERIM COMPETITIVE PAY RATES.—(1) The director of each Department of Veterans Affairs health-care facility located in a rural area—

(A) shall, not later than December 1, 1989, conduct a survey consistent with the provisions of section 4107A(c) of title 38, United States Code (as added by subsection (a)); and

(B) pursuant to the authority provided in section 4107(g) of such title (as amended by section 105)—

(i) shall decide, not later than January 1, 1990, on the basis of the survey referred to in clause (A), whether to adjust, on a local basis, the rates of basic pay for nurses employed by the Department of Veterans Affairs; and

(ii) if deciding to adjust such rates on a local basis, shall adjust such rates effective for pay periods beginning after January 1, 1990, and before July 1, 1990.

(2) In conducting the survey referred to in paragraph (1), the director of a health-care facility located in a rural area shall include in such survey the rates of pay paid to nurses who reside in such area, who are employed in a health-care facility located outside such area, and who commute to work from such area to such health-care facility, if the director determines that the number of nurses who commute to work outside the area adversely affects the ability to employ nurses in the health-care facility of the director.

(3) For the purposes of this subsection—

(A) the term "health-care facility" has the meaning given such term in section 4107A(1) of title 38, United States Code (as added by subsection (a)); and

(B) the term "rural area" means a geographic area that the Secretary determines, upon the recommendation of the Chief Medical Director, to be a rural area.

(f) FIRST REPORT.—The first report under section 4107A(i) of title 38, United States Code (as added by subsection (a)), shall be submitted not later than March 1, 1991.

(g) CONFORMING AMENDMENT.—Section 101 is amended by adding at the end the following new paragraphs:

"(33) The term 'Secretary' means the Secretary of Veterans Affairs (except when the context indicates otherwise).

"(34) The term 'Department' means the Department of Veterans Affairs (except when the context indicates otherwise).".

SEC. 102. OVERTIME RATES OF PAY FOR CERTAIN NURSES.

(a) IN GENERAL.—Section 4107(e)(5) is amended by striking out the first sentence and inserting in lieu thereof the following: "A nurse who performs officially ordered or approved hours of service in excess of forty

hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service. The rate of overtime pay for such nurse shall be one and one-half times such nurse's hourly rate of basic pay.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect with respect to overtime service performed on or after October 1, 1989.

SEC. 103. ADDITIONAL PAY FOR HEAD NURSES.

(a) IN GENERAL.—Section 4107(e) is amended by adding at the end the following new paragraph:

"(11) A nurse shall be paid additional pay equal to 6 percent of the nurse's hourly rate of basic pay for each hour of service performed as a head nurse. The preceding sentence shall not apply to a nurse who is assigned to perform service as a head nurse for a period of less than 30 consecutive days.".

(b) RELATIONSHIP TO BASIC PAY.—Paragraph (1) of section 4107(e) is amended by inserting "and (11)" after "(8)"

(c) COMPUTATION OF HOURLY RATE OF PAY.—Paragraph (6) of section 4107(e) is amended by striking out "or (5)" and inserting in lieu thereof "(5), or (11)".

(d) RELATIONSHIP TO OTHER ADDITIONAL PAY.—Paragraph (7) of section 4107(e) is amended by striking out "or (5)" and inserting in lieu thereof "(5), or (11)".

(e) ADDITIONAL PAY AS HEAD NURSE TO BE COUNTED FOR CERTAIN BENEFITS.—Paragraph (9) of section 4107(e) is amended by inserting ", other than pay under paragraph (11) of this subsection," after "this subsection".

(f) TECHNICAL AMENDMENT.—Paragraph (9) of section 4107(e) is further amended by inserting "84," after "83,".

(g) EFFECTIVE DATE.—The amendments made by subsections (a) through (d) shall take effect with respect to service performed as a head nurse on or after October 1, 1989.

SEC. 104. WAIVER OF REDUCTION IN RETIRED OR RETAINER PAY FOR REGISTERED NURSES.

Section 4107(i) is amended by striking out "physician positions" and inserting in lieu thereof "(A) physician positions, (B) positions of health-care professionals involved in providing direct patient care, or (C) positions of personnel involved in providing services incident to direct patient care".

SEC. 105. SPECIAL RATES OF PAY FOR CERTAIN EMPLOYEES IN THE VETERANS HEALTH SERVICES AND RESEARCH ADMINISTRATION.

(a) INCREASE IN LIMITATION.—Section 4107(g)(3) is amended—

(1) by inserting "(A)" after "(3)";

(2) by inserting "by two times" after "exceed" the first place it appears; and

(3) by inserting at the end the following new subparagraph:

"(B) Whenever the amount of an increase under paragraph (1) of this subsection results in a rate of basic pay for a position being in an amount that is 94 percent or more of the maximum amount permitted under subparagraph (A) of this paragraph, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.".

(b) APPROVAL OF SPECIAL RATES OF PAY.—Section 4107(g)(4) is amended—

(1) in the first sentence, by striking out "ninety" and inserting in lieu thereof "45"; and

(2) by adding at the end the following new sentence: "If, prior to such effective date, the President approves such increase, the Secretary may advance the effective date to any date not earlier than the date of the President's approval.".

SEC. 106. CONSIDERATION OF PROFESSIONAL SPECIALTY CERTIFICATION.

Section 4107 is amended by adding at the end the following new subsection:

"(k)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall pay each nurse who is recertified in the speciality in which the nurse is employed a lump-sum payment equal to 1 percent of the annual salary of the nurse (as of the time the nurse is recertified). The Secretary shall make such payment when the nurse is recertified.

"(2) A payment may not be paid to a recertified nurse under this subsection if the performance rating for such nurse for the latest rating period ending before the date of the recertification is less than satisfactory.

"(3) A special payment under this subsection shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this title.".

TITLE II—OTHER PERSONNEL BENEFITS

SEC. 201. HEALTH-CARE PROFESSIONALS CASH AWARDS.

(a) AUTHORITY TO PAY CASH AWARDS.—(1) Subchapter I of chapter 73 is amended by inserting after section 4120 the following new section:

"§ 4120A. Cash awards for supervisors and managers

"(a) The Secretary shall establish by regulation a program under which the Secretary may pay a cash award to any Department employee referred to in section 4104(1) of this title who is a supervisor or manager.

"(b) The amount of a cash award shall be determined by the Secretary but may not be in an amount that is less than 5 percent or more than 20 percent of the basic pay of the employee.

"(c) The Secretary may not pay cash awards under this section in any fiscal year to more than 20 percent of the employees in any one category of employees referred to in section 4104(1) of this title.

"(d) Determinations of which employees are supervisors or managers shall be made in accordance with the regulations prescribed to carry out this section, except that for purposes of this section head nurses shall be considered supervisors.

"(e) A cash award under this section shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this section.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4120 the following new item:

"4120A. Cash awards for supervisors and managers.".

(b) EFFECTIVE DATE.—(1) The amendments made by subsection (a) shall take effect on October 1, 1989.

(2) Cash awards may be made under section 4120A of title 38, United States Code (as added by subsection (a)), only for service performed on or after October 1, 1988.

SEC. 202. DEPENDENT CARE ASSISTANCE PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Subchapter I of chapter 73, as amended by section 201, is further amended by inserting after section 4120A the following new section:

"§ 4120B. Dependent care assistance

"The Secretary shall establish and conduct a dependent care assistance program, which meets the requirements of section 129 of the Internal Revenue Code of 1986, for the care of dependents of employees in the Veterans Health Services and Research Administration.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 201, is further amended by inserting after the item relating to section 4120A the following new item:

"4120B. Dependent care assistance.".

(c) IMPLEMENTATION REQUIREMENT.—The Secretary of Veterans Affairs shall implement the program provided for in section 4120B of title 38, United States Code (as added by subsection (a)), not later than June 1, 1990.

SEC. 203. LEAVE TRANSFERS AND LEAVE BANKS FOR CERTAIN HEALTH-CARE PROFESSIONALS.

(a) IN GENERAL.—Section 4108 is amended by adding at the end the following new subsection:

"(e)(1) The Secretary—

"(A) shall, subject to paragraph (6) of this subsection, establish a voluntary transfer of leave program for the benefit of health-care professionals referred to in the matter preceding clause (1) of subsection (a) of this section; and

"(B) may establish a voluntary leave bank program for the benefit of such health-care professionals.

"(2) To the maximum extent feasible—

"(A) the voluntary transfer of leave program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

"(B) any voluntary leave bank program established pursuant to paragraph (1)(B) of this subsection shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

"(3) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) of this subsection to participate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5.

"(4) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) of this subsection to participate in any voluntary leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5.

"(5) Participation of such health-care professionals in a voluntary transfer of leave program or a voluntary leave bank program pursuant to an agreement entered into under paragraph (3) or (4) of this subsection shall be subject to such requirements and conditions as may be prescribed in such agreement.

"(6) The Secretary is not required to establish a voluntary transfer of leave program for any personnel permitted to participate in a voluntary transfer of leave program pursuant to an agreement referred to in paragraph (3) of this subsection.".

(b) IMPLEMENTATION REQUIREMENT.—The Secretary of Veterans Affairs shall implement the programs provided for in subsection (e) of section 4108 of title 38, United States Code (as added by subsection (a)), not later than October 1, 1990.

TITLE III—HEALTH CARE EDUCATION

SEC. 301. HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM AWARDS.

(a) APPLICANT PRIORITY AND EQUITABLE ALLOCATION FOR NURSING DEGREE APPLICANTS.—Section 4312(b)(5) is amended to read as follows:

"(5) In selecting applicants for the Scholarship Program, the Secretary shall—

"(A) give priority to applicants who will be entering the final year in a course of training; and

"(B) ensure an equitable allocation of scholarships to persons enrolled in the second year of a program leading to an associate degree in nursing.".

(b) IMPLEMENTATION REQUIREMENT.—The Secretary of Veterans Affairs shall provide for the implementation of the amendment made by subsection (a) beginning with scholarships awarded under section 4312 of title 38, United States Code, in 1990.

SEC. 302. ASSISTANCE TO HEALTH-PERSONNEL EDUCATIONAL INSTITUTIONS.

(a) DEVELOPMENT OF NEW HEALTH CAREERS.—(1) Section 5091 is amended by inserting "(in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved)" after "paramedical personnel, and".

(2) The Secretary of Veterans Affairs shall prescribe interim final regulations for implementation of the amendment made by paragraph (1) not later than February 1, 1990.

(3) For the purposes of paragraph (2), the term "interim final regulations" means regulations that are in effect until the effective date of final regulations issued for implementation of the amendment made by paragraph (1).

(b) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—(1) Subchapter III of chapter 82 is amended by adding at the end the following new section:

"§ 5094. Authorization of appropriations

"(a) There is authorized to be appropriated for the purpose of making grants under this subchapter $5,000,000 for each of fiscal years 1990 and 1991 and $6,000,000 for each of fiscal years 1992 and 1993.

"(b) The sum appropriated for a fiscal year pursuant to subsection (a) of this section shall remain available until the end of the fifth fiscal year following the fiscal year for which the sum is appropriated.

"(c) Of the funds appropriated for each fiscal year pursuant to the authorization in subsection (a) of this section, an amount not to exceed 10 percent of the sum so appropriated may be expended for the purpose described in section 5096(2) of this title.".

(2) The table of sections at the beginning of chapter 82 is amended by inserting after the item relating to section 5093 the following new item:

"5094. Authorization of appropriations.".

TITLE IV—OTHER PERSONNEL MANAGEMENT MATTERS

SEC. 401. EMPLOYMENT OF PERSONNEL TRAINED BY THE DEPARTMENT OF VETERANS AFFAIRS.

Section 4106 is amended by adding at the end the following new subsection:

"(h)(1) Notwithstanding subchapter I of chapter 33 of title 5, the Secretary, upon the recommendation of the Chief Medical Director, may appoint in the competitive service under such title any individual who—

"(A) has been awarded a degree or certificate in a health-care profession or occupation by an accredited institution;

"(B) has been appointed by the Secretary to participate in a clinical education program conducted by an educational institution affiliated with the Department health-care facility; and

"(C) within one year before that individual's appointment in the competitive service, has successfully completed such clinical education program.

"(2) In making appointments to the competitive service under this subsection, the Secretary shall apply the provisions in subchapter I of chapter 33 of title 5 that relate to preferences for the hiring of veterans and other persons.".

SEC. 402. PILOT PROGRAM OF PAY AND PERSONNEL MANAGEMENT PRACTICES.

(a) IN GENERAL.—The Chief Medical Director of the Department of Veterans Affairs shall conduct a pilot program at not less than five department medical centers during calendar years 1990, 1991, and 1992, in order to determine—

(1) the effects of pay and personnel management practices of the Veterans Health Services and Research Administration on the ability of the department to recruit and retain persons qualified to provide direct patient-care services or services incident to direct patient-care services in department health-care facilities as employees in employee position categories in which the department is experiencing recruitment and retention problems;

(2) whether it is desirable to establish programs which foster interdisciplinary professional collaboration and collegial relationships between physicians, registered nurses, and other employees providing direct patient care, and what effects such programs would have on the ability of the department to recruit and retain registered nurses;

(3) whether it is desirable to create new alternatives for utilizing the skills and knowledge of registered nurses in furnishing direct patient care, and what effects such alternatives would have on (A) the ability of the department to recruit and retain registered nurses, and (B) the cost of providing care to veterans;

(4) whether increasing the pay differential for evening and night shifts will attract adequate numbers of qualified workers for such shifts and result in more permanent day-shift assignments;

(5) whether it is desirable to revise the grade, classification, pay, and performance qualifications systems and any other appropriate personnel management systems for employees of the Administration; and

(6) whether it is desirable to establish flexible employment benefits programs for employees of the Administration.

(b) CONDUCT OF PILOT PROGRAM.—In conducting the pilot program under subsection (a), the Chief Medical Director shall—

(1) at not less than one site, establish a collaborative practice committee involving physicians, nurses, and, as appropriate, other direct health-care personnel;

(2) at not less than one site, significantly increase the pay differential for evening and night service;

(3) at not less than three sites, implement new alternatives for utilizing the skills and knowledge of registered nurses in the furnishing of direct-patient care;

(4) at not less than one site, establish systems alternative to or additional to the systems established under chapter 73 of title 38, United States Code, or chapters 33, 43, 51, 53, 54, and 61 of title 5, United States Code, for grade, classification, pay, performance, qualifications, and other appropriate aspects of personnel management; and

(5) at not less than one site, establish and administer flexible employment benefits programs as alternatives or additions to the programs established under chapter 73 of title 38, United States Code, or chapters 63, 79, 87, and 89 of title 5, United States Code.

(c) REPORTS.—(1)(A) Not later than June 30, 1991, the Chief Medical Director shall submit to the Secretary of Veterans Affairs a report on the experience under the pilot program during the first 12 months such program is conducted. The report shall contain—

(i) the Chief Medical Director's evaluation of the effect of each management practice undertaken in the pilot program on the ability of the Department of Veterans Affairs to recruit and retain health-care employees;

(ii) information on the cost factors associated with each such management practice;

(iii) an evaluation of the functioning and productivity of the employees involved in or affected in any substantial way by such practices;

(iv) a discussion of any effects on the quality and timeliness of care provided to veterans; and

(v) any planned administrative actions and any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate to include in the report on the basis of the results of such pilot program.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Secretary shall submit a copy of the report, together with any comments on the report and any recommendations for legislation that the Secretary considers appropriate, to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(2)(A) Not later than June 30, 1992, the Chief Medical Director shall submit to the Secretary a report on the experience under the pilot program during the first 24 months such program is conducted. In such report the Chief Medical Director shall update all information contained in the report submitted pursuant to paragraph (1)(A) and shall make any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Secretary shall submit a copy of the report, together with any comments on the report and any recommendations for legislation that the Secretary considers appropriate, to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(3)(A) Not later than June 30, 1993, the Chief Medical Director shall submit to the Secretary a final report on the pilot program required by subsection (a). In such report the Chief Medical Director shall—

(i) update all information contained in the reports submitted pursuant to paragraphs (1)(A) and (2)(A) of this subsection;

(ii) make a final assessment of the pilot program based on the experience under the program during the 36 months for which the program was conducted; and

(iii) make any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Secretary shall submit to the Committees on

Veterans' Affairs of the Senate and the House of Representatives a copy of the report together with—

(i) any comments on the report that the Secretary considers appropriate;

(ii) the Secretary's final assessment of the pilot program based on the experience under the program during the 36 months for which the program was conducted; and

(iii) any recommendations for legislation that the Secretary considers appropriate.

By Mr. GORTON (for himself, Mr. HATFIELD, Mr. MCCLURE, Mr. MURKOWSKI, Mr. BURNS, Mr. STEVENS, and Mr. PACKWOOD):

S. 948. A bill to amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes; to the Committee on the Judiciary.

NINTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT

Mr. GORTON. Mr. President, my purpose this afternoon is to introduce the Ninth Circuit Court of Appeals Reorganization Act of 1989, which is similar to a measure I introduced 6 years ago. This measure has the cosponsorship of Senators HATFIELD, PACKWOOD, MCCLURE, MURKOWSKI, STEVENS, and BURNS, who represent most of the States forming the Ninth Circuit Court of Appeals. Simply put, this proposal will divide the 9th circuit, the largest circuit in the country, into two separate circuits, leaving the 9th circuit composed of Arizona, California, and Nevada and creating a new 12th circuit composed of Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands.

Today the ninth circuit is the largest judicial circuit measured both by number of judges and by caseload. The ninth circuit has 28 judges, 12 more than any other circuit in the Nation. And with a caseload of 6,334 last year, the ninth circuit handles 2,003 more cases than any other circuit. During this same period filing of appeals increased 30 percent. The rapidly expanding litigation from the Northwest continues to add to the burden of this circuit.

The massive size of this circuit has decreased the consistency of justice provided by ninth circuit courts. The large number of judges scattered over a large area inevitably results in difficulty in reaching consistent circuit decisions, and makes more difficult communications among judges. Although we recognize that the ninth circuit is employing innovative administrative techniques, and is generally well run, its increasing size threatens uniform and consistent circuit law. Moreover, the time is approaching at which attempts to retain the efficiency of such a large circuit will occur at the high expense of circuit alignment—the very purpose for which the appellate court system was created.

Since about 60 percent of the case filings of the ninth circuit are from California, the Northwest is the tail on a huge dog; and I understand that Arizona feels the same way. Northwestern States, including my State of Washington, are simply dominated by California judges, and California attitudes. We in the Northwest have developed our own interests in every aspect of the law from natural resources to international trade. Our interests cannot be fully addressed from a California perspective.

As long ago as 1973, on recommendation of the U.S. Judicial Conference, the policy making body of the Federal judiciary, the Congressional Commission on the Revision of the Federal Court Appellate System recommended division of the ninth circuit. The American Bar Association also adopted a resolution expressing the desirability of dividing the ninth circuit to help realign the U.S. appellate courts.

My colleagues who were Members in 1980 will remember pursuing a similar measure that divided the fifth circuit. Senator HEFLIN noted of that effort "Congress should be applauded for remedying many of the problems that plague fifth circuit appellate procedure." We have no reason to believe that the benefits gained by the fifth circuit in less travel, less research to keep abreast of developments in State law, and better monitoring of opinions and attention to precedential value, will not also inure from a division of the ninth circuit.

I can think of no significant benefit to be gained from retaining the current alignment of the ninth circuit, other than the administrative work involved to split the circuit and perhaps a sense of tradition. But tradition alone does not deserve our support when the ends of justice would be better served by moving forward.

I believe that this legislation will improve the administration and efficiency of the court, promote State uniformity in circuit law, and strengthen the constitutional guarantee of justice to which all people are entitled.

It is my strong desire to work with Senators and Congressmen from those States immediately affected by this proposal. We are particularly interested in hearing the preferences of our colleagues from those jurisdictions other than California which remain in the ninth circuit under this bill, as to whether they would prefer transfer to the proposed new circuit.

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. 948

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 "Ninth Circuit Court of Appeals Reorganization Act of 1989".

SEC. 2. Section 41 of title 28, United States Code, is amended—

(1) in the text before the table, by striking out "thirteen" and inserting in lieu thereof "fourteen";

(2) in the table, by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

"Ninth ..... Arizona, California, Nevada."

and

(3) between the last 2 items of the table, by inserting the following new item:

"Twelfth ..... Alaska, Idaho, Montana, Oregon, Washington, Hawaii, Guam, Northern Mariana Islands."

SEC. 3. The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

"Ninth ..... 19";

and

(2) by inserting between the last 2 items at the end thereof the following new item:

"Twelfth ..... 9".

SEC. 4. The table in section 48 of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

"Ninth ..... San Francisco, Los Angeles.";

and

(2) by inserting between the last 2 items at the end thereof the following new item:

"Twelfth ..... Portland, Seattle.".

SEC. 5. Each circuit judge in regular active service of the former ninth circuit whose official station on the day before the effective date of this Act—

(1) is in Arizona, California, Nevada is assigned as a circuit judge of the new ninth circuit; and

(2) is in Alsaka, Idaho, Montana, Oregon, Washington, Hawaii, Guam, or the Northern Mariana Islands is assigned as a circuit judge of the twelfth circuit.

SEC. 6. Each judge who is a senior judge of the former ninth circuit on the day before the effective date of this Act may elect to be assigned to the new ninth circuit or to the twelfth circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 7. The seniority of each judge—

(1) who is assigned under section 5 of this Act; or

(2) who elects to be assigned under section 6 of this Act;

shall run from the date of commission of such judge as a judge of the former ninth circuit.

SEC. 8. The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this Act, an appeal or other proceeding has been filed with the former ninth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner

and with the same effect as if this Act had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this Act been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this Act, or submitted before the effective date of this Act and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this Act had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this Act had not been enacted.

SEC. 9. As used in sections 5, 6, 7, and 8 of this Act, the term—

(1) "former ninth circuit" means the ninth judicial circuit of the United States as in existence on the day before the effective date of this Act;

(2) the term "new ninth circuit" means the ninth judicial circuit of the United States established by the amendment made by section 2(2) of this Act; and

(3) the term "twelfth circuit" means the twelfth judicial circuit of the United States established by the amendment made by section 2(3) of this Act.

SEC. 10. The court of appeals for the ninth circuit as constituted on the day before the effective date of this Act may take such administrative action as may be required to carry out this Act. Such court shall cease to exist for administrative purposes on July 1, 1991.

SEC. 11. This Act and the amendments made by this Act shall become effective on October 1, 1989.

Mr. HATFIELD. Mr. President, today I am joining Senators GORTON, PACKWOOD, MURKOWSKI, STEVENS, MCCLURE, and BURNS in introducing the Ninth Circuit Court of Appeals Reorganization Act of 1989. The growing case loads and size of the U.S. Courts of Appeals have long been a concern of the Federal bar and the judicial conference, the policymaking body of the Federal judiciary. In fact, 17 years ago the conference stated that "to increase the number of judges in a circuit beyond 15 would create an unworkable situation."

The U.S. Court of Appeals for the Ninth Circuit is the largest Federal appellate court in both number of judges, with 28, and in case load, with 6,334 filings in 1988. If the present rate of growth in Federal appeals continues, the case load of the circuits, particularly the ninth circuit, will double in the 15 years from 1980 to 1995.

Mr. President, simply adding more judges to the ninth circuit to handle the increased case load is not enough. As stated by the March 1989 report by the American Bar Association's Standing Committee on Judicial Improvements, "The side effects of the standard cures for increasing case load may prove to be as serious as the original disease." The most widely cited concerns with the size of the ninth circuit include frequent backlogs, overworked judges, and the increased likelihood of intracircuit conflicts.

A recent survey of judges and attorneys within the ninth circuit reported that 40 percent of the judges and 31 percent of the attorneys disagreed with the statement, "Ninth circuit opinions generally adhere to law announced in earlier opinions." And a majority of both groups, 68 percent of the judges and 59 percent of the attorneys, disagreed with the statement, "There is consistency between panels considering the same issue." In spite of recent efforts to modernize the administration of the ninth circuit, its size now works against the original purpose of its creation: the uniform, coherent, and efficient development and application of Federal law in the region.

Mr. President, as early as 1972 the Congressional Commission on the Revision of the Federal Court Appellate System, the so-called Hruska Commission, recommended that the ninth circuit be divided into two separate circuits, and the issue has been before the Senate Judiciary Committee on more than one occasion. The increased size and workload of that ninth circuit since 1972 only serves to strengthen the Hruska Commission's original recommendation.

The bill which we introduce today proposes to divide the ninth circuit into two separate circuits. Under the bill, the new ninth circuit would be comprised of Arizona, California, and Nevada. A new twelfth circuit would be comprised of Alaska, Idaho, Montana, Oregon, Washington, Hawaii, Guam, and the Northern Mariana Islands. This legislation will promote uniformity and consistency in the development of Federal case law, improve the administration and efficiency of the court, and will ultimately strengthen the constitutional guarantee of justice to which all people are entitled. I look forward to Senate consideration of this issue.

Mr. PACKWOOD. Mr. President, it gives me great pleasure to join with Senators HATFIELD and GORTON in introducing the Ninth Circuit Court of Appeals Reorganization Act of 1989. The ideas behind this legislation have been around for some 16 years, and they are ideas whose time has come.

Currently the Ninth Circuit Court of Appeals includes a vast amount of territory—nine Western States, including Oregon, and Guam. In addition to its geographic demands, the ninth circuit has far and away the largest case load of any of the Federal circuits.

As early as 1972, discussions were taking place about splitting the circuit to facilitate its efficiency and fairness. The U.S. Judicial Conference has called any circuit court with more than 15 judges an unworkable situation. At the moment, there are 28 judges on the ninth circuit. By lowering the number of States in each circuit, this bill will allow judges and their clerks to develop an even greater mastery of the State laws which their circuit encompasses than the high level of expertise which they currently exhibit.

In 1980, the only circuit of comparable size and caseload, the fifth circuit, was split in much the same manner as the legislation which we propose today would split the ninth. The new ninth and twelfth circuits created by this bill, would presumably have much more consistent rulings than the ninth circuit currently enjoys. Moreover, this bill might serve to reduce the ninth circuit's rate of reversal before the Supreme Court by promoting more complete and sound review of its currently unwieldy case load.

Besides the substantial increase in civil litigation, the current ninth circuit can expect to see a significant increase in criminal proceedings as the Federal effort in the drug war escalates. Burgeoning conflicts in the area of natural resources and the continuing expansion of international trade efforts will all expand the demand for judicial excellence in the region presently covered by the ninth circuit. By reforming our courts now, they will be better able to dispense justice in a fair and expeditious manner.

I commend my colleagues for their leadership on this issue, and I look forward to working with them on maintaining the superior quality of jurisprudence we have come to expect from the ninth circuit.

Mr. President, I yield the floor.

Mr. BURNS. Mr. President, I am pleased to join the Senator from Washington, Senator GORTON, as an original cosponsor of this legislation. This is legislation which is long overdue in my opinion. It is my hope that we can act to create a new twelfth circuit court this Congress.

The ninth circuit court is by far the largest of all the circuit courts, both in terms of the number of judges and caseload. In fact, the Judicial Conference of the United States stated in 1971 that "to increase the number of judges in a circuit beyond 15 would create an unworkable situation." The ninth circuit court currently has 28 judges. That is nearly twice the maximum workable number in the opinion of the Judicial Conference.

In terms of case load, the ninth circuit had 6,633 cases pending at the end of 1988. The eleventh circuit had the second most cases pending at the end

of the same time period with 3,171 cases. I guess in that case they rank No. 1 and No. 2 in the Nation. It only makes sense that a Federal appeals court with a case load that heavy should be splitup.

What does all of this mean in terms of our judicial process? It means that a case is pending in the ninth circuit for an average of 14.5 months. That means some cases may be there 29 months while others whiz through in 7 or 8 months. The costs to those in Montana or Washington who are victims of this backlog continues to accrue. Not only are they continuing to pay their legal counsel during that time, but in the case of suits against industrial activities such as timbering, mining, and water developments, employment is jeopardized, seriously threatening local economic stability.

I think the most compelling argument for splitting the ninth circuit is the fact that the precedent has already been set by the fifth circuit. In fact, a commission which studied the revision of the Federal appellate court system recommended in 1973 that both the fifth and the ninth circuit courts be split. Those involved with the fifth circuit had the sense to make the division. Unfortunately, the division of the ninth circuit was held up by political maneuvering. So now we have to be here arguing for something that should have been done 8 years ago.

Granted, the division of the ninth circuit is more complicated since one State, California, generates a majority of the cases in that circuit. However, I think it is in the best interest of California, Montana, and the other States under the court's jurisdiction to make the split. The case load for the ninth circuit will remain high no matter what, due to the population dynamics in a State like California. Thus, the split will bring much needed case load relief to the ninth circuit court while providing overall judicial relief to States like my own Montana.

I just do not think it is fair, or in the best interest of the judicial process, that Montana businesses and individual citizens suffer because California continues to experience an economic and population boom. I find myself arguing this case every day—the case of middle America battling to hold its own against the population centers on both coasts. There is a bias in the legislative branch, the executive branch, and now in the judicial branch.

I am here to see that States like Montana, Idaho, Washington, Oregon, and Alaska get a fair shake. I think that splitting the ninth circuit is a good place to start. I hope that my colleagues from all nine States currently under the jurisdiction of the ninth circuit court will join us in our efforts to quickly pass this legislation.

By Mr. RIEGLE (for himself, Mr. BRADLEY, Mr. CHAFEE, and Mr. DURENBERGER):

S. 949. A bill to amend title XIX of the Social Security Act to provide States additional authority and flexibility under Medicaid to improve children's access to health care services, to assure sufficient payment levels for certain providers and to provide funds for demonstration projects, and for other purposes; to the Committee on Finance.

MEDICAID CHILDREN'S HEALTH IMPROVEMENT ACT

Mr. RIEGLE. Mr. President, I rise today to introduce the Medicaid Children's Health Improvement Act of 1989. I am pleased that Senators BRADLEY, CHAFEE, and DURENBERGER, three leaders in health care who are members of the Subcommittee on Health for Families and the Uninsured that I chair, have joined me in introducing this important legislation.

This act was developed to improve low-income children's access to health care under Medicaid. The bill focuses on children and complements Senator BRADLEY's bill, which both Mr. CHAFEE and I have cosponsored, that mainly targets pregnant women and infants.

A strong bipartisan consensus has emerged to expand and improve the Medicaid Program for low income pregnant women, infants, and children in this Congress. As a member of the Budget Committee, I have been working closely with the chairman, Senator SASSER, to obtain additional Medicaid funds in the fiscal year 1990 budget. Medicaid improvements would help provide access to basic health care for the most needy members of our society.

The purpose of this bill is to give States additional authority and flexibility under Medicaid to cover more needy children, begin to address the problem of inadequate Medicaid payments to providers, especially for those serving children and low-income persons, and to provide funds for demonstration projects to increase provider participation in Medicaid's preventive health program for children, the Early and Periodic Screening, Diagnosis and Treatment Program [EPSDT] and to coordinate Medicaid with other maternal and child health programs.

Mr. President, the Medicaid Program is an inadequate safety net for low-income individuals needing health care. Medicaid covers only 40 percent of poor individuals and 50 percent of low-income children. Currently, 12.5 million children live in poverty, over one-third without health care coverage. This bill builds upon the current Medicaid Program by allowing States to cover more children by facilitating access through the eligibility process.

In Michigan, over 300,000 children are uninsured, many of whom are low-income and may be helped by this bill. The legislation takes a step toward increasing the proportion of poor and near-poor children covered by Medicaid. Currently, 13 States extend coverage to pregnant women and infants in families with incomes up to 185 percent of the poverty level. I am proud that Michigan is one of these States. In these States, however, children will lose eligibility for Medicaid on their first birthday. This bill gives States the option of covering children up to age 5, rather than abruptly halting services for children at such a critical age.

This legislation also allows States to immediately cover a particularly vulnerable group, foster care children with incomes below the poverty level. State subsidized foster children have limited access to health care. At the same time, such children are particularly susceptible to loss of health care coverage due to changes in family arrangements.

I am very concerned that families with children often find it extremely difficult to even receive the benefits entitled to them. This bill also makes access to program benefits easier for children whose families often struggle to receive the most basic of necessities.

Under this act, States would be given the option of offering presumptive eligibility, in a less onerous way than under the current program for pregnant women, to facilitate timely provision of needed services. In addition, by requiring a report to Congress on how the current error rate system affects eligibility determinations, we also increase understanding of the eligibility process so the Congress can begin to make needed changes to improve the current burdensome and timely eligibility process.

Mr. President, this bill also takes important steps to improve children's access to needed care by laying the foundation for improved provider participation. Payment rates for services under Medicaid are generally recognized as well below actual costs for services. It is estimated that more than 85 percent of children's hospitals incur financial losses on Medicaid reimbursement for outpatient services. In Michigan, outpatient hospital departments lose about 30 cents for every dollar spent.

The legislation requires State Medicaid payments to certain providers of pediatrics services be sufficient to maintain or increase provider participation so that services are available to Medicaid beneficiaries. The bill also provides for a payment adjustment for hospitals serving a disproportionate number of low income individuals through outpatient services and requires the Secretary of Health and Human Services to report to Congress on provider reimbursement and its impact on participation in the pro-

gram. With these three steps, we begin to comprehensively address the problem of inadequate Medicaid payments to providers.

Last, innovation in the Medicaid Program is encouraged by requiring the Secretary of Health and Human Services to conduct Medicaid demonstration projects to improve coordination between Medicaid and other programs to help pregnant women and children under age 21 get access to comprehensive services and to conduct EPSDT projects to improve access to providers.

Michigan's Medicaid Program is an excellent model for the Nation. As discussed earlier, it is one of 13 States covering children in families with incomes up to 100 percent of the poverty level. Under this proposal, 85,000 more children could be assisted in Michigan. Michigan has also been particularly successful with expediting the Medicaid eligibility process by authorizing specially trained local health department workers to take applications and shortening the application form. We are also the only State that has an indigent volume adjuster for Medicaid reimbursement of outpatient services.

The Medicaid Children's Health Improvement Act of 1989 has the support of key national organizations representing women, infants, and children including the Children's Defense Fund, National Association of Children's Hospitals and Related Institutions, American Association of University Affiliated Programs for the Developmentally Disabled, American Academy of Pediatrics, American Hospital Association and March of Dimes Birth Defects Foundation.

By improving the Medicaid Program, we begin to address the inadequacies of our current health care system, particularly the problem of 37 million Americans without health care coverage. Certainly, the most tragic and disgraceful aspect of this problem is that 11 million of the 37 million uninsured Americans are children. Many of these children come from low-income families. I believe this and other Medicaid proposals represent a positive first step toward a more comprehensive solution.

As chairman of the Subcommittee on Health for Families and the Uninsured, I will be working with other members of the Finance Committee to develop a comprehensive proposal to guarantee universal access to health insurance for 37 million Americans who lack coverage. Medicaid improvements would help provide access to basic health care for the most needy members of our society.

I look forward to working with others on the Finance Committee, particularly the chairman, on enacting needed changes in the Medicaid Program for pregnant women, infants, and children.

Mr. President, I ask unanimous consent that the text of the bill and a description of the bill be printed in the RECORD.

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

S. 949

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 "Medicaid Children's Health Improvement Act of 1989".

SEC. 2. OPTIONAL MEDICAID COVERAGE OF LOW-INCOME CHILDREN UNDER AGE 5.

(a) OPTIONAL COVERAGE.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(1)) is amended—

(1) in paragraph (1), by striking subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C) at the option of the State, children who have attained 1 year of age but have not attained 2, 3, 4, 5, 6, 7, or 8 years of age (as selected by the State),"; and

(2) in paragraph (2)(B) by striking "which is a percentage" and all that follows through the period and inserting in lieu thereof "which—

"(i) with respect to children who have attained 1 year of age but who have not attained 5 years of age is a percentage not less than 100 percent and not more than 185 percent; and

"(ii) with respect to children who have attained 5 years of age but have not attained 8 years of age is a percentage equal to 100 percent;

of the income official poverty line described in subparagraph (A).".

(b) EFFECTIVE DATE.—(1) The amendments made by this section apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 3. OPTIONAL PRESUMPTIVE ELIGIBILITY FOR CERTAIN CHILDREN PROVIDED.

(a) IN GENERAL.—Title XIX of the Social Security Act is amended by adding at the end thereof the following new section:

"PRESUMPTIVE ELIGIBILITY FOR CHILDREN

"SEC. 1927. (a) A State plan approved under section 1902 may provide for making medical assistance available to children who have not attained the age of 21 during a presumptive eligibility period.

"(b) For purposes of this section—

"(1) the term 'presumptive eligibility period' means, with respect to children who have not attained the age of 21, the period that—

"(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of such individual does not exceed the applicable income level of eligibility under the State plan, and

"(B) ends with (and includes) the earlier of—

"(i) the day on which a determination is made with respect to the eligibility of the individual for medical assistance under the State plan,

"(ii) the day that is 60 days after the date on which the provider makes the determination referred to in subparagraph (A), or

"(iii) in the case of an individual who does not file an application for medical assistance within a State specified number of calendar days after the date on which the provider makes the determination referred to in subparagraph (A), or

"(iv) the day that is 30 days after the date specified in (c)(2)(B); and

"(2) the term 'qualified provider' means any provider that—

"(A) is eligible for payments under a State plan approved under this title,

"(B) provides services of the type described in subparagraph (A) or (B) of section 1905(a)(2) or in section 1905(a)(9),

"(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

"(D)(i) receives funds under—

"(I) section 329, 330, or 340 of the Public Health Service Act,

"(II) title V of this Act, or

"(III) title V of the Indian Health Care Improvement Act,

"(ii) participates in a program established under—

"(I) section 17 of the Child Nutrition Act of 1966, or

"(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973, or

"(iii) is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638).

"(c)(1) The State agency shall provide qualified providers with—

"(A) such forms as are necessary for children who have not attained the age of 21 (or a guardian of such individuals under State law) to make application for medical assistance under the State plan, and

"(B) information on how to assist such individual in completing and filing such forms.

"(2) A qualified provider that determines under subsection (b)(1)(A) that a child who has not attained the age of 21 is presumptively eligible for medical assistance under a State plan shall—

"(A) notify the State agency of the determination after the date on which such determination is made, and

"(B) inform the individual (or such individual's guardian) at the time the determination is made that the individual is required to make application for medical assistance under the State plan within a State specified number of calendar days after the date on which the determination is made.

"(3) A child under the age of 21, who is determined by a qualified provider to be presumptively eligible for medical assistance

under a State plan shall make application for medical assistance under such plan within a State specified number of calendar days after the date on which the determination is made.

"(d) Notwithstanding any other provision of this title, medical assistance that—

"(1) is furnished to children who have not attained the age of 21—

"(A) during a presumptive eligibility period,

"(B) by a provider that is eligible for payments under the State plan; and

"(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1903.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective with respect to payments under title XIX of the social Security Act for calendar quarters beginning on or after July 1, 1990.

SEC. 4. OPTIONAL MEDICAID COVERAGE FOR FOSTER CHILDREN.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)(A)(ii)—

(A) by striking "or" at the end of subclause X,

(B) by striking the semicolon at the end of subclause XI and inserting ", or", and

(C) by adding at the end the following new subclause:

"(XII) who are described in subsection (s)(1) and whose income does not exceed the income level specified therein.".

(b) DESCRIPTION OF CHILDREN IN FOSTER HOMES, GROUP HOMES, OR PRIVATE INSTITUTIONS.—Section 1902 of such Act (42 U.S.C. 1396a) is amended—

(1) by adding at the end thereof the following new subsection:

"(s)(1) Individuals described in this paragraph are children who have not attained the age of 21 who are in a foster home, group home, or private institution for whom the public agency is assuming full or partial financial responsibility or in a foster home, group home or private institution maintained by private nonprofit agencies whose incomes do not exceed 100 percent of the nonfarm income official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of one.

"(2) Notwithstanding subsection (a)(17) of this section for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(ii)(XII) of this section—

"(A) no resource standard or methodology shall be applied to these individuals,

"(B) the income standard to be applied is the income standard established under paragraph (1), and

"(C) income for these individuals shall be determined in accordance with a methodology which is no more restrictive than the methodology employed under the State plan under part E of title IV.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1990.

SEC. 5. MANDATORY CONTINUATION OF COVERAGE FOR CHILDREN OTHERWISE QUALIFIED FOR BENEFITS UNTIL REDETERMINATION.

(a) CONTINUATION UNTIL REDETERMINATION.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended by adding at the end thereof the following new paragraph:

"(11) With respect to a child who has not attained the age of 21 who is receiving medical assistance under this title and who because of a change in eligibility status of the family of which the child is a member is determined to be no longer eligible for such assistance, the State may not discontinue such assistance, until the State has determined that the child is not eligible for assistance under this title on a basis other than the basis upon which the child is currently receiving assistance.".

(b) The amendments made by this section shall become effective with respect to eligibility determinations for medical assistance under title XIX of the Social Security Act on or after July 1, 1990.

SEC. 6. REPORT AND TRANSITION ON ERRORS IN ELIGIBILITY DETERMINATIONS.

(a) REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than July 1, 1990, on error rates by States in determining eligibility of children who have not attained the age of 21 for medical assistance under plans approved under title XIX of the Social Security Act. Such report may include data for medical assistance provided before July 1, 1990.

(b) ERROR RATE TRANSITION.—There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which—

(1) are attributable to medical assistance for individuals who have not attained the age of 21, and

(2) are made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the report under paragraph (1).

SEC. 7. PAYMENT FOR PEDIATRIC SERVICES.

(a) CODIFICATION OF ADEQUATE PAYMENT LEVEL PROVISIONS.—Section 1902(a)(30)(A) of the Social Security Act (42 U.S.C. 1396a(a)(30)(A)) is amended by inserting before the semicolon at the end the following: "and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population".

(b) ASSURING ADEQUATE PAYMENT LEVELS FOR PEDIATRIC SERVICES.—Title XIX of such Act, as amended by section 303 of the Family Support Act of 1988, is amended by redesignating section 1926 as section 1927 and by inserting after section 1925 the following new section:

"ASSURING ADEQUATE PAYMENT LEVELS FOR PEDIATRIC SERVICES

"SEC. 1926. (a)(1) A State plan under this title shall not be considered to meet the requirement of section 1902(a)(30)(A) with respect to pediatric services for children under 21 years of age, as of July 1 of each year (beginning with 1990), unless, by not later than April 1 of such year, the State submits to the Secretary an amendment to the plan that specifies, by pediatric procedure, the payment rates to be used for such services under the plan in the succeeding period and includes in such submission such additional data as will assist the Secretary in evaluating the State's compliance with such requirement.

"(2) The Secretary, by not later than 90 days after the date of submission of a plan amendment under paragraph (1), shall—

"(A) review each such amendment for compliance with the requirement of section 1902(a)(30)(A), and

"(B) approve or disapprove each such amendment.

If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

"(3) In this section, the term 'pediatric services' means services covered under the State plan provided by a pediatrician, family practitioner, obstetrician, gynecologist, physician assistant, nurse practitioner, or clinical nurse specialist to children under 21 years of age and does not include inpatient hospital services or other institutional services (except outpatient hospital services).

"(b) For amendments submitted under subsection (a)(1) in 1991 and thereafter, the data submitted under such subsection shall include, for the second previous year, at least the following:

"(1) The number of pediatricians, nurse practitioners, clinical nurse specialists, obstetricians, gynecologists, physician assistants, and family practitioners who were licensed in the State in the year, and, of such providers, the number of each class of provider who provided services in the State and the number who provided services to individuals who have not attained the age of 21 entitled to benefits for services under the State plan under this title.

"(2) An estimate of—

"(A) the number of children aged 20 and under who were in the State in the year, and the percentage of such children who received medical care under the State plan under this title in the State in the year; and

"(B) the number of children aged 20 and under who are enrolled under this title in the State in the year, and the percentage of such children who received medical care in the State in the year.

"(3) The statewide average payment rates under the State plan for services furnished by pediatricians, nurse practitioners, physician assistants, family practitioners, obstetricians, gynecologists, and clinical nurse specialists by procedure, stated in dollar amounts and as a percentage of the statewide average payment rates for such procedures other than under the State plan.

"(4) The statewide average payment rates under the State plan and the statewide reasonable cost (as that term is defined by the appropriate State regulatory agency or agencies) for outpatient services furnished by teaching hospitals, nonteaching hospitals, children's hospitals, rural hospitals, urban hospitals, and disproportionate share hospitals (within the meaning of section 1923(a)(1)) and clinic services furnished by rural health clinics; community and migrant health centers; clinics funded with State health department funds to deliver maternal and child health services; and title V Block Grant funded clinics, by procedure, stated in dollar amounts and as a percentage of the statewide average payment rates for such procedures other than under the State plan.

Information described in paragraphs (1), (3), and (4) shall be provided separately for providers located in rural areas and for providers located in urban areas and the information described in paragraph (2) shall be provided separately, to the extent practicable, for individuals located in rural areas and for individuals located in urban areas.

"(c) Nothing in this title (including section 1902(a)(30)(A)) shall be construed as preventing a State from establishing payment levels for pediatric services that are

higher for those services furnished in rural areas than those furnished in urban areas.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective upon the date of enactment of this Act.

SEC. 8. REPORT ON PROVIDERS SERVING LOW-INCOME CHILDREN.

(a) REPORT.—The Secretary of Health and Human Services shall report to Congress not later than July 1, 1990, on providers (including, but not limited to, pediatricians, family practitioners, physician assistants, nurse practitioners, clinical nurse specialist, obstetricians, gynecologists, and health clinics (defined in subsection (b), and outpatient hospital departments) and inpatient hospital departments serving children under the age of 21 who are receiving medical assistance under title XIX of the Social Security Act. Such report shall provide—

(1) information on the impact of payments under title XIX of the Social Security on providers (as described in this subsection) and the financial viability of such providers and the relationship of such providers to other publicly financed programs;

(2) information on reimbursement methodologies, including, but not limited to cost-based reimbursement, and the impact of various methodologies or providers; and

(3) recommendations or methods to improve provider reimbursement methodologies and provider participation under title XIX of the Social Security Act.

(b) DEFINITION OF HEALTH CLINICS.—For purposes of this section the term "health clinics" means—

(1) rural health clinics;

(2) Federal community and migrant health centers;

(3) clinics funded with State health department funds which deliver maternal and child health services; and

(4) clinics receiving funds under the Maternal and Child Health Block Grant established under title V of the Social Security Act.

SEC. 9. ENSURING ADEQUATE PAYMENT FOR OUTPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS.

(a) ADEQUATE PAYMENT LEVEL PROVIDED.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (51);

(2) by striking the period at the end of paragraph (52) and by inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(53) provide for payment of outpatient services in hospitals provided under the plan through the use of rates (determined in accordance with methods and standards developed by the State) which take into account the situation of hospitals which serve a disproportionate number of low-income patients with special needs in their outpatient departments.

(b) REPORT.—The Secretary of Health and Human Services shall report to Congress on the implementation and effects of the amendment made by this section no later than 1 year after the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by this section shall become effective for State plan amendments on or after April 1, 1990.

SEC. 10. DEMONSTRATION PROJECTS TO COORDINATE PROGRAMS DELIVERING HEALTH SERVICES TO PREGNANT WOMEN AND CHILDREN.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall provide for demonstration projects by States to improve coordination among programs (as described in subsection (b)) to assist pregnant women and children under the age of 21 in gaining access to comprehensive health services.

(b) NATURE OF PROJECTS.—(1) The demonstration projects provided for by the Secretary under this section shall incorporate innovative approaches to improving the coordination of health services provided to pregnant women and children under the age of 21 under titles V and XVIII of the Social Security Act and the special supplemental food program (WIC) established under section 17 of the Child Nutrition Act of 1966. Such projects may also include the coordination of services provided in clinics and community and migrant health centers, family planning services, support services, mental health and retardation services, and substance abuse and rehabilitation services.

(2) The projects provided for under this section may also include the colocation of services, utilization of simplified and combined eligibility applications, outreach and referral provisions, integrated case management and management of information systems.

(c) SUPPLEMENTAL FUNDING.—With respect to the additional expenditures for medical assistance made under a State plan under title XIX of the Social Security Act to carry out a demonstration project under this section, the Federal medical assistance percentage (otherwise determined under section 1905(b) of such Act) shall be increased by 25 percentage points (but in no case to a percentage greater than 90 percent).

(d) WAIVER AUTHORITY.—(1) Except as provided under paragraphs (2) and (3), the Secretary is authorized to waive the requirements of title XIX of the Social Security Act to the extent necessary to implement demonstration projects under this section.

(2) Except as permitted under section 1915(b)(1) of the Social Security Act, the Secretary may not waive under paragraph (1) the requirements of sections 1902(a)(23) and 1916 of such Act.

(3) The Secretary may not approve a demonstration project under this section, or a waiver under paragraph (1), that reduces the amount, duration, or scope of medical assistance made available under title XIX of the Social Security Act or that results in a loss of eligibility for individuals otherwise eligible for such assistance.

(e) TIMELY ACTION ON APPLICATIONS.—A request to the Secretary by a State for approval of a demonstration project under this section (and any accompanying waiver of a requirement of title XIX of the Social Security Act) shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(f) AMOUNTS AND USE OF FUNDS.—The Secretary may not approve demonstration projects under this section that result in aggregate, additional Federal expenditures under title XIX of the Social Security Act that exceed $15,000,000 in fiscal year 1990. Amounts appropriated and obligated to carry out this section shall be available until expended.

(g) REPORT.—The Secretary shall report to Congress, not later than March 1, 1992, on the demonstration projects carried out under this section and on how the results of such projects may be used to lower infant mortality and morbidity through improving the access of indigent pregnant women and infants to needed physician services.

(h) EFFECTIVE DATE.—The provisions of this section shall become effective upon the date of enactment of this Act.

SEC. 11. DEMONSTRATION PROJECTS TO INCREASE PROVIDER PARTICIPATION IN EARLY AND PERIODIC SCREENING AND DIAGNOSTIC SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall provide for demonstration projects by States to increase provider participation in delivering early and periodic screening and diagnostic services to improve detection of mental and physical defects of children receiving medical assistance under title XIX of the Social Security Act and to provide early treatment of any such defects detected in such children.

(b) NATURE OF PROJECTS.—Demonstration projects under this section shall incorporate innovative approaches to increasing participation of pediatricians, family practitioners, nurse practitioners, and clinical nurse specialists under the Medicaid programs by means such as—

(1) expediting reimbursement for screening services, as well as for followup diagnostic and treatment services;

(2) using innovative payment mechanisms, especially for screening services, immunizations, and dental services;

(3) decreasing unnecessary administrative burdens in submitting claims, particularly claims for screening services, or in securing authorization for followup diagnostic and treatment services; and

(4) decreasing unnecessary administrative burdens and procedures for qualified Medicaid providers seeking enrollment in EPSDT.

(c) SUPPLEMENTAL FUNDING.—With respect to the additional expenditures for medical assistance made under a State plan under title XIX of the Social Security Act to carry out a demonstration project under this section, the Federal medical assistance percentage (otherwise determined under section 1905(b) of such Act) shall be increased by 25 percentage points (but in no case to a percentage greater than 90 percent).

(d) WAIVER AUTHORITY.—(1) Except as provided under paragraphs (2) and (3), the Secretary is authorized to waive the requirements of title XIX of the Social Security Act to the extent necessary to implement demonstration projects under this section.

(2) Except as permitted under section 1915(b)(1) of the Social Security Act, the Secretary may not waive under paragraph (1) the requirements of sections 1902(a)(23) and 1916 of such Act.

(3) The Secretary may not approve a demonstration project under this section, or a waiver under paragraph (1), that reduces the amount, duration, or scope of medical assistance made available under title XIX of the Social Security Act or that results in a loss of eligibility for individuals otherwise eligible for such assistance.

(e) TIMELY ACTION ON APPLICATIONS.—A request to the Secretary by a State for ap-

proval of a demonstration project under this section (and any accompanying waiver of a requirement of title XIX of the Social Security Act) shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(f) AMOUNTS AND USE OF FUNDS.—The Secretary may not approve demonstration projects under this section that result in aggregate, additional Federal expenditures under title XIX of the Social Security Act that exceed $15,000,000 in fiscal year 1990. Amounts appropriated and obligated to carry out this section shall be available until expended.

(g) REPORT.—The Secretary shall report to Congress, not later than March 1, 1992, on the demonstration projects carried out under this section and on how the results of such projects may be used to lower infant mortality and morbidity through improving the access of indigent pregnant women and infants to needed physician services.

(h) EFFECTIVE DATE.—The provisions of this section shall become effective upon the date of enactment of this Act.

SEC. 12. EFFECTIVE DATES.

The provisions of this Act shall take effect on the dates specified without regard to whether the Secretary of Health and Human Services has published final regulations to implement such provisions by such dates.

SUMMARY OF MEDICAID CHILDREN'S HEALTH IMPROVEMENT ACT OF 1989

SECTION 1. SHORT TITLE

This Act may be cited as the "Medicaid Children's Health Improvement Act of 1989."

SECTION 2. OPTIONAL MEDICAID COVERAGE OF LOW-INCOME CHILDREN UNDER AGE 5

Currently, 13 states extend coverage to pregnant women and infants in families with incomes above the poverty level. In these states, children will become ineligible for Medicaid on their first birthday. This provision allows states to continue coverage rather than abruptly halting services for children during the critical early years of life.

Provision: States have the option of covering children less than age 5 (or 2, 3, or 4 years of age) in families with incomes below 185 percent of the poverty level.

SECTION 3. OPTIONAL PRESUMPTIVE ELIGIBILITY FOR CHILDREN

States were first given the option of presumptive eligibility for pregnant women in OBRA 1986 and many states have been successful in developing effective programs that expedite access to health care. This provision extends the option for children but would be less onerous than the current program for pregnant women in specifying how States must implement the program.

Provision: States would structure presumptive eligibility programs for children under age 21 with designated providers of the same types as under the existing option for pregnant women. Coverage would continue until such time as the State has completed its eligibility determination process and notified the beneficiary, at a maximum, 60 days after the date on which the provider made the presumptive eligibility determination.

SECTION 4. OPTIONAL MEDICAID COVERAGE FOR FOSTER CARE CHILDREN

Currently, about one-half of foster care children receive funding through the Title IV-E program and therefore qualify for Medicaid. All other foster care children (state subsidized non-Title IV-E children) may receive coverage through their state's medically needy program or Ribicoff children options. These children only receive Medicaid if they are fortunate to live in a state having such coverage. Children in non-Title IV-E foster care programs thus have limited access to health care. At the same time, such children are particularly vulnerable to loss of health care coverage due to changes in family arrangements.

Provision: Allow States the option of making all non-IV-E foster care children with incomes below the poverty level automatically eligible for Medicaid.

SECTION 5. MANDATORY CONTINUATION OF COVERAGE FOR CHILDREN OTHERWISE QUALIFIED FOR BENEFITS UNTIL REDETERMINATION

Currently Medicaid coverage is interrupted in the event that a child no longer meets Medicaid eligibility requirements under one provision, for example, due to changes in family income or family structure, but still meets eligibility requirements under other provisions.

Provision: Clarifies current law so that any child who received Medicaid but no longer meets the eligibility criteria under one provision, nonetheless remains eligible if he or she satisfies the requirements of other Medicaid provisions. The State may not discontinue such assistance until determining that the child is not eligible for assistance under the plan.

SECTION 6. REPORT ON ERRORS IN ELIGIBILITY DETERMINATIONS AND INTERIM SUSPENSION OF ERROR RATE RULES

The current error rate system penalizes states only for incorrectly granting Medicaid eligibility, but not for incorrectly denying benefits. This may influence a state's willingness to undertake aggressive outreach efforts to identify and enroll Medicaid eligible children for fear that more errors come with new applications. Information is needed on whether states are delaying or denying coverage for children in an effort to keep error rates down.

Provision: Require the Secretary, by 7/1/90, to report to the Congress on error rates with respect to children receiving Medicaid, and suspend any error rate penalties attributable to payments made on behalf of this population on or after July 1, 1989, until 12 months after the receipt of the Secretary's report.

SECTION 7. PAYMENT FOR PEDIATRIC SERVICES

Under current regulations, States must set Medicaid payment rates at levels that are sufficient to induce enough providers to participate in the program so that services are available to Medicaid beneficiaries to the same extent that such care and services are available to the general population.

Provision: Codify the current regulations regarding payment for pediatrics services for children less than 21 years. Require the States to file with the Secretary each year a State Medicaid plan amendment that specifies, by pediatric procedure, the payment rates to be used for such services under the plan.

The plan amendment must also include whatever additional data HCFA requires to determine the rates are sufficient, in addition to data that is specified in this legislation relating to numbers of providers and children receiving medical care under Medicaid, state payments for services including primary care services, clinics and outpatient care services. In order to improve participation, states may establish higher payment levels for pediatric services furnished in rural areas.

Within 90 days of receiving the amendment, the Secretary must approve or disapprove; if the Secretary disapproves, the State must immediately submit a revised amendment which brings it into compliance.

SECTION 8. REPORT ON PROVIDERS SERVING LOW-INCOME CHILDREN

The Secretary must Report to Congress, not later than October 1, 1990, on providers serving low income children. Providers must at least include pediatricians, family practitioners, physician assistants, nurse practitioners and clinical nurse specialists, obstetricians, gynecologists, clinics, and outpatient and inpatient hospital departments. The Report must include at least the following:

The impact of Medicaid payment rates on providers and their financial situation and relationship to other publicly financed programs; reimbursement methodologies, including but not limited to cost-based reimbursement, and impact on providers; and recommendations on ways to improve provider reimbursement methodologies and provider participation.

SECTION 9. ENSURING ADEQUATE PAYMENT FOR OUTPATIENT HOSPITAL SERVICES UNFURNISHED BY DISPROPORTIONATE SHARE HOSPITALS

As hospitals have increasingly sought to care for their patients on an outpatient basis, the number of patients served, particularly among children, and the complexity of the care provided has grown significantly. Under current law, however, no specific federal requirements exist for minimum standards or safeguards for the adequacy of hospital outpatient Medicaid reimbursement as there are for hospital inpatient reimbursement.

The lack of federal requirements with respect to hospitals that serve a disproportionate share of low income patients in their outpatient departments is particularly problematic. Such hospitals provide care to low-income persons, particularly children, who otherwise have very limited access to health care. This provision provides for a payment adjustment for hospitals serving a disproportionate number of low-income individuals through outpatient services.

Provision: Under this provision outpatient hospital payment must take into account the situation of hospitals serving a disproportionate number of low income patients receiving outpatient services.

As part of this provision, the Secretary of Health and Human Services must report to Congress on the progress of this provision 12 months after the effective date.

SECTIONS 10 AND 11. DEMONSTRATIONS

These provisions would require the Secretary to conduct Medicaid demonstration projects to improve coordination between Medicaid and other programs to help pregnant women and children under age 21 get access to comprehensive services and to conduct EPSDT projects to improve access to providers. Participating states would receive a 25-percentage point increase in their regular matching rates. $15 million (for each

type of demonstration outlined below) would be designated for this purpose in FY90, with funds available until expended.

(1) Coordinating maternal and child health programs.—Demonstration projects under this section would incorporate innovative approaches to improve coordination for Medicaid and Title V Maternal and Child Health Block Grant or WIC or both and may also include family planning services, Community and Migrant Health Centers, support service, mental health and retardation, and substance abuse prevention and rehabilitation. The coordination may include co-location of services, use of simplified eligibility and combined applications, outreach and referral requirements, integrated case management, client tracking and management of information systems.

(2) Increasing provider participation in EPSDT.—Demonstration projects under this section would incorporate innovative approaches to increasing participation of pediatricians, family practitioners, clinical nurse specialists and nurse practitioners under the Medicaid programs and EPSDT, by means such as:

Expediting reimbursement for screening services as well as for followup diagnostic and treatment services; using innovative payment mechanisms, especially for screening services, immunizations, and dental services; decreasing unnecessary administrative burdens in submitting claims, particularly claims for screening services, or in securing authorization for followup diagnostic and treatment services; and decreasing unnecessary administrative burdens and procedures for qualified Medicaid providers seeking enrollment in EPSDT.

Mr. CHAFEE. Mr. President, I am joining Senator RIEGLE in cosponsoring the Medicaid Children's Health Improvement Act of 1989. This legislation would allow States to increase much-needed Medicaid services for low-income children. It is our next step forward to ensuring that all children have access to necessary health care services.

When 12 million children have no health care coverage whatsoever—either through private insurance or through Medicaid—we must step back and ask why so many are falling through the cracks. We must wonder whether we have been showing adequate concern for our children's future. We must realize the importance of ensuring that children who do not currently receive proper health care services have access to them.

As a member of the Senate Finance Committee and both Subcommittees on Health, I have placed the very highest priority on widespread and effective preventive health care for low-income children. Since 1984, we have been successful in moving forward in incremental steps toward this goal. Yet, it is clear that much more needs to be done.

The legislation we are introducing today will build upon the progress we have made in recent years in improving the delivery of health services to children. State Medicaid programs would receive Federal matching funds for providing coverage for children up to age 5 whose family incomes are below 185 percent of the poverty level. In addition this measure would give States the option of offering presumptive eligibility to children, thus extending to children the current State option regarding presumptive eligibility for pregnant women.

This legislation also fine tunes present law regarding coordination of Medicaid with other maternal and child health programs and improved provider participation in programs that benefit children. Combined with other important provisions in the legislation, these are changes that are all necessary to create a system of services that will achieve our goals.

Senator RIEGLE and I believe that further extension of Medicaid coverage is critical for low-income children. Children need a good healthy start in their lives. We must recognize this now and act on it before it's too late for another generation of children living in poverty.

I know there is concern about how we can afford to address this problem in light of the continuing problem of the deficit. In my opinion it is a question of choosing priorities. I believe there are few goals more important than ensuring that the coming generations of Americans begin life with good health and have the opportunity to grow and flourish.

Mr. President, I commend Senator RIEGLE for his continued efforts in this critical area of child health. I hope my colleagues agree that Federal dollars for this legislation would be well spent and that even during a time of fiscal restraint it is sound economic policy to invest in the health of our children.

By Mr. DECONCINI:

S. 951. A bill to grant employees parental leave under certain circumstances, and for other purposes; to the Committee on Labor and Human Resources.

PARENTAL LEAVE ACT

Mr. DECONCINI. Mr. President, I rise to address a very grave threat to our Nation's economic and social health. Today, our Nation, the greatest industrial power in the history of the world, is most regrettably the only major industrialized nation without a national parental leave policy. In the face of over 70 years of overwhelming international support and the best medical advice by thousands upon thousands of pediatricians, America remains in the dark ages of family and labor policy.

Mr. President, last Tuesday I introduced legislation to require certain employers, including the Federal Government, to provide up to 10 weeks unpaid leave to parents to care for a newborn, adopted, or seriously ill child. This bill, the Parental Leave Act of 1989, S. 897, provides for parental leave only. The Family and Temporary Medical Leave Act of 1989, S. 345, contains a provision for temporary medical leave for employees that I have always supported in concept. Regretfully, S. 345 also includes a new provision for elder care. As such, I believe S. 345 goes too far and too fast. I must therefore withhold my support for S. 345.

My bill also differs from S. 345 in that it incorporates a provision from the House Labor Committee bill, H.R. 770, which addresses the need for phased-in coverage for small businesses with less than 50 employees. This provision responds to the soaring health care insurance rates for smaller businesses. The Parental Leave Act of 1989 also contains the same employer protection provisions of S. 345 which were added to last year's compromise on S. 2488. I believe the 1-year vesting period, advance employee notice, employer discretion concerning unused paid leave, and second medical opinion provisions remedy the practical barriers to enactment of unpaid parental care leave.

Current projections, based upon General Accounting Office analysis of H.R. 770, indicate that S. 897 will cost employers no more than $100 million annually for the first 3 years. Even after the smaller firms, 35 to 49 employees, are covered, the annual cost will not rise above $112 million. As such, S. 897 would cost roughly half as much as the House Labor Committee bill and much less than half of the Senate Labor Committee bill.

Before I address the compelling need for S. 897, I must take time to commend the most able Senators from the State of Connecticut and Massachusetts, Chairman DODD and Chairman KENNEDY, for their relentless efforts on behalf of our Nation's children and families. My friend, Chairman DODD, knows well that I have supported parental leave with him from day 1, testified at his first hearing, and encouraged many of my colleagues to support both the original Family and Medical Leave Act and last year's compromise bill. Senator DODD also knows that I will continue to be unyielding in my support of all the elements of his bill. But, I am afraid that we may get no farther in this Congress than we did in the last with the bill as reported by the Labor and Human Resources Committee.

As each of us knows, there are many moderate to conservative Senators on both sides of the aisle who oppose cloture on last year's legislation. I have spoken to most of them and I do not believe they are going to change their votes as a result of the latest compromise, which is more expansive than last year's bill. Last, we cannot ignore the politics of this issue in the House of Representatives. To date, the Whole of the House has not embraced

this compromise. I have serious doubts that they will. If we use the minimum wage legislation to forecast what their product will be like, I fear a long, hard-fought, political battle this summer, with no winners and no law. Therefore, my prognosis for the family leave bill is not good at all. In fact, I believe it to be terminal. What I am proposing instead is a scaled down bill to provide 10 weeks of unpaid leave to care for a new or seriously ill child.

This is not to say that I reject each of the other provisions incorporated into the compromise. I support the concept of eldercare. I also support spousal care. Each Member has heard the cries of despair from their aging constituencies and the families who are sacrificing so much to care for their seriously ill parents or spouse. We all know that congressional action in the area of long-term care is long overdue. But sadly, these important family leave issues, as well as temporary medical leave for employees themselves, have not been developed adequately to date. Parental leave legislation must still overcome some problems, but not nearly the barriers that these other leave issues present. Each, at this point in time, serves only to prevent the near certain passage of a clean and simple parental leave bill which is sensitive to the concerns of small business.

Mr. President, I am not here to talk about these other issues, nor do I want to leave the impression that I am sensitive only to the needs of the young. I am here to suggest that we should take the limited first step by enacting a parental leave bill and consider other important leave policies after we have had an opportunity to evaluate this vital first experiment.

Mr. President, my colleague and constituents have heard me on many occasions repeat the findings of the best medical minds in America on the value of parental bonding to the development of our children into healthy, productive citizens. Time after time, I have emphasized that the first weeks of life are the most critical periods in the physical and emotional development of any child. My colleagues know that. Every American can recall his or her grade school health courses that relayed this most basic medical fact. Yet what have we done in the face of this overwhelming evidence? Mr. President, I sadly report that our Government has ignored it.

Not so long ago, in a typical family, dad worked and mom stayed at home with the children. Today, less than a generation later, that stereotype fits less than 1 in 10 families. Today, two-income families are the rule rather than the exception. The simple truth is that American mothers aren't working because they want to work. The truth is the vast majority of mothers are working to provide their children with the basic necessities. Therefore, when the situation is complicated with a new infant or the serious illness of a child, the conflict between parenting and economic survival makes coping with everyday life impossible for most families.

You don't have to believe me. I am only a father. But you cannot avoid the harsh criticism of our Nation's foremost medical authorities about the failure of America to implement parental leave. When the parental leave effort began, Dr. T. Berry Brazelton, the renowned pediatrician and Harvard Medical School professor, declared "We're the least committed nation to families and children that I can think of."

The simple fact is that women are becoming more and more an integral part of the national work force, and our Government is failing to establish a national policy. More than 70 percent of all working women are of childbearing age and, according to one estimate, more than 90 percent will likely become pregnant during their working lives. As such, our children lack sufficient protection today, and countless more children will be at risk in the future.

The conflict between parenting and economic survival is beyond comprehension to most of my fellow colleagues whose mothers stayed home to raise them. In striking contrast to their childhood, the last 20 years have revolutionized family life. And, for the working poor, the data is so dramatically different that it appears unbelieveable. Fully two-thirds of working women are either the sole provider or have husbands who earn less than $10,000 per year. Only one-half of working women have husbands who earn $20,000 per year. In each case, family finances dictate miserable choices between inadequate care for children or impoverishment resulting from termination for choosing to stay home even a short period of time.

For families with very seriously ill children, especially those with terminal illnesses, the decision is far more complex and heart-breaking. Over 1 million children in America suffer from a serious chronic illness. From this Senator's perspective, leave to care for a seriously ill child is just as important, if not more so, than the new infant leave aspects of the bill.

Mr. President, before we end this day, four to six children will die from childhood cancer in America. Before the sun rises tomorrow, another 15 to 20 parents will be told their child has some form of cancer and will face up to 3 years of treatment, with only a 50-percent chance of survival.

For some families, the serious illness of a child will consume a lifetime of savings. One study has demonstrated that families of a child with spina bifida—where the spina is literally split in two—could face medical bills in excess of $30,000 over the first year. And the tragedy does not stop there. Each child afflicted with spina bifida will on average have one operation per year for 5 years during his or her early years of life. Let me assure you that I am not talking about a rare occurrence. Three to twelve thousand infants each year are born with spine bifida. Even with the best medical treatment, one in five will not survive the first year of life.

For the parents of children stricken with cystic fibrosis, the most cruel disease known to mankind, those odds would be welcomed. About 1,500 to 2,000 children are diagnosed with this fatal disease each year. Victims usually die early in adulthood, essentially through infection and through suffocation on their own lung secretions. Before they die, they run about a 30-percent chance each year of hospitalization, at a cost of $14,000 to $30,000 for little more than 3 weeks of treatment.

Mr. President, I do not believe for a moment that more than a handful of employers would not allow unpaid leave to a parent with a seriously or terminally ill child. But those types of employers do exist.

One insensitive employer in Rhode Island fired a young father who took a mere 6 days of unpaid leave to be at the hospital with his 7-year-old son who is dying of leukemia. And another employer from California fired a security guard whose wife was disabled by diabetes and complications in childbirth for taking unpaid leave to care for his sick infant son.

The American taxpayer spends millions upon millions each year in unemployment and public assistance costs as a direct result of such unscrupulous business practices. But that is not the true purpose of the second section of my bill. This section was written solely to establish a clear, unequivocal national policy. Seriously ill children deserve to live the remainder of their lives without the risk that their parents will lose their jobs or have the family's medical insurance terminated for merely following the medical advice of their child's doctor. This section allows a father or mother less than 10 weeks unpaid leave out of 2 years of employment, even if the child's physician believes that the parent should take a greater amount of leave.

Employers of some parents of a seriously ill child have responded to current economic realities and supported their employees with mutually beneficial, progressive employment practices, including parental leave and flexible workhours. However, this is not the norm. The majority of businesses across this Nation, large and small

alike, hold steadfast to archaic 19th century notions of the family and regressive notions of short-term profit, regardless of the price to the economy and society as a whole.

Mr. President, I believe the debate on this bill has drifted away from its primary purpose: To assure that families have an opportunity to respond to the needs of a new or a seriously ill child. That is where we should be directing our attention, nothing more and nothing less. I do not believe anyone in this body has heard anything different from their constituents. Last year, a group of Arizona construction contractors came into my office to advise me to vote against the bill. I asked them point blank what their objection was to unpaid leave to care for a newborn or very sick child. These contractors, each fathers, didn't have a single objection. Each one stated that he was a good family man; each understood that he could not ask any of his employees to ignore the needs of their children when he himself would not.

These contractors are not the only people who care for the children in our society. A national survey in 1988 indicated that registered voters favor parental leave by nearly two to one. Still another poll last year showed that "Reagan Democrats" in the Southern and industrial States favor parental leave by a whopping 87 to 10 percent.

On behalf of small business owners, I would like to point out for the record that the most recent studies on parental leave show small businesses are just as likely—about one in three—to provide parental leave to their employees as are large businesses. I believe that more and more small businesses will provide leave even though they are not covered under this legislation. I am a small businessman myself, and my family business provides paid parental leave. However, I appreciate that not every small business can afford to do what we do, and ordinarily should not be compelled to provide leave, paid or unpaid. However, we cannot jeopardize the lives of our children because some employers assert that national parental leave legislation interferes with their business.

Mr. President, our society succeeds only when we protect those who do not have the same ability to compete in our political and economic system. For the protection of the youngest members of our society, I am reaching out to marshal the support of all available resources, from my colleagues to the family and temporary medical leave coalition, which should be credited with bringing these issues to the forefront of American politics. Each coalition member knows that as a result of their efforts, the parental leave component is fast approaching reality for all American families. This bill will act as the first step toward realization of the goals that all of the various groups hold in common. This bill will not only grant parental leave, but will clear the way for our concentration on the other family leave issues.

In a clear and concise manner, the Parental Leave Act addresses just that—leave to care for a new or seriously ill child. In narrowing the focus, the bill overcomes the practical and political barriers to passage and enactment of these other family leave issues. The stage is ripe, however, to pass and enact parental leave. But we cannot succeed if the remainder of the coalition condition their support.

Mr. President, one of our own, and dear friend to many, the late Senator Hubert H. Humphrey expressed it best: "* * * the moral test of government is how that government treats those who are in the dawn of life—the children; those who are in the twilight of life—the elderly; and those who are in the shadows of life—the sick, the needy and the handicapped."

Right now the American public has challenged the Government with the kind of moral test that Senator Humphrey spoke of. How my colleagues and I meet this challenge will send a message to our Nation that we can all share in the sunlight of success if we work together. We cannot ignore the pleas of our public to support the hardworking parents in whose hands the future of America rests.

I rise in defense of those in the dawn of life, our children, and ask my colleagues and members of the family and temporary medical leave coalition to join me in this vital step to emancipate our Nation from the dark ages of family and labor policy.

Mr. President, I ask unanimous consent that my bill be printed in the RECORD.

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

S. 951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Parental Leave Act of 1989".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL REQUIREMENTS FOR PARENTAL LEAVE

Sec. 101. Findings and purposes.
Sec. 102. Definitions.
Sec. 103. Parental leave requirement.
Sec. 104. Certification.
Sec. 105. Employment and benefits protection.
Sec. 106. Prohibited acts.
Sec. 107. Administrative enforcement.
Sec. 108. Enforcement by civil action.
Sec. 109. Investigative authority.
Sec. 110. Relief.
Sec. 111. Notice.

TITLE II—PARENTAL MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Parental leave.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Effect on other laws.
Sec. 302. Effect on existing employment benefits.
Sec. 303. Encouragement of more generous leave provisions.
Sec. 304. Regulations.
Sec. 305. Study provisions.

TITLE I—GENERAL REQUIREMENTS FOR PARENTAL LEAVE

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the number of two-parent households in which both parents work and the number of single-parent households in which the single parent works are increasing significantly;

(2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early child rearing and the care of children who have serious health conditions;

(3) the lack of employment policies to accommodate working parents forces many individuals to choose between job security and parenting;

(4) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects their working lives more than it affects the working lives of men; and

(5) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) PURPOSES.—It is the purpose of this Act—

(1) to balance the demands of the workplace with the needs of families;

(2) to promote the economic security and stability of families;

(3) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child who has a serious health condition;

(4) to accomplish such purposes in a manner which accommodates the legitimate interests of employers;

(5) to accomplish such purposes in a manner which, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(6) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

SEC. 102. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, including "commerce" and any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947 (29 U.S.C 141 et seq.).

(2) EMPLOY.—The term "employ" has the same meaning given the term in section 3(g)

of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)).

(3) EMPLOYEE.—The term "employee" means an individual that is included under the definition of such term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)) who has been employed by the employer with respect to whom benefits are sought under this Act for at least—

(A) 900 hours of service during the previous 12-month period; and

(B) 12 months.

(4) EMPLOYER.—The term "employer"—

(A) means any person engaged in commerce or in any industry or activity affecting commerce who—

(i) during the 3-year period beginning after the date of enactment of this Act, employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year; or

(ii) after the period described in clause (i), employs 35 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(B) includes—

(i) any person who acts directly or indirectly in the interest of an employer to one or more employees; and

(ii) any successor in interest of such an employer; and

(C) includes any public agency, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(5) EMPLOYMENT BENEFITS.—The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

(6) HEALTH CARE PROVIDER.—The term "health care provider" means—

(A) any person licensed under Federal, State, or local law to provide health care services, or

(B) any other person determined by the Secretary to be capable of providing health care services.

(7) PARENT.—The term "parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

(8) PERSON.—The term "person" has the same meaning given the term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(9) REDUCED LEAVE SCHEDULE.—The term "reduced leave schedule" means leave scheduled for fewer than the usual number of hours of an employee per workweek or hours per workday.

(10) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(11) SERIOUS HEALTH CONDITION.—The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment or continuing supervision by a health care provider.

(12) SON OR DAUGHTER.—The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a de facto parent, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

(13) STATE.—The term "State" has the same meaning given the term in section 3(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(c)).

SEC. 103. PARENTAL LEAVE REQUIREMENT.

(a) IN GENERAL.—

(1) ENTITLEMENT TO LEAVE.—An employee shall be entitled, subject to section 104, to 10 workweeks of parental leave during any 24-month period—

(A) as the result of the birth of a son or daughter of the employee;

(B) as the result of the placement, for adoption or foster care, of a son or daughter with the employee; or

(C) in order to care for the employee's son or daughter who has a serious health condition.

(2) EXPIRATION OF ENTITLEMENT.—The entitlement to leave under paragraphs (1)(A) and (1)(B) shall expire at the end of the 6-month period beginning on the date of such birth or placement.

(3) INTERMITTENT LEAVE.—In the case of a son or daughter who has a serious health condition, such leave may be taken intermittently when medically necessary, subject to subsection (e).

(b) REDUCED LEAVE.—On agreement between the employer and the employee, leave under this section may be taken on a reduced leave schedule, however, such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled.

(c) UNPAID LEAVE PERMITTED.—Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave.

(d) RELATIONSHIP TO PAID LEAVE.—

(1) UNPAID LEAVE.—If an employer provides paid parental leave for fewer than 10 workweeks, the additional weeks of leave added to attain the 10 workweek total may be unpaid.

(2) SUBSTITUTION OF PAID LEAVE.—An employee or employer may elect to substitute any of the employee's accrued paid vacation leave, personal leave, or other appropriate paid leave for any part of the 10-week period.

(e) FORESEEABLE LEAVE.—

(1) REQUIREMENT OF NOTICE.—In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employer with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

(2) DUTIES OF EMPLOYEE.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee shall—

(A) make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee's son or daughter; and

(B) provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

(3) REGULATIONS.—The Secretary shall promulgate regulations under section 107(a) that define the term "reasonable and practicable" for purposes of paragraphs (1) and (2)(B).

(f) SPOUSES EMPLOYED BY THE SAME EMPLOYER.—In any case in which a husband and wife entitled to parental leave under this section are employed by the same employer, the aggregate number of workweeks of parental leave to which both may be entitled may be limited to 10 workweeks during any 24-month period, if such leave is taken under subparagraph (A) or (B) of subsection (a)(1).

SEC. 104. CERTIFICATION.

(a) IN GENERAL.—An employer may require that a claim for parental leave under section 103(a)(1)(C), be supported by certification issued by the health care provider of the son or daughter, whichever is appropriate. The employee shall provide a copy of such certification to the employer.

(b) SUFFICIENT CERTIFICATION.—The certification shall be considered sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the provider regarding the condition; and

(4) for purposes of leave under section 103(a)(1)(C), an estimate of the amount of time that the employee is needed to care for the son or daughter.

(c) SECOND OPINION.—

(1) IN GENERAL.—In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the employer concerning the information certified under subsection (b).

(2) LIMITATION.—Any health care provider designated or approved under paragraph (1) may not be employed on a regular basis by the employer.

(d) RESOLUTION OF CONFLICTING OPINIONS.—

(1) IN GENERAL.—In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider concerning the information certified under subsection (b).

(2) FINALITY.—The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) SUBSEQUENT RECERTIFICATION.—The employer may require that the employee obtain subsequent recertifications on a reasonable basis at the expense of the employer.

SEC. 105. EMPLOYMENT AND BENEFITS PROTECTION.

(a) RESTORATION TO POSITION.—

(1) IN GENERAL.—Any employee who takes leave under section 103 for its intended purpose shall be entitled, on return from the leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) LOSS OF BENEFITS.—The taking of leave under this title shall not result in the loss of any employment benefit accrued before the date on which the leave commenced.

(3) LIMITATIONS.—Except as provided in subsection (b), nothing in this section shall be considered to entitle any restored employee to—

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than that to which the employee was entitled to on the date the leave was commenced.

(4) CERTIFICATION.—As a condition to restoration under paragraph (1), the employer may have a policy that requires each employee to receive certification from the employee's health care provider that the employee is able to resume work.

(5) CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 103 to periodically report to the employer on the employee's status and intention to return to work.

(b) MAINTENANCE OF HEALTH BENEFITS.—During any period an employee takes leave under section 103, the employer shall maintain coverage under any group health plan (as defined in section 162(i)(3) of the Internal Revenue Code of 1954) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a), or otherwise legally discharged.

SEC. 106. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—

(1) EXERCISE OF RIGHTS.—It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) DISCRIMINATION.—It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because the individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given or is about to give any information in connection with any inquiry or proceeding relating to any right provided under this title; or

(3) has testified or is about to testify in any inquiry or proceeding relating to any right provided under this title.

SEC. 107. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall issue such rules and regulations as are necessary to carry out this section, including rules and regulations concerning service of complaints, notice of hearings, answers and amendments to complaints, and copies of orders and records of proceedings.

(b) CHARGES.—

(1) FILING.—Any person alleging an act that violates this title may file a charge respecting the violation with the Secretary. Charges shall be in such form and contain such information as the Secretary shall require by regulation.

(2) NOTIFICATION.—Not later than 15 days after the Secretary receives notice of a charge under paragraph (1), the Secretary shall—

(A) serve a notice of the charge on the person charged with the violation; and

(B) inform such person and the charging party as to the rights and procedures provided under this title.

(3) TIME OF FILING.—A charge may not be filed later than 1 year after the date of the last event constituting the alleged violation.

(c) PROCESS ON NOTICE OF A CHARGE, INVESTIGATION, COMPLAINT.—

(1) INVESTIGATION.—Within the 60-day period after the Secretary receives any charge, the Secretary shall investigate the charge and issue a complaint based on the charge or dismiss the charge.

(2) COMPLAINT BASED ON CHARGE.—If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based on the charge and promptly notify the charging party and the respondent as to the issuance.

(3) DISMISSAL.—If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the charging party and the respondent as to the dismissal.

(4) SETTLEMENT AGREEMENTS.—

(A) WITH CHARGING PARTY.—The charging party and the respondent may enter into a settlement agreement concerning the violation alleged in the charge before any determination is reached by the Secretary under this subsection. To be effective such an agreement must be determined by the Secretary to be consistent with the purposes of this title.

(B) WITH SECRETARY.—On the issuance of a complaint, the Secretary and the respondent may enter into a settlement agreement concerning a violation alleged in the complaint. Any such settlement may not be entered into over the objection of the charging party, unless the Secretary determines that the settlement provides a remedy for the charging party.

(5) CIVIL ACTIONS.—If, at the end of the 60-day period referred to in paragraph (1), the Secretary—

(A) has not issued a complaint under paragraph (2);

(B) has dismissed the charge under paragraph (3); or

(C) has not approved or entered into a settlement agreement under subparagraph (A) or (B) of paragraph (4);

the charging party may elect to bring a civil action under section 108.

(6) COMPLAINT AND RELIEF ON SECRETARY'S INITIATIVE.—

(A) ISSUANCE.—The Secretary may issue and serve a complaint alleging a violation of this title on the basis of information and evidence gathered as a result of an investigation initiated by the Secretary pursuant to section 109.

(B) RELIEF.—

(i) IN GENERAL.—On issuance of a complaint, the Secretary shall have the power to petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for appropriate temporary relief or a restraining order.

(ii) NOTICE.—On the filing of any such petition, the court shall cause notice of the petition to be served on the respondent.

(iii) TYPE OF RELIEF.—The court shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as the court considers just and proper.

(d) RIGHTS OF PARTIES.—

(1) SERVICE OF COMPLAINT.—In any case in which a complaint is issued under subsection (c), the Secretary shall, not later than 10 days after the date on which the complaint is issued, cause to be served on the respondent a copy of the complaint.

(2) PARTIES TO COMPLAINT.—Any person filing a charge alleging a violation of this title may elect to be a party to any complaint filed by the Secretary alleging the violation. The election must be made before the commencement of a hearing.

(3) CIVIL ACTION.—The failure of the Secretary to comply in a timely manner with any obligation assigned to the Secretary under this title shall entitle the charging party to elect, at the time of such failure, to bring a civil action under section 108.

(e) CONDUCT OF HEARING.—

(1) PROSECUTION BY SECRETARY.—The Secretary shall prosecute any complaint issued under subsection (c).

(2) HEARING.—An administrative law judge shall conduct a hearing on the record with respect to a complaint issued under this title. The hearing shall be conducted in accordance with sections 554, 555, and 556 of title 5, United States Code, and shall be commenced within 60 days after the issuance of the complaint, unless the judge, in the judge's discretion, determines that the purposes of this Act would best be furthered by commencement of the action after the expiration of such period.

(f) FINDINGS AND CONCLUSIONS.—

(1) IN GENERAL.—After a hearing is conducted under this section, the administrative law judge shall promptly make findings of fact and conclusions of law, and, if appropriate, issue an order for relief as provided in section 110.

(2) NOTIFICATION CONCERNING DELAY.—The administrative law judge shall inform the parties, in writing, of the reason for any delay in making the findings and conclusions if the findings and conclusions are not made within 60 days after the conclusion of the hearing.

(g) FINALITY OF DECISION; REVIEW.—

(1) FINALITY.—The decision and order of the administrative law judge shall become the final decision and order of the Secretary unless, on appeal by an aggrieved party taken not later than 30 days after the action, the Secretary modifies or vacates the decision, in which case the decision of the Secretary shall be the final decision.

(2) REVIEW.—Not later than 60 days after the entry of the final order of the Secretary under paragraph (1), any person aggrieved by the final order may obtain a review of the order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(3) JURISDICTION.—On the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States on writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—

(1) POWER OF SECRETARY.—If a respondent does not appeal an order of the Secretary under subsection (g)(2), the Secretary may petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the Secretary, by filing in the court a written petition praying that the order be enforced.

(2) JURISDICTION.—On the filing of the petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the Secretary. In the proceeding, the

order of the Secretary shall not be subject to review.

(3) DECREE OF ENFORCEMENT.—If, on appeal of an order under subsection (g)(2), the United States court of appeals does not reverse or modify the order, the court shall have the jurisdiction to make and enter a decree enforcing the order of the Secretary.

SEC. 108. ENFORCEMENT BY CIVIL ACTION.

(a) RIGHT TO BRING CIVIL ACTION.—

(1) IN GENERAL.—Subject to the limitations in this section, an employee or the Secretary may bring a civil action against any employer to enforce the provisions of this title in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) NO CHARGE FILED.—Subject to paragraph (3), a civil action may be commenced under this subsection without regard to whether a charge has been filed under section 107(b).

(3) LIMITATIONS.—No civil action may be commenced under paragraph (1) if the Secretary—

(A) has approved, or has failed to disapprove, a settlement agreement under section 107(c)(4), in which case no civil action may be filed under this subsection if the action is based on a violation alleged in the charge and resolved by the agreement; or

(B) has issued a complaint under section 107(c)(2) or 107(c)(6), in which case no civil action may be filed under this subsection if the action is based on a violation alleged in the complaint.

(4) TO ENFORCE SETTLEMENT AGREEMENTS.—Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

(5) TIMING OF COMMENCEMENT OF CIVIL ACTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no civil action may be commenced more than 1 year after the date on which the alleged violation occurred.

(B) EXCEPTION.—In any case in which—

(i) a timely charge is filed under section 107(b); and

(ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 107(c)(4)) occurs more than 11 months after the date on which any alleged violation occurred,

the employee may commence a civil action not more than 30 days after the date on which the employee is notified of the failure.

(6) AGENCIES.—The Secretary may not bring a civil action against any agency of the United States.

(b) VENUE.—An action brought under subsection (a) in a district court of the United States may be brought—

(1) in any appropriate judicial district under section 1391 of title 28, United States Code; or

(2) in the judicial district in the State in which—

(A) the employment records relevant to the violation are maintained and administered; or

(B) the aggrieved person worked or would have worked but for the alleged violation.

(c) NOTIFICATION OF THE SECRETARY; RIGHT TO INTERVENE.—A copy of the complaint in any action brought by an employee under subsection (a) shall be served on the Secretary by certified mail. The Secretary shall have the right to intervene in a civil action brought by an employee under subsection (a).

(d) ATTORNEYS FOR THE SECRETARY.—In any civil action brought under subsection (a), attorneys appointed by the Secretary may appear for and represent the Secretary, except that the Attorney General and the Solicitor General shall conduct any litigation in the Supreme Court.

SEC. 109. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—To ensure compliance with the provisions of this title, or any regulation or order issued under this title, subject to subsection (c), the Secretary shall have the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) OBLIGATION TO KEEP AND PRESERVE RECORDS.—An employer shall keep and preserve records in accordance with section 11(c) of such Act, and in accordance with regulations issued by the Secretary.

(c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.—The Secretary may not under this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once in any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge brought pursuant to section 107.

(d) SUBPOENA POWERS, ETC.—For purposes of any investigation conducted under this section, the Secretary shall have the subpoena authority provided under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

(e) DISSEMINATION OF INFORMATION.—The Secretary may make available to any person substantially affected by any matter that is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter that may be the subject of the investigation.

SEC. 110. RELIEF.

(a) INJUNCTIVE RELIEF.—

(1) CEASE AND DESIST.—On finding a violation under section 107 by a person, an administrative law judge shall issue an order requiring the person to cease and desist from any act or practice that violates this title.

(2) INJUNCTIONS.—In any civil action brought under section 108, a court may grant as relief any permanent or temporary injunction, temporary restraining order, or other equitable relief as the court considers appropriate.

(b) MONETARY DAMAGES.—

(1) IN GENERAL.—Any employer that violates this title shall be liable to the injured party in an amount equal to—

(A) any wages, salary, employment benefits, or other compensation denied or lost to the employee by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate; and

(B) an additional amount equal to the greater of—

(i) the amount determined under subparagraph (A), as liquidated damages; or

(ii) the amount of consequential damages but not to exceed three times the amount determined under subparagraph (A).

(2) GOOD FAITH.—If an employer who has violated this title proves to the satisfaction of the court that the act or omission which violated this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this title, the court may, in its discretion, reduce the amount of the liability or penalty provided for under this subsection to the amount determined under paragraph (1)(A).

(c) ATTORNEYS' FEES.—A prevailing party (other than the United States) may be awarded a reasonable attorneys' fee as part of the costs, in addition to any relief awarded. The United States shall be liable for costs in the same manner as a private person.

(d) LIMITATION.—Damages awarded under subsection (b) may not accrue from a date more than 2 years before the date on which a charge is filed under section 107(b) or a civil action is brought under section 108.

SEC. 111. NOTICE.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) PENALTY.—Any employer who willfully violates this section shall be fined not more than $100 for each separate offense.

TITLE II—PARENTAL LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. PARENTAL LEAVE.

(a) IN GENERAL.—(1) Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER III—PARENTAL LEAVE

"§ 6331. Definitions

"For purposes of this subchapter:

"(1) 'employee' means—

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

"(B) an individual under clause (v) or (ix) of such section;

who has been employed for at least 12 months and completed at least 900 hours of service during the previous 12-month period.

"(2) 'serious health condition' means an illness, injury, impairment, or physical or mental condition that involves—

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment, or continuing supervision, by a health care provider; and

"(3) 'son or daughter' means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a de facto parent, who is—

"(A) under 18 years of age; or

"(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

"§ 6332. Parental leave requirement

"(a)(1) An employee shall be entitled, subject to section 6333, to 10 workweeks of parental leave during any 24-month period—

"(A) as the result of the birth of a son or daughter of the employee;

"(B) as the result of the placement, for adoption or foster care, of a son or daughter with the employee; or

"(C) in order to care for the employee's son or daughter who has a serious health condition.

"(2) The entitlement to leave under paragraphs (1)(A) and (1)(B) shall expire at the end of the 6-month period beginning on the date of such birth or placement.

"(3) In the case of a son or daughter who has a serious health condition, such leave may be taken intermittently when medically necessary, subject to subsection (e).

"(b) On agreement between the employing agency and the employee, leave under this section may be taken on a reduced leave schedule, however, such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is otherwise entitled.

"(c) Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave.

"(d)(1) If an employing agency provides paid parental leave for fewer than 10 workweeks, the additional weeks of leave added to attain the 10 workweek total may be unpaid.

"(2) An employee or employing agency may elect to substitute any of the employee's accrued paid vacation leave, personal leave, or other appropriate paid leave for any part of the 10-week period.

"(e)(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

"(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee shall—

"(A) make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee's son or daughter; and

"(B) provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

"(3) The Director of the Office of Personnel Management shall promulgate regulations that define the term 'reasonable and practicable' for purposes of paragraphs (1) and (2)(B).

"§ 6333. Certification

"(a) An employing agency may require that a claim for parental leave under section 6332(a)(10)(C), be supported by certification issued by the health care provider of the son or daughter, whichever is appropriate. The employee shall provide a copy of such certification to the employing agency.

"(b) The certification shall be considered sufficient if it states—

"(1) the date on which the serious health condition commenced;

"(2) the probable duration of the condition;

"(3) the appropriate medical facts within the knowledge of the provider regarding the condition; and

"(4) for purposes of leave under section 6332(a)(1)(C), an estimate of the amount of time that the employee is needed to care for the son or daughter.

"(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a), the employing agency may require, at its expense, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning the information certified under subsection (b).

"(2) Any health care provider designated or approved under paragraph (1) may not be employed on a regular basis by the employing agency.

"(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at its expense, that the employee obtain the opinion of a third health care provider concerning the information certified under subsection (b).

"(2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.

"(e) The employing agency may require that the employee obtain subsequent recertifications on a reasonable basis.

"§ 6334. Job protection

"An employee who uses leave under section 6332 of this title shall be entitled, on return from the leave—

"(1) to be restored to the position of employment held by the employee when the leave commenced; or

"(2) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

"§ 6335. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of the rights of the employee under this subchapter.

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6336. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 of this title may elect to continue the health benefits enrollment of the employee while in leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through the employing agency of the employee, the appropriate employee contributions.

"§ 6337. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Parental Leave Act of 1989.".

(2) The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—PARENTAL LEAVE

"6331. Definitions.
"6332. Parental leave requirement.
"6333. Certification.
"6334. Job protection.
"6335. Prohibition of coercion.
"6336. Health insurance.
"6337. Regulations.".

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, subchapter III of chapter 63,".

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTIDISCRIMINATION LAWS.—Nothing in this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status.

(b) STATE AND LOCAL LAWS.—Nothing in this Act shall be construed to supersede any provision of any State or local law that provides greater parental rights than the rights established under this Act.

SEC. 302. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act shall be construed to diminish the obligation of an employer to comply with any collective-bargaining agreement or any employment benefit program or plan that provides greater parental rights to employees than the rights provided under this Act.

(b) LESS PROTECTIVE.—The rights provided to employees under this Act may not be diminished by any collective-bargaining agreement or any employment benefit program or plan.

SEC. 303. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing in this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act.

SEC. 304. REGULATIONS.

Not later than 60 days after the date of enactment of this Act, the Secretary shall prescribe such regulations as are necessary to carry out title I.

SEC. 305. EFFECT ON SMALL BUSINESSES.

Not later than 2 years after the effective date of this Act, the Secretary of Labor shall conduct a study to determine the effect of this Act on businesses with less than 50 employees and submit a report to Congress on the results of such study.

By Mr. KERRY:

S. 952. A bill to stimulate the design, development, and manufacture of high definition television technology, and for other purposes; to the Committee on Commerce, Science, and Transportation.

HIGH DEFINITION TELEVISION DEVELOPMENT ACT

● Mr. KERRY. Mr. President, I am today introducing legislation that would permit U.S. companies to move forward with the development and marketing of high definition television in a consortium or other cooperative effort free of restrictions from U.S. antitrust laws.

While the Senate has been advised that the administration is now considering such a provision, it is clear that the United States is already behind Japan in the development of high definition television, and that if we do not act quickly, whatever opportunity we may have to get into the market will disappear.

Today, the Secretary of Commerce, Robert Mosbacher, testified before the Senate Committee on Commerce, and told us that the U.S. Government should not get into the business of picking winners and losers, that it was up to industry to lead the way, and that the Government's role in the de-

velopment of markets should be very limited.

I asked Secretary Mosbacher whether in his view the development of a U.S. high definition television industry was essential to U.S. security. Secretary Mosbacher said that it is, because whoever controls that industry in the future will have a leg up in controlling computers, semiconductors, and other industries essential to the national security of the United States.

I then asked Secretary Mosbacher if United States companies could compete with Japan in the development of high definition television if we did not give them an exemption from United States antitrust laws.

Secretary Mosbacher said he believed they could not.

I then asked Secretary Mosbacher if the administration would support legislation, such as this bill, to exempt the high definition television industry from the application of U.S. antitrust laws.

Secretary Mosbacher said that the issue was under review by the administration and he could not say whether it would or would not.

I frankly do not understand the hesitation on the part of the administration in reaching a decision that is this urgent. If the United States interferes with the ability of U.S. industry to go forward into high definition television, we won't be picking winners and losers, but turning a possible winner into a nonstarter.

I think we should not sit by and just watch while the Japanese move in to dominate high definition television as they have consumer electronics, and increasingly, computer chips, computers, and many other industries we once dominated and gave away.

For years, our Government has chosen to adopt a hands-off policy to technological development. The miracle of the marketplace may wind up being Japan's miracle, and our mistake.

There are aspects of the Japanese model of a partnership between government and business that we must emulate if we are not to be shut out of emerging technologies.

The legislation I am introducing would exempt joint ventures which seek to develop and market HDTV from antitrust regulations which today would prevent United States companies from cooperating with another to beat Japan to the development of this multibillion dollar market. The legislation mirrors provisions of legislation previously filed by Congressman RITTER in the House. However, unlike the Ritter legislation, it does not appropriate any Federal funds for intervention in the high definition area. Instead, it merely ensures that U.S. industry will not be impeded by antitrust laws from going forward with HDTV development and marketing.

One issue that we need to face is the fact that in eliminating the antitrust exemptions for HDTV, we may be creating a production and marketing monster for the future in the form of a U.S. consortium with enormous economic power. I think that prospect should be of legitimate concern to us as we go down that path. However, I think it is becoming very clear that if we fail to act, we will have no HDTV production capability at all in the United States.

I believe that a U.S.-controlled consortium may be the least bad outcome available to us under the present circumstances, and that recognizing the threat of monopoly that such a consortium poses, we should still go ahead and eliminate the antitrust provisions, including marketing, that today impede the development of such a consortium for HDTV.

I am convinced that the primary issue today is not whether U.S. corporations are engaging in monopolistic activity when it comes to consumer electronics—but whether they are going to engage in any activity whatsoever. We should not stand by idly while foreign corporations continue to grab markets that could have been ours. In the case of HDTV, the stakes are too high. I urge swift consideration and passage of this legislation.

I ask unanimous consent that the legislation be reprinted in full in the RECORD.

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

S. 952

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 "High Definition Television Development Act of 1989."

SEC. 2. FINDINGS.

The Congress finds that—

(1) maintaining a viable domestic electronics industry is vital to both the national security and the economic well-being of the United States;

(2) the significant decrease in consumer electronics market share held by United States companies has led to the loss of United States leadership in designing, developing, and manufacturing electronics products and processes;

(3) high definition television is a cutting edge consumer electronics technology which offers markedly superior video display, and is estimated to become a $20,000,000,000 industry by the mid-1990's;

(4) development of high definition television technology by American industries is critically important to the Nation's economy and security, and it is vital that the Nation attain a leadership role and capability in the development, design and manufacture of high definition television and related technologies;

(5) offshore industries have successfully conducted research and product development in a variety of areas related to high definition television, and have been highly successful in the resulting commercial applications;

(6) government action and industry cooperation are necessary to ensure that domestic industries engage in long-term high definition television research and development, and manufacture of high definition television products and related technologies; and

(7) it is necessary for the Congress to take the actions required by this Act to encourage and facilitate the development and manufacture of domestically produced high definition television technologies.

SEC. 3. DEFINITIONS.

(1) The term "Secretary" means the Secretary of Commerce.

(2) the term "HDTV technology" means equipment and techniques required to create, transmit, receive, displace, process, record, store, recover and play back high definition television images and accompanying sound material.

(3) the term "cooperative HDTV enterprise" means any organization, joint venture, or partnership of domestic designers or manufacturers (or both) of broadcast or cable television technologies for the purposes of—

(A) discussions, considerations, review, actions, or agreements concerning HDTV technology;

(B) conducting research on, or design, development, or manufacture of, HDTV technology; or

(C) any combination of the activities described in subparagraphs (A) and (B).

TITLE I—AUTHORITY TO ENGAGE IN JOINT ACTIONS TO PROMOTE DEVELOPMENT

SEC. 101. FINDINGS.

The Congress finds that—

(1) the efficient deployment of HDTV and HDTV technologies will require significant cooperative efforts by domestic companies;

(2) current statutory restrictions make it impossible for many companies now involved in research, design and development of HDTV technologies to cooperate or engage in joint ventures designed to facilitate domestic HDTV development and manufacture; and

(3) cooperative efforts and joint ventures by domestic companies must be encouraged to foster domestic HDTV technology research, design, development and manufacture.

SEC. 102. TREATMENT OF HDTV JOINT VENTURES UNDER THE COMMUNICATIONS ACTS OF 1934.

Section 313 of the Communications Act of 1934 is amended—

(1) by inserting before the period at the end of the first sentence of subsection (a) the following: ", except for activities conducted in accordance with subsection (c)"; and

(2) by adding at the end thereof the following:

"(c) The sentence of subsection (a) of this section shall not apply to any cooperative HDTV enterprise (as that term is defined in section 3 of the High Definition Television Development Act of 1989) engaged in a joint research, development, or production venture with respect to which a notification is in effect under section 6 of the National Cooperative Research Act of 1984 (15 U.S.C. 4305).".

SEC. 103. TREATMENT OF HDTV JOINT VENTURES UNDER THE NATIONAL COOPERATIVE RESEARCH ACT OF 1984.

Section 2 of the National Cooperative Research Act of 1984 is amended by adding at the end thereof the following:

(c)(1) Notwithstanding subsection (b), the term "joint research and development venture" includes, with respect to a cooperative HDTV enterprise—

"(A) discussions, considerations, review, actions or agreements concerning HDTV technology;

"(B) conducting research on, or design, development, or manufacture of, HDTV technology; or

"(C) any combination of the activities described in subparagraphs (A) and (B).

(2) As used in this subsection, the terms "cooperative HDTV enterprise" and "HDTV technology" have the meanings provided in section 3 of the High Definition Television Development Act of 1989.".

TITLE II—INTERNATIONAL TRADE

SEC. 201. RESPONSIBILITIES OF THE SECRETARY.

The Secretary shall, within 90 days after the date of enactment of this Act, submit a report to the President and the Congress on the implications for international trade of HDTV technology. Such report shall include such recommendations as the Secretary considers appropriate on methods by which Federal laws governing international trade may promote the development and viability of domestic manufacturers of HDTV technology.●

By Mr. SIMPSON:

S. 953. A bill to amend the Immigration and Nationality Act to revise the grounds for exclusion from admission into the United States; to the Committee on the Judiciary.

IMMIGRATION EXCLUSIONS

Mr. SIMPSON. Mr. President, let me insert into the RECORD a piece of legislation that would revise our present system of immigration exclusions. I think this is an important measure. I want to present this for my thoughtful colleagues.

We have presently 33 grounds upon which we may deny entry to aliens seeking admission to the United States. Those grounds of exclusion fall into categories like public health danger, economic burden, past criminal or unsocial behavior, previous immigration violations, threat to U.S. security. However, many of those exclusions were written over 35 years ago. Some are very antiquated, some are no longer good national policy.

So the bill I am introducing is somewhat similar to legislation substantially agreed to by Congressman BARNEY FRANK, whom I have worked with over the years on immigration matters. I enjoy very much working with him. We do not really vote together very much, but we like to legislate together. The Reagan administration also looked carefully at this.

It addressed certain differences that Congressman FRANK and the Reagan administration were not able to resolve, but in general I think there is much bipartisan agreement on the proposals. It would not delete any of the major categories of exclusion, but it would modernize most of the present exclusions, particularly in the public health area, and would make the following notable changes:

First is the ideological exclusion. We reached a compromise between myself and Senator PAT MOYNIHAN last year on the foreign operations appropriations bill. We no longer exclude temporary immigrants because of their past writings, their beliefs, or membership in certain organizations. However, permanent immigrants must receive a waiver if they are excludable on the above grounds.

My legislation would continue this very liberal treatment of temporary immigrants while requiring permanent immigrants to seek a waiver from memberships in any of the prescribed organizations, but, of course, not for their writings or their speech.

Aliens who are national security or terrorist threats or whose admission would have a serious effect on U.S. foreign policy would still remain excludable.

I strongly believe that no aliens should be excluded from the United States merely because he or she wrote a book, gave a speech, or would wish to give a speech in the United States that most Americans would likely disagree with or find totally offensive. That is fine. We are a big country, and we can handle all of those.

I also believe that membership in the Communist Party should not be the sole reason for preventing an alien from coming to the United States to visit, to speak, or attend lectures or otherwise temporarily remain in the country. However, I really believe that applicants for permanent residence should have their past activities in the Communist Party and all other aspects of life examined before they are admitted to remain permanently in this country.

This is only a good commonsense precaution. If their party membership is found to have been involuntary or nonmeaningful, fine. Then we should waive the exclusion and permit them to enter on a permanent basis. In fact, 80 percent of all permanent residents who applied for the waiver of this exclusion in 1986 were later admitted to the United States.

I think we have to look at the public health grounds. My bill would continue current law by denying a waiver of exclusion for any permanent immigrants infected with AIDS. The House bill creates such a waiver. If it is necessary to admit such an afflicted alien, the Attorney General may use his parole authority to do that. He may also place conditions on an AIDS-infected alien's entry. I believe for now we should reserve the ability to put special limitations on the admission of permanent aliens with this tragic and deadly disease.

Current law would exclude any alien—this is current law today—who claims to be a homosexual or who the Government knows is a homosexual. This bill would end the exclusion of homosexual aliens merely because of their homosexuality, although they would remain excludable if they were infected with AIDS or other contagious diseases.

In the efforts on the Select Commission on Immigration and Refugee Policy when I worked with Congressman MAZZOLI and Peter Rodino, that issue came up. We could see that would be a great diversion from our work because it is filled with emotion—the issue of homosexuality. But it is time to deal with that in a rational commonsense and humane way, as we should.

I have added another provision about child kidnaping, a new ground of exclusion for any alien who escapes abroad with a child of a U.S. citizen who has legal custody of that child. There are a surprising number of cases which have arisen where a U.S. citizen marries an alien, has a child from that marriage, and then the alien leaves the United States with that child. My bill would prevent that alien from reentering the United States until the alien surrenders the child to the person with the proper custody.

So there is the legislation. It contains a number of other more modest exclusions, and I will make a detailed summary of the bill to all who are interested.

Mr. President, I strongly believe the time is right to modernize our system of immigration to remove the antiquated provisions, and to address the problems that our immigration system will face in decades to come. And I earnestly commend this legislation to my colleagues.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 953

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (a) of section 212 of the Immigration and Nationality Act is amended to read as follows:

"(a) Except as otherwise provided in this Act, an alien in any of the following classes shall be ineligible to receive visas and shall be excluded from admission into the United States:

"(1) Any alien who has a communicable disease of public health significance or any alien under the age of nineteen who has not received a series of immunizations as prescribed by the Secretary of Health and Human Services.

"(2) Any alien who has—

"(A) a current physical or mental disorder which has posed, or may pose, a threat to

the property, safety, or welfare of the alien or others; or

"(B) a history of behavior which has posed a threat to the property, safety, or welfare of the alien or others, and which the Attorney General, after consultation with the Secretary of Health and Human Services, determines may have been associated with a mental or physical disorder.

"(3) Any alien who is a drug abuser or addict, as defined by the Secretary of Health and Human Services.

"(4) Any alien who has been convicted of, who admits having committed, or who admits committing acts constituting the essential elements of, a felony or each of three or more misdemeanors, as defined in the United States Code or the District of Columbia Code (other than a purely political offense).

"(5) Any alien—

"(A) who has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)); or

"(B) who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or has been a knowing assister, abettor, conspirator, or colluder with others in such illicit trafficking.

"(6) Any alien who at any time shall have knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or to attempt to enter the United States in violation of law.

"(7) Any alien—

"(A) who is ineligible for citizenship, except aliens seeking to enter as a nonimmigrant, or

"(B) who departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency, except any alien who at the time of such departure was a nonimmigrant and who seeks to reenter the United States as a nonimmigrant.

"(8) Any alien who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(9)(A) Any alien who a consular officer or the Attorney General knows, or has reason to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

"(i) any activity to violate, circumvent, or evade any law of the United States or any State relating to espionage or sabotage, or any law which prohibits export from the United States of goods, technology, or sensitive information,

"(ii) any other unlawful activity, or

"(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.

"(B) Any alien—

"(i) who has engaged in a terrorist activity,

"(ii) who has been a member of a group or subgroup which has been engaged in a terrorist activity, or

"(iii) who a consular officer or the Attorney General knows or has reason to believe is likely to engage in any terrorist activity after entry into the United States.

"(C)(i) Any immigrant who is or ever has been a member of or affiliated with—

"(I) the Communist or any other totalitarian party of any State or the United States, of any foreign state, or of any political or geographic subdivision of any foreign state,

"(II) any section, subsidiary, branch affiliated, or subdivision of any such association or party, or

"(III) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt.

"(ii) Any immigrant who is within any of the classes described in clause (i) because of membership in or affiliation with a party or organization or a section, subsidiary, branch, affiliate, or subdivision thereof, may, if not otherwise ineligible, be issued a visa if such alien establishes to the satisfaction of the consular officer when applying for a visa, and the consular officer finds, that—

"(I)(a) such membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes, or

"(b) since the termination of such membership or affiliation, such alien is and has been, for at least 5 years prior to the date of the application for a visa, actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and

"(II) the admission of such alien into the United States would be in the public interest.

Any such alien to whom a visa has been issued under the provisions of this subparagraph may, if not otherwise inadmissible, be admitted into the United States if he shall establish to the satisfaction of the Attorney General that either of the conditions in subclause (I) and the condition in subclause (II) apply. The Attorney General shall promptly make a detailed report to the Congress in the case of each alien who is or shall be admitted into the United States under subclause (I)(b).

"(D) Any alien whose entry or proposed activities in the United States could, in the opinion of the Secretary of State, have potentially serious adverse foreign policy consequences for the United States because such entry or activities could—

"(i) result in imminent harm to the lives or property of United States citizens abroad or to the property of the United States Government abroad;

"(ii) convey the impression that the United States recognizes or supports any government that the United States does not recognize or support or convey the impression that the United States supports a group, of which the alien is a member, which the United States does not support;

"(iii) violate, or conflict with, an international obligation or undertaking of the United States; or

"(iv) have a serious negative effect on the diplomatic relations of the United States with another country or countries.

"(E) Any alien who is a representative of a purported labor organization in a country where such organizations are in fact instruments of a totalitarian state.

"(10) Any alien—

"(A) who is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, entry, or adjustment of status,

"(B) who procures or attempts to procure, or (within 10 years of the date of application for a visa, entry, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution or, within such 10-year period, received, in whole or in part, the proceeds of prostitution,

"(C) who is coming to the United States to engage in any other unlawful commercialized vice, or

"(D) who is coming to the United States to practice polygamy.

"(11) Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, is likely at any time to become a public charge.

"(12) Any alien—

"(A) who, within one year prior to application for admission into the United States, was excluded from admission and deported,

"(B) who, within five years or, in the case of an alien convicted of an aggravated felony, within ten years, prior to application for admission into the United States, was arrested and deported from the United States, departed voluntarily from the United States in lieu of deportation pursuant to section 242(b), or was removed as an alien enemy, or

"(C) who fell into distress and was removed from the United States at his request,

unless prior to embarkation or reembarkation at a place outside the United States or an attempt to be admitted from foreign contiguous territory, the Attorney General has consented to such alien's applying or reapplying for admission.

"(13) Any alien who arrives as a stowaway.

"(14)(A) Any alien seeking to enter the United States to perform skilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

"(i) there are not sufficient qualified workers (or equally qualified workers in the case of any aliens who are members of the teaching profession or who have exceptional ability in the sciences or arts) available in the United States in the position in which the alien will be employed; and

"(ii) the employment of the alien in such position will not adversely affect the wages and working conditions of workers in the United States.

"(B) The Secretary of Labor may, in his discretion, substitute for the determination and certification described in subparagraph (A)(i) a determination and certification that there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of any aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled labor.

"(C) In making either determination under this paragraph, the Secretary of Labor may use labor market information without regard to the specific job opportunity for which certification is requested, but if such determination is adverse, the Secretary of Labor shall make a certification with regard to the specific job opportunity if the employer submits evidence that such specific certification would result in a different determination.

"(D) Each alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States.

"(E) The exclusion of aliens under this paragraph shall only apply to immigrants seeking admission under paragraph (3) or (6) of section 203(a).

"(15) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure or has procured, a visa, other documentation, or entry into the United States or other benefit provided under this Act.

"(16) Except as otherwise specifically provided in this Act, any immigrant who at the time of application for admission—

"(A) is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), or

"(B) whose visa has been issued without compliance with the provisions of section 203.

"(17) Any nonimmigrant who is not in possession of—

"(A) a passport valid for a minimum of six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period; and

"(B) at the time of application for admission, a valid nonimmigrant visa or border crossing identification card.

"(18) Any alien (other than a refugee, asylee, or one who has been lawfully admitted for permanent residence and who is returning from a temporary visit abroad), over sixteen years of age and physically capable of reading, who cannot read and understand some language or dialect.

"(19) Any alien who is a graduate of a medical school not accredited by a body or bodies approved for this purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession, except any alien—

"(A) who has passed parts I and II of the National Board of Medical Examiners examination (or an equivalent examination determined by the Secretary of Health and Human Services), and

"(B) who is competent in oral and written English.

For the purposes of this paragraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

"(20) Any alien accompanying another alien ordered to be excluded and deported under paragraph (2) of this subsection, whose protection or guardianship is required by the alien ordered excluded and deported.

"(21) Any alien who, after the entry of a court order granting custody to a United States citizen of a child having a lawful claim to United States citizenship, detains, retains, or withholds custody of such child outside the United States from the United States citizen granted custody, except that the alien shall no longer be excludable upon the surrender of the child to the United States citizen granted custody.".

(b) Section 101(a) of the Immigration and Nationality Act is amended by adding at the end thereof the following new paragraphs:

"(43) The term 'terrorist activity' means any activity which is unlawful under the laws of the place where it is committed (or which, if committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

"(A) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

"(B) The seizing or detaining, and threatening to kill, injure, or continue to detain another individual, in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual detained or seized.

"(C) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

"(D) An assassination.

"(E) The use of any—

"(i) biological agent, chemical agent, or nuclear weapon or device, or

"(ii) explosive or firearm (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of people or cause substantial damage to property.

"(F) Any threat, attempt, or conspiracy to do any of the acts described in clauses (A) through (E).

"(44) The term 'engage in terrorist activity' means to commit an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

"(A) The preparation or planning of terrorist activity.

"(B) The gathering of information on potential targets for terrorist activity.

"(C) The providing of any type of material support, including a safe house, transportation, communications, funds, false identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit an act of terrorist activity.

"(D) The soliciting of funds or other things of value for terrorist activity or for any organization which engages in or which has engaged in terrorist activity.".

(c)(1) Any reference in the Immigration and Nationality Act or any other provision of law before the date of enactment of this Act to paragraph (1), (2), (3), or (4) of section 212(a) shall each be deemed to be a reference to paragraph (2) of section 212(a) (insofar as it relates to mental impairments) after such date.

(2) References in such Act or any other provision of law to paragraphs (6), (10), (11), (12), (15), (16), (18), (19), (20), (21), (23), (25), (26), (27), (28), (29), (30), (31), (32), and (33) of section 212(a) before the date of enactment of this Act shall be deemed to be references after such date to paragraphs (1), (4), (10), (10)(D), (11), (12), (13), (15), (16)(A), (16)(B), (5), (18), (17), (9)(D), clauses (A) through (C) and clause (E) of paragraph (9), clauses (A) and (C) of paragraph (9), (20), (6), (19), and (8) of section 212(a), respectively.

(3) References to paragraphs (5), (7), (8), (9), (13), (17), (22), and (24) of section 212(a) before the date of enactment of this Act shall be deemed to be stricken after such date.

By Mr. LUGAR (for himself, Mr. SHELBY, Mr. PRYOR, Mr. STEVENS, Mr. METZENBAUM, Mr. PELL, Mr. KERRY, Mr. CHAFEE, and Mr. HEFLIN):

S.J. Res. 122. Joint resolution to designate October 1989 and 1990 as "National Down Syndrome Month"; to the Committee on the Judiciary.

NATIONAL DOWN SYNDROME MONTH

● Mr. LUGAR. Mr. President, I rise today to introduce legislation to designate October 1989 and 1990 as National Down Syndrome Month. I have introduced this proposal every year since 1984, and I am convinced that Congress will once again enact such a law to encourage continued understanding and advancement in the medical and educational programs concerned with Down syndrome.

Down syndrome occurs once in every 1,000 births. It results from a genetic mishap in which an extra chromosome No. 21—which affects physical and mental development—is found within the individual's genetic material. For years, Down syndrome carried a stigma of being a hopeless impediment to a meaningful and productive life. Happily, recent medical research has brought about the possibility of correcting a number of the disorders associated with this genetic defect. Moreover, infant stimulation programs taught to parents of babies with Down syndrome have increased their intellectual development far beyond previous expectations.

Since the enactment of the Education for All Handicapped Children Act (Public Law 94-142), we have seen the rewards of educating the developmentally disabled in our public schools. These rewards can be measured in terms of their increased achievements and, consequently, the contributions that these children are later able to make to society. This alone is a major breakthrough in our regard for these boys and girls, men and women, fellow members of our families and our neighborhoods. We have come to the important realization that persons with Down syndrome, though limited, can and do contribute to the welfare of our society. These individuals are not to be regarded as a mere responsibility. They are capable human beings who need our encouragement to reach their full potential.

We have an obligation to forge new social attitudes so that persons with Down syndrome will be accepted for what they are—people first, and secondly people with Down syndrome. We must help to ensure that their

rights and privileges as American citizens are respected and observed, and that their human dignity is preserved.

At one time, the birth of a child with a mental handicap was tantamount to a life of anguish, despair, and certain institutionalization. Today, however, this does not need to be so. Today we are able to integrate such children into the community, and to educate them to become productive members of society. This effort has been made possible through greater public awareness, the dissolution of old stereotypes and stigmas, and a more educated acceptance of these individuals. Our annual recognition of National Down Syndrome Month has made an important contribution to this growing public awareness.

Mr. President, I would like to thank and commend my distinguished colleagues who have joined me in cosponsoring this joint resolution. I ask unanimous consent that the text of this joint resolution and a letter on this subject be printed in the RECORD.

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

S.J. RES. 122

Whereas the past two decades have brought a greater and more enlightened attitude in the care and training of the developmentally disabled;

Whereas one such condition which has undergone considerable reevaluation is that of Down syndrome—a condition which, just a short time ago, was often stigmatized as a mentally retarded condition which relegated its victims to lives of passivity in institutions and back rooms;

Whereas through the efforts of concerned physicians, teachers and parent groups such as the National Down Syndrome Congress, programs are being put in place to educate new parents of babies with Down Syndrome, to develop special education classes within mainstream programs in schools, to provide for vocational training in preparation for entering the work force, and to prepare young adults with Down syndrome for independent living in the community;

Whereas the cost of such services designed to help individuals with Down syndrome move into their rightful place in our society is but a tiny fraction of the cost of institutionalization;

Whereas not only the improvement in educational opportunities for those with Down syndrome, but also the advancement in medical science is adding to a brighter outlook for individuals born with this chromosomal configuration; and

Whereas public awareness and acceptance of the capabilities of children with Down syndrome can greatly facilitate their being mainstreamed in our society: now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 1989 and 1990 are designated as "National Down Syndrome Month" and that the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the designated month with appropriate programs, ceremonies, and activities.

U.S. SENATE,
Washington, DC, April 26, 1989.

DEAR COLLEAGUE: I will soon introduce once again a resolution to designate October 1989 and 1990 as National Down Syndrome Month. For each of the past five years this commemorative month has played a key part in the Down Syndrome public awareness effort. It serves as a catalyst to bring the needs of people touched by Down syndrome to the public attention. The enemies of Down syndrome are ignorance, old stereotypes, myths and prejudice. When the public is educated about Down syndrome and those whose lives it impacts, these old barriers are broken down.

Down syndrome occurs once in every 1,000 births. It results from a genetic mishap in which an extra chromosome number 21—which affects physical and mental development—appears within the individual's genetic material. For years, Down syndrome carried a stigma of being a hopeless impediment to a meaningful and productive life. Happily, recent medical research has brought about the possibility of correcting a number of the disorders associated with this genetic defect. Moreover, infant stimulation programs taught to parents of babies with Down syndrome have increased the children's intellectual development far beyond previous expectations.

At one time, the birth of a child with a mental handicap was tantamount to a life of anguish, despair and certain institutionalization. Today, however, this does not need to be so. Now we are able to integrate such children into the community, and to educate them to become productive members of society. This effort has been made possible through greater public awareness, the dissolution of old stereotypes and stigmas, and a more educated acceptance of these individuals.

The annual recognition of "National Down Syndrome Month" has made an important contribution to this public awareness. I urge you, therefore, to join with me as a cosponsor of this measure. If you are interested in cosponsoring this resolution, please contact Mary Coogan of my staff at 224-4814.

Sincerely,

RICHARD G. LUGAR,
U.S. Senator.●

By Mr. GORTON:

S.J. Res. 124. Joint resolution to designate October as "National Quality Month"; to the Committee on the Judiciary.

NATIONAL QUALITY MONTH

Mr. GORTON. Mr. President, I am pleased to have the privilege of introducing today a joint resolution designating October 1989 as "National Quality Month." This resolution recognizes the movement to raise the level of quality in American goods and services, and the role that quality plays in maintaining the competitiveness of American companies in the world marketplace.

We hear so much about the quality of goods made in foreign lands, like Japan and Germany to name two. However, according to a 1988 Gallup survey conducted by the American Society for Quality Control, a society of American businesses dedicated to the advancement of quality, 66 percent of American consumers prefer American-made products in terms of quality. Out of the companies which are most frequently named as associated with high quality, only 1 out of the top 10 was a foreign firm.

The movement to improve the quality of everything we do extends to the Government as well as to the private sector. These programs focus both on improving our own Government operations and on encouraging and honoring notable achievements relating to quality. For example, the Malcolm Baldrige National Quality Award, managed by the Department of Commerce, is the highest level of national recognition an American firm can receive for quality. The first of these awards, dubbed the Nobel Prize for Quality, were presented on November 14, 1988, by former President Reagan. The Bush administration intends to continue to give high priority to accelerating the adoption of quality in America.

There is a renewed emphasis in America on producing high quality goods and services. Over the past few years, we have seen American companies make great strides in raising their standards for quality. Consumers at home and abroad are demanding higher quality in everything that they buy, and they are willing to pay for it. Every American should become increasingly aware of the rewards of achieving increased quality, and should strive each day to attain it. In the competitive global marketplace in which we live, good is no longer good enough.

ADDITIONAL COSPONSORS

S. 6

At the request of Mr. MCCAIN, the names of the Senator from Oklahoma [Mr. BOREN] and the Senator from Delaware [Mr. ROTH] were added as cosponsors of S. 6, a bill to grant the power to the President to reduce appropriated funds within 10 days after the date of enactment of a bill appropriating such funds.

S. 14

At the request of Mr. CRANSTON, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 14, a bill to provide for a grant program to assist eligible consortia in providing services to individuals with acquired immunodeficiency syndrome or AIDS-related complex.

S. 16

At the request of Mr. CRANSTON, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of S. 16, a bill to require the executive branch to gather and disseminate information regarding, and to promote techniques to eliminate discriminatory wage-setting prac-

tices and discriminatory wage disparities which are based on sex, race, or national origin.

S. 52

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 52, a bill to amend section 1086 of title 10, United States Code, to provide for payment under the CHAMPUS Program of certain health care expenses incurred by certain members and former members of the uniformed services and their dependents to the extent that such expenses are not payable under Medicare, and for other purposes.

S. 100

At the request of Mr. ROCKEFELLER, the names of the Senator from Alabama [Mr. HELFIN] and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of S. 100, a bill to amend title XVIII of the Social Security Act with respect to coverage of, and payment for, services of psychologists under part B of Medicare.

S. 120

At the request of Mr. KENNEDY, the names of the Senator from Alaska [Mr. STEVENS] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 120, a bill to amend the Public Health Service Act to reauthorize adolescent family life demonstration projects, and for other purposes.

S. 137

At the request of Mr. BOREN, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 137, a bill to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees, and for other purposes.

S. 169

At the request of Mr. HOLLINGS, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 169, a bill to amend the National Science and Technology Policy, Organization, and Priorities Act of 1976 in order to provide for improved coordination of national scientific research efforts and to provide for a national plan to improve scientific understanding of the Earth system and the effect of changes in that system on climate and human well-being.

S. 223

At the request of Mr. MOYNIHAN, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 223, a bill to establish a grant program for research, treatment and public education with respect to Lyme disease.

S. 231

At the request of Mr. MOYNIHAN, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 231, a bill to amend part A of title IV of the Social Security Act to improve quality control standards and procedures under the Aid to Families With Dependent Children Program, and for other purposes.

S. 243

At the request of Mr. MCCLURE, the names of the Senator from North Carolina [Mr. SANFORD], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of S. 243, a bill to provide for the extension of regional referral center classification of certain hospitals under the Medicare Program and to continue the payment rates for such hospitals.

S. 244

At the request of Mr. GLENN, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 244, a bill to require the Administrator of the General Services Administration to encourage the development and use of plastics derived from certain commodities, and to include such products in the General Services Administration inventory for supply to Federal agencies, and for other purposes.

S. 276

At the request of Mr. DURENBERGER, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 276, a bill to establish a Department of Environmental Protection.

S. 335

At the request of Mr. MCCAIN, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 335, a bill to amend title XVIII of the Social Security Act and other provisions of law to delay for 1 year the effective dates of the supplemental Medicare premium and additional benefits under Part B of the Medicare program, with the exception of the spousal impoverishment benefit.

S. 346

At the request of Mr. WIRTH, the names of the Senator from New Jersey [Mr. LAUTENBERG] and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of S. 346, a bill to amend the Alaska National Interest Lands Conservation Act, and for other purposes.

S. 355

At the request of Mr. RIEGLE, the names of the Senator from California [Mr. CRANSTON] and the Senator from Indiana [Mr. COATS] were added as cosponsors of S. 355, a bill to amend the Internal Revenue Code of 1986 to extend through 1992 the period during which qualified mortgage bonds and mortgage credit certificates may be issued.

S. 375

At the request of Mr. HOLLINGS, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of S. 375, a bill to provide for the broadcasting of accurate information to the people of Cuba, and for other purposes.

S. 384

At the request of Mr. CHAFEE, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 384, a bill to amend title XIX of the Social Security Act to assist individuals with a severe disability in attaining or maintaining their maximum potential for independence and capacity to participate in community and family life, and for other purposes.

S. 390

At the request of Mr. BINGAMAN, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 390, a bill entitled the "Business Incubator Review Act of 1989".

S. 399

At the request of Mr. GLENN, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Washington [Mr. GORTON] were added as cosponsors of S. 399, a bill to amend the Library Services and Construction Act to authorize the Secretary of Education to establish a program to make grants to local public libraries to establish demonstration projects using older adult volunteers to provide intergenerational library literacy programs to children during afterschool hours, and for other purposes.

S. 416

At the request of Mr. DOMENICI, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 416, a bill to provide that all Federal civilian and military retirees shall receive the full cost-of-living adjustment in annuities payable under Federal retirement systems for fiscal years 1990 and 1991, and for other purposes.

S. 424

At the request of Mr. THURMOND, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 424, a bill to provide a minimum monthly annuity for the surviving spouses of certain deceased members of the uniformed services.

S. 430

At the request of Mr. DASCHLE, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 430, a bill to amend title XIX of the Social Security Act to provide coverage for certain outreach activities undertaken at the option of a State for the purpose of identifying pregnant women and children who are eligible for medical assistance and assisting them in applying for and receiving such assistance, and for other purposes.

S. 480

At the request of Mr. COCHRAN, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 480, a bill to authorize the several States and District of Columbia to collect certain taxes with respect to sales of tangible personal property by nonresident persons who solicit such sales.

S. 488

At the request of Mr. FOWLER, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 488, a bill to provide Federal assistance and leadership to a program of research, development, and demonstration of renewable energy and energy efficiency technologies, and for other purposes.

S. 491

At the request of Mr. CHAFEE, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 491, a bill to reduce atmospheric pollution to protect the stratosphere from ozone depletion, and for other purposes.

S. 499

At the request of Mr. CRANSTON, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 499, a bill to amend the National Security Act of 1947 to make the Secretary of Commerce a member of the National Security Council.

S. 537

At the request of Mr. RIEGLE, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 537, a bill to require that any calculation of the Federal deficit made as a part of the Federal budget process include a calculation of the Federal deficit minus the Social Security reserves.

S. 561

At the request of Mr. DANFORTH, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 561, a bill to provide for testing for the use, without lawful authorization, of alcohol or controlled substances by the operators of aircraft, railroads, and commercial motor vehicles, and for other purposes.

S. 606

At the request of Mr. BOND, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 606, a bill to amend the Agricultural Act of 1949 to permit producers to plant supplemental and alternative income-producing crops considered to be planted to a program crop.

S. 640

At the request of Mrs. KASSEBAUM, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 640, a bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

S. 652

At the request of Mr. KENNEDY, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 652, a bill to revise the format of the presidential report to Congress on voting practices in the United Nations.

S. 710

At the request of Mr. JOHNSTON, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 710, a bill to provide for a referendum on the political status of Puerto Rico.

S. 711

At the request of Mr. JOHNSTON, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 711, a bill to provide for a referendum on the political status of Puerto Rico.

S. 712

At the request of Mr. JOHNSTON, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 712, a bill to provide for a referendum on the political status of Puerto Rico.

S. 724

At the request of Mr. GRAHAM, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 724, a bill to modify the boundaries of the Everglades National Park and to provide for the protection of lands, water, and natural resources within the park, and for other purposes.

S. 771

At the request of Mr. REID, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 771, a bill to amend the Internal Revenue Code of 1986 to disallow deductions for costs in connection with oil and hazardous substances cleanup unless the requirement of all applicable Federal laws concerning such cleanup are met, and for other purposes.

S. 772

At the request of Mr. LIEBERMAN, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 772, a bill to provide permanent housing for the homeless by rehabilitating and preserving our existing housing stock.

S. 783

At the request of Mr. JOHNSTON, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 783, a bill to amend the Natural Gas Policy Act of 1978 to eliminate wellhead price and nonprice controls on the first sale of natural gas, and to make technical and conforming amendments to such act.

S. 816

At the request of Mr. DURENBERGER, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 816, a bill to control the release of toxic air pollutants, to reduce the threat of catastrophic chemical accidents and for other purposes.

S. 822

At the request of Mr. MOYNIHAN, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of S. 822, a bill to prohibit the importation into the United States of certain articles originating in Burma.

S. 850

At the request of Mr. JOHNSTON, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 850, a bill to amend the Internal Revenue Code of 1954 to impose a fee on the importation of crude oil or refined petroleum products.

S. 863

At the request of Mr. BAUCUS, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 863, a bill to create a rural partnership fund and a loan program to administer funds from such fund, to create a microbusiness loan fund and a microbusiness technical assistance fund and a program to administer funds from such funds, and for other purposes.

S. 893

At the request of Mr. LAUTENBERG, the names of the Senator from Illinois [Mr. DIXON], the Senator from Indiana [Mr. COATS], the Senator from Kentucky [Mr. FORD], and the Senator from California [Mr. WILSON] were added as cosponsors of S. 893, a bill to establish certain categories of Soviet and Vietnamese nationals presumed to be subject to persecution and to provide for adjustment to refugee status of certain Soviet and Vietnamese parolees.

S. 905

At the request of Mr. LIEBERMAN, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 905, a bill to amend title VI of the Communications Act of 1934 to restore the right of State and local regulatory agencies to regulate cable television rates, and for other purposes.

SENATE JOINT RESOLUTION 8

At the request of Mr. SANFORD, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of Senate Joint Resolution 8, a joint resolution disapproving the recommendations of the President relating to rates of pay of certain officers and employees of the Federal Government.

SENATE JOINT RESOLUTION 57

At the request of Mr. PELL, the names of the Senator from Iowa [Mr. HARKIN], the Senator from Colorado [Mr. ARMSTRONG], the Senator from Missour [Mr. DANFORTH], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of Senate Joint Resolution 57, a joint res-

olution to establish a national policy on permanent papers.

SENATE JOINT RESOLUTION 72

At the request of Mr. RIEGLE, the name of the Senator from California [Mr. WILSON] was added as a cosponsor of Senate Joint Resolution 72, a joint resolution to designate the period commencing May 7, 1989, and ending May 13, 1989, as "National Correctional Officers Week."

SENATE JOINT RESOLUTION 88

At the request of Mr. WIRTH, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of Senate Joint Resolution 88, a joint resolution to establish that it is the policy of the United States to reduce the generation of carbon dioxide and for other purposes.

SENATE JOINT RESOLUTION 95

At the request of Mr. MCCLURE, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Nebraska [Mr. EXON], the Senator from Ohio [Mr. METZENBAUM], the Senator from California [Mr. CRANSTON], the Senator from Alabama [Mr. HEFLIN], the Senator from Florida [Mr. MACK], and the Senator from Texas [Mr. BENTSEN] were added as cosponsors of Senate Joint Resolution 95, a joint resolution to designate the week of September 10, 1989, through September 16, 1989, as "National Check-Up Week."

SENATE JOINT RESOLUTION 104

At the request of Mr. MITCHELL, the names of the Senator from North Carolina [Mr. SANFORD], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 104, a joint resolution to express the sense of the Congress with respect to the health of the Nation's children.

SENATE JOINT RESOLUTION 106

At the request of Mr. BOND, the names of the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from North Dakota [Mr. BURDICK], the Senator from Montana [Mr. BURNS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Arizona [Mr. DECONCINI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Hawaii [Mr. INOUYE], the Senator from Indiana [Mr. LUGAR], the Senator from Idaho [Mr. MCCLURE], the Senator from Michigan [Mr. RIEGLE, and the Senator from Virginia, [Mr. WARNER] were added as cosponsors of Senate Joint Resolution 106, a joint resolution to authorize a commemorative stamp to be issued on January 18, 1991, to honor Doctor Thomas Anthony Dooley III, and commemorate the 30th anniversary of his death.

SENATE JOINT RESOLUTION 112

At the request of Mr. GRASSLEY, the names of the Senator from Nevada [Mr. BRYAN], the Senator from Tennessee [Mr. GORE], the Senator from Alabama [Mr. SHELBY], the Senator from Indiana [Mr. LUGAR], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Virginia [Mr. ROBB], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from California [Mr. WILSON], the Senator from Virginia [Mr. WARNER], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from South Carolina [Mr. THURMOND], the Senator from Vermont [Mr. LEAHY], the Senator from Georgia [Mr. FOWLER], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Nebraska [Mr. EXON] were added as cosponsors of Senate Joint Resolution 112, a joint resolution designating May 29, 1989, as the National Day of Remembrance for the victims of the U.S.S. Iowa.

SENATE JOINT RESOLUTION 113

At the request of Mr. DIXON, the names of the Senator from South Carolina [Mr. HOLLINGS], the Senator from Arkansas [Mr. PRYOR], the Senator from Michigan [Mr. RIEGLE], the Senator from Louisiana [Mr. BREAUX], and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of Senate Joint Resolution 113, a joint resolution prohibiting the export of technology, defense articles, and defense services to codevelop or coproduce the FSX aircraft with Japan.

SENATE CONCURRENT RESOLUTION 16

At the request of Mr. BOSCHWITZ, the names of the Senator from Vermont [Mr. JEFFORDS], the Senator from Illinois [Mr. SIMON], the Senator from Tennessee [Mr. GORE], the Senator from Oregon [Mr. HATFIELD], the Senator from New Jersey [Mr. BRADLEY], the Senator from California [Mr. CRANSTON], the Senator from Delaware [Mr. BIDEN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from California [Mr. WILSON], the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of Senate Concurrent Resolution 16, a concurrent resolution calling for the Government of Vietnam to expedite the release and emigration of all political prisoners.

SENATE CONCURRENT RESOLUTION 18

At the request of Mr. ROTH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of Senate Concurrent Resolution 18, a concurrent resolution expressing the sense of Congress that Federal laws regarding the taxation of State and local government bonds should not be changed in order to increase Federal revenues.

SENATE CONCURRENT RESOLUTION 25

At the request of Mr. GRASSLEY, the name of the Senator from North Dakota [Mr. CONRAD], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of Senate Concurrent Resolution 25, a concurrent resolution expressing the sense of the Congress that the number of refugees admitted to the United States and the appropriation for programs for refugee migration and resettlement should be increased and that the Department of Justice should reestablish the presumption that Jews and members of other religious minorities emigrating from the Soviet Union qualify for refugee status for admission to the United States.

SENATE CONCURRENT RESOLUTION 26

At the request of Mr. HATFIELD, the names of the Senator from Washington [Mr. ADAMS], the Senator from Indiana [Mr. LUGAR], the Senator from Vermont [Mr. JEFFORDS], the Senator from South Dakota [Mr. DASCHLE], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Hawaii [Mr. INOUYE], the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of Senate Concurrent Resolution 26, a concurrent resolution urging first asylum countries of the Association of Southeast Asian Nations (ASEAN) to reinstate the practice of providing refuge to all asylum-seekers from Vietnam, and for other purposes.

SENATE RESOLUTION 99

At the request of Mr. BOSCHWITZ, the names of the Senator from Colorado [Mr. WIRTH], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of Senate Resolution 99, a resolution requiring the Architect of the Capitol to establish and implement a voluntary program for recycling paper disposed of in the operation of the Senate.

SENATE RESOLUTION 113

At the request of Mr. HEINZ, the names of the Senator from Nebraska [Mr. KERREY], the Senator from California [Mr. CRANSTON], the Senator from Colorado [Mr. WIRTH], the Senator from Georgia [Mr. FOWLER], and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of Senate Resolution 113, a resolution to discontinue the use of polystyrene foam products in the Senate Food Services.

SENATE RESOLUTION 114

At the request of Mr. GRAHAM, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of Senate Resolution 114, a resolution concerning the restoration of Eastern Airlines.

SENATE RESOLUTION 119

At the request of Mr. WILSON, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from Texas [Mr. BENTSEN], the Senator from North Carolina [Mr. HELMS], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Resolution 119, a resolution concerning the 1986 agreement be-

tween the United States and Japan regarding the Japanese semiconductor market.

At the request of Mr. WILSON, the name of the Senator from Minnesota [Mr. DURENBERGER] was withdrawn as a cosponsor of Senate Resolution 119, supra.

SENATE CONCURRENT RESOLUTION 34—RELATING TO TELECOMMUNICATIONS POLICY

Mr. BREAUX (for himself, Mr. STEVENS, and Mr. LOTT) submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. CON. RES. 34

Whereas full market penetration of basic telephone service, technological advances, and other global and domestic social and economic changes require a comprehensive review of telecommunications policy objectives;

Whereas the retention of universally available telephone services at affordable rates is accepted national policy;

Whereas advancements in technology have brought society to the threshold of an information age that would merge voice, data, and video conferencing/videotex capabilities into basic telephone service;

Whereas the national welfare will be greatly enhanced by the universal availability of information age technologies;

Whereas increased availability of information services, whether provided by the regional Bell holding companies or by competing companies, may stimulate the use of information-age technology by the American people;

Whereas determining whether regulated telecommunications companies will be permitted to fully compete in the telecommunications marketplace will reduce uncertainties and improve the business climate in the telecommunications industry, and thereby promote development of a state-of-the-art universally available telecommunications network;

Whereas improvements in the administrative structure for Federal policy will also promote industry development by facilitating and improving United States competitiveness in the global information and telecommunications products marketplace and prevent domination of the United States network and telecommunication technology by foreign companies; and

Whereas all American consumers should have high-technology telecommunications services available to them that are currently offered only to large businesses or to consumers in France, Japan, or other foreign markets; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) should determine whether, or the extent to which, regional Bell holding companies should be permitted to compete with other companies to provide information services (including the provision of content), to conduct research, to design, develop, and market software, and to design, develop, manufacture, and market customer premises and other telecommunications equipment, and to engage in the provision of inter—LATA services;

(2) if it extended to Bell operating companies rights to engage in any of the aforementioned activities, it should determine the statutory safeguards that would be in place prior to any implementation of such rights, to prevent cross subsidies and to ensure that other anti-competitive conduct will not harm customers or unfairly fringe upon competition; and

(3) should review the fragmented Federal structure for the administration of telecommunications policy with the intent of improving coordination within that structure and thereby enhance the capacity of the United States to effectively compete in the global information and high technology marketplace.

Mr. BREAUX. Mr. President, the United States has the best telecommunications system in the world. The system's expansiveness and quality are unparalleled. Today, 93 percent of the 91 million American households have at least one telephone. We've come a long way since 1934 when 31 percent of households had telephones.

Telephone industry operating revenues for 1934 were $949 million. Those revenues now exceed $85 billion! Quality universal telephone service for Americans is now a fact. Still, this mighty industry's greatest achievements, if we make right and timely moves, are yet to come.

I am increasingly concerned about America's telecommunications future. Will we continue to be first in telecommunications? In an age capable of melding voice, data, and video technologies to provide untold varieties of telecommunications services, will we retain technological leadership in this field? How do we tailor our laws to manage change and sustain the development of leading-edge telecommunications technology?

Mr. President, a confluence of related technologies just 8 years ago resulted in delivery by IBM of its first desktop personal computer. Today there are 40 million such computers in American homes and businesses. One out of five homes has one. One of three will have one by 1995. Perhaps the desk-top computer is the Gutenberg printer of the information age.

With the computer we mass-produce information. American technology has harnessed the speed of light to deliver that information in greater volume. In AT&T's transatlantic fiber optic cable, slender glass threads can carry 40,000 simultaneous conversations across the ocean literally in a flash. The U.S. fiber optics market is expected to grow from $774 million in 1986 to $3 billion in 1992. A $1.5 billion market is projected for Europe by 1991.

Since 1984 the delivery of financial and other information services has grown to add more value to the American economy than all of the manufacturing sector. The number of databases doubled between 1981 and 1985. Last year 40 percent of our work force created, processed, and transmitted information. America's business information services market produces nearly $5 billion in annual revenues; $15 billion is expected in 3 years. Additionally, residential and small business markets for information services are virtually untapped. We ignore the problems and potential of telecommunications, a vital link of the information industry, at our economic and strategic peril.

We will either shape the dynamics of the swelling information age to our advantage or be swamped in the wake of others taking the advantage from us. In the 1940's the Japanese designated telegraphy as one of several strategic industries whose advancement was deemed to be in the national interest. Is there doubt that the telecommunications industry is a fundamental and strategic American interest even more so today?

Can we agree on that point and yet remain unshaken, unconcerned with today's policymaking process for determining America's telecommunications future? I am concerned, and so are many others, that key decisions concerning America's vast, strategic communications network are made not by duly elected public officials, but by a solitary Federal district court judge. Judge Harold Greene's edicts are properly but primarily made under the circumscription of antitrust laws, rather than under a farsighted mandate of communications laws and policies set by Congress.

I do not fault the efforts of Judge Greene, because in telecommunications areas we have failed to act decisively. When conflicts arise, when disputes cannot be settled, then our courts must act. But Congress can no longer remain silent. The future of America in the oncoming information age cannot be left to piecemeal decisions.

I am concerned as well that we continue to ignore serious flaws in the Federal structure which administers telecommunications policy. Those flaws are documented by the National Telecommunications and Information Administration [NTIA] in its publication, "NTIA Telecom 2000." We cannot have effective, timely decision-making when, as noted by NTIA, "delineation of authority among executive branch agencies * * * is unclear. Executive Order 12046, congressional authorization and appropriations measures, * * * do not clearly establish the respective responsibilities of NTIA, Department of State, U.S. Trade Representative, Office of Management and Budget, Department of Justice, Department of Defense, and other agencies. On any given issue, one or more of these * * * agencies may take a position before the FCC, the courts, or other forums, and there is no established coordination mechanism." Under such circumstances have we a right to expect a globally competitive telecommunications industry?

Mr. President, we must confront these issues. The role of Congress is to create public policy; the role of courts and administrative agencies is to interpret and apply the laws we pass. Too frequently, this is not the case in the communications arena. Congress must now reaffirm its necessary role in establishing communications law and policy.

I am today introducing legislation which expresses the view that Congress is now willing to take responsibility in determining communications policy. I am hopeful that in this way momentum can be generated, and, as a result, comprehensive hearings will, this year, begin to carefully examine the issues. I am equally hopeful that in this Congress we can arrive at a consensus on policies that will resolve industry conflicts, establish new goals and priorities, and establish order in the Federal process that will administer these policies. I am calling on the Congress to reassert itself, to take charge of the process for determining America's future in the critical and dynamic telecommunications field.

SENATE CONCURRENT RESOLUTION 35—RELATING TO THE PANAMA CANAL TREATIES

Mr. MACK submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 35

Whereas there has been a continual erosion of the democratic freedoms of Panamanian citizens and a consolidation of dictatorial power by the government of Panama led by General Manuel Noriega;

Whereas the United States has not recognized the government of Panama led by General Manuel Noriega since his refusal to accept the resignation orders from President Eric Arturo Delvalle;

Whereas on February 5, 1988, General Manuel Noriega was indicted in the United States district courts in Tampa and Miami, Florida, on a total of 15 counts, including the import and distribution of 1,000,000 pounds of marijuana, cocaine trafficking, money laundering, racketeering, and the protection of the Columbian Medellin drug cartel;

Whereas Cuba has supplied hundreds of tons of arms and ammunitions to General Manuel Noriega and maintains close ties to the Panamanian Defense Forces;

Whereas there have been an increasing number of incidents of harassment and intimidation of American citizens in Panama by members of the Panamanian Defense Forces;

Whereas on May 7, 1989, the Panamanian people participated in an election in which the government controlled by General Manuel Noriega engaged in systemic and massive electoral fraud;

Whereas President George Bush stated that the United States would not recognize a new government installed by General Manuel Noriega based upon a fraudulent election in Panama;

Whereas the chairman of the Panama Canal Commission is scheduled to be appointed on January 1, 1990 by the government of Panama, and that chairman would have a significant degree of control over the operations of the Canal;

Whereas the transferrence of control to the government of Panama controlled by General Manuel Noriega would permit even greater economic, political, and military oppression of the Panamanian people;

Whereas internal military corruption and the threat of continuing violence would make it impossible, if canal operations are transferred to Panama under the Panama Canal Treaty, for the United States to ensure that the canal is kept open and secure as affirmed by the United States Senate's "Deconcini Reservation" to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress urges the President to initiate the following actions:

(1) The Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and the Operation of the Panama should be abrogated by the United States;

(2) At such time as the government of Panama is freely elected and reflects the will of the Panamanian people, the United States should enter negotiations with regard to the future status of the Panama Canal with that government.

SENATE RESOLUTION 122—RELATING TO A WORLD SUMMIT ON CHILDREN

Mr. SANFORD submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 122

Whereas in 1982 the United Nations Children's Fund (UNICEF) launched the "Child Survival and Development Revolution", to reduce by one-half by the end of this century the then daily toll of 45,000 deaths of young children attributable to preventable disease and malnutrition;

Whereas such "Child Survival and Development Revolution" has achieved impressive results, despite the extreme economic and developmental difficulties that have afflicted developing countries in this decade;

Whereas in 1983 Congress approved a joint resolution (Public Law 98-198) that was the first piece of national legislation to endorse formally the Child Survival and Development Revolution;

Whereas low-cost, high-impact, health and nutrition interventions form the core of child survival programs;

Whereas most notably, oral rehydration therapy and immunization are already by 1989 saving the lives of over 2,500,000 children per year who would have died if the death rates of 1982 still prevailed;

Whereas UNICEF, the World Health Organization (WHO), the governments of developing countries, the World Bank, and other multilateral and bilateral development assistance agencies (including the Agency for International Development in the United States) have identified additional low-cost opportunities for dramatically improving the survival, health, and development of the children of the world;

Whereas such low-cost opportunities could, with increased international coordination, political commitment, and institutional innovation, increase the number of children saved to over 5,000,000 within 2 years and to over 10,000,000 annually on a permanent and sustainable basis by 2000;

Whereas fewer than 5 percent of children in the developing world were immunized against the six major childhood diseases when the United Nations' goal of "Universal Child Immunization of 1990" was initiated in 1977;

Whereas now more than 50 percent of children worldwide are immunized and the Universal Child Immunization target of at least 80 percent immunization by 1990 is within reach for a majority of developing countries;

Whereas the Child Survival and Development Revolution requires integrated action to meet the goals of providing the following basic needs: nutrition, primary health care, environmental sanitation, water, and basic shelter, and basic education, especially for women and girls;

Whereas many governments, including the United States Government, have endorsed the attainment of these goals by the year 2000 as part of the WHO program of "Health for All";

Whereas a "Grand Alliance for Children" composed of a vast array of critically important private organizations, including voluntary associations, private businesses, the media, religious groups and other institutions, as well as governments, intergovernmental agencies and international organizations, is advancing child survival and development programs;

Whereas the emerging global concern for children reflects a new international political commitment to future generations;

Whereas such political commitment has been evident at the highest levels of international discourse, such as the Joint Statement issued on June 2, 1988, following a Summit Meeting in Moscow between the United States and the Soviet Union;

Whereas at such Summit Meeting President Reagan and General Secretary Gorbachev reaffirmed support for the goal of UNICEF and WHO of reducing the scale of preventable childhood death and urged other countries and the international community to intensify efforts to achieve such goal;

Whereas a general surge in concern for the welfare of children has formed the moral, legal, and political basis for the International Convention on the Rights of the Child;

Whereas such International Convention on the Rights of the Child would define the rights of children with regard to survival, protection, and development, and is expected to be approved by the United Nations General Assembly in 1989;

Whereas Secretary of State James Baker has indicated that the United States should take a leadership role in the initiative to develop a plan to get to the core of the poverty problem in order to achieve a healthy world by 2000;

Whereas the United States has consistently led the world in the provision of financial, operational, research, and advocacy support for child survival initiatives; and

Whereas the Executive Director of UNICEF, with the current endorsement of over a score of national leaders from developed and developing countries, East and West, has proposed a "World Summit on Children" to promote international plans for achieving the goals of child survival, health, and development of all children: Now, therefore, be it

Resolved, That—

(1) it is the sense of the Senate that the child survival and development programs implemented collaboratively by national governments, the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the Agency for International Development, and many other governmental and nongovernmental organizations are to be commended and have the full support and encouragement of the Senate;

(2) the Senate reaffirms a commitment on the part of the Senate to the goal of permanent improvement in the survival rates, health, and development of people in all countries, especially children, by 2000, and urges the President to adopt such goal as a major priority of the executive branch and to lead the world community in proposing concrete actions to achieve such goal;

(3) the Senate urges the President, on behalf of the people and Government of the United States, to propose to the Secretary General of the United Nations that the Secretary General establish an independent advisory commission to provide strategic planning, leadership, and advice to the world community on collaborative actions and programs in primary health care, nutrition, basic education, and environment by all members of the Grand Alliance for Children in order to eliminate easily preventable death and disabling illness in all countries by 2000;

(4) the Senate endorses the call for a representative World Summit on Children at the earliest opportunity to provide a forum for governmental leaders, including the President of the United States, to commit to concrete plans of national action and international cooperation to reduce the scale of preventable childhood deaths nationally and globally;

(5) the Senate endorses, in particular, a commitment for such governmental leaders to attain the goals of Universal Childhood Immunization by 1990 and Health for All by 2000; and

(6) the Senate encourages the President of the United States to take a leading role in ensuring the convening of a World Summit on Children at the earliest opportunity.

Mr. SANFORD. Mr. President, today I am introducing a resolution which will put the U.S. Senate on record in support of a world summit for children—for the purpose of eliminating preventable deaths and disabling illness among the world's children—by the year 2000.

This resolution is especially timely because 1989 is a symbolic year: It marks the 10th anniversary of the International Year of the Child. This year also marks the 30th anniversary of the adoption of the Declaration of the Rights of the Child. Thus, 1989 should be the year we support the call by Mr. James Grant, executive director of the U.N. Children's Fund: "We should have a solemn declaration, pledging urgent action by all governments, all health and development workers, and the world community, to attain for all the people of the world by the year 2000, a level of health that will permit them to lead a socially and economically productive life."

President John F. Kennedy said: "If a free society cannot help the many who are poor, it cannot save the few who are rich." At this very moment, millions of children are growing up in circumstances which mean that they will never fulfill the mental and physical potential with which they were born. That is an avoidable human tragedy.

There is no financial, technical, or moral reason that the world community cannot now make a decision to actually do something that has been a dream of mankind for thousands of years—to decide that it will organize itself so that no one—and especially no child—is condemned to a life in which they cannot be productive because of hunger, illness, or the lack of basic health care, sanitation, and education.

It is clear, at this time, that a new concern for children is arising in the industrialized world. In the United States today, for example, there is an increasing awareness that 20 percent of the Nation's children live below the official poverty line. We have a new President who has pledged himself to seek a kinder and gentler Nation.

Even the international arena has given us some unexpected hope. The Health Minister of the Soviet Union stated at the landmark Communist Party Conference in 1988: "We are proud of our health care system, but we keep silent about the fact that we are ranked 50th in the world, behind Mauritius and Barbados, in infant mortality."

An international summit to focus on children might therefore bring political leaders together—not confrontationally—but cooperatively—to focus on ways of improving the lives of children in both developing and industrialized counties.

After all, we have the amazing proliferation of grassroots associations that have always existed in the United States now beginning to happen in Asia, Africa, Latin America, and the Caribbean.

We now, for the first time in world history, have the technical means to insure that no one in the world dies of an easily preventable disease.

We now have low-cost technology for sanitation, water, and diarrheic diseases.

And, we also have radio and television as a means of educating poor, remote, and homebound people.

Because we are so technically advanced, one has to wonder why 14 million children die each year. Contrary to what you might think, the main obstacle is not money but coordination, inspiration, and leadership.

It is time to begin attending to the needs and rights of children and poor people. Not as a mere byproduct of progress, but as an end and a means of progress itself.

After all, the true test of a civilization is how well it protects its vulnerable citizens and how well it safeguards its future. Investing in our children's development today—by meeting their most obvious needs—is the only level of action which both meets pressing human needs today and leads to the solutions of what may otherwise become the almost insoluble problems tomorrow.

Mr. President, I urge my colleagues to support this resolution.

AMENDMENTS SUBMITTED

ARCTIC COASTAL PLAIN COMPETITIVE OIL AND GAS LEASING ACT

JOHNSTON AMENDMENT NO. 100

(Ordered referred to the Committee on Energy and Natural Resources and ordered to be printed.)

Mr. JOHNSTON submitted an amendment intended to be proposed by him to the bill (S. 406) to authorize competitive oil and gas leasing and development on the coastal plain of the Arctic National Wildlife Refuge in a manner consistent with protection of the environment, and for other purposes, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—FINDINGS, PURPOSES AND GOALS

SEC. 101. SHORT TITLE.—This Act may be cited as the "Prince William Sound Oil Spill Emergency Response Act of 1989".

SEC. 102. CONGRESSIONAL FINDINGS.—Congress finds and declares that—

(a) The March 24, 1989, grounding and rupture of the fully loaded oil tanker, the *Exxon Valdez*, spilled 240,000 barrels of crude oil in the Prince William Sound, an environmentally sensitive area;

(b) A review of the causes of this grounding and the response of Exxon, the Alyeska Pipeline Service Company, the State of Alaska and the Federal government to the largest oil spill in the United States plainly demonstrates that:

(1) Human error and negligent conduct led to the nation's largest oil spill;

(2) Exxon and other oil companies which own the Alyeska Pipeline Service Company failed to maintain oil spill containment equipment and personnel at the Valdez terminal in a state of readiness;

(3) Government agencies failed to inspect equipment and enforce compliance with contingency plans and oil spill response plans; and

(4) The response to the grounding and the oil spill was late, disorganized and lacked vital equipment under conditions which required a timely, organized, and properly manned and equipped clean up effort.

(c) The damage caused by the *Exxon Valdez* oil spill to the marine environment, to fish, birds, wildlife and marine mammals, to the commercial fishery of Southeast Alaska and to Native Villages and subsistence users—whether measured in economic terms or quality of life terms—is extremely serious and merits an early and decisive Congressional response.

SEC. 103. CONGRESSIONAL PURPOSE.—The purpose of this Act is to:

(a) Provide a decisive, but interim, Congressional legislative response to the shortcomings in law, policy and regulation which the *Exxon Valdez* oil spill has made evident;

(b) Initiate immediate reviews, studies and reports on the status of oil spill contingency plans for Alaska crude oil which will provide data and information required for a full review and reform of national law, policy and regulation governing oil spill contingency plans;

(c) Implement measures to correct apparent and obvious problems so as to avoid future spills of Alaska crude oil pending the review and development of a legislative response applicable to the nation as a whole;

(d) Implement regulations and standards governing contingency and response plans, and readiness capacity to deal with spills of Alaska crude oil;

(e) Adopt measures to reduce risks of spills and provide backup safety systems;

(f) Provide for short and long term research on the effects of oil spills, and oil and gas activities on fish, wildlife and the marine environment;

(g) Provide emergency economic assistance to those whose jobs, businesses and economic well-being have been jeopardized by the *Exxon Valdez* oil spill; and

(h) Geographically expand the application of the law of strict liability to cover the production and transport of all North Slope Alaska crude oil; increase the funding level of the Trans-Alaska Pipeline Liability Fund; establish a new Oil Spill Avoidance Trust Fund; and increase civil and criminal penalties.

SEC. 104. CONGRESSIONAL GOAL.—It is the goal and objective of the Congress in enacting this Act to dedicate the resources necessary and to revise the statutory and regulatory requirements applicable to the development, production and transportation of Alaska crude oil for the purpose of reducing, to the lowest level humanly and technically possible, the risks of another significant oil spill.

TITLE II—AMENDMENTS TO THE TRANS-ALASKA PIPELINE ACT OF 1973

SEC. 201. JOINT, SEVERAL AND STRICT LIABILITY STANDARD ESTABLISHED AND EXTENDED.—The Trans-Alaska Pipeline Authorization Act of November 16, 1983, 87 Stat. 584, 43 U.S.C. § 1651 et seq., as amended, (hereinafter in this Title referred to as "the Act") is further amended as follows:

(a) Section 204(a)(1) of the Act, 87 Stat. 586, 43 U.S.C. § 1653(a)(1), is amended, as follows:

(1) After the numeral "(1)" insert the letter "(A)";

(2) After the phrase "such holder shall be" insert the words "jointly, severally and";

(3) At the end of subsection (a)(1)(A), insert a new subparagraph (B) as follows:

"(B) The standard of liability established for any actions or activities resulting in damages as described in subparagraph (A) above shall also be applicable to the actions and activities of any holder of any lease, right-of-way or permit for exploration of crude oil or for any port facility into which or from which crude oil is shipped, whenever such actions or activities occur in onshore or offshore areas on Alaska's North Slope, including State submerged lands and the Outer Continental Shelf of the Beaufort Sea and the Chukchi Sea.".

SEC. 202. LIABILITY FOR DAMAGE WITHOUT FAULT INCREASED TO $500,000,000.—Section 204(a)(2) of the Act, 87 Stat. 586, 43 U.S.C. § 1653(a)(2), is amended as follows:

(a) Delete the first sentence and insert in lieu thereof: "(2) Liability under paragraph (1) of this subsection shall be limited to $500,000,000 for any one incident and the holder of any lease, right-of-way or permit for oil exploration, development or transportation shall be liable for any claim allowed in proportion to its ownership interest in the lease, right-of-way, permit or other authorization.".

(b) In the second sentence, strike the phrase "in excess of $50,000,000" and insert in lieu thereof "in excess of $500,000,000".

SEC. 203. EXTENSION OF LIABILITY WITHOUT FAULT TO OTHER AREAS OF THE ARCTIC AND NORTH SLOPE OF ALASKA.—Section 204(b) of the Act, 87 Stat. 586, 43 U.S.C. § 1653(b), is amended as follows:

(a) After the phrase "right-of-way holder", in the title of the subsection, insert the numeral "(1)";

(b) At the end of subsection (b)(1), add new paragraph (2) as follows:

"(2) The provisions and the authority granted the Secretary under paragraph (1) above shall also be applicable to the holder of any lease, right-of-way or permit for oil exploration, development or transportation of crude oil or for any port facility into which or from which Alaska crude oil is shipped, whenever such activity occurs in onshore or offshore areas of Alaska's North Slope, including State submerged lands and the Outer Continental Shelf of the Beaufort Sea and the Chukchi Sea.".

SEC. 204. INCREASE IN LIABILITY FOR VESSEL OIL SPILLS TO $500,000,000, EXTENSION OF LIABILITY WITHOUT FAULT TO AREAS OF THE ARCTIC, AND INCREASE IN THE TRANS-ALASKA PIPELINE LIABILITY FUND TO $500,000,000.—Section 204(c) of the Act, 87 Stat. 586, 43 U.S.C. § 1653(c), is amended as follows:

(a) In section 204(c)(1), delete all after the phrase "of and other law," and insert in lieu thereof the following:

"the owner or operator of any vessel or facility (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable, without regard to fault, in accordance with the provisions of this subsection, for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, that arise out of or directly result from the discharge of oil from:

"(A) vessels engaged in the transportation of crude oil between the terminal facilities of the Trans-Alaska Pipeline at Valdez, Alaska, and ports under the jurisdiction of the United States;

"(B) the Trans-Alaska Pipeline;

"(C) fields or reservoirs supplying oil to the Trans-Alaska Pipeline; and

"(D) onshore or offshore oil and gas exploration, development or transportation activities in areas on Alaska's North Slope, including State submerged lands and the Outer Continental Shelf of the Beaufort Sea and the Chukchi Sea.".

(b) In section 204(c)(2), insert the words "or facility" after the word "vessel" in the two places it appears.

(c) In section 204(c)(3), insert the words "or facility" after the word "vessel".

(d) In section 204(c)(3), delete the number "$100,000,000" in the three places it appears and, in lieu thereof, insert in each place the number "$500,000,000".

(e) In section 204(c)(3), delete the number "$14,000,000" in the two places it appears and, in lieu thereof, insert in each place the number "$100,000,000".

(f) In section 204(c)(5), delete the number "$100,000,000" in the two places it appears and, in lieu thereof, insert in each place the number "$500,000,000".

(g) Delete the first sentence of section 204(c)(7) and insert in lieu thereof the following:

"(7) The provisions of this section shall apply to any discharge of oil from the Trans-Alaska Pipeline; from fields or reservoirs supplying oil to the Trans-Alaska Pipeline; from onshore and offshore oil and gas exploration, development or transportation activities in areas on Alaska's North Slope, including State submerged lands and the Outer Continental Shelf of the Beaufort Sea and the Chukchi Sea; and from vessels engaged in transportation of crude oil between the terminal facilities of the Trans-Alaska Pipeline at Valdez, Alaska and ports under the jurisdiction of the United States.".

SEC. 205. NATURE OF DAMAGES COVERED.—Section 204 of the Act, 87 Stat. 586, 43 U.S.C. § 1653, is amended by adding a new subsection (d) as follows:

"(d) NATURE OF DAMAGES COVERED.—Liability for damages caused under subsections (a), (b) and (c) of this section shall include, but not be limited to:

"(1)(A) all removal costs incurred by the United States Government or a State under subsection (b) of this section or under any other Federal law or regulation;

"(B) any removal costs incurred by any person, including, but not limited to, any State; and

"(2) all damages and economic loss, including cost of restoration or replacement of personal property or natural resources injured or destroyed by an oil spill, including—

"(A) any injury to, destruction of, or loss of any real or personal property;

"(B) any loss of use of real or personal property;

"(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

"(D) any loss of use, including loss of subsistence use, of any natural resources, without regard to the ownership or management of such resources;

"(E) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources;

"(F) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year; and

"(G) any secondary damages resulting from the effects of cleanup operations on the economy, including but not limited to losses resulting from the depletion of the labor pool.".

SEC. 206. DAMAGE TO NATURAL RESOURCES; APPOINTMENT OF TRUSTEES.—Section 204 of the Act, 87 Stat. 586, 43 U.S.C. § 1653, is amended by adding a new subsection (e) as follows:

"(e) DAMAGE TO NATURAL RESOURCES AND APPOINTMENT OF PUBLIC TRUSTEES.—Where actions and activities giving rise to liability under this section cause or result in damage, injury to, destruction of, or loss of natural resources, additional liability shall be:

"(A) to any subsistence user, including any individual, any Native, or any Native group that used such resources;

"(B) to the United States Government for natural resources belonging to, managed by,

controlled by, or appertaining to the United States; and

"(C) to any State or any other government entity, for natural resources belonging to, managed by, controlled by, or appertaining to such State or entity."

"(2) The President or his designate, or the authorized representative of any State, shall act on behalf of the public as Trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as Trustee under this subsection shall be retained by the Trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as Trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same discharge and natural resource.

"(3)(A) The President shall designate the Federal official or officials who shall act on behalf of the public as Trustees for natural resources under this Act. The Trustee shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act for those resources under his trusteeship and may, upon request of reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

"(B) The Governor of each State shall designate State officials who may act on behalf of the public as Trustee for natural resources under this Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act for those natural resources under their trusteeship.

"(C) Any determination or assessment of damages to natural resources for the purposes of this Act made by a Federal or State Trustee in accordance with this subsection shall have the force and effect of a rebuttable presumption on behalf of the Trustee in any administrative, judicial or arbitration proceeding under this Act.

"(4) The Secretary of the Interior, after consulting with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies, shall, not later than 6 months after the enactment of this Act, promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from an oil spill for the purposes of this Act. Such assessment regulations shall not be limited to demonstrable economic loss, but shall accord value to the constituent natural resource elements which comprise the damaged ecosystem.

"(5) The term "natural resources" includes land, fish, birds, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, protected by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone) or any State or local government.".

TITLE III—VESSEL OPERATIONS AND ACCIDENT PREVENTION

SEC. 301. TANKER OPERATIONS: USE OF HARBOR PILOTS; COAST GUARD MONITORING; CONTROL OF VESSELS.—Effective within 30 days of the date of enactment of this Act, the Secretary of Transportation shall issue emergency regulations which shall:

(a) Define "hazard to navigation" areas in any United States port through which significant quantities of Alaska crude oil is transported (including the area in Prince William Sound extending from Valdez to beyond Bligh Reef) encompassing regions near or adjacent to vessel traffic lanes that present risks of grounding, accident or collision.

(b) Require that the Coast Guard, after a 90 day period of public review and comment, establish clear standards based on weather and ice conditions during which vessel traffic is to be restricted or prohibited.

(c) Require full time Coast Guard monitoring by radar and other electronic devices and periodic radio contact with the Captain and local harbor pilot of any vessel transitting hazard to navigation areas.

(d) Require the installation of radar responders at the existing Bligh Reef Buoy and at other hazard to navigation areas.

(e) Require additional or extended tug boat escort and assistance for vessels transitting hazard to navigation areas.

(f) Require that any vessel travelling through a hazard to navigation area:

(1) be at all times controlled from the bridge by a certified local harbor pilot and the ship's captain.

(2) have on board two officers, including the captain and excluding the harbor pilot, certified to navigate the hazard to navigation area.

SEC. 302. DIRECTIVE TO IMPOSE NEW REQUIREMENTS FOR DRUG AND ALCOHOL TESTING.—Effective within 30 days of the date of enactment of this Act, the Secretary of Transportation shall issue emergency mandatory regulations which:

(a) Require of any entity or person engaged in the shipment of crude oil from the Valdez terminal that it impose drug and alcohol screening, testing and monitoring procedures, patterned after those used for licensing or certification of railroad engineers (section 202 of the Federal Railroad Safety Act of 1970, 43 U.S.C. 431), the issuance of medical certificates for airman in the commercial aviation industry (Federal Aviation Act of 1958, as amended, 49 U.S.C. 1301), and the procedures followed in the United States Navy's nuclear submarine program, for all personnel having command or other navigational responsibilities in the operation of a vessel engaged in or assisting in the movement of Alaska crude oil;

(b) Require that any individual otherwise eligible for a Masters license in operating a vessel transporting or assisting in the transport of Alaska crude oil shall be excluded from receiving such license if such individual:

(1) Has a record or history of drug abuse or alcohol abuse;

(2) Has been convicted within the past five years of driving while under the influence of drugs, under local, State or Federal law; or

(3) Has failed to pass a periodic physical fitness medical examination which provides documentation from a licensed physician that the applicant shows no physical evidence of drug usage, or alcohol abuse or addiction.

(c) Grant access to any company engaged in the transportation of Alaska crude oil to the driving records of prospective Captains, Officers and Mates of such vessels, as provided in Section 202(b)(3) of the National Driver Register Act of 1982, as amended, 23 U.S.C. 401;

(d) Impose such random drug and alcohol testing procedures, including breathalyzer testing, as the Secretary determines is necessary to avoid and prevent the risk of an oil spill from accident, grounding or collision of a vessel carrying Alaska crude oil; and

(e) Require all officers and crew to be on board any vessel engaged in the transportation of Alaska crude oil a minimum of six hours before departure from the terminal or port facility.

SEC. 303. REGULATIONS TO SHORTEN THE OPERATIONAL TERM OF ELIGIBILITY FOR A MASTERS LICENSE; INCREASE VESSEL MANNING REQUIREMENTS; AND IMPROVE VESSEL RECRUITING AND JOB TRAINING REQUIREMENTS.—Effective within 60 days of the date of enactment of this Act, the Secretary of Transportation shall issue emergency mandatory regulations which:

(a) Require that the conditions for a Masters license for any person engaged in the operation of a vessel carrying Alaska crude oil from Valdez to a port under the jurisdiction of the United States shall require that the license be renewed every two years and the license holder shall submit a copy of the required physical examination by a licensed physician to the appropriate Federal agency;

(b) Require that the certificates of inspection for vessels engaged in the movement and transport of Alaska crude oil direct and require that all watches on board ship be redundantly manned to insure back-up personnel and second opinions on radar monitoring and critical navigation decisions; and

(c) Require more stringent recruiting, personnel, and job training standards for all personnel and crew operating or crewing vessels engaged in the movement or transport of Alaska crude oil for the purpose of enhancing safety and reducing future risks of oil spill to the lowest level humanly possible.

SEC. 304. EXECUTIVE AGENCY REPORTS AND LEGISLATIVE AUTHORIZATION FOR REQUIRING TUGBOAT AND ICE BREAKING VESSEL ASSISTANCE: NEW RETROFIT AND CONSTRUCTION STANDARDS FOR DOUBLE BOTTOMS, SEGREGATED COMPARTMENTS, BOW THRUSTERS, VESSEL INSPECTION STANDARDS; AND OTHER REQUIREMENTS FOR VESSELS CARRYING ALASKA CRUDE OIL.—(a) Within 90 days of the date of enactment of this Act, the Secretary of Transportation shall submit to the Congress a report which addresses and makes recommendations on the following transportation issues related to the movement of crude oil through Prince William Sound from Valdez, Alaska to ports under the jurisdiction of the United States:

(1) The need or desirability, from a safety point of view, for one or more world class ice breaking vessels with the capacity to move ice flow or icebergs out of incoming or outgoing Valdez and Prince William Sound tanker sea lanes;

(2) The need or desirability, from a safety point of view, for a requirement that existing tankers be retrofitted and that all new tankers be constructed to incorporate:

(A) Double bottoms or interior liners to reduce oil spill risks;

(B) An increased number of separated compartments;

(C) Bow thrusters to increase vessel maneuverability; and

(D) Any other design, equipment or operational feature which will achieve the purposes of this section and this Act to reduce the risk of oil discharges from tanker accidents, groundings or collisions.

(3) The need or desirability, from a safety point of view, for more frequent and more rigorous Coast Guard safety and structural inspection of all vessels engaged in the transportation of Alaska crude oil, including both in-water inspections and dry dock inspections, with special attention directed to older vessels and to vessels over 700 feet in length.

(b) The Secretary of Transportation, after notice to the Congress, is authorized to implement, at any time, through appropriate regulations, any of the recommendations made under subsection (a) of this section which the Secretary determines will enhance safety, reduce the risk of an oil spill, or improve oil spill clean-up and response capabilities.

TITLE IV—UPDATE AND REVISION OF VESSEL TRAFFIC CONTROL SYSTEMS TO PREVENT ACCIDENTS

SEC. 401. REVIEW OF VESSEL TRAFFIC CONTROL SERVICE SYSTEMS.—Within 90 days of the date of enactment of this Act, the Secretary of Transportation shall submit to the Congress a report on the adequacy of existing Vessel Traffic Control Services (VTCS) Systems for ports in the United States shipping or receiving Alaska crude oil, including but not limited to:

(a) The Port of Valdez and vessel traffic lanes in the Prince William Sound;

(b) Ports and vessel traffic lanes in the Strait of Juan de Fuca, Puget Sound and the San Juan Islands area;

(c) Ports and vessel traffic lanes in the Long Beach and Los Angeles area;

(d) Ports and vessel traffic lanes in the Gulf Coast;

(e) Ports and vessel traffic lanes in the Virgin Islands and on the East Coast receiving significant quantities of Alaska crude oil; and

(f) Ports and vessel traffic lanes used by vessels transporting Alaska crude oil which encompass or are adjacent to hazard to navigation areas.

SEC. 402. RECOMMENDATIONS FOR UPGRADING VTCS SYSTEMS TO STATE OF THE ART.—(a) The Secretary's report under Section 401 on the adequacy of existing VTCS systems shall contain recommendations for improving, upgrading and, where necessary, replacing existing VTCS systems.

(b) The Secretary's recommendations shall have as their objective the development of VTCS systems which reduce the risk of an oil spill to the lowest levels technically and humanly possible.

SEC. 403. VTCS SYSTEM AUTHORIZATION.—(a) The Secretary is authorized and directed to submit funding requests to the Trustees of the Oil Spill Avoidance and Readiness Trust Fund established under Title V for finding any needed VTCS system component, operation or training program to achieve the purposes of this Title and this Act.

(b) Vessel traffic shall be limited to daylight hours in hazard to navigation areas until the VTCS systems are reviewed and improved. Such improvements shall include but need not be limited to:

(1) Installation of navigational aids and warning systems;

(2) Improved radar surveillance capability including the installation of radar responders at Bligh Reef Buoy, on Naked Island in central Prince William Sound and on either Hinchbrook or Montague Island at the Sound's entrance, for the purpose of placing all vessels operating in Prince William Sound under positive control of the VTCS system;

(3) Computerized radar alarm systems to alert the Coast Guard, pilots and captains when a vessel strays from established shipping lanes or is at risk of grounding or collision;

(4) Improved communications capabilities;

(5) Redundant or back-up safety systems where warranted;

(6) Training, retraining and refresher programs for all Federal, State, local and private sector personnel who play a role in the operation of vessels carrying Alaska crude oil or the VTCS systems; and

(7) Such other improvements in the VTCS systems as will prevent or reduce the risk of oil spills.

(c) The Secretary is further authorized and directed, for any of the ports listed in Section 401(b) through (f), to take any of the actions set forth in Section 301 of this Act which he determines will reduce the risk of an oil spill resulting from a grounding, accident or collision.

(d) The standard the Secretary is to follow in implementing this Title is to achieve the prompt installations of VTCS systems which provide redundant safety features, utilize the best technology available in the world, and are best designed to prevent groundings, accidents and collision.

TITLE V—OIL SPILL AVOIDANCE TRUST FUND

SEC. 501. OIL SPILL AVOIDANCE AND READINESS TRUST FUND.—(a) There is hereby imposed a five cent per barrel oil spill avoidance and readiness fee on the throughput of the Trans-Alaska Pipeline System. The operator of the pipeline shall collect the fee from the owner of the crude oil at the time it is loaded on a vessel at the Valdez, Alaska terminal facility.

(b) The revenue from the fee shall be paid into the Alaska Oil Spill Avoidance and Readiness Trust Fund which shall be an account in the United States Treasury administered by the Secretary of the Treasury. The collection of the fee shall cease when $200,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $200,000,000.

(c) All revenues in the Fund not needed for the purposes of subsection (e) shall be invested prudently by the Secretary of the Treasury in income-producing securities. Income from the securities shall be added to the principal of the Fund and shall be available for use as provided in this Title.

(d) The Secretary of the Interior, the Secretary of Commerce and the Administrator of the Environmental Protection Agency shall serve as Trustees of the Fund. Revenues from the Fund shall be disbursed by the Trustees, without prior appropriation, for the uses and purposes set forth in subsection (e). The Trustees shall provide an annual report to the Congress on the use of the Fund revenues and their proposed use in succeeding years. Revenues in the Fund shall be used to achieve the goals and purposes of this Act. The Trustees shall exercise their discretionary authority to establish funding priorities to achieve these objectives.

(e) The Trustees of the Fund are authorized to approve requests and provide funding for any of the following authorized purposes:

(1) Updating and improving the Vessel Traffic Control Services (VTCS) systems for Valdez, Alaska, and Prince William Sound and at ports in the United States receiving significant quantities of Alaska crude oil as required by Title IV;

(2) Conducting research on oil spill prevention, containment and clean-up and on the long-term effects of oil spills, and oil and gas activities on fish, wildlife, the marine environment, and subsistence uses, including but not limited to, research on:

(A) present modes of oil spill prevention, containment and clean-up technology, including but not limited to, the speed and effectiveness of the various technologies under the differing environmental and weather conditions presently encountered in onshore and offshore oil and gas exploration, development and transportation; the size of the spill which can be contained and cleaned up using the various technologies under these differing environmental and weather conditions; and the environmental impact of technologies such as chemical disbursants;

(B) the feasibility of preventing, containing and cleaning up an oil spill in the Arctic using present technologies under Arctic environmental conditions, including weather, temperature and sea ice;

(C) improvements to present oil spill prevention, containment and clean-up technologies;

(D) the effects of onshore and offshore oil and gas exploration, development, transportation, spill or discharge and related containment and clean-up activities on fish, wildlife, and the marine environment, including but not limited to: noise impacts; degradation or loss of habitat; disruption of habitat usage; and disruption of migratory routes; and

(E) the economic and cultural impacts of onshore and offshore oil and gas activities on affected subsistence communities.

The Trustees shall seek the views and recommendations of the Environmental Advisory Panel established under Title VIII in determining the priorities or relative merits of funding requests from State and Federal agencies, universities, colleges or other groups which possess special expertise on this subject;

(3) Supplementing budget authority for critically needed manpower, equipment and other requirements for Federal agencies with oil spill prevention and clean up responsibilities, or for enforcement of private sector compliance;

(4) Providing, in conjunction with the Small Business Administration, emergency low interest loan assistance to individuals, small business, and Native Corporations whose source of income and employment has been adversely impacted by an oil spill;

(5) Providing emergency assistance grants to subsistence communities whose source of livelihood has been disrupted by an oil spill or discharge;

(6) Conducting the review and preparing the report on the adequacy of contingency and response plans required by Title VI; and

(7) Funding the costs of developing, maintaining and operating contingency and response plans, response teams and clean-up and containment equipment as required by Title VII.

(f) The Trustees of the Fund are authorized to use revenues in the Fund to pay for the costs of administration and, to satisfy

start-up costs and early obligations on the Fund, to borrow any funds needed from any commercial credit source, at the lowest available rate of interest, subject to the approval of the Secretary of the Treasury.

TITLE VI—REPORTS ON OIL SPILL CONTINGENCY PLAN

SEC. 601. PREPARATION OF REPORT ON ADEQUACY OF OIL SPILL CONTINGENCY PLAN.—(a) Within 90 days of the date of enactment of this Act, the Secretary of Transportation, the Secretary of the Interior and the Administrator of the Environmental Protection Agency shall submit to the Congress a report which shall include their recommendations, based upon an in depth review of all Federal, State, local and industry contingency or oil spill emergency response plans, for dealing with oil spills in connection with the exploration, development and transportation of Alaska crude oil. Such report shall include all contingency plans for the exploration, production and transportation of crude oil from onshore areas, State offshore waters, and the Outer Continental Shelf of the Chukchi and Beaufort Seas, and shall include current and projected oil exploration, development and transportation activities in the Canadian Beaufort Sea.

(b) The review and report on contingency plan adequacy shall address, but not be limited to, the following subjects:

(1) The adequacy of the contingency or oil spill emergency response plan for dealing with potential oil spills;

(2) The adequacy and operational capacity of oil spill containment equipment, including, but not limited to, containment booms, oil skimming vessels, barge facilities, work vessels, oil spill dispersants and equipment for their application;

(3) The adequacy, training, prepardeness and fitness of all personnel assigned to direct and implement the contingency or oil spill emergency response plan;

(4) The adequacy of plans, personnel and prepositioned equipment for protecting critical habitat, environmentally sensitive areas, and areas in which fish hatcheries are located;

(5) The adequacy of on-site availability of chemical dispersants and disbursement systems; and

(6) The adequacy of arrangements for enlisting the use of non-oil industry personnel such as commercial fishermen, volunteers and calling upon backup assistance from sources such as the national guard or the military.

SEC. 602. The Report required under Section 601 shall include recommendations for civil and criminal penalties for violations of contingency and response plans.

TITLE VII—DEVELOPMENT OF OIL-SPILL CONTINGENCY AND RESPONSE PLANS: STANDARDS; READINESS; TESTING; AND INSPECTIONS

SEC. 701. REGULATIONS.—Based upon the review and report on contingency planning prepared pursuant to Title VI, and the standards established by this Title, the Secretary of Transportation, with the assistance of the Secretary of Interior and the Administrator of the Environmental Protection Agency, shall, within 90 days of the date of enactment of this Act, promulgate regulations which set forth mandatory requirements for oilspill contingency and response plans, response teams, clean up and recovery equipment, dedicated manpower levels, state of readiness standards, and mobilization time for response.

SEC. 702. FEDERAL AUTHORITY.—(a) The Federal Government, acting through the Secretary of Transportation, shall establish mandatory Federal regulations governing the development and implementation of oil-spill contingency and response plans.

(b) The Federal Government shall also establish minimum standards for oilspill containment, removal and clean-up equipment and shall provide for funding under Title V of this Act to implement plans through acquisition of required equipment and hiring of necessary personnel.

SEC. 703. STATE AUTHORITY TO IMPLEMENT.—(a) The State of Alaska and each State receiving significant quantities of Alaska crude oil at a port facility or facilities within the State's jurisdiction is authorized and delegated the responsibility to implement the contingency and response plan for that port or ports and for movements of Alaska crude oil on vessels in all waters adjacent to the State.

(b) Operating within the minimum Federal standards, the State of Alaska and each receiving State shall develop contingency and response plans which are best adapted to protect that State's natural resources and marine environment from damage that might be caused by an oilspill or oil discharge.

(c) The State contingency and response plans must impose requirements which meet the minimum requirements of the regulations promulgated under section 701 of this Title. State plans may exceed the requirements of the Federal regulations where, in the judgment of the State, prudence or local conditions warrant additional requirements.

(d) The enactment of this Title shall not constitute any delegation or diminution of Federal constitutional power and authority over commerce, navigation, the public lands or other matters.

(e) Contingency and response plans prepared by a State shall be submitted to and approved by the Secretary of Transportation. The Secretary shall have authority to modify a plan in the event he determines that the plan: (1) does not meet minimum Federal requirements; (2) encroaches on Federal constitutional powers; or (3) imposes economic costs which exceed potential safety benefits.

(f) Two or more States may jointly develop all or a poriton of their contingency and response plans. A State or States may also engage in joint planning, administration and operation of plans with Canada or other foreign governments.

SEC. 704. FEDERAL STANDARDS FOR CONTINGENCY AND RESPONSE PLANS.—(a) The regulations promulgated by the Secretary of Transportation under Section 701 shall incorporate the Federal standards set forth in this section for contingency plans and response plans.

(b) The contingency plan and oil spill response plan shall:

(1) Provide full details of the method of response to a worst case oil spill, defined as the discharge, in poor weather conditions, of the largest vessel which is known to transit the area;

(2) If implemented, be capable, in terms of manpower and equipment, of containing any projected probable oil spill within 48 hours, and any worst case oil spill as rapidly as technology, manpower, equipment and funding will permit;

(3) Address means of mitigating short-term effects on the environment, on fish and wildlife and marine mammals, and ensure that the contingency plan itself, when implemented, does not pose unacceptable risks to the public or the environment;

(4) Address the number, types and operational capacity of oil spill containment equipment, including, but not limited to, containment booms, oil skimming vessels, barge facilities, work vessels, oil spill dispersants and equipment for their application, needed under the plan;

(5) Address the number, training preparedness and fitness of all full-time personnel assigned to direct and implement the contingency or oil spill emergency response plan;

(6) Address the need for special plans and personnel and pre-positioned equipment for protecting critical habitat, environmentally sensitive areas, and areas in which fish hatcheries are located;

(7) Set requirements for on-site availability of chemical dispersants and disbursement systems;

(8) Address arrangements for enlisting the use of oil industry personnel and non-oil industry personnel such as commercial fishermen and volunteers, as well as backup assistance from sources such as local and state governments, the national guard or the military; and

(9) Require full-time, dedicated, pre-positioned personnel and equipment capable of meeting the standard of paragraph (1) if the plan should have to be implemented.

SEC. 705. READINESS AND TESTING.—(a) Oil spill response teams established to implement contingency and response plans under this section shall:

(1) be organized in a manner similar to municipal fire departments;

(2) consist of full-time dedicated personnel;

(3) incorporate periodic training and drill programs;

(4) be in a state of operational readiness at all times;

(5) have available state of the art operational cleanup and containment equipment adequate to deal with projected oil spills at projected locations under varying weather and water conditions;

(6) maintain a worldwide computer inventory of spill equipment and experts available in the event of a major spill; and

(7) provide for a "spill ship" to escort any vessel transiting a hazard to navigation area. Such spill ship shall be equipped, manned and tested as outlined in this subsection 705(a).

(b) The States shall assure that, under their contingency and response plans, oil industry support, volunteer assistance and other private and public capabilities are periodically assessed and that a coordinated plan and procedure has been developed to efficiently deploy these forces if needed.

(c) The States shall periodically conduct tests and drills, including random surprise drills, to assure readiness of response teams and equipment.

SEC. 706. INSPECTION.—(a) The Secretary of Transportation shall direct a periodic inspection of State plans, response teams and equipment to determine their operational readiness.

(b) The Secretary shall establish an Alaska Crude Oil Contingency Plan Advisory Group to monitor developments under this Title. The Advisory Group shall consist of Federal officials, the Governors of Alaska and Washington, other State officials, oil industry representatives and representatives of Alaska Natives and local government selected by the Secretary.

(c) The Secretary shall be responsible for assuring a coordinated and efficient response by the Coast Guard and other Feder-

al agencies in developing, implementing and operating under oil spill contingency or response plan.

(d) The President shall at all times have the authority to assume Federal responsibility for dealing with and directing an oil spill clean-up effort in navigable waters when a determination is made that such action is in the public interest.

SEC. 707. INDUSTRY RESPONSIBILITY.—(a) Each vessel shall be required to maintain its own contingency plan in coordination with relevant Federal, State, and industry containment plans, capable of containing any spill as rapidly as technology, manpower and equipment will permit. Each vessel shall be equipped with containment boom and small boats to assist in the deployment of the boom and each vessel shall be staffed with a "spill officer" trained in spill containment.

(b) The enactment of this Title and this Act does not eliminate, reduce, modify or change in any respect any requirement of Federal, State or local law, any insurance code requirement, or any other requirement concerning planning and oil spill response capability applicable to any sector of the oil industry. The requirements of this section are in addition to any such existing requirements: *Provided*, That a State may incorporate industry equipment and personnel into State contingency and response plans if such personnel and equipment meet the minimal Federal requirements of this Title and the implementing regulations.

SEC. 708. FUNDING.—(a) The costs of funding this Title shall be paid out of the Oil Spill Avoidance and Readiness Trust Fund established under Title V.

(b) The State of Alaska and other States receiving Alaska crude oil shall apply to the Secretary for funding assistance under regulations implementing this Title. The Secretary shall, after considering all State applications, establishing priorities in light of need and risk, and considering the revenues available, make an application for funds to the Trustees of the Oil Spill Avoidance and Readiness Trust Fund under section 501(e)(7).

TITLE VIII—ENVIRONMENTAL ADVISORY PANEL

SEC. 801. ADVISORY PANEL ON IMPACTS OF OIL AND GAS EXPLORATION AND DEVELOPMENT ON FISH, WILDLIFE, AND THE MARINE ENVIRONMENT: ESTABLISHMENT.—(a) There is hereby established the Advisory Panel on Impacts of Oil and Gas Exploration and Development on Fish, Wildlife, and the Marine Environment (hereafter referred to as the "Advisory Panel").

(b)(1) The Advisory Panel shall be composed of nine members appointed by the President, with the Chairman of the Arctic Research Commission serving as a permanent member. The members appointed by the President shall include:

(A) four members selected from a list submitted to him by the Chairman of the Marine Mammal Commission, the Chairman of the Council on Environmental Quality, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of persons knowledgeable with respect to marine research, and who are not in a position to profit, directly or indirectly, from offshore oil or gas exploration or development;

(B) one member associated with a college, university or other research institution having expertise in areas of research relating to the marine environment;

(C) one member selected from the North Slope Borough Science Advisory Committee;

(D) one member selected from the commercial fishing industry; and

(E) two members selected from among indigenous residents along: (i) the coast of south central Alaska; and (ii) the coast of the Beaufort Sea or the Chukchi Sea, each of whom shall be representative of subsistence interests in coast areas affected by the shipment of Alaska crude oil and offshore oil and gas activities in the Arctic.

(2) The President shall designate one of the appointed members of the Advisory Panel as Chairperson.

(c)(1) Except as provided in paragraph (2) of this subsection, the term of office of each member shall be three years.

(2) Of the members originally appointed under subsection (b)(1):

(A) three shall be appointed for a term of one year;

(B) three shall be appointed for a term of two years; and

(C) three shall be appointed for a term of three years.

(3) Any vacancy occurring in the membership of the Advisory Panel shall be filled in the manner provided by the preceding provisions of this section, for the remainder of the unexpired term.

(4) A member may serve after the expiration of the member's term of office until the President appoints a successor.

(5) A member may serve consecutive terms beyond the member's original appointment, or may be reappointed to nonconsecutive terms.

(d)(1) Members of the Advisory Panel may be allowed travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code [5 USCS § 5703]. A member of the Advisory Panel not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS-16 of the General Schedule under section 5332 of title 5, United States Code [5 USCS § 5332], for each day the member is engaged in the actual performance of his or her duties as a member of the Advisory Panel, not to exceed 90 days of service each year. Except for the purposes of chapter 81 of title 5 [5 USCS §§ 8101 *et seq.*] (relating to compensation for work injuries) and chapter 171 of title 28 [28 USCS §§ 2671 *et seq.*] (relating to tort claims), a member of the Advisory Panel shall not be considered an employee of the United States for any purpose.

(2) Funds necessary for the Advisory Panel to carry out its duties as set forth in this Title shall be provided in accordance with the provisions of Section 501(e)(2) of this Act from the Oil Spill Avoidance and Readiness Trust Fund established pursuant to Title V.

(e)(1) Except as provided in paragraph (2) of this subsection, the Advisory Panel may meet at any time at the call of its Chairperson or a majority of its members.

(2) The Advisory Panel shall meet at least twice annually to review:

(A) the current status of environmental impact mitigation measures relating to oil and gas exploration and development activities, including, but not limited to, matters pertaining to the prevention of oil spills and the containment and clean-up of oil spills;

(B) the current status of research and knowledge with respect to the short and long-term effects of onshore and offshore oil and gas exploration, evelopment and transportation on fish, wildlife, and the marine environment, including, but not limited to: noise impacts; degradation or loss of habitat; disruption of habitat usage; disruption of migratory routes; pollution effects of day-to-day offshore oil and gas activities; pollution effects of oil spills or discharges; and other matters relevant to the impacts of offshore oil and gas exploration and development and transportation of Alaska crude oil on fish, wildlife, and the marine environment;

(C) the current status of research and knowledge with respect to the marine environment, including the Arctic marine environment; and

(D) the current status of research and knowledge with respect to the impacts of offshore oil and gas activities on the subsistence interests of indigenous residents of the coastal areas of Alaska.

(3) Based upon its review pursuant to subsection (e)(2) of this section, the Advisory Panel shall establish priorities for issues relevant to the impacts of offshore oil and gas activities on fish, wildlife, and the marine environment, with respect to which further research is needed.

(4) Not later than January 31 of each year, the Advisory Panel shall report to the President, to the Congress, and to the Trustees of the Alaska Oil Spill Avoidance and Readiness Trust Fund on the current status of knowledge with respect to the impacts of onshore and offshore oil and gas exploration, development and transportation and of oil spills on fish, wildlife, and the marine environment, and on the Advisory Panel's present recommendations concerning research priorities. The Advisory Panel's report may include recommendations with respect to legislative or administrative action, including action which the members of the Advisory Panel believe will further understanding of the impacts of offshore oil and gas activities on the marine environment, or impacts on subsistence uses of the marine environment, or will mitigate either of the above impacts.

(f)(1) The Advisory Panel may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to research in marine environment or biology in the possession of the agency which the Advisory Panel considers useful in the discharge of its duties.

(2) Each agency shall cooperate with the Advisory Panel and furnish all data, reports, and other information requested by the Advisory Panel to the extent permitted by law; except that no agency need furnish any information which it is permitted to withhold under section 552 of title 5, United States Code [5 USCS § 552].

(g) To the extent necessary to carry out its administrative functions, the Advisory Panel may:

(1) appoint (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service) an Executive Director and necessary additional staff personnel, and shall provide compensation at a rate not in excess of the rate for GS-16 of the General Schedule under section 5332 of title 5, United States Code [5 USCS § 5332]. The Executive Director shall have such duties as the Chairman may assign.

(2) procure temporary and intermittent services as authorized by section 3109 of title 5, United States Code [5 USCS § 3109];

(3) enter into contracts and procure supplies, services, and personal property; and

(4) enter into agreements with the General Services Administration for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds available to the Advisory Panel, as provided in subsection (d)(2) of this section, in amounts to be agreed upon by the Advisory Panel, the Trustees of the Alaska Oil Spill Avoidance and Readiness Trust Fund, and the Administrator of the General Services Administration.

(h) As used in this title, the term "Arctic" has the same meaning as set forth in section 4111 of title 15, United States Code [15 USCS § 4111].

TITLE IX—NO IMPACT ON STATE LAW OR ON LIABILITY UNDER OTHER LAW

SEC. 901. STATE LAWS AND PROGRAMS.—Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or other requirements with respect to oil spills or to the discharge of oil within such State.

SEC. 902. LIABILITY FOR OIL SPILLS OR DISCHARGES OF OIL NOT AFFECTED BY THIS ACT.—(a) Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to oil spills or the discharges of oil.

(b) Nothing in this Act shall absolve any person of any obligations or liabilities, or reduce the obligations or liabilities or any person, under existing Federal of State law, including common law, with respect to oil spills or discharges of oil occurring prior to the date of enactment of this Act.

TITLE X—ENFORCEMENT

SEC. 1001. CIVIL AND CRIMINAL PENALTIES.—(a)(1) Any person who, after notice and an opportunity for a hearing, if found to have failed to comply with any requirement of this Act or regulations issued pursuant to this Act shall be assessed a civil penalty by the Secretary in an amount not to exceed $25,000 per violation or per day of a continuing violation. In assessing such penalty, the Secretary shall consider all relevant circumstances, including the nature, extent and gravity of the violation, the degree of culpability, any history of prior violation or similar offense, ability to pay, and such other matters as justice may require. Each violation shall be a separate offense.

(2) Any company or officer of a company, acting in his or her capacity as an officer of the company which, after notice and opportunity for a hearing, is found to have knowingly and willfully allowed an action or pattern of conduct resulting in a violation of or a failure to comply with any requirement of this Act or regulations issued pursuant to this Act shall be assessed a civil penalty by the Secretary in an amount not to exceed $500,000 per violation or per day a continuing violation. Each violation shall be a separate offense.

(3) Any civil penalty assessed under paragraphs (1) or (2) of this subsection may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under paragraphs (1) or (2) of this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person, company or company officer if found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain the Secretary's action if it is supported by substantial evidence on the record considered as a whole.

(4) Hearings held during proceedings for the assessment of civil penalties authorized by paragraphs (1) or (2) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code [5 U.S.C. § 554]. The Secretary may issue subpoeans for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person if found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) In addition to, or in lieu of, assessing a penalty under paragraphs (1) or (2) of this subsection, the Secretary may request the Attorney General to secure such relief as necessary to compel compliance with this Title, including, but not limited to, a judicial order suspending or terminating operations. The district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(b) (1) Any person who, upon conviction, is found to have failed to comply with any requirement of this Act or regulations issued pursuant to this Act shall be fined an amount not to exceed $100,000, or imprisoned for not more than one year, or both.

(2) Any company or officer of a company, acting in his or her capacity as an officer of the company which, upon conviction, is found to have knowingly and willfully allowed an action or pattern of conduct resulting in a violation of or failure to comply with any requirement of this Act or regulations issued pursuant to this Act shall be fined an amount not to exceed $1,000,000, or imprisoned for not more than five years, or both.

(c) The several district courts of the United States shall have jurisdiction over any actions arising under this Act.

(d) (1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his or her own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof.

(2) No action may be commenced under paragraph (1) of this subsection:

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action to redress a violation of any such provision or regulation.

(3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(b) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(6) All penalties and fines collected pursuant to this Title shall be paid directly to the Oil Spill Avoidance and Readiness Trust Fund established pursuant to Title V of this Act.

(7) As used in this title, the term:

(A) "Secretary" shall refer to the Secretary of the agency having jurisdiction over the violation or action in question. Where more than one agency has such jurisdiction, the term shall refer to the Secretaries of the various agencies, acting in cooperation.

(B) "Person" shall mean an individual or company.

(C) "Company" shall mean a corporation, a partnership, an association, a joint stock company, a business trust, or an organized group of persons, whether incorporated or not.

TITLE XI—DEFINITIONS

SEC. 1101. AS USED IN THIS ACT.—(a) "Vessel" means any type of water craft, or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the Trans-Alaska Pipeline System and ports under the jurisdiction of the United States, and which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearings on drugs and public housing.

These hearings will take place on Wednesday, May 10, 1989, at 9:30 a.m. in room 342 of the Dirksen Senate Office Building. For further information, please contact Daniel Rinzel of the subcommittee's minority staff at 224-9157.

SPECIAL COMMITTEE ON AGING

Mr. PRYOR. Mr. President, I would like to announce for the public that the Special Committee on Aging has scheduled a hearing to examine the role the Health Care Financing Administration [HCFA] has/has not played in implementing the nursing

home reform provisions that were included in the Omnibus Budget Reconciliation Act [OBRA] of 1987.

The hearing will take place on Thursday, May 18, 1989, beginning at 9:30 a.m. in room 628 of the Dirksen Senate Office Building in Washington, DC.

For further information, please contact Portia Mittelman, staff director, at (202) 224-5364.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee's Subcommittee on Rural Economy and Family Farming will hold a field hearing in Livingston, MT, on May 26, 1989. The subcommittee will be hearing testimony on the impact of S. 863, the Rural Access to Capital Act of 1989, and S. 759, the Rural Access to Telecommunications Services Act of 1989, on rural communities. The hearing will be held at the Park County Courthouse community room, 414 Callender Street, Livingston, MT, and will commence at 8 a.m. For further information, please call Tamara McCann of the committee staff at 224-4352.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on May 9, 1989, at 2:30 p.m. to hold hearings on and to consider the nominations of Charles H. Dallara, to be a Deputy Under Secretary of the Treasury; Hollis S. McLoughlin, to be an Assistant Secretary of the Treasury; Kay Coles James, to be an Assistant Secretary of Health and Human Services; and Roger Bolton, to be an Assistant Secretary of the Treasury.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on May 9, 1989, at 2:30 p.m. to conduct a hearing on S. 110, Family Planning Amendments of 1989 and S. 120, Adolescent Pregnancy Prevention, Care, and Research Grants Act of 1989.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on May 9, 1989, at 10 a.m. to conduct a hearing on Americans With Disabilities Act.

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

COMMITTEE ON THE JUDICIARY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on May 9, 1989, at 10 a.m. to hold a hearing on steroids.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on May 9, 1989, at 2 p.m. to mark up the Foreign Relations Authorization Act for fiscal year 1990; S. 928.

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

SUBCOMMITTEE ON DEFENSE INDUSTRY AND TECHNOLOGY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Defense Industry and Technology of the Committee on Armed Services be authorized to meet on Tuesday, May 9, 1989, at 2:30 p.m. in open/closed session to receive testimony on the FS-X aircraft agreement between the United States and Japan.

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

COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on May 9, 1989, at 9:30 a.m. to hold a hearing on section 89 nondiscrimination rules.

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

SPECIAL COMMITTEE ON INVESTIGATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Special Committee on Investigations of the Select Committee on Indian Affairs be authorized to meet during the session of the Senate on May 9, 1989, at 10 a.m. to hold hearings pursuant to Senate Resolution 66, section 21, agreed February 28, 1989.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday May 9, 1989, at 2 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON GENERAL SERVICES, FEDERALISM, AND THE DISTRICT OF COLUMBIA

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on General Services, Federalism, and the District of Columbia, of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, May 9, 1988, at 9 a.m. to resume open hearings on Federal and State solutions to crime and drug abuse.

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Comerce, Science, and Transportation, be authorized to meet during the session of the Senate on May 9, 1989, at 9:30 a.m. to hold a hearing on industry-government cooperation to speed the commercialization of new technologies.

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

ADDITIONAL STATEMENTS

HEALTH EFFECTS OF CARBON MONOXIDE

● Mr. LIEBERMAN. Mr. President, in my concluding discussion on the health effects of air pollution, I want to emphasize again society's obligation to protect the most vulnerable members of our population from the impact of these pollutants. Exposure to carbon monoxide is particularly devastating to certain groups.

Carbon monoxide is a colorless gas which results primarily as a by-product of incomplete fuel combustion in cars, buses and trucks. Approximately 70 to 90 percent of the carbon monoxide pollution comes from transportation sources in urban areas. Carbon monoxide hotspots are found in areas where motor vehicle traffic is heaviest.

Dr. Philip Bromberg, director of the Center for Environmental Medicine at the University of North Carolina School of Medicine, recently testified before Congress that "exposure to CO—carbon monoxide—is well known to be potentially lethal." When inhaled, carbon monoxide enters the bloodstream and disrupts the delivery of oxygen to the body's vital organs and tissues. This deprivation of oxygen may severely affect the development of the fetus, which normally functions on relatively low oxygen levels. Dr. Bromberg concluded that a mother's exposure to even modest levels of carbon monoxide "may find the fetus extraordinarily susceptible to the development of irreversible neutral changes." This means that the Nation's failure to meet the health-based carbon monoxide standards may be impacting the intellectual and physical development of our children—effects which we may not see for many years.

Scientists who have identified at least 9 million Americans—those who suffer from heart disease—whose conditions are gravely aggravated by exposure to carbon monoxide. These per-

sons are especially vulnerable because their circulatory systems have a limited capacity to transport oxygen to the body.

A recent study by the National Institute of Occupational Safety and Health examined the causes of death among tunnel workers in New York City. Carbon monoxide levels are particularly high in these areas because of the poor air circulation. The study concluded:

> Given the magnitude of the effect that we have observed for a very prevalent cause of death, exposure to a vehicular exhaust, more specifically to CO, in combination with underlying heart disease or other cardiovascular risk factors could be responsible for a very large number of preventable deaths.●

GAUCHER'S DISEASE AWARENESS WEEK

● Mr. D'AMATO. Mr. President, I rise today to cosponsor Senate Joint Resolution 73, a resolution designating the week beginning October 29, 1989, as "Gaucher's Disease Awareness Week."

Gaucher's disease is an inherited genetic disorder caused by the body's failure to produce an essential enzyme. Without this enzyme, the body stores up abnormal quantities of lipids, resulting in symptoms which include anemia, severe bleeding, painful bone inflammation and malformation, fractures, and shortened life span. While Gaucher's disease is most prevalent among those of Eastern European ancestry, this deadly disease is known to occur among all racial and ethnic groups.

There is currently no cure or treatment for Gaucher's disease. However, there has been promising research. In 1984, major progress was made when a scientist identified the gene responsible for the body's failure to produce the essential enzyme. With this discovery, the key has been found which may someday open the door to a cure for Gaucher's disease—but the necessary experiments will take both time and money. To help meet this need, the National Gaucher Foundation was established to support research into Gaucher's disease, as well as to help victims and families cope with the devastating effects of this disease.

Mr. President, we, too, can play a part in the fight against Gaucher's disease. By passing this resolution, we will focus attention on understanding the nature of Gaucher's disease, and on finding the means of prevention, treatment, or cure for this disease and other genetic disorders. I urge my colleagues to join me in support of this legislation.●

TENNESSEE SMALL BUSINESSMAN OF THE YEAR, MR. JESSE E. ROGERS

● Mr. SASSER. Mr. President, I would like to take a minute to bring attention to a man of whom all of us in Tennessee can be proud. Mr. Jesse E. Rogers, president and owner of Universal Technologies, Inc., in Estill Springs, TN, has been named Tennessee Small Businessman of the year.

This honor is a well-deserved tribute. Mr. Rogers began Universal Technologies from scratch in 1972. Over the ensuing years, this company has grown from three employees to 65 and annual sales have increased from $2.5 million to $6 million over the past 6 years. Under Mr. Rogers' expert guidance, Universal has expanded its contract portfolio to the impressive total of nearly $10 million.

Yet, Mr. President, Mr. Rogers involvement with his business does not end with balance sheets and daily operations. Indeed, he is a friend and confidante to his employees and works just as hard in keeping them happy as he does keeping his business profitable. His adaptive and responsive nature as a boss and businessman has been known to call him into the role of marriage counselor, financial adviser, mediator, psychologist and medical adviser to his employees. Indeed, the compassion and warmth that he shows to his workers is a major factor in the success and camaraderie that he has achieved at Universal.

I think that Mr. Rogers' mottos lend great insight into his character. His credo is:

> Be honest. If there's ever a doubt about price or quality, you take the short end. Work hard. Put your job before anything else. Be good to your employees. Don't try to grow too fast.

In this age of widespread corruption in our financial community, Mr. Rogers and his way of doing business are living proof that good guys don't finish last.

Innovation is the cornerstone of success in any small business venture. Mr. Rogers has proven to be a master of this skill. For example, Universal Tenchnologies' area of expertise is found in the area of aircraft-related military contracting. With the intricate products that this type of work involves, parts and a good parts supply are essential. In order to overcome the parts supply problems that plague so many small businesses, Mr. Rogers developed the parts he needed in-house at substantially less cost than other major Government suppliers.

Small businesses are at the very heart of the foundation of our economy. New products and ideas often originate from small businesses and the flexibility that is inherent in the small business structure. I applaud Mr. Rogers' hard work and dedication to the small business ideal and I hold him up as an example of an American success story. Keep up the good work for our small business community—we need the jobs, the innovation and the productivity of small firms too badly to do anything less.●

THE GENERAL AVIATION ACCIDENT LIABILITY STANDARDS ACT OF 1989

● Mr. CHAFEE. Mr. President, I recently joined in reintroducing the General Aviation Accident Liability Standards Act of 1989, S. 640, a bill to establish Federal standards of liability for injury or property damage resulting from a general aviation accident. The language in this bill is exactly the same as S. 473 from the 100th Congress as it was favorably reported by the Commerce Committee.

Our legislation addresses the most significant factors which have brought about the decline of the general aviation industry: increased product liability exposure and its cost to aircraft manufacturers. It applies only to aircraft that carry fewer than 20 passengers and are not engaged in regularly scheduled passenger service.

The bill would make three important changes in liability laws. First, it creates one set of Federal standards governing accident liability in the general aviation industry. The state-by-state discrepancies in liability laws present the industry with a set of varying and unpredictable standards. This bill will provide uniformity and predictability. Second, it establishes a general rule of comparative responsibility, combined with joint and several liability, among the parties to a lawsuit resulting from a general aviation accident. Comparative responsibility attributed to the claimant's conduct will reduce damages awarded to the claimant in an amount proportionate to his or her responsibility for the damages. Third, the bill establishes a 20-year statute of repose on manufacturer liability, which starts on the date of delivery. General aviation manufacturers currently remain liable for an aircraft regardless of its age.

These changes are essential to the future of the general aviation in the United States. Without them, we will continue to see a decline in the general aviation industry, and equally important—a decline in jobs and trade. Cessna Aircraft, for example, has suspended production of all piston-engine aircraft through the 1987 model year. Likewise, Piper Aircraft has stated it may move to production of single piston-engine aircraft only, and Beech Aircraft has scaled back its production significantly. Over the last decade, unemployment in the domestic industry has risen to 65 percent. I am sure all of my colleagues are well aware of the ripple effect those job losses have on

the economies of the communities that are the homes of general aviation manufacturers.

The decline of this industry also has contributed greatly to the trade deficit, the source of so much concern. In 1981, general aviation exports contributed an annual multimillion dollar surplus to our Nation's balance of trade. Since that year, however, the U.S. general aviation industry has suffered significant trade deficits.

We all know that our general aviation industry is suffering because of the competition it faces from foreign manufacturers who do not carry this burden. We know that the confusing patchwork of State laws governing liability is at the root of the problem. With this bill, we can free our general aviation manufacturers from this load, without restricting the rights of those people who have legitimate liability claims. I urge my colleagues to join us in support of this long overdue reform of the general aviation liability system.●

TELEPHONE PRIVACY

● Mr. KOHL. Mr. President, last week the Washington Post carried an interesting editorial entitled "Peephole Telephoning." It discussed a new device that lets the recipient of a telephone call discover the caller's phone number as the phone is ringing.

The Incoming Call Display Device shows a caller's phone number on a small screen attached to the receiving party's telephone. There is something to be said for using this mechanism to deter or track down persons who make obscene calls or bomb threats. Indeed, telephone companies and law enforcement authorities have long used similar traps and trace devices for such purposes. Moreover, the new product could enhance the privacy of Americans who want to avoid annoying calls, such as uninvited sales pitches.

At the same time, though, this technological advance may end up diminishing the amount of privacy we can enjoy in our daily lives. With the aid of a reverse telephone directory (available in any public library), owners of these gadgets can learn the identities of those who ring them up—whether or not the callers want to remain anonymous.

Many Americans try to protect their privacy by having their phone numbers "unlisted." These people might lose the protection for which they pay. Many Americans have need to place anonymous phone calls to social service agencies, crisis lines, or government hotlines. These people, too, may lose the confidentiality they require.

Mr. President, I am investigating possible legislative responses to "Peephole Telephoning." I invite my colleagues to join with me in exploring this issue. I ask that the attached editorial be printed in the RECORD.

The editorial follows:

[From the Washington Post, May 4, 1989]

PEEPHOLE TELEPHONING

Imagine having a telephone that lets you know who's calling before you even answer it. Imagine, by the same token, not being able to hang up quietly and anonymously when you make a call and the person who answers is someone you're tying to avoid. Imagine having you unlisted number revealed electronically to everyone and everything you call. Imagine, kids, being instantly detected and subsequently whaled for calling strangers and asking them impudent questions about whether their refrigerator is running.

All this and more is becoming possible with the development of telephone technology that tells you who's calling—or at least gives you some idea of who it is—before you answer the phone. The service, which is already being offered in some parts of the country, uses a small screen attached to one's phone to show the number from which an incoming call is being made. A sociology professor quoted recently in The New York Times offered a nice example of the effect such knowledge could have on personal relationship. "If you invite me to a party tonight and I say I can't make it because I'm working at home, you would be less likely to call my home tonight and check on me. With these new services, if you did call, I would know you didn't believe me."

The new technology also has implications for business, especially in view of IMB's announcement this week that it is getting into the field. In the future, when you call to inquire about the status of your bank account, your phone number may go directly into a computer, allowing the bank employee to have your records in front of him when he takes your call. Instead of "Hello," he may answer with a cherry, "Well, now overdrawn again are we, Mr. Johnson?"

The ACLU, meanwhile, is concerned about the privacy issues involved in having one's number revealed to just anyone. Apparently with this objection in mind, Pacific Telesis, the company that plans to offer the service on the West Coast, will include a feature that allows callers to prevent their numbers' being revealed. "We are providing the same rights to both caller and receiver," said an official of the company. "It's the same as someone knocking on your door and putting their finger over the peephole. You don't have to open the door."

Indeed, the business of making and avoiding phone calls may soon become so complicated, time-consuming and coldly exclusive that we will all long for the days when an operator put through the calls and then listened in on the good parts.●

GOOD GROOMING MONTH

● Mr. D'AMATO. Mr. President, I rise today in recognition of the month of April's designation as "Good Grooming Month" by the Neighborhood Cleaners Association.

Mr. President, this organization was established in 1946 and represents members from the States of New York, New Jersey, Massachusetts, Rhode Island, Pennsylvania, West Virginia, Florida, Connecticut, and Delaware.

During April this organization undertakes an effort to advise the public of the need for a high standard of care in their clothing and household items. The industry enlists the aid of State and local governments to bring public attention to the proper care for their goods, the need for quality service, and the protection of our environment in the proper disposal of chemical waste.

Mr. President, I wanted to take this opportunity to advise my colleagues of this month's designation and ask that they join me in commending the Neighborhood Cleaners Association for its outstanding efforts.●

THE FISCAL YEAR 1990 BUDGET RESOLUTION

● Mr. KERREY. Mr. President, I would like to take this opportunity to discuss my reasons for voting against the fiscal year 1990 budget resolution.

As Governor of Nebraska from 1982 to 1986 my most searing memory is the economic chaos created across my State by the effects of high interest rates on our agricultural economy. Farmers and ranchers were forced off the land, businesses in small towns failed, banks that had lent money to farmers and small businesses closed down, and families across the State were affected. In many rural communities, a way of life was changed forever.

One of my most frustrating experiences in dealing with this chaos was the knowledge that there was little we could do in State government to address the underlying economic conditions that produced the high interest rates. They were largely a result of the unprecedented Federal budget deficits that the Reagan administration allowed to fester at the Federal level. Because the Federal Government was borrowing so much to finance the deficit, interest rates were forced up to levels that proved devastating to agricultural States like Nebraska.

As a Senator from Nebraska, I am determined to see that we never again allow macroeconomic conditions at the Federal level to create havoc as they did in Nebraska in the early 1980's. As a lawmaker, I am determined to see that Federal deficits are reduced and eventually eliminated. Achieving that goal will require that we make difficult choices and experience some sacrifices. However, the consequences of allowing high deficits to persist are simply unacceptable.

As a new Senator I was faced with a difficult decision on the fiscal year 1990 budget resolution, my first important budget vote. The resolution included funding for many programs important to Nebraska and for some important programs that had been seriously underfunded in the past several years, such as rural development, edu-

cation and low income health programs. It also directed that the postal service be moved off budget, an important policy that I strongly support.

However, I found myself unable to support the resolution. While it did include many important provisions, it did not go nearly far enough in bringing us toward the goal of curbing Federal deficits. Under the framework it creates, we could easily end up borrowing another $200 billion to reduce the deficit—and that, in my view, is unacceptable.

The major problems with the resolution are that it would not provide enough deficit reduction, and it appears to overstate the savings it claims to make.

The budget resolution estimates a deficit in 1990 of $100 billion. However, that figure does not fully account for the size of the deficit. For instance, the presence of trust fund accounts in the Federal budget subsidizes the budget and makes the deficit look smaller than it is. Receipts in these trust funds can only be used for their intended purpose, not for general budget expenditures or to reduce the deficit. In the case of the Social Security trust fund, if we exclude those receipts from budget deficit calculations, the fiscal year 1990 deficit is estimated at $169 billion instead of $100 billion. If all trust funds were excluded from deficit calculations, the deficit would be $240 billion. The problem is clearly far greater than the budget resolution would have us believe.

There is a lot of evidence that the savings claimed in the budget resolution will never materialize. For example, the economic projections used to calculate the size of the budget and the deficit are very optimistic. The budget resolution projects that interest rates next year will be 5.5 percent. However, current interest rates are 8.61 percent and rising. There is little reason to think that they will decline to anything near 5.5 percent. This difference between projections and actual performance will make a substantial difference on the demand for Federal expenditures and thus on the deficit.

I could cite numerous other examples of my reservations about the budget deficit. They all add up to a decision that the Senate budget resolution, despite some very good and important provisions, does not bring us close enough to the goal of substantially reducing next year's budget deficit.●

WEST WARWICK SENIOR HIGH SCHOOL IN NATIONAL BICENTENNIAL COMPETITION ON THE CONSTITUTION AND THE BILL OF RIGHTS

● Mr. CHAFEE. Mr. President, last Thursday I met with 24 young Rhode Islanders from West Warwick Senior High School. They gathered in our Nation's Capital to participate in the National Bicentennial Competition on the Constitution and the Bill of Rights. I am proud that this team from West Warwick represented Rhode Island in the competition. These young scholars worked hard to reach the national finals by winning their district and State competitions.

The members of the West Warwick team are: Stacey Abjornson, Kelly Addy, Steven Baril, Kerry Brown, Michelle Champagne, Maria DiCarlo, Kathy Dyer, Kimberly Edge, Mark Fecteau, Melissa Fried, Bethany Gemma, Teresa Giusti, Christa Gosselin, Mark Graham, Lisa Heilman, Lisa Leveillee, Michele Manosh, Brooke Mulholland, Jessica Palazzo, Christopher Pizzi, Andrea Polederos, Mikal Sklaroff, David Suraski, and Nicole Tourangeau.

Along with the students, I would like to congratulate their teacher, Michael Trofi, for his excellent guidance, as exemplified by the team's two victories in Rhode Island. I also wish to thank District Coordinator Carlo Gamba and State Coordinator Henry Cote for their efforts in organizing these contests.

Just over 200 years ago, a government was founded here which has become the model for representative democracy around the world. Our Government is based upon two documents which have granted our people rights and freedoms that are the object of admiration to many of our foreign neighbors. The National Bicentennial Competition on the Constitution and the Bill of Rights is an extensive educational program developed to educate young Americans about the significance of these two documents.

The preservation of our freedom and our Nation depends upon our young people, the decisionmakers of tomorrow. We have much to gain from educating them about the Constitution, the Congress, and the continuing responsibilities of citizenship. I commend each of the students on the Rhode Island team and their teacher for their hard work and determination which has brought them to Washington for the national finals.●

NATIONAL BICENTENNIAL COMPETITION ON THE CONSTITUTION AND BILL OF RIGHTS

● Mr. GRAHAM. Mr. President, it is my pleasure to announce that 24 students from Stanton College Preparatory School in Jacksonville, FL, participated in the finals of the National Bicentennial Competitition on the Constitution and the Bill of Rights in our Nation's Capital from May 1 through May 3. I am delighted to commend these bright young scholars for their diligence and hard work. They are among some 950 students who gathered here for the prestigious competition.

As the 101st Congress celebrates its centennial, it is gratifying that young people chose to honor the Constitution and our Nation's proud 200 years of existence. Florida's students reached the national finals through arduous State and district competitions. The national bicentennial competition offers these participants the opportunity to learn about constitutional democracy and fosters civic responsibility.

With the support of Congress, this noble pursuit has been dramatically successful. Throughout the past 2 years, over 1 million students have participated in the bicentennial program while some 14,000 teachers have guided their students through the constitutional curriculum. The bicentennial competition begins with an extensive 6-week course, designed to instill students with a fundamental understanding of the Constitution and Bill of Rights and the principles which they embody. Students complete the course with a constitutional quiz. High school participants then enter the national competition, culminating in 3 days in Washington, DC.

The need to educate our young people about the Constitution is evident. Studies show that only slightly more than half of the students surveyed could identify the purpose of the Constitution, and nearly half thought the President could appoint Members of Congress. Clearly, endeavors such as the bicentennial competition will facilitate a greater understanding of the history and principles which our country was founded upon.

Mr. President, the strength and health of our Nation depends, in large part, on our young people. We must continue to educate them about the Constitution, Congress, and civic responsibility. These efforts will enhance students' academic and personal lives; as our future decisionmakers we have a great stake in their progress. I am proud to salute Florida's 24 participants and wish them the best of luck in the future.●

NATIONAL BICENTENNIAL COMPETITION ON THE CONSTITUTION AND BILL OF RIGHTS

● Mr. KERREY. Mr. President, last week after months of study and hard-won victories, students from across the Nation gathered in our Nation's Capital to compete in the finals of the National Bicentennial Competition on the Constitution and Bill of Rights. It gives me great pleasure to announce that a team from Lincoln Southeast High School in Lincoln, NE, has emerged from this competition as the national champion.

Earlier this week, I had the good fortune to meet with these future leaders of our Nation. Given their true understanding of the forces that have forged our great Nation, I can say with the utmost confidence that the future of our country will be secure in their capable hands.

The members of the Lincoln Southeast team are: Jeff Aguilar, Lars Anderson, Abbey Bellamy, Derek Chollet, Jenelle Cox, Darcy Davis, Beau Finley, Elaine Gale, Mike Garrison, Ruth Griesen, Scott Hielen, Frank Hoppe, Paige Johnson, Erika Kuebler, Matt Norman, Chris Pappas, Silke Peterson, Claire Simon, Scott Starr, Jon Steinman, Jessica Sutton, Candy Taft, Colin Theis, Bryan Van Deun, and Julie Wiechart.

Along with the students, Ted Larson, their teacher, Carol Labeber, the district coordinator, and Dennis Lichty and Carolyn Gigsted, the State coordinators, all deserve much of the credit for the success of the Lincoln Southeast team.

Mr. President, the National Bicentennial Competition on the Constitution and Bill of Rights is a nationwide program involving over 1 million students and over 14,000 instructors teaching the course. The program provides the students with a specially designed 6-week course of study designed to provide upper elementary, middle and high school students with a fundamental understanding of the Constitution and the Bill of Rights, and the principles and values they embody.

As our Nation approaches the dawn of a new century with changing needs and problems, one fundamental need stays the same: The need to educate our young people about the Constitution and the Bill of Rights. I, therefore, applaud the efforts of the bicentennial competition. Due in large part to their efforts, students in classrooms all over the country are debating the issues that concerned the Founding Fathers and demonstrating how the Constitution's basic principles apply to them today.

I am proud to have students from my State and my hometown participating in this competition and representing the Nation as its national champions. I commend each of them and their teacher for their hard work and I encourage all Americans, students and adults alike, to follow their example by understanding the greatest document in our Nation, the U.S. Constitution.●

IN SUPPORT OF DARE DAY

● Mr. GRAHAM. Mr. President, our country continues to face an escalation of drug abuse, and, along with it, myriad related problems. It is Congress' responsibility to attack these problems on all fronts and to commit ourselves to fight to make our streets and schools and society safe again from drugs and drug traffickers.

Education is one of the most important tools we have to arrest the use of drugs. Programs offered in our Nation's schools may be the most effective preventative method to curtail drug use. By reaching children at a young age, and by explaining to them effective ways to resist pressures to experiment with drugs, we can help them stop a problem before it starts. In my experience working with Florida's teachers and school children, I have often been asked what can be done to provide an alternative means of dealing with the desire for recognition and acceptance that drugs can offer. Questions like this are tough, but I believe programs like Drug Abuse Resistance Education [DARE] are well-suited to answer them. DARE goes beyond simple slogans by providing a comprehensive drug program for public education.

By emphasizing their own importance and self esteem, children may be able to resist peer pressure or an inability to deal with sadness or disappointment, by devaluing themselves through drug use and abuse. I want Congress to support our Nation's children; we can do this by supporting the DARE Program. Thousands of children in a dozen of Florida's counties have had the opportunity to participate in DARE, but I want all of Florida's children to have that same opportunity. I join with Florida's Departments of Education and Law Enforcement, the Florida Police Chiefs Association and the Florida Sheriff's Association in their goal to reduce the demand for drugs by making this program statewide in the next few years. Because of this, I support Drug Abuse Resistance Education and designating September 14, 1989, as the "National DARE Day."

I urge you to join me in supporting this important legislation.●

HONORING ANNE BLATTNER, BI-CULTURAL DAY SCHOOL, STAMFORD, CT

● Mr. LIEBERMAN. Mr. President, it is with great pleasure that I bring to the attention of the Senate a very special individual from my home State of Connecticut, Mrs. Anne Blattner. On Sunday, May 28, the Bi-Cultural Day School of Stamford will celebrate its 33d anniversary and honor Anne Blattner who has been a part of Bi-Cultural for 28 of those 33 years. Anne is the school's assistant principal.

Bi-Cultural Day School has illuminated the best of the American and Hebrew heritages for over three decades. During its 33 years of existence, it has garnered a plethora of awards and citations from prestigious American and Israeli academic boards and institutions. Students from the school annually win prizes in local and regional educational competitions in the sciences, art, literature and knowledge of Israel; prizes totally out of proportion to the school's population. Several Bi-Cultural academic programs have even become models for other Hebrew day schools throughout the world.

The school's dedication to nothing less than excellence for the community and its students was recently recognized nationally. In May 1989, Bi-Cultural received the "Award for Excellence" from the U.S. Department of Education, the highest honor granted in elementary education. Bi-Cultural was evaluated against a field of more than 4,000 schools nationally, and was the only independent school in Connecticut so cited. It is no surprise the school attracts students from many communities in Fairfield and Westchester Counties, and has a waiting list for classes every year.

A big part of the school's success is due to the efforts and dedication of its faculty, none more important to that success than Anne Blattner. Under Mrs. Blattner's guidance, the school developed innovative and progressive approaches to both secular and Judaic studies marked by a creative, individualized curricula, structured to support each student's strengths. Through strong leadership, determination and an uncompromising commitment to top-notch education, Anne Blattner has served the needs of both the students at Bi-Cultural and the Stamford community as a whole.

The dedicated faculty and staff, students and friends of the Bi-Cultural Day School have been touched and enriched by the efforts and presence of this great woman. Mr. President, I hope that my colleagues will join me in rising to pay tribute to this great educational institution and to the woman who has played a big part in the development and preservation of Bi-Cultural's outstanding reputation.●

BUDGET SCOREKEEPING REPORT

● Mr. SASSER. Mr. President, I hereby submit to the Senate the lastest budget scorekeeping report for fiscal year 1989, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is over the budget resolution by $0.9 billion in budget authority, and over the budget resolution by $0.4 billion in outlays. Current level is under the revenue floor by $0.3 billion.

The current estimate of the deficit for purposes of calculating the maximum deficit amount under section 311(a) of the Budget Act is $135.7 billion, $0.3 billion below the maximum deficit amount for 1988 of $136.0 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 1989.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the Budget for fiscal year 1989 and is current through May 5, 1989. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the most recent budget resolution, House Concurrent Resolution 268. This report is submitted under section 308(b) and in aid of the section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the 1986 first concurrent resolution on the budget.

Since my last report, Congress has taken no action that affects the current level of spending or revenues.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 101ST CONG., 1ST SESS., AS OF MAY 5, 1989

[In billion of dollars]

	Current level [1]	Budget resolution H. Con. Res. 268 [2]	Current level +/− resolution
Fiscal year 1989			
Budget authority	1,233.0	1,232.1	0.9
Outlays	1,100.1	1,099.8	.4
Revenues	964.4	964.7	−.3
Debt subject to limit	2,755.2	[3] 2,824.7	−69.5
Direct loan obligations	24.4	28.3	−3.9
Guaranteed loan commitments	111.0	111.0	
Deficit	135.7	[4] 136.0	[5] −.3

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval and is consistent with the technical and economic assumptions of H. Con. Res. 268. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] In accordance with sec. 5(a) and (b) the levels of budget authority, outlays, and revenues have been revised for catastrophic health care (Public Law 100–360).

[3] The permanent statutory debt limit is $2,800.0 billion.

[4] Maximum deficit amount [MDA] in accordance with sec. 3(7)(D) of the Congressional Budget Act, as amended.

[5] Current level plus or minus MDA.

PARLIAMENTARIAN STATUS REPORT 101ST CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL, FISCAL YEAR 1989 AS OF CLOSE OF BUSINESS MAY 5, 1989

[In millions of dollars]

	Budget Authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			964,434
Permanent appropriations and trust funds	874,205	724,990	
Other appropriations	594,475	609,327	
Offsetting receipts	−218,335	−218,335	
Total enacted in previous sessions	1,250,345	1,115,982	964,434

PARLIAMENTARIAN STATUS REPORT 101ST CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL, FISCAL YEAR 1989 AS OF CLOSE OF BUSINESS MAY 5, 1989—Continued

[In millions of dollars]

	Budget Authority	Outlays	Revenues
II. Enacted this session:			
Adjust the purchase price for nonfat dry dairy products (Public Law 101–7)		−10	
Implementation of the bipartisan accord on Central America (Public Law 101–14)	−11		
Total enacted this session	−11	−10	
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Dairy indemnity program	([2])	([2])	
Special milk	4		
Food Stamp Program	253		
Federal crop insurance corporation fund	144		
Compact of free association	1	1	
Federal unemployment benefits and allowances	31	31	
Worker training	32	32	
Special benefits	37	37	
Payments to the Farm Credit System	35	35	
Payment to the civil service retirement and disability trust fund [1]	(85)	(85)	
Payment to hazardous substance superfund [1]	(99)	(99)	
Supplemental Security Income	201	201	
Special benefits for disabled coal miners	3		
Medicaid:			
Public Law 100–360	45	45	
Public Law 100–485	10	10	
Family support payments to States:			
Previous law	355	355	
Public Law 100–485	63	63	
Veteran's Compensation COLA (Public Law 100–678)	345	311	
Total entitlement authority	1,559	1,121	
VI. Adjustment for economic and technical assumptions	−18,925	−16,990	
Total current level as of May 5, 1989	1,232,969	1,100,103	964,434
1989 budget resolution H. Con. Res. 268	1,232,050	1,099,750	964,700
Amount remaining:			
Over budget resolution	919	353	
Under budget resolution			266

[1] Interfund transactions do not add to budget totals.

[2] Less than $500 thousand.

Note.—Numbers may not add due to rounding.●

ASSAULT RIFLES

● Mr. McCLURE. Mr. President, I admit to a certain prejudice. As an Idahoan, and a westerner, I believe that my fellow westerners can spot nonsense and cut through baloney with a special directness. As a case in point, I am sharing a column written by Dave Bond for the Spokane, WA, Spokesman Review.

Mr. Bond makes a point that we need to consider. An attack on one constitutional right can only give legitimacy to attacks on other rights.

Mr. President, I ask that the attached column be printed in the RECORD.

The column follows:

THOSE GUNNING FOR "ASSAULT RIFLES" MAY INJURE CITIZENS' BASIC RIGHTS

(By David Bond)

PATMOS, ID.—This nightly assault on so-called assault rifles is getting tiresome. I can't even watch the evening news because that pious Dan Rather has been harrumphing daily about the extraordinary danger these weapons seem to pose.

True, some nut with an AK-47 went off his front porch in a schoolyard last month and committed an unspeakable horror. But Ted Bundy killed 10 times as many innocents, and he didn't need a semiautomatic rifle to conduct his decade-long reign of terror. Bundy liked ice picks. To a killer and his victim, the weapon is not the issue.

Now, however, the carrot-eaters in California are driving steamrollers over Kalashnikovs, Arfies, Uzis, Mac 10s, H&Ks and anything else that looks nasty, as if that will stop the death of children and other folks minding their own business in a state that has made criminal-coddling the national pastime.

Don't misunderstand me. I'm not a fringe-element "gun nut," just a hunter, though an AR-15 rifle has occupied a place in my humble arsenal. And I once fired an old boy's Gamemaster .30-06 that was semiautomatic. It held four or five rounds, weighed a ton, and believe me, unless you're Charlie Atlas those things do more damage to your shooting shoulder than whatever's in the sights.

But if a guy wants to own one, it's none of my business.

It's very tempting to say that semiauto rifles like the AR-15 and AK-47 don't belong in any hunter's closet, and aren't sporting devices.

It's very tempting to say that only nut cases or speed freaks collect semiautomatic rifles (although the old gent with the Gamemaster, who has eaten a lot of elk during the course of his life thanks to that rifle, would disagree).

It's very tempting to say that some guys wouldn't become killers if they couldn't get their hands on a semiautomatic rifle.

But you could also say that printed material in the wrong hands is just as dangerous.

A person predisposed to child molestation or rape might get just the turn-on he needs from one of Larry Flynt's rags to go out and commit a crime against a youngster or woman. And it would be very tempting to blame the smut for the crime.

But I have little trouble with any government, whether it's a city council, a state legislature or Congress, abridging Larry Flynt's right to print any garbage he wishes. Because once that door of censorship is opened, it gets opened on The New York Times, the Eagles Lodge pinochle newsletter, and me.

So to preserve the purity of the First Amendment, I have to respect the porno rags' rights to publish. The American Civil Liberties Union understands this subtlety, and takes a lot of abuse for it.

When sportsmen protest against the prohibition of weapons they wouldn't dream of owning, the same thing is going on. Protecting fundamental constitutional right means, sometimes defending a distasteful, even dangerous, lunatic fringe.

We have no better definition of a so-called assault rifle than we do of pornography.

What constitutes an assault rifle? Is it anything that fires multiple rounds? Or does it come down to anything that kicks out more than one bullet between loadings?

What about the lever-action Model 30 that every hunter totes? You can get damned fast with one of them. Or the Ruger .22-caliber pistol? It will spit out shots as fast as any semiautomatic rifle.

Is it plastics in the butt and stock? The number of rounds available in the magazine? Take the Mini-14, a little .223-caliber rifle made by Ruger that is one fine varmint gun. Lots of farmers and hunters own them and use them. But dress the Mini-14 up in plastic, stick a bipod and a 30-round clip under it, and it becomes a favorite of cops, drug dealers and armchair mercenaries.

A double-barreled shotgun is, in a sense a semiautomatic weapon, in that two trigger pulls will get off two shots, with no manual operation of the gun between shots. You could say the same of any double-action revolver.

The schoolyard killer could just as easily have tossed a gallon of gasoline and a cigarette lighter at those children as sprayed rifle fire into them, and might well have, had the rifle not been available to him.

I should admit that I was fond of my AR-15, the civilian version of the Army's M-16 infantry rifle. Like the Mini-14, it is a great varminter, light and easy to pack in the brush. I never found it necessary to turn it loose in a schoolyard.

Have I still got it? That is no more your business than it is my business that you read dirty books. If you really want to know, kick down my door some night and you'll find out.●

AIRPORT SECURITY—EXAMINING THE OPTIONS

● Mr. KERRY. Mr. President, I would like to take this opportunity to present, for insertion into the RECORD, an article on aviation security from the April 17 edition of Aviation Week & Space Technology. A great deal of attention has been focused on aviation security issues in light of the Pan American Airways flight No. 103 tragedy. This article examines a number of promising security detection screening systems.

I believe that it is important for Congress to support private sector technological development in this very important area. Much has been written about the thermal neutron activation [TNA] system, which is being developed. I feel that it is also important to promote the development and production of other available technology. American Science & Engineering's new 101-ZZ x-ray system has been purchased by Japan Air Lines [JAL] for installation at a number of United States airports. In addition, American Science & Engineering's original 100-Z or 100-ZZ series x-ray systems were purchased by the Israeli Airport Security Authority, the United States Customs Service, the United States State Department, the United States Department of Defense, the United States National Security Agency, and the United States Secret Service.

I am sure that my colleagues will find this information of great interest. I ask that the Aviation Week & Space Technology article be printed in the RECORD.

The article follows:

[From Aviation Week & Space Technology, Apr. 17, 1989]

X-RAY BACKSCATTER EQUIPMENT PROVIDES AUTOMATIC SCREENING FOR EXPLOSIVES

(By David Hughes)

CAMBRIDGE, MA.—American Science and Engineering, Inc., is producing a new line of backscatter X-ray detection equipment that can automatically search for plastic explosives concealed in luggage.

Japan Air Lines Co. (JAL) is purchasing seven of American Science's new 101-ZZ backscatter X-ray systems with automatic explosives screening capability. Three of the 101-ZZ machines will be installed at Honolulu International Airport in Hawaii, two at Los Angeles International Airport and one each at San Francisco International and John F. Kennedy Airport in New York, according to Frank Mertton, who is the assistant station manager for JAL in San Francisco.

Mertton said JAL evaluated other devices before deciding on the backscatter technology. "It does have the capability of detecting plastic explosives and weapons," he said.

JAL is expected to order a second lot of 101-ZZ backscatter machines after the first seven are delivered this summer, according to Mertton. The double Z designation means there are two sets of detectors, so the machine can examine both sides of a piece of luggage on one pass. These double Z systems sell for $135,000 each. Less expensive 101-Z systems are available that check just one side of a piece of luggage at a time. American Science officials say the system can screen up to 1,500 pieces of luggage an hour using the automatic threat detection mode as bags move on a conveyor belt. However, it is unlikely that operators will attempt to screen baggage at this high a rate.

The new 101 series machines incorporate a conventional X-ray detector and a backscatter detector in one system. Two television monitors are used to display both the standard X-ray absorption pattern images and the images created with backscatter returns.

Conventional X-ray images rely on the fact that certain materials, such as metal, absorb X-rays and create dark areas on an image. Backscatter X-ray images depend on an entirely different phenomenon. When X-rays are directed into organic materials, such as plastics or drugs, some of the X-ray photons strike electrons. After transferring some energy, these X-ray photons bounce back towards the transmitter. This is the Compton effect named for the physicist A.H. Compton. The American Science system uses solid state scintillating crystals to detect both the backscatter and X-rays that continue through the object being illuminated.

The backscatter detectors are geared to finding all types of plastic explosives, plastic weapons like the 9-mm. Glock 17 pistol and drugs. These organic materials have a low atomic number and generate a large amount of backscattered X-rays. High atomic number materials like metal generate much less backscatter return even though they have more electrons than low atomic number materials. This is because these materials absorb X-rays so efficiently.

American Science began developing the 101 series of equipment two years ago as a follow-on to its original line of 100 series backscatter machines introduced in 1986 (AW&ST Apr. 28, 1986, p. 31). While the company demonstrated the earlier generation equipment to many airlines, few purchased the equipment. The main customers turned out to be agencies of the U.S. government as well as foreign governments. For example, 100 series machines are installed at the White House and at the Pentagon. Other customers include Pakistan, Finland, Sweden, Brazil and Sri Lanka.

Dr. Martin Annis, president of American Science, said the firm's systems are usually sought out by agencies that are dealing with threats considered serious enough to merit substantial expenditures.

STOWED BAGGAGE

JAL was one of the few airline customers to buy first-generation backscatter equipment. The airline owns 10 of the 100 series Z machines that are installed at various airports in Japan. There are also three 100 series machines at San Francisco International Airport. These machines are being paid for by a consortium of 14 foreign flag carriers there including JAL, Lufthansa, Air France, and other carriers using the San Francisco terminal.

American Science officials report that a number of airlines and aviation authorities are interested in the new 101 series with automatic explosive detection capability. Last month, Swiss security officials responsible for the airport at Zurich visited Cambridge to see a demonstration of the new equipment. A large portion of all luggage passing through Zurich Airport is searched by hand.

Annis said American Science plans to market the new 101 series equipment for use in examining stowed baggage. He envisions the machines being used in the automatic threat detection mode at or near ticket counters.

Annis also said that in this role the 101 series machines would be competing with thermal neutron activation systems (TNA), an automatic device that bombards luggage with low energy neutrons. When these neutrons are absorbed by the nitrogen in explosives, the nitrogen nuclei emit characteristic gamma rays. TNA is marketed by Science Applications International Corp. in San Diego, Calif., and this firm has a contract to deliver six of the $750,000 units to the FAA by the end of this year (AW&ST Jan. 16, p. 65).

The new American Science 101 series has a number of performance improvements over the previous backscatter machines. The 101 series has four times more X-ray power than previous systems, and it can penetrate ¾ in. of steel instead of merely ½ in. The new equipment also has much better spatial resolution and incorporates the automatic threat detection system, which is based on computer processing using an off-the-shelf mother board for the main circuitry.

The first 101 series machines being produced are being delivered to the U.S. government. The U.S. is purchasing about 25 of the 101-Z units for about $2.5 million, all of which will be installed in General Motors vans. The equipment operators can drive the van to any location it is needed, open the doors and begin processing baggage or other types of packages.

These single Z units have both conventional X-ray and backscatter imaging capability for processing baggage or packages one side at a time. The machines do not have the automatic explosives detection capability developed for use by JAL. Instead,

they are equipped with an earlier system that will sound an alarm automatically when metal is detected by conventional X-ray techniques.

AUTOMATIC THREAT DETECTION

Of the 25 units being purchased by the U.S. government, 14 are going to the U.S. Customs Service. American Science has already delivered eight of these units. Another six are being purchased on behalf of the customs agency in Saudi Arabia. These vans will have air-conditioning and dust control equipment. The remaining five vans are going to other U.S. agencies. Annis said his company is currently producing 101 series machines at the rate of two a month.

The automatic threat detection feature of the 101 series machines allows an operator to set the threshold for a warning of either explosives, in the case of backscatter detection, or a metallic object, in the case of conventional X-ray image. During a demonstration for Aviation Week & Space Technology, an operator dialed in the setting for an alert. For backscatter detection of explosives, for example, the operator set the area of sensitivity reading at 7.5% and the level of backscatter return required to sound an alarm at 80%. This meant that if 7.5% or more of the area examined generated a backscatter return that was 80% or more of the maximum value possible, an alarm would sound.

Both a suitcase and a portable radio containing simulated plastic explosives set off the automatic monitor. A warning sounds when enough plastic explosive material is present, regardless of the shape it is in. Annis pointed out that some types of plastic explosives, such as Semtex, can come in the form of a liquid or a powder as well as a moldable piece of plastic.

CONVENTIONAL X-RAYS

When the alarm sounds, the operator merely looks at the image on the screen to see the bright backscatter return flashing on and off. In the case of a heavy backscatter return from a suitcase or a portable radio, the possibility is high that explosives are present. The type of plastic in the radio case would not set off the alert and it is unlikely that any other organic material than explosives would be packed inside a radio.

The 101 series allows the operator to examine the strong backscatter return as part of the image of the overall object being scanned. This should be particularly helpful when trying to find explosives hidden in a radio.

It is difficult to spot these explosives with conventional X-rays which create a darker image from the radio's circuits than from the explosives hidden behind them, according to Richard W. Sesnewicz, marketing manager for American Science.

The 30-year-old Cambridge firm started in business developing some of the first sensors used in X-ray astronomy.

American Science was at one time one of the largest contractors to NASA in New England. Annis, a cosmic-ray physicist, said the firm's experience in developing sensors to detect X-rays coming from deep space made it possible for the company to develop the type of sensitive detectors needed to make a backscatter X-ray system work.●

LIBERIAN DEBTS

● Mr. DECONCINI. Mr. President, I would like to commend the people of Liberia for assuming responsibility for the payment of their nation's outstanding debts to the United States.

The nation of Liberia owes $138 million to the United States. United States law requires that Liberia be cutoff from further aid if a $7 million payment is not received by May 10, 1989. Faced with the immediacy of this situation, the Liberian Government has turned to the citizens of the country to request that they donate the needed funds. The response has been inspiring. President Gen. Samuel Doe should take careful note of the good example of his citizens, but he should not be given any credit in this undertaking. It is his poor judgment and leadership that have put Liberia in the position of being unable to meet its financial obligations.

The Liberian people could have reacted with hostility toward their leader's request for individual citizens to pay the country's debt. Many of the loan dollars intended to help the people of Liberia never produced the results for which they were intended. The people could have used this economic crisis to highlight the financial mismanagement of Doe's administration. The people could have demanded that the money be contributed by those who have most benefited from the aid—the administration of Liberian President Gen. Samuel K. Doe.

Instead, the people have responded generously to their leader's call for assistance. They have quietly donated funds from their own pockets for the sake of meeting their country's obligations with honor, and for the sake of preserving the friendship of an ally they value. They should be commended for their generosity and patriotism. The government, on the other hand, is the culprit. A little more than 3 years ago the United States State Department and USAID noticed problems in Liberia. They suspected accounting difficulties, missing funds, and misplaced priorities. The result was for the United States to send a shadow cabinet to Liberia to monitor this highly unusual situation.

Mr. President, just as teachers can learn from those they teach, leaders can learn from those they lead. I hope General Doe will learn something from the unselfish willingness of his people to honor their commitments. The people are trying to bail out a highly suspect government with their actions and efforts. The members of the government should hang their heads in shame, pause, and follow the examples of their citizens. I praise the people of Liberia for their action and I hope that the government will follow their lead in living up to their obligations in the future.

Mr. President, I ask that an article from the San Diego Union that discusses these circumstances be entered into the RECORD at this point.

The article follows:

[From the San Diego Union, Apr. 30, 1989]

LIBERIAN CITIZENS DIG DEEP TO PAY THE COUNTRY'S DEBT TO AMERICA

MONROVIA, LIBERIA.—The man was old and blind and gnarled, and the woman, her legs useless from some crippling disease, sat next to him.

Another man stood on crutches, one leg several inches shorter than the other.

It was a tableau of despair that is seen often in Africa these days—but with a startling difference: These people had come to Monrovia's executive mansion not to beg for money, but to offer up the few coins they owned. And they were giving them to the people of America.

Variations of this scene have been repeated daily in the mansion's glittery reception hall for the last two weeks as part of a national fund-raising campaign aimed at paying off the $183 million debt Liberia owes the United States.

American officials have warned that unless Liberia tended to its obligations, the unique bonds between the two countries would be strained and U.S. aid to the nation severed.

Liberian officials countered with an unprecedented offer: They would pay the debt, not from government coffers but from the pockets of citizens.

"America has been a true and good friend," said May Shaw, a 37-year-old seamstress, one of several thousand ordinary people who, Liberian officials say, have contributed to the campaign. "We owe them money and we ought to pay it."

There are some who say that the contributions are not entirely voluntary, that some employers have used subtle coercion to get their workers to contribute.

There are also complaints that the fund-raising campaign is a way for the administration of Liberian President Gen. Samuel K. Doe to shift the focus away from its own mismanagement and financial sleight of hand.

As one businessman put it: "We all know where a lot of those American dollars went—they're lining the pockets of some of the very officials who are now asking us to contribute money."

Asked if he would contribute to the campaign, the businessman replied, "Sure, we still owe the money, and no matter who runs the country, the debt is not going to go away."

Since 1946, the United States has given this country more than $800 million in aid and loans, making Liberia the largest per-capita recipient of American aid in sub-Saharan Africa.

But last month, citing several loans that have been in arrears for more than a year, American officials said that unless they received a payment of at least $7 million from Monrovia by May 10, they would be required under U.S. law to cut off Liberia from further economic or military aid.

The ultimatum at first stunned Liberian officials, in part because this nearly bankrupt nation of 2 million people is the closest that the United States has ever had to a colony on the African continent.

In 1822, freed American slaves began to settle the area. A quarter of a century later, they established the first independent republic in Africa, with a red, white and blue flag—but only one star. The constitution was drawn up by a Harvard Law School dean.

Today, there is a Maryland County and a Virginia River. The police uniforms come

from the New York City Police Department, and the principal currency is the U.S. dollar.

The capital, Monrovia, is named after former President James Monroe in gratitude for the American money that helped finance the colony.

In the campaign to pay off its present-day debt, the government has unleashed lots of official enthusiasm.

"Let's rally around our leaders and pay the debt," a chorus of young women chanted the other day on the state-owned radio station. On nearly every major thoroughfare there are billboards and posters with slogans like: "For Dignity and Respect, Let's Pay the U.S.A."

Improbably perhaps, the U.S. Embassy here seems to be one of the institutions that has little to say about the fund-raising drive.

Ambassador James K. Bishop and his chief deputies declined to be interviewed for this article.

In Washington, a State Department official said he was aware of Liberia's fund-raising efforts. "It's up to the government of Liberia to decide how it's going to pay its debts," the official said.

Other U.S. officials here said they were concerned about what they regarded as anti-American posturing by some Liberian officials.

The tenor of the campaign, which started April 12, was set early on by Doe, this nation's mercurial president. In a speech last week, Doe complained that "we have done all that is humanly possible to please the American people."

"In my mind," he said, "I think it is America that owes us; we don't owe them." And in an aside, he added, "I think the only thing America has not done to me is to shoot my plane down."

More recently, a lengthy article in Liberia's state-owned newspaper complained that demands by the United States have "callously humiliated" Liberia.

In an interview, however, Information Minister J. Emmanuel Bowier denied that the current campaign was anti-American. "We are saying our relationship goes beyond money. But if after 130, or 140 years, the U.S. will look at us and say, 'If you don't pay down to the last brass copper, we will pull out and close down everything,' then we know now that for them, a relationship, a friendship, has a monetary value, has a dollar sign."

He also noted pointedly that the United States has extensive interests here, including a Voice of America radio transmitter, communications equipment and landing rights for American military aircraft.

"We're going to look at all those investments and decide what to do with them," Bowier said.

Some Liberians, though, warn that the campaign could backfire, especially if the government is unable to raise the $7.2 million needed to meet the May 10 deadline.●

NATIONAL CENTER FOR MANUFACTURING SCIENCE

● Mr. RIEGLE. Mr. President. I know that many of my colleagues in the Senate share my view that the problems associated with U.S. competitiveness are among the most pressing problems our Nation faces today.

In the 100th Congress, we enacted comprehensive legislation to strengthen our trade laws and to combat the unfair trade practices of trading partners like Japan and Korea. We also enacted other significant initiatives to improve the competitive position of the United States and to move toward a more balanced international trade situation.

One such initiative was the funding of the National Center for Manufacturing Science [NCMS]. The National Center for Manufacturing Science was created in 1986 to conduct research in manufacturing science and to enhance the competitiveness of U.S. manufactures. Some $5 million of seed money was provided to NCMS in the DOD appropriations bill last year to support initial operation in this very important effort. NCMS has also attracted substantial industry support and that support is still growing.

This week, two very important events will occur that are the result of the work of NCMS. The first is a conference entitled, "Making U.S. Manufacturing Competitive through Technology Research and Transfer." The conference, which is scheduled for Tuesday and Wednesday, is jointly sponsored by NCMS, the University of Texas, the Manufacturing Studies Board, the National Science Foundation, and the Council on Competitiveness. In a notable show of cooperation, this group has brought together leading figures from industry, Government and academia to discuss options for improving manufacturing excellence in the United States and to develop recommendations.

On Wednesday afternoon and Thursday of this week, the National Center for Manufacturing Science will hold its second annual meeting and conference. At this meeting, NCMS will report on what has been accomplished to date and outline its research strategy for the future.

These promise to be very interesting meetings and all are open to members and their staff who are interested in U.S. manufacturing competitiveness.

Mr. President, the work of the NCMS is vital to all of us. I know all of my colleagues will join me in wishing them well as they seek to find solutions to this very difficult problem.●

RURAL HOMELESSNESS

● Mr. CONRAD. Mr. President, I rise today to alert my colleagues to an article in last week's New York Times. The article highlighted the growing problem of rural homelessness. Homelessness evokes an urban image for most people—those unable to pay exorbitant rents; released from institutions with no place to turn; living on the streets and in public parks and large city shelters. This article tells the story of rural Americans—two North Dakotans—who have lost their shelter.

Rural homelessness is not very visible. As the New York Times points out, rural Americans are hesitant to ask for help, seeking shelter only when they are completely desolate. They try to make it on their own, spending all their savings, before they will let others know of their situation.

The reasons behind the growing rural homeless population are complex. One thing is certain—the bleak economic situation of the farm economy has played a key role. Families no longer able to sustain themselves on the farm are forced to leave, sometimes leaving a home their family has held for generations. Failing farms means failing Main Street businesses in small town America. They, too, are forced out.

Mr. President, I hope my colleagues will take note of this article, which I ask be inserted into the RECORD. I hope the specter of rural poverty will instill a challenge in this Congress—a challenge to fashion comprehensive rural development legislation that will revitalize rural America.

The article follows:

[From the New York Times, May 2, 1989]

AS FARMS FALTER, RURAL HOMELESSNESS GROWS

(By Isabel Wilkerson)

In a steady stream driven by bleak economics in America's farm country, a new class of homeless people is emerging from rural areas: farm families and others who are out of work because farms are faltering.

Some crowd into big-city shelters in Minneapolis, Chicago, Des Moines and Omaha, where they can find leads for jobs and anonymity. Other make their way to country hamlets that are little more than detours off a dirt road, where church basements and other makeshift shelters fill up as quickly as they open.

"Rural homelessness is growing faster than we can keep track of it," said Bill Faith, who heads the Ohio Coalition for the Homeless. "People are living in railroad cars and tarpaper shacks. Shelters in tiny towns we've never heard of are operating at or above capacity and are turning people away."

While there are few definitive statistics on how many people are homeless outside metropolitan areas, the Housing Assistance Council, a rural advocacy group in Washington, found that rural people accounted for a fourth of all stays at homeless shelters in 2,200 rural and urban counties it surveyed across the country last year. The problem is even more acute in heavily agricultural states like South Dakota, where rural people account for close to 90 percent of the state's 4,000 homeless, said Ruth Henneman, who runs the state's community assistance program.

"They try to keep it secret as long as they can," said Margaretann Sweet, a psychologist who counsels homeless people in Charlotte, Mich. "Some are ashamed to tell their friends they've lost their farm. Owning land and working hard to keep it is central to self esteem here."

The same spirit of independence and self-reliance that attracts people to farming has kept many rural people from seeking help until their circumstances become desperate.

One farmer, ashamed to use food stamps in his rural hometown, drove his family seven hours from Minnesota to South Dakota in the middle of the night to get food at a 24-hour convenience store.

SOME HAVE TRIED SUICIDE

"Some of them have attempted suicide before coming into the city because, for them, coming to the city means failure," said Sue Watlov Phillips, who heads the Minnesota Coalition for the Homeless and is regional vice president for the National Coalition for the Homeless.

While drug use or mental illness propel many of the urban homeless into the streets, in rural areas the cause of homelessness is more likely to be downturns in farming and related businesses.

Rural homelessness is a more clearly economically caused homelessness," said Dr. Fredrick Solomon, director of the Division of Mental Health and Behavioral Medicine of the Institute of Medicine, which studied the problem last fall.

The study defined the rural homeless as farm families, the working poor, migrants and others who are without shelter or living in temporary quarters. Many experts on rural life include the thousands of families that have lost their farms but remain as caretakers, facing eviction when all the legal dealings are finished.

That is what happened to Donald and Marilyn Bahlof, farmers in their early 60's who lost their 280-acre place near Denison, Iowa, in January and are now staying in a friend's, house with their combine and tractor outside. The farm had been in the family for nearly 100 years.

"You don't want to go to town, you don't want to see people," Mrs. Bahlof said.

HUSBAND CAN'T FIND ENOUGH WORK

Among the hardest hit are low-paid workers in secondary businesses that depend on farming.

Wanda Belling, a 33-year-old mother of three from the tiny town of Erie, N.D., took her family to a homeless shelter in Fargo last March, after her husband's tree-trimming business failed because few of his farmer customers could afford the service. "He wasn't able to find enough work to get us through the winter," Mrs. Belling said. "Business has been bad ever since the drought last year. Sometimes we haven't been able to afford toilet paper. I left because I was worried about the children."

Often rural people show up penniless at city shelters, having exhausted their savings trying to survive on their own. "They prefer that they never be connected with the system," said Ms. Philips. "They'll stay out there as long as they can. They'll use up all their resources before asking for help. That makes it harder for us to help them get reestablished."

Maureen French, a 31-year-old woman from Fargo, N.D., did not know where to turn when she lost her clerical job at a construction company that had been hurt by downturns in oil and agriculture.

Too proud to admit she was homeless, she went by day to a part-time job at a nursing home and, by night, she slept in cars that people had left unlocked.

FRIENDS WERE ASTONISHED

With her father dead, her mother retired to Wisconsin, no relatives nearby, estranged from her former husband and unable to pay her rent, she thought she had few alternatives. Friends were astonished and uncomfortable with her homelessness, she said. "It was as if I had a social disease," she said. "They acted as if it might be contagious."

In late March, Ms. French worked up the "courage and humility," she said, to ask for shelter. She is now staying at a women's shelter in Fargo, and seeking a job that will pay enough for her to afford an apartment.

Unlike cities that have developed extensive shelter systems, many rural states are just now beginning to assess the severity of their homelessness and are finding it difficult to help the homeless people who are isolated in the countryside.

Advocates for the homeless say that because services for the homeless are scarce in rural areas, and because there is a stigma attached both to those who seek and those who provide such help, it is difficult to know just how big the problem is.

One barrier is the reluctance of some financially strapped towns and counties to help outsiders. "These communities are saying, 'We'll take care of our own, but we don't want any transients,'" said Mr. Faith of the Ohio Coalition for the Homeless. "They'll say, 'We'll put you up for a night or two but then you've got to get on down the road.'"

In Hawley, Minn., homeless advocates have housed out-of-work farm workers, displaced by automation, in a shelter on a farm. There, on a 54-acre plot of land, homeless men grow tomatoes, squash, pumpkins and sweet corn, some to eat and some to sell to pay for the electricity.

CANNOT AFFORD TO START

Clarence Schuenke tends the three cows. Mr. Schuenke is a 59-year-old former farmer and hired hand. He said he would like to raise cattle himself, but cannot afford to get started.

Mr. Schuenke lived on the streets of nearby towns and in shelters until he was referred to the farm shelter a year and a half ago. "This is like home," Mr. Schuenke said. "I go out and give the cows a bale of hay. They're awful glad to see me."

Currently, there are three other homeless men living at the farm in Hawley. "They talk about leaving all the time." said Barb Martens, who runs the shelter. "For some of them coming here is giving up. They don't want to see themselves as desperate homeless people. But that's good because that means they have enough faith in themselves to feel they can make it on their own."●

RESPONSE TO NATIONAL RIFLE ASSOCIATION REGARDING S. 747

● Mr. DECONCINI. Mr. President, following the recent introduction of S. 747, the Anti-Drug Assault Weapons Limitation Act, the National Rifle Association solicited support for opposition to S. 747 in my home State of Arizona by sending a mass mailing to its Arizona members. I was somewhat disheartened to find that the NRA had distributed a position paper containing what I believe to be inaccurate statements regarding S. 747. Consequently, at this time I would like to submit a response to the assertions of the NRA.

For many years I have considered the NRA a friend and supporter. It is unfortunate that they have found it necessary to engage in these activities. Yet, because I believe it is of the utmost importance for the public to receive the complete truth about S. 747 before making a decision to support or oppose the legislation, I am providing this response for review.

Mr. President, I ask that the attached response to the National Rifle Association's analysis of S. 747 be printed in its entirety.

The response follows:

RESPONSE TO NRA ANALYSIS OF S. 747, THE ANTIDRUG, ASSAULT WEAPONS LIMITATION ACT OF 1989

I. BAN ON SEMI-AUTOMATIC WEAPONS

NRA: An inadvertent failure to follow the requirements of S. 747 would result in a violation of S. 747.

Response: The NRA's assertion is wrong. S. 747 only punishes a knowing failure to follow the record-keeping requirements. Furthermore, the Bureau of Alcohol, Tobacco & Firearms (BATF) will promulgate regulations on procedures for maintaining legal possession following an individual's "inadvertent" failure to acquire form 4473.

II. "ASSAULT" RIFLES INCLUDES SPORTING FIREARMS

NRA: The firearms being considered for limitation are hunting rifles because of the ammunition used.

Response: The fact that a firearm uses ammunition often used for hunting does not mean that the firearm itself is strictly a hunting rifle.

S. 747 bans firearms that have become weapons of choice of drug dealers and youth gangs. S. 747 coverage includes less than 1% of the many semi-automatic firearms that are currently available.

III. VAGUE DEFINITIONS

NRA: Assault weapons are vaguely defined and the language defining firearms as being nearly identical, thereby including them in the ban, is also vague.

Response: It would be impossible to define "assault weapons" with any greater specificity than S. 747 because the bill explicitly lists the firearms to be banned.

It is necessary to ban "nearly identical" firearms so that gun manufacturers cannot, by making minor cosmetic changes in the design of banned firearms, avoid the law. The list of changes to a model listed as an assault weapon reveals that the law does not create a broad "catch-all" provision applicable to unnamed firearms, but rather provides clear direction to BATF to determine if a firearm is merely a banned model with superficial changes. This language has been developed with the help of firearms experts inside and outside of the government, including BATF. The assistance of the NRA was sought, but they declined to provide any input.

NRA: S. 747 would result in Congress deferring to the Secretary of the Treasury regarding firearms to be added to the list of assault weapons.

Response: Other proposals have included language to place discretion in the hands of the Secretary of Treasury to add firearms to the list of banned firearms with no oversight. S. 747 maintains the power to make that decision in Congress. Congress, and only Congress, should make the decision to add any additional firearms to the list of banned firearms. Is the NRA suggesting the Secretary should have unbridled discretion to add firearms to the list as has been suggested by Senator Metzenbaum and others?

IV. NO INCREASE IN PENALTIES

NRA: There is "no increase in penalties for criminal misuse."

Response: Section 5 of S. 747 enhances criminal penalties for the criminal use of a firearm by providing 5 years imprisonment "in addition to the punishment provided for the commission of any such other crime".

V. UNPRECEDENTED PAPERWORK REQUIREMENTS

NRA: Requiring a current assault weapon owner to obtain a copy of form 4473 is overburdensome. NRA further contends that any person who ever owned an assault weapon will have to acquire a copy of form 4473.

Response: This assertion is wrong. Only current gun owners would have to acquire a copy of the Form 4473. (This will be specified by regulation or by amending S. 747). Section 7 makes it criminal to knowingly fail to acquire form 4473 "with respect to the lawful transferring, . . . as required by the provisions of this chapter." S. 747 directs BATF to develop regulations on procedures for acquiring form 4473 when the original dealer can not be located.

VI. VIOLATION OF DUE PROCESS

NRA: Failure to request form 4473 is a 5 year and/or $5,000 fine, and that is an ex post facto and due process violation under S. 747.

Response: S. 747 creates a 6 month and/or $1,000 fine for a failure to meet the form 4473 requirement.

Section 6 does not create an ex post facto law. Prior purchase of the gun is not being punished. The crime is to continue possession of the weapon without acquiring a form 4473.

NRA: The proposed legislation violates due process under *Lambert* v. *California*, 355 U.S. 225 (1957).

Response: This assertion is incorrect. Under *Lambert* due process is violated when an individual is held to have violated a Los Angeles Municipal Code section requiring registration of a felon, without the felon having actual knowledge of the duty to register. Under S. 747 only a knowing violation of the legislation would be considered an offense.

Congress' Constitutional authority to create, define and punish crimes and offenses whenever necessary to effectuate the objects of the Federal Government has long been conceded to be found in Article I, Section 8, clause 17. *U.S.* v. *Fox*, 95 U.S. 670 (1878); *U.S.* v. *Hall*, 98 U.S. 343, (1879); *McCulloch* v. *Maryland*, 4 Wheat. (17 U.S.) 316 (1819).

VII. IMPOSSIBLE FORM REQUIREMENTS

NRA: A person can not easily acquire a copy of form 4473.

Response: BATF has indicated that this is not an impossible requirement. The final version of the law will not punish gun owners who, through no fault of their own, are unable to obtain a form 4473 from the original dealer. The BATF will publish regulations establishing procedures for individuals to acquire a form 4473, and to enable legal owners to meet the requirement when they are unable to locate the original seller/dealer.

VIII. CITIZENS UNABLE TO LOCATE FORMS

NRA: Law-abiding citizens will be treated unfairly.

Response: Again, S. 747 does not punish gun owners who, through no fault of their own, have difficulty obtaining form 4473. (See above response to Section VII.)

NRA: The form 4473 requirement is far worse than Senator Metzenbaum's registration requirement.

Response: Law-abiding citizens should not be forced to register and be submitted to an extensive background check. S. 747 utilizes a system already in place whenever there is a purchase of a new firearm. This system has been in place since 1968.

IX. CRIMINAL PENALTIES

NRA: The criminal penalties in S. 747 already exist, and the penalties resulting from S. 747 are excessive.

Response: S. 747 provides for an enhanced penalty of 5 years for using an assault weapon, "in addition to the punishment provided for the commission of any such other crime." Clearly this penalty did not previously exist since there has never been an offense for assault weapon use.

The hypothetical situations provided by the NRA to argue the excesses of the penalties associated with S. 747 are unrealistic. For example, a person could not be prosecuted for possession or transportation of an assault weapon under section 2 because weapons that are "lawfully possessed before the effective date of the subsection" are not covered. The information provided by the NRA leads one to assume that the defendant has legal possession of the weapon on the date of enactment.

The illegal use of an assault weapon is a severe violation and should result in a severe penalty. Because the form 4473 requirement will be easily met, those penalties resulting from failure to comply with S. 747 requirements would be appropriately severe.●

TERRY ANDERSON

● Mr. MOYNIHAN. Mr. President, today marks the 1,515th day of captivity for Terry Anderson in Beirut.

I ask that an October 11, 1987, article from Editor and Publisher magazine be printed in the RECORD.

The article follows:

WHAT ABOUT TERRY ANDERSON?

ASSOCIATED PRESS CORRESPONDENT'S SISTER CRITICIZES SECRETARY OF STATE SHULTZ FOR NEGOTIATING THE RELEASE OF DANILOFF BUT REFUSED TO MEET WITH HER

(By Andrew Radolf)

While Secretary of State George Shultz was engaged in final negotiations to secure the release of journalist Nicholas S. Daniloff from the Soviet Union, he was refusing to meet with the sister of another journalist who's been held hostage in Lebanon for 18 months.

Peggy Say told *E&P* that she sought a meeting with Shultz to discuss the plight of her brother, Associated Press chief Middle Eastern correspondent Terry Anderson, while Shultz was in New York City for the U.N. General Assembly. Anderson has been held captive by the Islamic Jihad (Holy War) since being abducted by gunmen in West Beirut on March 17, 1985.

Say said she was told by Shultz's aides that he was too busy to meet with her.

Shultz did find the time, however, to play tennis with Ivan Lendl while he was in New York City. His tennis match with Lendl was reported on the local TV newscasts.

While Shultz was in New York for the United Nations, he was also finalizing the deal to release Daniloff with Soviet Foreign Minister Eduard Shevardnadze.

Say also has been having difficulty recently in securing meetings with other top administration officials. In the past, she has met with President Reagan and Vice President Bush, although she said it took her over a year to get those meetings.

However, her most recent contacts with the administration have been with lower level White House aides whom she declined to identify.

The State Department's public affairs office would not comment on Say's allegations.

Daniloff, Moscow correspondent of *U.S. News & World Report*, was arrested August 30 by the Soviets on spying charges. His being taken into custody was regarded as a retaliatory move for the arrest on espionage charges of Gennadi Zhakarov earlier that month in New York by the FBI.

Daniloff's release was secured a month later after intense negotiations, which also saw Zhakarov's return to the Soviet Union.

The Islamic Jihad's stated aim in kidnapping Anderson and several other westerners was to pressure the United States government to in turn pressure Kuwait to release 17 of Jihad's members who were imprisoned for trying to overthrow the monarchy.

The Jihad have executed two of their captives, but they also have released three others—most recently Father Martin Jenco who they said would be the last captive to be let go in a gesture of good will.

The Reagan Administration's position from the time of Anderson's capture has been that it does not negotiate with terrorists.

Say noted that the Islamic Jihad's demand for the release of the 17 held is not necessarily a non-negotiable position.

"By never negotiating, we held them to their original demand. I believe they're ready to settle for something else," Say stated.

Say said she also recently asked the United States to attempt to contact the Jihad via a letter to be published in Lebanon's newpapers. The administration rejected her request, she said, again on the grounds that they won't negotiate with terrorists.

"In every hostage situation they found a way to deal without having to admit it," she commented. "There's something very wrong" about the Reagan Administration's refusal in her brother's case, she added.

"Terry's a Marine Corps and Vietnam veteran. He put his ass on the line for this country. I think it's shameful they don't help him."

In the past, the Associated Press has asked that stories on Anderson leave out references to his military background out of concern it would lead to harsher treatment by his captors. But Say said she learned from Jenco that the Islamic Jihad knows Anderson is a former marine.

Despite getting a cold shoulder from the administration, Say expressed her hope that its successful negotiations for the release of Daniloff will result in public pressure for a similar effort to free her brother.

"We're hoping that kind of (negotiating) effort will take place now," Say said in a telephone interview. "The administration is under fire from a lot of people right now. I'm getting calls from all over the country from people who are writing their congressman and asking the same question—Why was there never the same effort put forth for these guys (in Lebanon)?"

Say anwered her own question. "Obviously, it was in the political best interests of

the U.S. to pursue Daniloff's release. We have no political best interests in Lebanon, and there had been no public outcry.

Say also rejected U.S. contentions that Anderson and the others were being held by some shadowy group and that there was really no one to negotiate with.

"Why don't you ask Terry Waite? He certainly didn't take long to contact them," she said. Waite is an emissary from the Archbishop of Canterbury who has made several trips to Beirut in an effort to secure the captives' release.

Say, speaking in an October 2 E&P interview, remarked that her brother had steadfastly refused to cooperate with his captive in any way, including in the making of videotapes. She said that refusal resulted in his being treated more severely, but that ultimately his captors "respected him for it."

However, there is strong indication that Daniloff's release may have embittered Anderson and convinced him to be more cooperative.

On October 3, the Islamic Jihad released a videotape in which Anderson sharply criticized the Reagan administration for ignoring his case while it devoted full-scale diplomatic efforts to the release of Daniloff.

Say, on hearing the videotaped message, told the press her brother "would not have been coerced to say something that is not the truth. I know that whatever Terry said would be what he felt.

On the tape, Anderson protests the "unjust and unfair treatment of our situation." He criticizes the Reagan administration for its "propaganda and bombast" in announcing the freeing of Daniloff "who had been a prisoner only a short time" and assails its refusal to negotiate in his case.

"How can any official justify the interest and attention and action given that (Daniloff's) case and the inattention give ours," Anderson stated.

Say's efforts to free her brother have taken her to the Middle East, although not Lebanon itself, and she has met with both Syrian and Cypriot officials who had contacts with Lebanese Shiite groups. Say also met with Margaret Papandreou, the American wife of Greece's prime minister, because she had good relations with Syrian President Hafex al-Assad.

Both Assad and Nabih Berri, leader of the Amal Shiite in Lebanon, have made statements that "they could be helpful" in securing her brother's release, "but they have no incentive," Say said. "The U.S. did not acknowledge their help in the TWA negotiations and Berri said certain promises to him were not kept."

Say had high praise for AP, saying the news service "had been terrific to me" in helping her cause. She said AP had paid the cost for all her travels and has been "very supportive emotionally."

Say works closely with AP Washington bureau chief Charles Lewis, commenting the two meet regularly to work on Anderson's case.●

THE EXCITEMENT OF HISTORIC MESILLA, NM

● Mr. DOMENICI. Mr. President, one of my favorite spots in the State of New Mexico is the historic community of Mesilla, which is located just outside Las Cruces in the southern part of our State.

It is a wonderful community and a fascinating place for visitors.

The Mesilla's plaza is certainly one of the most charming plazas in the entire United States, surrounded by many traditional New Mexican style adobe buildings, including San Albino Church.

And certainly, some of the very best food in the entire Southwest is available in the restaurants of Mesilla.

New Mexicans know about Mesilla. And, fortunately, more and more Americans are learning about Mesilla. Just a few days ago, the New York Times carried a most interesting article about Mesilla.

Because I am convinced this article will be of interest to anyone planning a trip to New Mexico, I ask that a copy of this article be printed in the CONGRESSIONAL RECORD.

The article follows:

[From the New York Times, Apr. 23, 1989]

HISTORIC ADOBE, MYTHS OF THE OLD WEST

(By Paula Panich)

On the plaza in Mesilla, a village of 2,000 in southern New Mexico's wide, rich Rio Grande valley, a sharp-eyed visitor can delight in the details of its carefully restored Territorial architecture. Along the way, shops, art galleries and restaurants add to the mix of history and tourism.

The style of the plaza's buildings is a reflection of its mid-19th-century origins, when this Mexican settlement became part of the United States. In the 1850's, Mesilla was briefly the largest town between San Antonio and San Diego, and, after the Civil War, the town's fortunes were again on the rise. When abloom with prosperity and importance, the town was the site of a delightful union: the marriage of indigenous adobe mud buildings and Greek Revival architecture. The resulting Territorial style remains here, and Mesilla's buildings are intertwined with Billy the Kid stories and other harrowing tales of the taming of the West.

The plaza has been the heart of Mesilla since its beginning, when the first mestizo settlers (people of mixed Spanish and Indian heritage) arrived in 1848.

The original buildings on the plaza changed and prospered along with the town. Today the visitor sees, thanks to meticulous restoration, the elements of the New Mexico Territorial vernacular—rectangular adobe buildings in the colors of the earth with deepset glass windows and multipaned doors capped with glossy white pedimented lintels. Commonplace enough in other parts of North America in the mid-19th century, these building materials—window glass and sawed lumber—were revolutionary in New Mexico, having traveled for hundreds of miles by wagon to the territory.

A good place to begin an architectural and shopping tour of the Mesilla Plaza is on Calle Principal, at the northwest corner of the plaza. You'll see the unified sand-colored adobe facade of a group of buildings known as the Barela-Reynolds property. It was built in the 1850's by the Barela family, who were lawmen, shopkeepers and operators of a stage and freight business. The graceful front of the compound is punctuated by nine doors and windows framed in white and crowned with peaks in the Territorial manner. Looking almost like a classic Old West cutout, the parapet of the crisp-looking facade is topped with brick coping, another common characteristic of the New Mexico vernacular. Today you can shop for folk art, souvenirs and clothing in three shops, La Zia, Del Sol and the Galeria on the Plaza (the latter is housed in a contemporary addition to its 19th-century neighbors to the south) fronting the square.

The plaza is so compact you can visit every shop. Continuing south, you'll see El Platero (The Silversmith). Before you go on, look carefully at the metal facade of this store—it is tin, stamped to look like masonry. The Reynolds family ordered the Italianate Bracketted storefront by mail in the 1890's, and it arrived in due course by railroad. Above the entry is a faded, painted sign, Mesilla Valley Store, and higher, above the tin flourishes near the top of the facade, is the name J. Alidib, Prop., a reference to a subsequent storekeeper. Inside, El Platero is stocked with souvenirs of New Mexico and silver jewelry made in the region.

Next to El Platero is the Mesilla Book Center, a crucial stop in a tour of the Mesilla Plaza. The shop's white exterior has a peaked parapet with brick coping, and the interior is chockablock with books on New Mexico and the Southwest. In particular, you can take a look at books about the Mesilla Valley. Mary Bowlin, owner of the bookstore, grew up on the Navajo reservation, where her mother was one of the first Anglo nurses to serve the tribe. The shop has a separate room of the very best of children's literature, along with an impressive collection of books on the Southwest for the young, many in Spanish.

Not all the buildings on the plaza, or in Mesilla itself, are as carefully restored or as esthetically pleasing as these two historic properties, but are interesting nonetheless. A case in point is the oldest documented brick building in New Mexico, next to the Mesilla Book Center. It now houses El Mariachi, a souvenir shop. The well-worn bricks of this sturcture were made from a local kiln in 1863 for the builder, a wealthy French merchant. The building was quite unusual in New Mexico, where bricks made in the territory were not widely available until the final two decades of the last century. Two of the building's early owners were murdered here in the 1860's—this was the Wild West, after all.

If you visit Mesilla soon you may be able to see just how adobe buildings were constructed more than a century ago. Across from El Mariachi is a building site—a ruin, really—with its mud-and-straw adobe bricks exposed. Straw was used for centuries in an attempt to stabilize the mud in adobe bricks. In modern times, all but the most meticulous preservationists use asphalt emulsion for the same purpose.

On the south side of the plaza is a low building—El Patio, a Mexican restaurant and bar—where the young people of the Mesilla Valley gather for rock music. El Patio is part of what was Mesilla's transportation block in the early days, home to the San Antonio Mail as well as the Butterfield Overland Mail and Stagecoach line. The Mission-Revival-style parapets and the brick structure on the northeast portion of the block date from the 1930's, replacing buildings destroyed by fire at the turn of the century.

La Posta, on the southeast corner of the plaza, is the restaurant that sparked the beginning of Mesilla's tourist industry in 1939. La Posta was once the Butterfield Stage Station, and is now honeycombed with dining rooms. The entry is a covered atrium and home to an aviary with 14 birds and an aquarium with four red piranhas, but it was

once an open patio where folks gossiped around the town pump.

The Billy the Kid Gift Shop on the plaza's east side, a simple Territorial building with dentil brick coping, recalls the killer's brief stay in Mesilla. When the Kid reached the town in March 1881, it looked as if it might be the end of the line for him. It was here the Kid was tried for murder and sentenced to hang. Heavily manacled, he was taken by wagon from Mesilla north to Lincoln County, where he escaped before he was finally shot down.

After you've contemplated the deeds of this badman, you might need to rest and refresh yourself at the Double Eagle Restaurant, the star of Old Mesilla. You'll see it immediately—its refined, classic New Mexican portal graces the length of the building facing the plaza; its entry is guarded by heavy, post-Civil War cast-iron gates. Inside, the Maximilian Room shines with a Baccarat chandelier, its light dancing from the gold-leaf ceiling. Its 30-foot bar is flanked by four Corinthian columns in gold leaf. Seven other rooms, tributes to local, state and Mexican luminaries, are filled with turn-of-the-century furniture and art. The elegant, small Carlotta Room, named for the Mexican Empress, is reputed to be haunted by starcrossed teen-aged lovers who died in the house in the mid-19th century. Among the antique paintings on the wall is a photo with a ghostlike image taken by a recent patron. The accompanying letter suggests the shadowy figure seated with dinner guests at the Carlotta Room's dining table just may be one of the resident phantoms.

Just a minute's walk from the Double Eagle restaurant, the twin-spired Romanesque-style structure of San Albino Church dominates the north end of the plaza. Dedicated in 1906, the church is a legacy of Archbishop Lamy (immortalized by Willa Cather in "Death Comes for the Archbishop"), who sent many of his fellow French clerics to New Mexico in the 19th century.

This delightful Romanesque-meets-California Mission-style building replaced Mesilla's original 1860's adobe church. Above the church's door, you can see the Mission-style parapet on the facade between the two belfries. Unfortunately, the church is no longer open at all times to visitors, but it is open an hour before and after scheduled services. (Mass is said daily at 7 A.M. in Spanish; check for other weekend services.)

For art and antiques, don't miss the collection of shops and galleries just off the plaza. North of San Albino Church, on Calle de Guadalupe, for example, is the impeccably restored Adobe Patio Gallery, also the home and studio of the artist Carolyn Bunch and her husband, Henry. This adobe is a beauty—the green door of the gallery is surrounded by 18 blue-trimmed side lights or small windows. In these parts the color blue, when applied to windows and doors, is said to keep evil spirits away. When Henry Bunch began restoration, which took six years to complete, he was faced with dirt floors and collapsed walls. He managed to keep the room arrangement of the original 1850's building; the front door opens to a central hallway, known as a zaguan. The work of Carolyn Bunch and other artists hang in the zaguan and on the other soft adobe walls of the gallery. Of particular interest are the paintings and ceramics of Susi Nagoda-Berquist, an artist who takes a lively and whimsical view of Indian folklore and Catholic saints alike.

Across Highway 28, within a few minutes' walk of the plaza, is the Gadsden Museum, a private museum run by Mary Alexander, great-granddaughter of Col. Albert Jennings Fountain, one of Mesilla's pioneers.

The museum is housed in a beautifully restored Territorial building, an ancestral home of the family. Mrs. Alexander won't permit visitors to roam at will, but she will guide visitors along the several front rooms filled with family memorabilia, most of which is intertwined with the history of the Mesilla Valley. (The tour will take at least an hour.) Among painted teacups and the pottery and basketry of New Mexico's Pueblo Indians are paintings of local scenes by two or three generations of Fountain men. Uniforms and dresses worn by family members more than a century ago are also on display. The family's collection of santos, religious figures made by early New Mexican woodcarvers, is outstanding.

Mrs. Alexander will show too what are said to be the relics—brown rosary beads, a brass bell, a cowhide book, among other things—of the Hermit of New Mexico, Giovanni Maria d'Agostino. The Italian-born pilgrim was known by a variety of names throughout his life, and at the Gadsden Museum he is called Juan Maria Justiniani. The hermit, who had a reputation as a holy man and healer, came to Mesilla in 1867. D'Agostino was found dead in 1869 at his retreat in the Organ Mountains northeast of town. The identity of his murderer remains a mystery.

Mesilla is still a farming community, and the Rio Grande continues to set the pace of life here for many. Walking on the outskirts of town at dusk, past irrigated fields of chili or onions (depending on the season) and rows of pecan trees, is one of the Mesilla Valley's greatest pleasures. The sunsets here are enough to impress even a veteran New Mexico visitor. The colors in the fading sky seem lit from within—illuminated peach and heliotrope, ringed with charcoal. The twilight is short, and night falls quickly.

FOR OLD COWHANDS, A VILLAGE ON THE RIO GRANDE

GETTING THERE

Mesilla is about an hour's drive west on Interstate 10 from the El Paso International Airport in El Paso, Tex. Take Exit 140, turning south for one mile to Highway 28. From this two-lane highway, turn on Calle Santiago or Calle Parian to get to the plaza—you'll see the spires of the San Albino Church rising above the one-story buildings.

On Mondays, some restaurants and shops are closed. Most open at 11 A.M. during the week and at noon on Sunday. Shops close at 5 or 5:30.

A copy of the bright yellow Historic Old Mesilla brochure, available at any merchant on the plaza, lists shops and restaurants, and includes a brief account of the town's history.

DINING

The Double Eagle Restaurant (505-523-6700) is open for lunch and dinner daily and for brunch on Sundays, with good, reliable Continental food. Dinner entrees average about $14; the roast duck ($13.25) and Chateaubriand for two ($36.50) are recommended. On the plaza.

Peppers (505-523-4999) is Mesilla's new, chic eatery with Santa Fe-style food. Lunch entrees range from chicken enchiladas ($4.95) to shark fajitas ($6.95). For dinner, try the chile relleno of fresh sea bass, served with tropical fruit salsa, ($8.95). Open Monday through Saturday, 11 A.M. until 10 P.M. On the plaza.

La Posta (505-524-3524) is open for lunch and dinner every day except Monday. Fifty years ago La Posta's signature tostados compuestos—toasted corn tortillas shaped into cups and filled with chile con carne—were 60 cents, as was a T-bone steak; they are $5.40 and $11.25 today. This is Mesilla's landmark restaurant; on the plaza.

ACCOMMODATIONS

Mesilla itself has only one place to stay, although nearby Las Cruces has an assortment of standard motels. Highly recommended is the Meson de Mesilla (1803 Avenida de Mesilla; 505-525-9212), a small bed-and-breakfast inn within walking distance of the plaza. The adobe two-story inn was built a few years ago in a contemporary, Territorial-inspired style by Chuck Walker, a transplant from San Diego. The chef, Bobby Herrera, has built a solid reputation for Meson de Mesilla's fine restaurant.

Rates at the 13-room inn range from $45 for a single bed to $75 for a double room with a fireplace. A swimming pool is open in summer. Breakfasts are included in the price of the room (the restaurant is closed to the public for this meal).

RECREATION

Mesilla is only a 10-minute drive from the city limits of Las Cruces. Write for a brochure detailing the cultural and recreational opportunities in the area, such as boating and golf: Las Cruces Convention and Visitors Bureau (311 North Downtown Mall, Las Cruces, N.M. 88001).

The American Southwest Theater Company (800-525-2782) stages many of the plays of the Tony-award winning Mark Medoff, New Mexico State University's resident playwright. (Mr. Medoff wrote, among other plays, "Children of a Lesser God.") The season runs from September through April.

The Visitors Center at Fort Selden State Monument, only a 20-minute drive from Mesilla, chronicles the rise and fall of the military compound. Abandoned in 1889, the fort was briefly the boyhood home of Gen. Douglas MacArthur.

The nearby Organ Mountains are a popular hiking spot, with dozens of trails for the experienced and novice alike. Contact the Las Cruces Convention and Visitors Bureau (505-524-8521) for a trail map.

TOURS AND EVENTS

Mesilla receives about 50,000 visitors a year, and is particularly crowded on Mexican Independence Day (Sept. 16) and Christmas. Each December, several historic private homes in Mesilla are open for a house tour to raise funds for the Las Cruces Symphony. Details are available at 505-646-3709.

The Mesilla Plaza is the site for several community religious festivals each year. The feast day of the village, Día de San Albino, is held on the Sunday nearest March 1. A procession on the plaza celebrates the new growing season and the first water into the irrigation ditches from the Rio Grande.

On Dec. 11 and 12, Indians at nearby Tortugas celebrate the Festival of Our Lady of Guadalupe. The last day is spent in traditional Matachin (Indian) dancing.

At Christmas, 2,000 luminaries or farolitos (candles placed in sand in small paper bags) illuminate the plaza and the Church of San Albino in one of the community's most cherished celebrations.●

THE ALBUQUERQUE CIVIL AIR PATROL'S T-34'S

● Mr. DOMENICI. Mr. President, so many fine volunteer groups throughout America have demonstrated their great loyalty and pride in our Nation. They are essential to what America is all about.

But, Mr. President, I am convinced there is no group with greater loyalty and pride than the Civil Air Patrol. It is a great organization, and one of its most dedicated squadrons is the one that flies out of Kirtland Air Force Base in Albuquerque, NM.

The men and women who give their time to the Albuquerque Squadron are charged with a variety of challenges: Air search and rescue missions, cadet leadership development, and aviation and space education. Their mission includes low-level route surveying for the Air National Guard, assistance to the Customs Service, and air support for the U.S. Forest Service. More than 250 senior and cadet CAP volunteers who belong to the Albuquerque Squadron are the reason that their squadron has been such a success.

These dedicated volunteers use two mountain search and rescue aircraft. These aircraft are the Beechcraft T-34's, a variation of the popular general aviation plane known as the Beechcraft Bonanza.

Over the years, these T-34's have proved so very effective in providing search capability throughout the mountainous regions of New Mexico. The Albuquerque CAP volunteers know that the performance, maneuverability, and dependability of these aircraft have been outstanding in high mountain searches. These planes also have outstanding visibility.

Using these T-34's—and this is vitally important—the Albuquerque Squadron has saved more than 10 lives and found numerous aircraft, hikers, and hunters who had been missing.

As a result of private contributions in both time and money, the Albuquerque CAP Senior Squadron 2 has maintained these two T-34's for more than 15 years. The State of New Mexico has helped to support these aircraft for over 10 years.

Frankly, these planes are the heart of the Albuquerque Squadron, the pride of its membership. They are the symbols of the loyalty these men and women have shown to the mission of the Civil Air Patrol.

Recently, the national executive committee of the Civil Air Patrol decided to modernize the CAP aircraft fleet. It decided to replace these older T-34's throughout the country with newer aircraft. The national executive committee decided to sell these two planes.

The pending sale has, very frankly, angered the volunteers of the Albuquerque Squadron because the membership knows how magnificently these planes have performed over the years for the benefit of the people of New Mexico and the Nation.

I and my colleague from New Mexico, Senator BINGAMAN, have asked the national executive committee to postpone its action for a year. The committee has agreed. During this time, the members of the Albuquerque Squadron intended to explore options, including the possible purchase of the two T-34's.

I applaud their dedication, and I am hopeful they will be successful.

They are a great group of individuals, and I commend them on their dedication, pride, and sense of loyalty to a very important mission.●

ESSAY BY LAUREN GARRETT ON KATHERINE STINSON OTERO

● Mr. DOMENICI. Mr. President, I rise today to present an essay written by Lauren Garrett, of Austin, TX. Lauren chose to write about a famous New Mexican for this essay which was entered in a "National Historic Day Contest."

The late Katherine Stinson Otero made significant contributions to the fields in which she endeavored. Born in 1891 she continously demonstrated by example her dedication to excellance and spirit of adventurism. In Santa Fe many of the houses she designed stand today as monuments to her successful career as an acclaimed southwestern architect.

Before she moved to Santa Fe and married, Katherine Stinson was an accomplished mail and stunt pilot and the first person to reach many milestones in aviation. She was the first to fly in Japan and China and the first woman to perform the loop the loop. Ms. Stinson, along with her sister Marjorie, also founded Stinson Field in San Antonio, TX, which was used as a training field for allied pilots during World War I.

After World War I where Katherine Stinson drove an ambulance for the Red Cross in France, she moved to Santa Fe. There she met and married Miguel Otero, Jr., whose father had been the territorial Governor of New Mexico. Though lacking formal training Katherine Stinson Otero soon became intrigued by the distinctive architecture of New Mexico. She began to design her own houses and soon become reknown for the combination of Spanish and native American styles she incorporated into her architecture. Many of her homes won her national recognition for their award winning designs.

Mr. President, I wish to have printed Lauren Garrett's award winning essay in the CONGRESSIONAL RECORD. Not only is her paper a fine tribute to Katherine Stinson Otero, who truly deserves our recognition, but also sets a fine example for other seventh grade writers.

The essay is as follows:

KATHERINE STINSON: THE SCHOOL GIRL WHO OUTFLEW THE MEN

(By Lauren Garrett, individual project, junior division, grade 7)

DESCRIPTION OF RESEARCH

I first discovered Katherine Stinson in a series of articles published last year in the Austin *American Statesman*. From there, I went to the library to find a more indepth portrait of Katherine's life. This was found in several books about women in aviation before World War I. I used the bibliographies to start a chain of correspondence, to the curator of the National Air and Space Museum, and to the Ninety-Nines, International Women Pilots. They in turn sent me information including an obituary which led me to Katherine Stinson's niece, Jacqueline Stinson Delano. She agreed to furnish information about her famous aunt and gave me the names of several individuals who might have more information about Katherine's architectural career. I then contacted Metta Nicewarner, Head of Special Collections, Texas Woman's University, Mr. Arthur Wendt, manager of Stinson Field, and Cynthia Beeman, who works for the Texas Historical Commission. All of these people and I exchanged information and leads. I also contacted several state agencies and archives in New Mexico and Texas. At least ninety percent of the people I wrote sent a reply giving leads. Jacqueline Delano filled in the missing details that other researchers were unable to locate. She made it possible for me to use her family photographs and to locate Mary Brennan, who owns the award winning Dorothy McKibbin House which was designed by Katherine Stinson Otero in 1936. Mrs. Brennan was very cooperative in sharing information about her home.

A six foot tall, three dimensional triangular plywood tower became the base of my project. I found a gold colored parachute to cover the base and mounted all documents, letters, captions, and photos on foamcore, These were later mounted three dimensionally on the covered base. All of the titles were done with various sizes of adhesive letters. After everything was complete, I placed a model of a Curtiss JN-4, "Jenny", the airplane Katherine Stinson used to fly her fund raising tour for the Red Cross during World War I, on top of the display.

RESEARCH

Katherine Stinson's place in history has been assured by her accomplishments in two areas of expertise. During the birth of human flight, Katherine was a pioneer aviatrix. She did such stunts as the loop the loop. She was the first woman to skywrite and was the first person, male or female, to night skywrite. She was criticized for her daring maneuvers, but less than two years later the army was using her methods to train fighter pilots for combat. Due to ill health, Katherine could not continue flying, but she did not give up. Instead she designed many acclaimed homes without the advantage of formal training. For these reasons, I chose Katherine Stinson to be my National History Day topic.

Katherine Stinson was born in Mississippi, February 14, 1891. As a child she wanted to become a pianist and study in Europe, but her dream was postponed because her family was not able to afford her dream. She then began to read about the prize money early aviators were making. This

seemed to be a way she could earn the money to fulfill her dream. She convinced her parents to sell her piano so she could use the money for her flying lessons. Katherine persuaded Max Lilly to teach her to fly at his school at Cicero Field in Chicago in May of 1912. She soloed for her license on July 16, and was granted Certificate number 148, on July 24, 1912, in a Lilly Wright, the fourth woman in the world to do so.

During her six year career, she set many records. She was the first woman to loop the loop, to fly airmail, to practice skywriting, to skywrite at night. She was also one of the first women to fly in Canada and was the first person to fly in Japan and China.

As the United States entered World War I, Katherine volunteered her services to fly for her country. She was quickly rejected because of her sex. During the war Katherine Stinson flew airmail on several different routes. She also set and broke many distance records.

In 1916, Katherine and her sister, Marjorie, opened an airfield and training school in San Antonio, Texas. They had been flying practice runs from the parade grounds at Fort Sam Houston for two years, but the army wanted the space for troop training. Appropriately named Stinson Field, It has become the second oldest general aviation field in the nation. Most of the pilots who flew under the Canadian flag during World War I were trained at Stinson Field by the Stinson family.

After being rejected for her flight services, Katherine volunteered to help the Red Cross. She contracted tuberculosis as a Red Cross ambulance driver in France. She returned to the United States, ending her flying career and spent the next nine years in sanitariums in New York State and Santa Fe, New Mexico. In Santa Fe she met John Gaw Meem, an architect, and Dorothy McKibbin as fellow patients at Sunmount Sanitarium. The sanitarium was owned by Meem's brother. The three of them became interested in the native architectural styles which incorporated Spanish and Native American Indian features. When released from the sanitarium, Katherine married Miguel Otero Jr., the son of the last territorial governor of New Mexico, in 1927. Katherine went on to design many award winning homes though she had no formal architectural training. She designed a home for her friend, Dorothy McKibbin, who was known as "The Gatekeeper" of the Manhattan Project. Mrs. McKibbin was one of the first people hired by J. Robert Oppenheimer as he was staffing the Los Alamos center to develop the atomic bomb. Dorothy's home was the only "Safe House" in Santa Fe used for meetings and social gatherings of the atomic scientists during World War II.

Katherine Stinson Otero was one of three individuals awarded the title of Elder Statesman of Aviation by the National Aeronautical Society. The title was established in 1954 by the NAA to honor Americans over the age of 60 who have contributed significantly throughout a period of years of aeronautics.

Mrs. Otero became ill in 1959 of an undisclosed illness and lapsed into a coma in 1962. Her husband, Miguel, hired around the clock nursing care and kept Katherine at home until her death on July 10, 1977. Miguel Otero Jr. died shortly after her, having suffered a stroke the year before.

CONCLUSION

Katherine Stinson was truly a great aviatrix during the birth of human flight in America. Despite her small stature she became an expert pilot and she was determined that she could do anything a man could do. She found many opportunities to prove it during her long and eventful flying career. As the first of the four Stinson children to earn a pilot's license, she inspired her siblings to follow in her footsteps. A remarkable family of children, with their mother as business manager, they went on to international fame. Katherine received many medals and awards from both the United States and foreign countries. Her name deserves an honored place in the history of early American aviation.

ANNOTATED BIBLIOGRAPHY

"Aerial Mail Service in Canada." The Curtiss Flyleaf July 1918:13. This article gives facts about Katherine's aerial mail career in Canada. It also gives specific dates of flights Katherine made.

"Aviation School May Lease Land From City Dads." San Antonio express 28 Jan. 1916, morning ed. This article discusses how Katherine and Marjorie Stinson went about leasing land for Stinson Field.

Bilstein, Roger and Jay Miller. Aviation in Texas Austin: Texas Monthly Press 1985: 4, 14-16. Briefly describes Stinson's family's accomplishments: Stinson School of Flying, Katherine's flights, Marjorie's flight instructor's career.

Boughner, Fred. "Katherine Stinson First Woman Mail Pilot." Linn's Stamp News 3 Jan. 1977: 54. This gives facts about Katherine's years as a mail pilot.

"The Stinsons: First There Was Katherine." Linn's Stamp News 27 Dec. 1976: 26. This gives a small history of how Katherine got her pilot's license.

"The Stinsons: Flying Sisters End Career." Linn's Stamp News 17 Jan. 1977: 55. This article talks about Katherine's air mail career and then how Marjorie and Katherine end their careers.

Brennan, Mary. Personal interview. 18 Jan. 1989. Owns Dorothy McKibben House designed by Katherine Stinson. She agreed to send photos of her home.

Letter to the author. 22 Jan. 1989. She owns the Dorothy McKibben House designed by Katherine Stinson Otero and sent photographs and history of the home.

Culver, Edith D. Talespins A Story of Early Aviation Days Santa Fe: Sunstone Press: 100-103. This talks about Katherine's air mail flights.

Delano, Harvey II. Personal Interview. 21 Jan. 1989. Katherine Stinson's great nephew, Jacqueline Stinson Delano's son, who possesses the Stinson family photos. He is lending me pictures of Katherine after she quit flying.

Delano, Jacqueline Stinson (Mrs. Victor). Personal Interview. 17 Dec. 1988. Established relationship to Katherine and willingness to help me with my project.

Letter to the author. 16 Jan. 1989. Katherine Stinson's niece. Sent me original articles about Katherine and a copy of The Stinsons, a book, autographed.

"Early Woman Pilot Dies at 86 in SF." New Mexican [Santa Fe] 10 July 1977. This is an obituary of Katherine Stinson Otero. I located Katherine's relatives with the help of this obituary.

Encyclopedia of Associations 1989 ed.: 14. I located the Ninety Nines (International Women Pilots) address.

"Field Suits the Aviators." *San Antonio Express* 19 Jan. 1916, morning ed. This talks about how Marjorie Stinson picked the tract of land where Stinson Air Field will be placed.

"Girl Aviator Thrills the Japanese." *Commercial Appeal* [Memphis, Tenn.] 28 Jan. 1917. This article tells about how Katherine Stinson toured Japan and met the Japanese royal family.

Gregory, Jane. "Lady Engineers Her Course." *Long Island Press* 17 July 1972. This article says it's about Katherine Stinson, but truly gives facts about Marjorie Stinson.

Hall, Rosanna. "Aviatrix Given Final Air Salute." *New Mexican* [Santa Fe] 12 July 1977. This article describes Mrs. Otero's funeral.

Hodgman, Ann and Rudy Djabbaroff. *Skystars, The History of Women in Aviation* Harrisonburg: R.R. Donnelley and Sons, Inc., 1981: 32-35, 60-61, 181-182. This book looks at Katherine Stinson's life compared to other aviators of her time.

"Husband's Senatorial Candidacy Again Brings Katherine Stinson Otero Into Public Eye." *New Mexican* [Santa Fe] 27 Oct. 1936. This article talks about how Katherine's husband campaign affected her.

"Katherine Stinson, Noted Aviation Pioneer." *New Mexican* [Santa Fe] 17 March 1928. This article sums up Katherine's accomplishments as a pilot.

"Katherine Stinson, The Flying Schoolgirl." *FAA Aviation News* Nov. 1971: 10-11. This article discusses Katherine's nonstop flight from San Diego to San Francisco.

Kopitzka, Bob. Letter to the author. 12 Jan. 1989. Curator, History of Aviation Collection, University of Texas at Dallas. Sent me information about Katherine Stinson.

Logan, Lisa. "Corporate Aviation." *San Antonio Magazine* May 1981: 59-62. This article talks about airports in general. It mentions Stinson Field's history.

Lomax, Judy. *Women of the Air.* New York: Dodd, Mead and Co., 1986. This gives a short history of early women in aviation, including Katherine Stinson.

Lowry, Jack. Letter to the author. 30 Dec. 1988. Managing Editor, *Texas Highways Magazine.* Sent me what *Texas Highways* had on Katherine Stinson.

May, Charles P. *Women in Aeronautics* New York: Thomas Nelson & Sons, 1962: 73-76. This gave me Katherine's license number and where she received her license.

Nicewarner, Metta. Letters to the author. 19 Dec. 1988, 2 Jan., 21 Jan. 1989. Head of Special Collections, Texas Woman's University at Denton. Sent me photocopies of pictures that are available at TWU, as well as information in their archives.

Nolan, William F. "The High-flying Schoolgirl." *Sports Illustrated* 18 Oct. 1965: W3. This article gives a good short biography of Katherine Stinson.

Oakes, Claudia M. Letter to the author. 6 Dec. 1988. Curator, National Air and Space Museum, Smithsonian Institution. Sent microfilm of photos available and other information pertaining to Katherine Stinson.

United States Women in Aviation through World War I Washington: Smithsonian Institution Press, 1973: 33-35. This is a short look at Katherine's aviation career.

Oualline, Virginia. Letter to the author. 15 Dec. 1988. Archivist of the Ninety-Nines, International Women Pilots. Sent me obituary and other material from their files.

Overstreet, Kathy. "Kate Stinson Was Flying Schoolgirl." *San Antonio Light* 3 May 1981. This article gives a brief look at Katherine Stinson.

Photographs: From the personal collection of Mary Brennan. Original 1930's photos of the Dorothy McKibben House designed by Katherine Stinson Otero.

Photographs: From the personal collection of Lauren Garrett. Taken during a visit to Stinson Field, 21 Dec. 1988.

Photographs: Photographs from the Texas Woman: A celebration of History Exhibit, housed in the Library of the Texas Women's University in Denton, Texas. We ordered pictures here, including an official program of one of her flights in California.

Photographs: The University of Texas Institute of Texan Cultures at San Antonio. We located two photos here, one of Stinson being sworn in to fly the mail and the other a picture of the Stinson Flying School circa 1916.

Pratt, Boyd, ed. *Directory of Historic New Mexico Architects* Albuquerque: University of New Mexico Press 1988: 81. This article states that Katherine did not have professional training as an architect.

Reeve, Agnesa. Letter to the author. 28 Jan. 1989. Wrote the Stinson Otero biography published in the *New Director of Historic New Mexico Architects.* She did not send me the the information requested but did suggest other people to contact.

Rogers, Mary Beth. *Texas Woman A Celebration of History* Austin: Texas Foundation for Women's Resources, 1981: 12-13. This gives a brief history of Katherine's life.

Rogers, Mary Beth, Sherry A. Smith and Janelle D. Scott. *We Can Fly, Stories of Katherine Stinson and Other Gutsy Women* Austin: Texas Foundation for Women's Resources, 1983: 11-23. This gives a good biography of Katherine Stinson until 1920. Then it gives small bits of information until her death at the age of 86.

Salazar, Richard J. Letter to the author. 12 Jan. 1989. Chief of Archival Services, New Mexico State Records Center and Archives. Sent me what he had on file about Katherine Stinson.

"School of Flying Has New Quarters." *San Antonio Express* 18 Dec. 1915, morning ed. This article gives information that land for Stinson Field has been located and now is in use for the airfield.

Seaver, John. Letter to the author. 4 Jan. 1989. Director, New Mexico Board of Examiners for Architects. Sent me all of the information about Katherine that he has.

Stewart, William. "Former Air Queen Now Cooking Biscuits." *Dallas Morning News* 31 March 1929, morning ed. This article gives a brief description of Katherine's life after she quit flying. It goes on stating facts about Katherine's flying career.

Stinson, Katherine. "Why I Am Not Afraid to Fly." *The American Magazine* 1919: 36-37. It describes the sensations Katherine experienced while she was flying.

"The Strength and Beauty of Santa Fe Style." *American Home* March 1970: 60-61. This article has pictures of houses Katherine designed in Santa Fe, New Mexico.

Taylor, Woodson. Letter to the author. 30 Jan. 1989. Employed by the Palace of the Governors, a unit of the Museum of New Mexico. Mr. Woodson sent me clippings from the Stinson Otero file.

Templeton, Ronda. "Open House Set at Stinson Field." *San Antonio Light* 7 Nov. 1981, morning ed. The article tells of a ceremony honoring the Stinson sisters. It also gives a small history of Stinson Field.

Texas. Map. Austin: Texas State Department of Highways, 1988. I used a small map of San Antonio from this source.

Texas. Texas Historical Commission, Office of the State Archeologist. *An Archeological and Historical Survey of the Proposed Mission Parkway, San Antonio, Texas.* Scurlock, Benavides, Isham, Clark. Austin: July 1976. This report gave a brief description and history of Stinson Field.

Texas Women's Hall of Fame, A Sesquicentennial Celebration Honoring the 1986 Inductees Austin: Governor's Commission for Women 18 Sept. 1986. This program gave brief biographical sketches of Hall of Fame members, including Katherine and Marjorie Stinson.

Towbridge, Charles. "Kathy Looped the Loop." *Chicago American* 18 Jan. 1958. This article states that Katherine Stinson looped an airplane Feb. 16, 1916 completing three loops.

Truby, H.A. "Katherine Stinson, First Aviatrix to Fly U.S. Mail." *Stamps* 9 Dec. 1933. This article discusses Katherine Stinson's mail carrying career.

Underwood, John W. *The Stinsons* Glendale: Heritage Press, 1976: 4-23. This book was about the Stinson Family of Aviators. It contains many photos of the Stinson family.

Villard, Henry Serrano. *Contact! The Story of the Early Birds* New York: Thomas Y. Crowell Co., 1968: 144, 251-254. This book has an extensive bibliography.

Wendt, Arthur. Personal Interview. 21 Dec. 1988. Current airport manager of Stinson Field, San Antonio. Gave me a tour of the facilities and shared information.

Winegarten, Ruthe, ed. *Finders Guide to the Texas Women: A Celebration of History Exhibit Archives* Denton: Texas Woman's University, 1984: 180-181. This article told me there was information at TWU about Katherine Stinson.

Women Aloft Alexandria: Time-Life Books, 1981: 13, 31, 35-41, 172-173. This gave lots of pictures of Katherine Stinson plus a short biography.

"World-famous Woman Flyer Aids Future of Aeronautics." A.M. Bergere Family Papers, NM State Records Center & Archives. This article has a good timeline which was very helpful.

United States. Department of Interior. *National Register of Historic Places Inventory—Nomination Form.* Dorothy McKibbin House, 1986. Santa Fe: Swanson.●

INTERNATIONAL CONVENTION ON CLIMATE CHANGE

● Mr. HEINZ. Mr. President, very few days go by when the problem of global warming is not being earnestly discussed within the Congress, within our Nation's scientific agencies, and among the nations of this increasingly interdependent world. Global warming is a real problem demanding real attention.

In Geneva, as we speak, the United States is chairing a meeting of the Intergovermental Panel on Climate Change. This is not just another meeting. The IPCC is the primary international mechanism available for taking up the so-called greenhouse effect. The United States has before it a unique opportunity to take a leadership role in addressing what some of our leading scientists call a potentially catastrophic change in global temperatures. The question is—will we seize the opportunity or, as we are now doing, sit on the sidelines.

To date the United States has been the world leader in global warming research. But we can also show diplomatic world leadership. Our scientists are doing their job; policymakers also have a job to do. What is urgently needed at this time is an international convention similar to the one that tackled our global ozone problem.

We all recognize that addressing global warming is not going to be an easy process. We must address fundamental questions of energy use and conservation in industrialized nations. The United States is responsible for 20 percent of the world's manmade carbon dioxide emissions, over 1 billion tons of CO_2 per year. We cannot look to other nations to reduce energy consumption or preserve rain forests if we are not willing to put our own house in order.

Mr. President, I share the administration's concern over controlling the cost of solutions to environmental problems. We should be doing everything in our power to bring creative least-cost solutions to bear on this problem. This does not mean we should ignore the costs or the policy decisions that must be made.

All Western economic powers except the United States have agreed that we need an international convention. The administration cannot turn a blind eye and prevent our delegates in Geneva from calling for and leading such a conference.

I urge my colleagues to join me in calling for an international climate change convention to be hosted by the United States this year. The United States must follow its scientific lead and move from analysis to action. If the White House does not act on the greenhouse, we'll all end up in the doghouse.●

ANNE FRANK DAY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 65, a joint resolution designating June 12, 1989, as Anne Frank Day, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 65) designating June 12, 1989 as "Anne Frank Day."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the joint resolution (S.J. Res. 65) was considered, ordered to a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and its preamble, are as follows:

S.J. RES. 65

Whereas, Anne Frank's Diary, which has recounted the horror and humiliation of living in Nazi-controlled Europe during the Holocaust, has been an inspiration to young and old throughout the world;

Whereas, Anne Frank's spirit, despite her ordeal and that of her family, led her to conclude: "In spite of everything, I believe that people are basically good";

Whereas, Anne Frank's story gives hope that the tragedies and horrors of another Holocaust can be prevented by learning the causes and teaching the remedies; and,

Whereas, June 12, which would have been Anne Frank's sixtieth birthday, is an appropriate day to remember her courage and wisdom: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That June 12, 1989, is designated as "Anne Frank Day". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe that day with appropriate programs, ceremonies, and activities.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reconsideration of the vote by which the joint resolution was passed to be laid upon the table.

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

NATIONAL CORRECTIONAL OFFICERS WEEK

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of House Joint Resolution 135, a joint resolution designating the week of May 7, 1989, as "National Correctional Officers Week," and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 135) to designate the week beginning May 7, 1989 as National Correctional Officers Week.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the joint resolution (H.J. Res. 135) was considered, ordered to a third reading, read the third time, and passed.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reconsideration of the vote by which the joint resolution was passed be laid on the table.

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

APPOINTMENT OF CONFEREE—HOUSE CONCURRENT RESOLUTION 106

Mr. MITCHELL. Mr. President, in behalf of Senator DOLE, I ask unanimous consent that Senator ARMSTRONG be added as a conferee to House Concurrent Resolution 106, the budget resolution, to replace the Senator from Wisconsin [Mr. KASTEN].

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

AMENDMENT NO. 100

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senate amendment No. 100 be printed, and I am authorized to say that the Republican leader has no objection to this request.

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

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

PRINCE WILLIAM SOUND OIL SPILL EMERGENCY RESPONSE ACT OF 1989

Mr. JOHNSTON. Mr. President, on March 24, 1989, the Nation experienced its worst oil spill ever—240,000 barrels or 10 million gallons of crude oil. The Good Friday grounding and the rupture of the *Exxon Valdez* on Bligh Reef in the Prince William Sound was a tragedy.

This oil spill occurred in one of the most environmentally sensitive areas in North America. And it could not have occurred at a worse time as marine mammals, migratory waterfowl and anadromous fish runs were within days and weeks of moving into the bays, streams and inlets of Prince William Sound.

The American public has witnessed more than 6 weeks of close-up and detailed media coverage on the causes and the consequences of the *Exxon Valdez* oil spill.

We have seen the thick oil spread, day after day, saturating otters, sea birds, marine mammals and remote beaches.

We have seen the valiant efforts of Alaska fishermen working to stretch booms and operate makeshift equipment to protect hatcheries and sensitive harbors.

We have also seen one of the Nation's largest corporations—Exxon—mount a late and initially disorganized, equipment-short effort to stem the spill and clean up the damage already done.

We have seen indecision and faltering leadership from the oil industry and from Government.

We have also seen a disgraceful failure on the part of the Alyeska Pipeline Services Co. to have personnel and equipment on hand and in a state of readiness to deal with oil spills.

We have also seen the horrible consequences of human error, compounded by alcohol abuse, in what should have been the routine navigation of an oil tanker through an area previously passed safely by more than 3,000 other tankers.

Dealing with this oil spill's impact on the environment, the fish and the wildlife, and the fisheries based economy of Southcentral Alaska will take months and perhaps years. It will cost hundreds of millions of dollars. And it will send reverberations back for years through many features and aspects of national energy, maritime, and environmental policy.

The *Exxon Valdez* disaster will, I am confident, ultimately lead to many needed permanent reforms in the nation's statutes, policies and regulatory framework governing oil spills, strict liability, compensation, tanker operations, contingency planning, and oil spill response capability.

Unfortunately, developing comprehensive national legislative policies on these matters will take more time than we would like. The issues are complex. And the reality is that it will take a long time to develop national policies which meet the needs, the realities, and the circumstances of different districts, States and regions of the Nation. Congress has labored for years, for example, on comprehensive oilspill liability legislation, yet we still do not have a statute on the books.

I have concluded that interim emergency legislative action should be taken. This action must focus on the *Exxon Valdez* oilspill, on the movement of Alaska crude oil, and on the potential consequences of other developmental activities now taking place in the Arctic region of the State of Alaska.

I am introducing, in the form of a substitute amendment to S. 406, the Prince William Sound Oil Spill Emergency Response Act of 1989. I invite my colleagues to join in sponsoring this interim and emergency measure.

This amendment incorporates many useful suggestions and proposals made by the Environmental Policy Institute, the Friends of the Earth, the Oceanic Society, organizations representing Alaska fishermen, and the Inupiat Eskimo people of the North Slope—who have called for tighter regulation of tanker transport and offshore oil activities in the Arctic for many years—and the suggestions of State and Federal officials.

This interim legislative response to the *Exxon Valdez* disaster would achieve the following important objectives for Prince William Sound, AK and ports receiving Alaska crude oil:

First. Extend the standard of joint, several and strict liability for damage now applicable to the Trans-Alaska Pipeline right-of-way to all areas of the North Slope, both onshore and offshore.

Second. Increase the strict liability damage levels for these areas from $50 to $500 million.

Third. Extend the requirement that removal costs shall be at the expense

of the Trans-Alaska Pipeline right-of-way permit holders to all lease and permit holders on Alaska's North Slope, both onshore and offshore.

Fourth. Increase strict liability for each incident of spill or discharge of Alaska North Slope crude oil from $100 to $500 million.

Fifth. Increase the revenues available for cleanup and damages in Trans-Alaska Pipeline Liability Fund from $100 to $500 million by reimposing a 5 cent per barrel fee on all oil moved through the pipeline.

Sixth. Authorize the Secretary of Transportation to issue emergency regulations within 30 days to:

Subject tankers to heightened safety precautions in "hazard to navigation areas" where the risk of grounding, accident, or collision is increased;

Require full-time Coast Guard radar monitoring and radio contact for all tankers transmitting hazard to navigation areas;

Require that a certified local harbor pilot assist the captain on the bridge of tankers at all times while moving through Prince William Sound and other hazard to navigation areas;

Require the establishment of limits on tanker movement in hazard to navigation areas under poor weather and ice conditions;

Require the installation of radar responders at Bligh Reef and at other hazard areas near traffic lanes; and

Require that tankers transitting hazard to navigation areas have on board at least two officers certified for navigation in that area.

Seventh. Require, within 30 days, the issuance of regulations on alcohol and drug use which:

Mandate that all tanker owners moving Alaska crude oil impose stringent alcohol and drug testing and monitoring procedures, including random testing, on all officers and crew members;

Direct that these programs be patterned after those used in the commercial aviation industry;

Exclude issuance of licenses to operate vessels under specified circumstances; and

Grant access to the driving records of prospective officers of vessels.

Eighth. Require, within 60 days, the issuance of regulations on qualifications, operations and training for vessel officers and crews which:

Impose more stringent requirements for reciept and renewal of masters licenses in the Alaska crude oil trade;

Direct increased vessel manning requirements, redundant safety systems, and second opinions on navigation decisions; and

Increase job training requirements for tanker crews.

Ninth. Require the Secretary of Transportation to prepare a report on and authorize him, within 90 days, to impose regulations which require:

The transport of Alaska crude oil improvements to Vessel Traffic Control Services Systems, the enhancement of current radar capabilities and the restriction of tanker traffic in hazard to navigation areas to daylight hours until needed changes are made;

New ice breaking vessels in Prince William Sound for tanker assistance;

Tankers in the Alaska trade to incorporate: double bottoms; segregated hull compartments; bow thrusters for greater maneuverability; and other needed vessel design or operational changes; and

Increased frequency of in-water and dry dock Coast Guard structural inspections of all vessels in the Alaska crude oil trade.

Tenth. Establish a new $200 million oil spill avoidance and readiness trust fund, financed by a new 5 cent per barrel fee on oil moved through the Trans-Alaska Pipeline. The trustees of the fund are authorized to disburse revenues from the fund to:

Update and improve the Vessel Traffic Control System for Valdez, AK, and Prince William Sound and at U.S. ports receiving Alaska crude oil;

Conduct research on short- and long-term effects of oil spills and offshore oil and gas activities on fish, wildlife and the marine environment; and

Supplement Federal agency budget authority for critically needed manpower and equipment.

Eleventh. Provide emergency low interest loan assistance to individuals, small businesses and Native corporations adversely impacted by the *Exxon Valdez* oil spill.

Twelfth. Require a full report by the EPA and the Departments of Transportation and the Interior on all Alaska crude oil related contingency plans, including the state of readiness of personnel and equipment. This report shall include recommendations for civil penalties and criminal action where warranted by the facts.

Thirteenth. Increase and impose new civil and criminal penalties for violation of Federal law and regulations concerning oil spills, contingency plans, and operational readiness of containment and cleanup equipment.

This legislation addresses directly—but on an interim and geographically limited basis—most, if not all, of the significant failures in policy, in regulations and in operations which have been unveiled in the reviews to date of the Prince William Sound oil spill.

The oil industry clearly will see this measure as over-kill, especially those companies that were not directly responsible for the *Exxon Valdez* oil spill. One thing, however, is very plain out of all of this. That is that the owners of the Alyeska Pipeline Service Co. have been cutting corners. To reduce expenses, they have let their oil spill contingency capability erode. They have let their pollution control capability at Valdez slip. And in so doing, they have sacrificed public confidence for short-term gain. And regrettably, this short-term gain will carry with it a very large long-term price to the whole industry. This measure and other legislation will place the burden of future risks on the oil industry's balance sheet, and not on the public.

The time has come for some needed changes. The major changes this bill would bring about are:

First, the oil industry must be brought to understand that the costs of protecting the environment are a direct cost of, and a condition precedent to, being allowed to do business in Alaska and in this country. Once this is made clear by law and regulation, the cost of reducing the risks of oil spills and other environmental degradation will be the subject of careful attention by corporate boards of directors, officers, and managers.

Second, enforcement and compliance must and will be made a top priority. The era of assuming oil industry compliance with governmental requirements is past. Enforcement by public officials of the letter of the law and regulation will be the standard in the future.

Third, the costs of protecting the environment from spills of Alaska crude and the costs of enforcement will be borne by the oil industry, and not the public.

The American public's outrage over the *Exxon Valdez* oilspill is understandable. This simply should not have happened. It would not have happened if more care had been taken. The magnitude of the spill would not have been as great if contingency plans and regulations had been followed and if needed equipment and manpower was in place and in a state of readiness.

But the oil spill did happen.

And its causes need to be addressed promptly by appropriate legislation.

The amendment I am introducing today as chairman of the Senate Energy and Natural Resources Committee represents my best judgment and the best judgment of my staff on how to respond, on an interim basis, to this human and environmental tragedy.

But, that is not the end of the *Exxon Valdez* oilspill.

It should be possible to bring forth a timely and united legislative response to deal with the *Exxon Valdez* oilspill. What will be harder, is to focus on long-term national policy; to determine how to shift national incentive systems and how to deploy and utilize national resources in a manner which will truly serve the long-term interests of the American people.

Make no mistake, we have a whipping boy in the *Exxon Valdez* oilspill.

Exxon bears responsibility. But there are others who also bear responsibility.

Let me start with the Congress. Why have we not acted to put into Federal law the still pending comprehensive oil spill liability legislation? Why has the Coast Guard budget been cut and placed on hold for the past 10 years? Why have published reports of the Alyeska Pipeline Service Co.'s actions to cut expenses and curtail oilspill response plans and to cut corners in the operation of the Valdez terminal gone unanswered? Why has Federal and State enforcement of industry compliance been so haphazard?

In short, there is plenty of blame to go around.

Congress needs to promptly address the causes of the *Exxon Valdez* oil spill. We also need to look at the long-term implications of this tragic event for America's future. What does it portend for our balance of trade, for our energy policy, for the environment, for fish and wildlife, for consumer prices, for maritime policy, and for the Nation's future reliance on imported oil from insecure sources.

Mr. President, I ask unanimous consent that a summary and text of the amendment I am introducing today be printed in the RECORD.

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

SUMMARY—MAJOR PROVISIONS OF THE PRINCE WILLIAM SOUND OIL SPILL EMERGENCY RESPONSE ACT OF 1989

TITLE I—FINDINGS, PURPOSES AND GOALS

1. Congress finds that the *Exxon Valdez* oil spill was caused by "human error and negligent conduct" and compounded by a "failure . . . to maintain oil spill . . . equipment and personnel . . . in a state of readiness".

2. The purpose of the Act is to provide decisive Congressional action addressing the shortcomings in law, policy and regulation governing oil spill contingency and response plans and the transport of Alaska crude oil to receiving ports in the U.S.

3. The goal of the Act is to dedicate all resources necessary to reduce the risk of future oil spills and discharges to lowest levels technically and humanly possible.

TITLE II—TRANS-ALASKA PIPELINE ACT AMENDMENTS

1. Extend the standard of joint, several and strict liability for damage now applicable to the Trans-Alaska Pipeline right-of-way to all areas of the North Slope, both onshore and offshore.

2. Increase the strict liability damage levels for these areas from $50 million to $500 million.

3. Extend the requirement that removal costs shall be at the expense of the Trans-Alaska Pipeline right-of-way permit holders to all lease and permit holders on Alaska's North Slope, both onshore and offshore.

4. Increase strict liability for each incident of spill or discharge of Alaska North Slope crude oil from $100 million to $500 million.

5. Increase the revenues available for clean-up and damages in the Trans-Alaska Pipeline Liability fund from $100 million to $500 million by reimposing the 5 cent per barrel fee on all oil moved through the pipeline.

6. Specify the nature of the damages covered by the Act to include all removal costs, economic losses, real or personal property losses, natural resources losses, loss of subsistence uses, loss of income or impairment of earning capacity, and tax, royalty, rental or net profit loss.

7. Appoint Public Trustees to secure damages for natural resource losses.

TITLE III—VESSEL OPERATIONS AND ACCIDENT PREVENTION

1. Authorize the Secretary of Transportation to issue emergency regulations within 30 days to:

(a) define "hazard to navigation areas" in Prince William Sound and Marine areas near ports receiving Alaska crude oil.

(b) require all tankers in Prince William Sound hazard areas to be under the control of a local harbor pilot;

(c) require full-time Coast Guard radar monitoring and radio contact with all tankers in Prince William Sound;

(d) require the installation of radar responders at Bligh Reef and at other hazard areas near traffic lanes;

(e) require the presence of the Captain and a certified local harbor pilot on the bridge of tankers at all times while in the Sound; and

(f) require additional and/or extended tug boat escort and assistance in the Sound and in United States ports receiving Alaska crude oil.

2. Require, within 30 days, the issuance of regulations on alcohol and drug use which:

(a) mandate that all tanker owners moving Alaska crude oil impose stringent alcohol and drug testing and monitoring procedures on all officers and crew members having navigational responsibilities;

(b) direct that these programs be patterned after those used in the railroad and commercial aviation industry and in the Navy's nuclear submarine program;

(c) exclude issuance of licenses to operate vessels under specified circumstances related to drug and alcohol use;

(d) grant access to the driving records of prospective officers of vessels;

(e) institute random drug and alcohol testing procedures; and

(f) require officers and crew to be on board vessels six hours before leaving the terminal.

3. Require, within 60 days, the issuance of regulations on qualifications, operations and training for vessel officers and crews which:

(a) impose more stringent requirements for receipt and renewal of Masters licenses in the Alaska crude oil trade;

(b) direct increased vessel manning requirements, redundant safety systems, and second opinions on navigation decisions; and

(c) increase job training requirements for tanker crews.

4. Require the Secretary of Transportation to prepare, within 90 days, a report on, and authorize the Secretary to impose regulations for Prince William Sound which require:

(a) ice breaking vessels in the Sound for tanker assistance;

(b) that tankers in the Alaska trade incorporate: double bottoms; segregated hull compartments; bow thrusters for greater manueverability; and other needed vessel design or operational changes; and

(c) increased frequency of in-water and dry dock Coast Guard structural inspections of all vessels in the Alaska crude oil trade.

TITLE IV—UPDATE AND REVISE VESSEL TRAFFIC CONTROL SYSTEM (VTRCS SYSTEMS) TO PREVENT ACCIDENTS

1. Direct the Secretary of Transportation to review all VTCS Systems for monitoring Alaska crude oil traffic in Alaska and at receiving ports and make recommendations to improve them.

2. Authorize specific improvements to or replacement of existing VTCS systems to achieve the best and most redundant safety systems possible.

3. Authorize funding from the Oil Spill Avoidance and Readiness Trust Fund established under Title V to fund improvements to the VTCS systems.

TITLE V—OIL SPILL AVOIDANCE TRUST FUND

1. Establish a new $200 million Oil Spill Avoidance and Readiness Trust Fund, financed by a new 5 cent per barrel fee on oil moved through the Trans-Alaska Pipeline. The Trustees of the Fund are authorized to disburse revenues from the Fund to:

(a) update and improve the Vessel Traffic Control System for Valdez, Alaska, and Prince William Sound and at U.S. ports receiving Alaska crude oil;

(b) conduct research on short- and long-term effects of oil spills, and oil and gas activities on fish, wildlife and the marine environment;

(c) supplement Federal agency budget authority for critically needed manpower and equipment;

(d) provide emergency low interest loan assistance;

(e) provide emergency assistance grants to subsistence communities;

(f) conduct a review and report on the adequacy of contingency and response plans required by Title VI; and

(g) fund the cost of developing, implementing and operating new contingency and response plans.

TITLE VI—REPORTS ON OIL SPILL CONTINGENCY PLANS

1. Require a full report by the EPA and the Departments of Transportation and the Interior on all Alaska crude oil related contingency plans, including the state of readiness of personnel and equipment.

2. This report shall include recommendations for civil penalties and criminal action where warranted by the facts.

TITLE VII—DEVELOPMENT OF OIL SPILL CONTINGENCY AND RESPONSE PLANS; STANDARDS; READINESS; TESTING; AND INSPECTIONS

1. The Secretary of Transportation is to issue new mandatory requirements for contingency and response plans.

2. (a) The Secretary of Transportation shall establish minimum standards for oil spill containment, removal and clean-up equipment.

(b) Funding for the clean-up plans is to be provided from the new Oil Spill Avoidance and Readiness Trust Fund.

3. State governments are to implement and supervise clean-up plans.

4. New standards are established for clean-up plans, full-time employees, clean-up equipment, training, use of volunteers and military.

5. Response teams are to be organized on a permanent, full-time basis like municipal fire departments, and shall be subjected to testing and readiness training, including surprise drills.

6. The Secretary shall direct a periodic inspection of State plans, response teams and equipment to determine their operational readiness.

7. This Act does not replace, lessen or reduce in any way oil industry responsibility to maintain contingency and response plans, equipment and personnel.

8. The costs of funding for this Title shall be paid out of the Oil Spill Avoidance and Readiness Trust Fund established under Title V.

TITLE VIII—ENVIRONMENTAL ADVISORY PANEL

1. An Environmental Advisory Panel on the Marine Environment is created to give advice and establish priorities for funding short and long-term research on the impacts of oil spills, discharges, and oil and gas activities on the marine environment.

TITLE IX—NO IMPACT ON STATE LAW OR ON LIABILITY FOR OIL SPILLS UNDER OTHER LAW

1. The Act does not preempt State law or prevent States from imposing additional liability or damage rules.

2. The Act does not affect obligations of parties responsible for oil spills or discharges of oil under other Federal or State law, including common law.

TITLE X—ENFORCEMENT

1. The Act imposes new civil and criminal penalties.

2. Penalties and fines are paid into the Oil Spill Avoidance Trust Fund.

ORDERS FOR WEDNESDAY

Mr. MITCHELL. Mr. President, each of the following requests has been cleared with the distinguished Republican leader, who has no objection to any of them.

RECESS UNTIL 1 P.M. TOMORROW AND MORNING BUSINESS

I now ask unanimous consent that when the Senate completes its business today, it stand in recess until 1 p.m. tomorrow, Wednesday, May 10, and that following time for the two leaders there be a period for morning business not to extend beyond 2 p.m. with Senators permitted to speak therein for up to 5 minutes each.

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

CONSIDERATION OF SENATE JOINT RESOLUTION 100

Mr. MITCHELL. Mr. President, I further ask unanimous consent that at 2 p.m. tomorrow, the Senate proceed to the consideration of Senate Joint Resolution 100, that the 10-hour time limitation be reduced to 2 hours, and that all other provisions of the statutory time limitation remain in effect.

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

PROGRAM

Mr. MITCHELL. Mr. President, Senators should be aware that at 2 o'clock tomorrow, we will take up Senate Joint Resolution 100, a resolution disapproving Presidential certification with respect to the Bahamas, and that a rollcall vote is expected with respect to that joint resolution at or about 4 p.m. tomorrow if the 2 hours is all used. So it is now expected that there will be a rollcall vote on that resolution tomorrow afternoon on or shortly prior to 4 p.m.

RECESS UNTIL 1 P.M., WEDNESDAY, MAY 10, 1989

Mr. MITCHELL. Mr. President, if no other Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess under the previous order until 1 p.m. on tomorrow, Wednesday, May 10.

There being no objection, the Senate, at 4:57 p.m., recessed until Wednesday, May 10, 1989, at 1 p.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate after the recess of the Senate on May 5, 1989, under authority of the order of the Senate of January 3, 1989:

DEPARTMENT OF STATE

MELVIN F. SEMBLER, OF FLORIDA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO AUSTRALIA AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF NAURU.

RICHARD H. SOLOMON, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF STATE, VICE GASTON JOSEPH SIGUR, JR., RESIGNED.

JEWEL S. LAFONTANT, OF ILLINOIS, TO BE U.S. COORDINATOR FOR REFUGEE AFFAIRS AND AMBASSADOR-AT-LARGE WHILE SERVING IN THIS POSITION, VICE JONATHAN MOORE, RESIGNED.

DEPARTMENT OF AGRICULTURE

JOANN D. SMITH, OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF AGRICULTURE, VICE KENNETH A. GILLES, RESIGNED.

DEPARTMENT OF LABOR

KATHLEEN M. HARRINGTON, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE FRANCIS J. DUGGAN.

U.S. COURT OF VETERANS APPEALS

KENNETH B. KRAMER, OF COLORADO, TO BE AN ASSOCIATE JUDGE OF THE U.S. COURT OF VETERANS' APPEALS FOR THE TERM OF 15 YEARS. (NEW POSITION—P.L. 100-687.)

Executive nominations received by the Senate May 9, 1989:

DEPARTMENT OF DEFENSE

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT AS VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF UNDER TITLE 10, UNITED STATES CODE, SECTION 154.

To be vice chairman of the Joint Chiefs of Staff

GEN. ROBERT T. HERRES, [redacted] FR, U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT AS THE JUDGE ADVOCATE GENERAL AND THE ASSISTANT JUDGE ADVOCATE GENERAL, RESPECTIVELY, U.S. ARMY, IN THE GRADE OF MAJOR GENERAL, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 3037:

To be the judge advocate general

MAJ. GEN. WILLIAM K. SUTER, [redacted] U.S. ARMY.

To be the assistant judge advocate general and major general

BRIG. GEN. JOHN L. FUGH, [redacted], U.S. ARMY.

CONFIRMATION

Executive nomination confirmed by the Senate May 9, 1989:

EXECUTIVE OFFICE OF THE PRESIDENT

RUFUS HAWKINS YERXA, OF THE DISTRICT OF COLUMBIA, TO BE A DEPUTY U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

WITHDRAWAL

Executive nomination withdrawn by the President, May 5, 1989, from further Senate consideration:

DEPARTMENT OF LABOR

FRANCIS J. DUGGAN, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE WILLIAM JOHN MARONI, WHICH WAS SENT TO THE SENATE ON JANUARY 3, 1989.